

# OFFICIAL RECORD OF PROCEEDINGS

**Wednesday, 1 December 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 TIMOTHY FOK TSUN-TING, G.B.S., J.P.

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

**PUBLIC OFFICERS ATTENDING:**

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

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

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

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

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

**CLERKS IN ATTENDANCE:**

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

**PRESIDENT** (in Cantonese): Clerk, as there are less than 20 Members in the Chamber now, please ring the bell to summon Members to the Chamber.

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

### **TABLING OF PAPERS**

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

No. 37 — Director of Social Welfare Incorporated  
Financial statements for the year ended 31 March 2010  
together with the Report of the Director of Audit

Report No. 6/10-11 of the House Committee on Consideration of  
Subsidiary Legislation and Other Instruments

### **ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions: First question.

#### **Review of Legislation on Transportation and Storage of Explosives**

1. **PROF PATRICK LAU** (in Cantonese): *President, At present, there are only two Government Explosives Depots in Hong Kong, which are respectively located at Kau Shat Wan on Lantau Island and Sha Tin Heights in Kowloon, and as vehicles carrying explosives are prohibited from entering cross harbour tunnels, explosives required for the works projects on Hong Kong Island are mainly delivered by sea transport from Lantau Island. At the same time, shipping of explosives is prohibited between the hours of sunset and sunrise under the existing legislation. As such, if blasting has to be carried out for a works project twice a day during morning and evening hours, a temporary explosives magazine has to be built close to the construction site. Given the*

*above reasons, the MTR Corporation Limited has proposed to build a temporary explosives magazine at Chung Hom Kok in Stanley for the construction of the South Island Line, but the local community has objected strongly to such a proposal because the site selected for the cross-district magazine is not near the construction site but only 300 metres from residential areas and adjacent to the workstations of telecommunications facilities, coupled with the added danger of transporting explosives through the narrow roads, sharp bends and steep slopes of the vehicular routes in the Stanley area, thus threatening the safety of residents and workers in the vicinity. In this connection, will the Government inform this Council:*

- (a) of the respective numbers, locations and capacities of the temporary explosives magazines which were built and will be built in Hong Kong at present, as well as their shortest distance from nearby buildings or leisure and recreational facilities, with a breakdown by District Council district;*
- (b) given that when the relevant legislation was being enacted, the authorities prohibited the conveyance of explosives by sea transport between the hours of sunset and sunrise, having regard to the dangerous nature of explosives, but I have learnt that the safety of the explosives currently supplied by the Government for blasting works has been greatly improved, whether the authorities will amend the relevant legislation to extend the operating hours of Government Explosive Depots, and permit the conveyance of explosives by sea transport between the hours of sunset and sunrise, so as to avoid the need to construct temporary explosives magazines in urban areas which are close to residents; and*
- (c) whether the authorities will expeditiously amend the Dangerous Goods Ordinance and related legislation to stipulate that explosives shall be delivered directly to construction sites at specific time so as to remove the threat to public safety posed by the setting up of temporary cross-district explosives magazines in various places in the urban area, thereby gaining public support for the 10 major infrastructural projects so that they can be taken forward smoothly?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, my reply to the three parts of the question is as follows:

- (a) As Prof Patrick LAU has mentioned, at present, there are two Government Explosives Depots in Hong Kong, which are respectively located at Kau Shat Wan on Lantau Island and Sha Tin Heights in Kowloon. The capacity of Kau Shat Wan Government Explosives Depot is about 500 tonnes. Located on an outlying island, it is not accessible by land, so, explosives must be delivered by marine transport, that is, vessels. The explosives depot at Sha Tin Heights is situated next to Tai Po Road. It operates on a smaller scale with a capacity of less than 3 tonnes.

Apart from the above two government owned explosives depots, implementation agents of individual major works projects will apply for construction of temporary explosives magazines to meet the operational needs of the projects. These temporary explosives magazines are owned by the implementation agents of individual major works projects and supervised by the Government. At present, there is one temporary explosives magazine in operation at Victoria Road on Hong Kong Island. Two more are under construction at So Kwun Wat in Tuen Mun and Tai Shu Ha in Yuen Long respectively.

In addition, there are three proposed temporary explosives magazines. One is proposed for Chung Hom Shan on Hong Kong Island and the remaining two for Tseung Kwan O Area 137. Each temporary explosives magazine is proposed to cater for a specific major works project.

Details of the above temporary explosives magazines, including the relevant works projects, storage capacity for explosives and the shortest distance from the nearby facilities are set out in the Annex.

- (b) About part (b) of the question, section 3(2) of the Dangerous Goods (Government Explosives Depots) Regulations provides that no person shall cause or permit any explosives to be received into or removed from a depot between the hours of sunset and sunrise without the permission of the Commissioner of Mines, that is,



Director of Civil Engineering and Development. Section 17(1)(d) of the Dangerous Goods (Shipping) Regulations provides that no locally licensed vessels while conveying any explosives may be underway in the Victoria Harbour between the hours of sunset and sunrise without the permission of the Director of Marine. The above restrictions are imposed in light of the safety problems involved in delivering explosives at night.

It is not necessary to amend the existing legislation since the heads of departments concerned are empowered under current legislation to grant approval as necessary in individual cases for moving explosives in and out of the depots and delivery by marine transport before the hours of sunrise or after the hours of sunset. That said, in exercising their discretion, the department heads concerned need to assess whether the level of risk is acceptable and in line with the principles of good risk management. They have to consider relevant factors carefully, such as the risk of conveying explosives at night, the quantity and class of explosives, land and marine transport routes, the location of the pier for loading and unloading the explosives, the time and frequency of delivery, the risks involved as compared with other feasible options, as well as the advice of international experts. The Marine Department has pointed out that their main concern is the additional risk of vessel operations at night. Although the Director of Marine may approve such activity, approval will be granted for individual trips under very special and exceptional circumstances only.

- (c) Concerning part (c) of the question, as mentioned above, the existing legislation permits direct delivery of explosives to the construction sites for blasting. Therefore, it is not necessary to amend the Dangerous Goods Ordinance and related legislation. Such an arrangement of direct delivery of explosives to the construction sites for blasting was adopted for previous works projects where blasting was required only once per day (that is, in the afternoon). Nevertheless, for individual works projects where more than one blasting was required per day, temporary explosives magazines were built in the vicinity to reduce effectively the frequency of long-distance delivery of explosives to the construction sites from the Government Explosives Depot at Kau Shat Wan, therefore

lowering the overall risks in delivery. An international explosives expert employed by the Civil Engineering and Development Department (CEDD) also agrees that the provision of temporary explosives magazines is a more appropriate arrangement conducive to effective overall risk management. Moreover, temporary explosives magazines can be put to contingency use for storing explosives which cannot be blasted on the same day they are delivered to the construction sites owing to unexpected circumstances, or those which cannot be blasted as scheduled because of delay in blasting preparatory work at construction sites.

I appreciate the public's general concern about explosives depots as expressed in Prof Patrick LAU's question. However, I must point out that the construction and operation of a temporary explosives magazine are subject to stringent vetting and approval procedures. The applicant must conduct the environmental impact and risk assessments under the Environmental Impact Assessment Ordinance to ensure effectively the safety in building and operating the temporary explosives magazine. Furthermore, the location and storage capacity of explosives magazines must meet the safety clearance requirements under the Manufacture and Storage of Explosives Regulations enacted by the United Kingdom Health and Safety Executive in 2005. Our records show that no safety incidents occurred in such facilities over the past decades.

As for the proposal of requiring explosives to be delivered directly to construction sites at specified time, it should be noted that the blasting process, frequency and schedule vary among different projects to meet their specific needs. If explosives need to be delivered directly from Kau Shat Wan to the construction sites every time when blasting is carried out so as to tie in with the blasting works at different construction sites at different times, it will greatly increase the number of long-distance trips of delivering the explosives and affect the implementation and progress of the works.

To minimize long and indirect trips in transporting explosives and the demand for temporary explosives magazines, the CEDD and the implementation agents of major works projects have been searching over the past two years for a site along the coastline of Hong Kong

Island that is suitable for use as a pier for loading/unloading explosives. The identified site must meet relevant technical requirements and should be acceptable to the local community. The CEDD and other departments concerned will continue to identify a suitable site for a pier for loading/unloading explosives that is acceptable to the local community, so that various major infrastructure projects can be taken forward smoothly.

## Annex

## (a) Temporary Explosives Magazines in Operation/under Construction

<i>District Council District</i>	<i>Number</i>	<i>Location</i>	<i>Works Project</i>	<i>Storage Capacity</i>	<i>Shortest Distance from Nearby Facilities</i>
Central and Western	1	Victoria Road	MTR West Island Line	2.4 tonnes	about 64 m <sup>(1)</sup>
Tuen Mun	1	So Kwun Wat, Siu Lam	Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL)	1.2 tonnes	about 230 m
Yuen Long	1	Tai Shu Ha	Hong Kong Section of the XRL	0.8 tonnes	about 210 m

Note:

- (1) The magazine is located in a cavern with seaward access.

## (b) Proposed Temporary Explosives Magazines

<i>District Council District</i>	<i>Number</i>	<i>Location</i>	<i>Works Project</i>	<i>Storage Capacity</i>	<i>Shortest Distance from Nearby Facilities</i>
Southern	1	Chung Hom Shan	MTR South Island Line (East)	0.8 tonnes	about 200 m
Sai Kung	2	Tseung Kwan O Area 137	MTR Kwun Tong Line Extension	1.5 tonnes	about 160 m
			Shatin to Central Link	1.0 tonnes	about 160 m

**PROF PATRICK LAU** (in Cantonese): *President, I have studied the Mines Division Practice Note No. 1 (MDPN) on the Delivery of Explosives and Related Safety and Security Procedures. It is set out in para 3.3 of the MDPN that "For tunnel blasting works and other sites with special requirements, the Contractor may apply to the Mines Division for the setting up of a site magazine for temporary storage of the delivered explosives, which may subsequently be used at a time to suit the blasting cycles". So, I do not understand why the magazine for temporary storage of explosives for the South Island Line of the MTR would be constructed in another place, for example, the remote Chung Hom Shan. Should a site adjacent to the construction site be identified for setting up an explosives magazine?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): *President, I have also asked the Commissioner of Mines a relevant question. Actually, in handling the storage of explosives, we have to identify a proposal acceptable by various parties. However, regarding the setting up of a magazine on-site for storage of explosives, such as storage of explosives at sites for tunnel blasting works, I am afraid this will create risks in the course of the works and for workers at the site. Therefore, we have now chosen, upon assessment, a more suitable location which is relatively close to the site for setting up a site magazine for temporary storage of the delivered explosives. We think that this is a more suitable alternative in terms of risk management.*

**MS CYD HO** (in Cantonese): *President, the Secretary has mentioned in part (b) of her main reply that the Dangerous Goods (Shipping) Regulations provides that no locally licensed vessels while conveying any explosives may be underway in the Victoria Harbour between the hours of sunset and sunrise without the permission of the Director of Marine.*

*President, when we scrutinized the Buildings Energy Efficiency Bill last week, the Environment Bureau lobbied this Council not to support an amendment on the ground that it is hard to ascertain the hours of sunset, and thus it is not easy to implement the Regulation. But, in this context the relevant provision is feasible and well-tested. Can the Secretary tell this Council how the Government implements this regulation as the hour of sunset and sunrise differs from day to day? Why does the Government have double standards?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, if the explosives are delivered by sea transport, they must be taken out from the depots located at Kau Shat Wan on Lantau Island. Since these depots have prescribed service hours, which must tie in with the hours of sunset and sunrise. For example, the service hours of the two Government Explosives Depots are 8.45 am to 3.55 pm from Monday to Friday, and 8.40 am to 12.25 pm on Saturday. Since the Explosives Depot in Kowloon is accessible by land, its service hours may be extended under special circumstances. Therefore, its service hours are basically determined by the depot staff.

**PROF PATRICK LAU** (in Cantonese): *President, according to my understanding, the dynamites and detonators of explosives are manufactured separately, and it is therefore substantially safe. Explosives will not explode without detonators. Will the Secretary consider storing these two items separately in different depots? In that case, explosions will not be triggered because of accidental contacts and the public can put their minds at ease.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, the explosives and the detonators are stored separately at present.

**MR IP KWOK-HIM** (in Cantonese): *President, the Secretary has mentioned in the last paragraph of her main reply that the setting up of explosives depots and magazines should be acceptable to the local community. How will the Bureau handle the relevant cases if the setting up of these depots and magazines are not acceptable to the local community? Regarding site identification, taking the Hong Kong Island as an example, the current site is relatively close to residential areas, and in fact there are sites which are further away from residential areas, why has the Government not chosen such sites but has instead chosen sites that are not acceptable to the local community? How does the Bureau make decisions regarding the choosing of sites?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, as stated in my main reply, I also understand that the public must be concerned when explosives are involved. The site identification for a temporary explosives magazine must involve very strict and stringent procedures and the

Environmental Impact Assessments (EIAs) must be conducted. Since a temporary explosives magazine is set up for supporting a particular project, it must be connected in a certain way to the site where blasting works are undertaken, and a choice cannot be casually made. We also need to take into consideration residential areas nearby. Mr IP Kwok-him can see from the Annex that each magazine is related to the construction site of the project. Certainly, we will have discussions with the local District Council about the site identification for magazines. Take Chung Hom Shan on Hong Kong Island that Prof Patrick LAU is most concerned about as an example, to build a magazine to cater for the construction of the South Island Line (East), we have discussed two times with the South Island Line Focus Group under the Southern District Council, and have gained the understanding of District Council members. After all, the magazine is set up to cater for the project which is widely welcome by local residents, and the construction of the South Island Line (East) was approved by the Executive Council yesterday. The magazines concerned are of a temporary nature, for instance, the Chung Hom Shan magazine is set up to cater for the South Island Line (East) project, and the magazine will only be set up for two years; when the blasting works have been completed, the temporary magazine will be removed.

**MR KAM NAI-WAI** (in Cantonese): *President, about the South Island Line project just mentioned by the Secretary, I have met with members of the community opposing to the setting up of explosives magazines at Chung Hom Shan at the Complaints Division of the Legislative Council Secretariat. The Secretary has also stated in her reply that the sites identified will be connected to the construction sites. I wonder if the Secretary knows the distance between Chung Hom Shan and the construction site of the South Island Line project. Prof Patrick LAU has pointed out in his main question that there are sharp bends and steep slopes between Chung Hom Shan and Wong Chuk Hang, and we all know that we can only travel from Chung Hom Shan to Wong Chuk Hang by a roundabout route. Has the Government considered that accidents may occur in the course of transportation? Recently, some vehicles carrying explosives for the West Island Line have had accidents. Has the Government taken this point into consideration? How many similar accidents have occurred in the past?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): As I have mentioned in my main reply, though the public are worried, the transportation and storage of

explosives are actually very safe at present. According to the relevant records in the past decades, accidents have never occurred. As to site identification, the distance from the construction sites is one of the factors for consideration, but other factors should also be taken into account before the Commissioner of Mines would be satisfied that the site is the safest location. I have a map in hand which shows the Chung Hom Shan site. In the course of conducting an EIA, we have considered factors such as the connection of this site to the future construction sites, stabilization works and temporary access, and we consider the site a suitable option.

**MISS TANYA CHAN** (in Cantonese): *President, about an EIA, I understand that an EIA is required to be conducted only when explosives are stored overnight and the storage places are close to residential areas. Sometimes, an EIA is not necessary as explosives are not required to be stored overnight, even if the storage places are close to residential areas and subsequent transportation is required. For example, we know that there is a pier near Cyberport in Pok Fu Lam, which is used for the loading and unloading of explosives and their transportation to relevant places. Just now, the Secretary has said that discussions have been made with the District Council on two occasions in connection with the Chung Hom Shan proposal. Will the Secretary improve the arrangement in future by notifying every related District Council about the routes for the transportation of explosives? This is because a transportation route may sometimes pass through more than one district and involves more than one District Council.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, we can absolutely consider Miss Tanya CHAN's proposal and notify the relevant District Councils of the transportation routes. Miss Tanya CHAN has also referred to the pier at Cyberport on Hong Kong Island for the loading and unloading of explosives. The pier is used exclusively in connection with the works of the Drainage Services Department at Cyberport and is not used for the transportation of other explosives to places other than the construction site.

**PRESIDENT** (in Cantonese): Second question.

## **Enforcement of Human Reproductive Technology Ordinance**

2. **MS CYD HO** (in Cantonese): *President, it has been reported that a male Hong Kong permanent resident has recently issued a press release on the triplets born to him in the United States through a surrogate mother using human reproductive technology, and brought back to Hong Kong. It has also been reported that the man may have contravened the relating sections of the Human Reproductive Technology Ordinance (the Ordinance) (including section 16 on "Prohibition against commercial dealings in prescribed substance" and section 17 on "Prohibition against surrogacy arrangements on commercial basis, and so on"). The incident has aroused concerns in the Hong Kong community about regulation of the use of human reproductive technology, the child adoption system, and the extra-territorial jurisdiction of Hong Kong. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have assessed if the aforesaid surrogacy arrangement, which was extensively reported by the media, has contravened the Ordinance; if so, whether they consider this incident a suspected case of contravening the Ordinance, and whether they will initiate an investigation into the case if the incident is assessed as a suspected case; if they have assessed but have not initiated any investigation, whether they consider this incident to be a suspected case of contravening the Ordinance, and whether such practice is consistent with their general practice in dealing with other suspected cases of contravention of other criminal laws; if they have not assessed, of the reasons for that, and whether the authorities are still upholding the Ordinance and the policy of prohibiting the use of human reproductive technology on commercial basis and for economic gains;*
- (b) *whether the authorities will explain if the extra-territorial effect of the aforesaid section 17 will be restricted by factors such as nationality, permanent resident status, ordinary place of residence, domicile and place of occurrence of the suspected contravention, and so on; whether this provision has ever been invoked for initiating extraterritorial prosecution; whether the authorities will review if this provision can be effectively enforced outside Hong Kong in the light of this incident; and*



- (c) *in each of the past five years, of the respective numbers of pairs of married spouses, unmarried companions of the opposite sex, male spouses/companions of the same sex, female spouses/companions of the same sex who had applied in Hong Kong for adopting local and overseas children, the respective numbers of single men and women who had done the same, and the respective numbers of approved and rejected applications, and the reasons for rejecting those applications (please provide a breakdown by applicants' age group in the form of a table in an annex); whether the authorities will consider reviewing the restrictions on child adoption to make it easier for the applicants with a view to reducing the possibility of these applicants' resorting to commercial surrogacy arrangements; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the Ordinance aims at ensuring that reproductive technology services and researches are safe and appropriate. It seeks to ensure that human life is respected, and to safeguard the role of family, the rights of service users and the welfare of children born as a result of human reproductive technology. The Ordinance mainly regulates reproductive technology procedures and surrogacy arrangements as well as the use of embryos and gametes, and prohibits commercial dealings in substances such as gametes or embryos and surrogacy arrangements. Through the establishment of a licensing system and formulation of a code of practice, the Ordinance also regulates the use of human reproductive technology and provision of reproductive technology services. A Council on Human Reproductive Technology, comprising members from different sectors of the community, is established under the Ordinance to regulate matters related to human reproductive technology, prepare and maintain a code of practice on human reproductive technology, keep under review information about human reproductive technology and surrogacy arrangements, and provide the public with relevant information.

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

- (a) Section 17 of the Ordinance prohibits surrogacy arrangements on a commercial basis which includes, amongst the others, the following:
- firstly, make or receive any payment for any of the following three acts:

- (i) initiating or taking part in any negotiations for the making of a surrogacy arrangement;
- (ii) offering or agreeing to negotiate the making of a surrogacy arrangement; or
- (iii) compiling any information for its use in making, or negotiating the making of, surrogacy arrangements;

secondly, seek to find a person willing to do any of the three acts stated above;

thirdly, cause to be published or distributed, or knowingly publish or distribute, an advertisement relating to surrogacy arrangements.

The Ordinance was passed in 2000 after detailed deliberation and scrutiny by the Legislative Council. Section 17 reflects the Administration's policy on surrogacy arrangements.

As regards the general arrangements for law enforcement under the Ordinance, on knowing that any act that may be in contravention of a criminal provision under the Ordinance has taken place, the Council on Human Reproductive Technology will refer the case to the police, as the law-enforcement agency, for consideration as to whether investigation and enforcement action should be conducted. The Department of Health will provide the relevant professional advice when needed.

While we will not comment on individual cases reported in the media, we can confirm that referral concerning suspected surrogacy arrangements has been made to the police for consideration as to whether investigation and law-enforcement action are required. We do not consider it appropriate to comment on the content of the case and whether there is any violation of the law, as there might be investigation, enforcement and further legal proceedings in future.

- (b) Section 17 of the Ordinance should be construed against the presumption in statutory interpretation that an enactment is taken not

to apply to foreigners and foreign matters both outside the territory to which it extends. Against the background of the above presumption, section 17(1)(a) expressly prohibits the making and receiving of any payment for any of the purposes specified therein relating to surrogacy arrangement, whether the payment is made or received in Hong Kong or elsewhere.

As records on the drafting of the provision indicated, there was discussion in the Bills Committee over a possible loophole in law enforcement in cases where payment was made or received outside Hong Kong. Amendment was thus made to include "whether in Hong Kong or elsewhere" upon resumption of the Second Reading of the Bill to state clearly that even if the payment is made outside Hong Kong, the provision still applies. This legislative intent is reflected in the current provision.

According to our records, there has been no prosecution made under section 17 of the Ordinance so far. Since the content and nature of each individual case vary, we are not in a position to make any generalized comments on the enforcement of the provision. For any suspected violation of the Ordinance, the law-enforcement authority will deal with it with prudence and seriousness, taking into account the circumstances of each case.

- (c) The main objective of adoption service is to find permanent and stable homes for children whose parents are unable or unwilling to take care of them until they reach adulthood. When considering applications for child adoption, the prime consideration of the Social Welfare Department (SWD) and the Court is the best interests of the children rather than those of the applicants. Upon receipt of an adoption application, social workers of the Adoption Unit of the SWD will thoroughly assess whether the applicants are suitable to serve as adoptive parents. The assessment covers the applicants' personality, life experience, parenting attitudes and capacities, adoption motivation, abilities in meeting the needs and developing the potentials of the child to be adopted, and so on. Applicants are also required to undergo a mandatory criminal record check. The Court will determine, on the basis of the best interests of the child,

whether an adoption order should be granted in respect of the application.

To protect the children to be adopted, the Administration will not relax the requirements imposed on adoptive parents for reasons (including reducing commercial surrogacy activities) irrelevant to the best interests of these children.

The number of applications for adopting local children handled by the SWD in the past five years by married spouses, single men and women, and the number of applications approved and withdrawn by the applicants are at Annex. The SWD has not rejected any adoption applications during the period. Since spouses/companions of the same sex are not relationships legally recognized in Hong Kong, they cannot make joint applications for adoption. The SWD does not have statistical information on the adoption applicants by age groups.

As for applications submitted in Hong Kong for adopting overseas children, the Administration does not have the relevant information as applicants may directly submit their applications to the relevant overseas authorities without the need to file with or report to the SWD.

Annex

Number of adoption applications handled by  
the SWD in the past five years

Financial Year	Joint applications submitted by spouses				Applications submitted by single men				Applications submitted by single women			
	Number of applications	Approved applications	Applications withdrawn by applicants	Applications rejected	Number of applications	Approved applications	Applications withdrawn by applicants	Applications rejected	Number of applications	Approved applications	Applications withdrawn by applicants	Applications rejected
2006-2007	108	94	14	0	1	1	0	0	11	6	5	0
2007-2008	121	103	18	0	0	0	0	0	7	0	7	0
2008-2009	118	105	13	0	0	0	0	0	4	3	1	0
2009-2010	96 <sup>Note</sup>	89	6	0	0	0	0	0	10 <sup>Note</sup>	7	1	0

Financial Year	Joint applications submitted by spouses				Applications submitted by single men				Applications submitted by single women			
	Number of applications	Approved applications	Applications withdrawn by applicants	Applications rejected	Number of applications	Approved applications	Applications withdrawn by applicants	Applications rejected	Number of applications	Approved applications	Applications withdrawn by applicants	Applications rejected
2010-2011 (As at end of October)	73 <sup>Note</sup>	33	1	0	1	1	0	0	5 <sup>Note</sup>	3	0	0
Total	516	424	52	0	2	2	0	0	37	19	14	0

Note:

Some applications are still being processed.

**MS CYD HO** (in Cantonese): *President, part (b) of the main reply mentioned the presumption that an enactment is taken not to apply to foreigners and foreign matters both outside the territory to which it extends. As a matter of fact, exceptions should not be arbitrarily made for this presumption. While crimes such as child sex abuse have been provided in the laws of Hong Kong, extra-territorial jurisdiction has also been provided for offences involving international agreements, universal value and international consensus. What criteria have we adopted for giving extra-territorial effect to provisions on offences that do not have any implications regarding international agreement, universal value or international consensus? Should the Secretary say that this is a question for the Secretary for Justice but not for him, why then is the Secretary for Justice not attending today's meeting?*

**PRESIDENT** (in Cantonese): Which Secretary will reply?

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, just as I said earlier on, there was discussion in the bills committee concerned in 1998 over a possible loophole in law enforcement in cases where payment was made or received outside Hong Kong. At that time, it was the intention of the Government to provide for business transaction even if only one part of it is done in Hong Kong. Amendment was thus made to the relevant provision to include "whether in Hong Kong or elsewhere" upon resumption of the Second Reading of

the Bill, to state clearly that the provision still applies even if the payment is made outside Hong Kong. This legislative intent is reflected in the current provision.

Consideration will be made to the merits of and the evidence collected for each case to decide whether prosecution will be instituted. Certainly, approval from the Secretary of Justice would also be sought. If he considers that a violation of the Ordinance is substantiated, then a prosecution will be instituted.

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

**MS CYD HO** (in Cantonese): *Yes. I did not only refer to section 17 of the Ordinance, but the general laws of Hong Kong. In enacting such laws, what criteria have we adopted for giving extra-territorial effect to legal provisions involving offences not having international agreement, universal value or international consensus? If the Secretary does not consider it appropriate for him to answer this supplementary question, except on the part concerning section 17, may I ask the Secretary to undertake to request the Secretary for Justice to provide a written explanation for us after the meeting?*

**PRESIDENT** (in Cantonese): Ms HO, your main question asked about section 17 of the Ordinance, but then you switched to other provisions. This is outside the scope of the main question. If you think that the Government should give a reply, please raise another question.

**MS CYD HO** (in Cantonese): *President, I will. I originally intended to ask about other provisions in my main question. However, according to the Rules of Procedure, I cannot raise such question in written form. Neither do I know that I cannot get an answer by raising a oral question. I certainly have the patience to follow up on this question in written form.*

**MR CHAN HAK-KAN** (in Cantonese): *President, the Ordinance has been enacted for 10 years since it was passed in 2000. As we can see, many people in*

*Hong Kong prefer to stay single or get married late, and some of them may encounter difficulties in pregnancy. There are thus more and more seminars on reproductive technology in the community. May I ask the Secretary, given that the annual adoption rate in Hong Kong is so low, what can people, who prefer to stay single, do if they wish to have children? Will the Government consider making legislative amendments to respond to the aspirations of the community?*

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

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, despite the fact that different technologies are available to help infertile married couples to pregnant, the Ordinance seeks to ensure that human life is respected, and to safeguard the role of family and the welfare of children born; and we still adopt such values in deciding which reproductive technology should be used to help infertile married couples. Of course, there are certain restrictions. In the relevant code of practice, we have highlighted that reproductive technology procedures can only be provided pursuant to a surrogacy arrangement only if the gametes used in the procedure are those of the parties to a marriage and no gametes of a third party should be used, and the wife in that marriage is unable to carry a pregnancy to term. We consider that the restrictions imposed can balance people's needs on the one hand, and tie in with the societal values on the other.

**MS AUDREY EU** (in Cantonese): *President, in the main reply, the Secretary said that he would not comment on individual cases. I nonetheless believe the Secretary should be aware that a pretty high-profile case has attracted much disputes and discussions in society. My question is, will the Government consider making essential clarification on the existing Ordinance to members of the public? One of the current disputes, for instance, concerns with section 17 of the Ordinance, which provides that no one should make or receive any payment for acts prescribed in that provision in Hong Kong or elsewhere. The prescribed acts have been set out in part (a) of the main reply, which include taking part in any negotiations, offering or compiling information. Are acts done outside Hong Kong also not permitted? Are acts done outside Hong Kong*

*also governed by the provision? Does our extra-territorial jurisdiction apply to such acts? Is it necessary for the Government to clarify?*

*Furthermore, just as many reports have pointed out, is it permissible under the Ordinance if payment is not made in cash, but in giving or donating gifts or equipments? Since these issues have aroused many disputes, should the Government clarify? If not, what is the reason for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, just now in part (a) of the main reply, I have deliberately read out clearly the relevant provision to highlight that such acts are currently prohibited. Anyone who does such acts will therefore violate the law. Regarding the different cases, I certainly have to gain a better understanding of their background, merits and facts before making any comment.

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

**MS AUDREY EU** (in Cantonese): *Yes. In the supplementary question, I asked if payment made in the form of donation but not in cash is not permitted by the law. I have requested the Government to clarify this point.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, just as I have said earlier on, we will consider the merit of each case. For instance, whether the people concerned has made donations on some special grounds, and whether or not this will be regarded as a form of payment. I believe the situation varies from case to case. We will therefore look at the merits and evidences of individual cases before making any judgment.

**MR RONNY TONG** (in Cantonese): *President, I wonder if the Secretary is aware that Hong Kong people had great reservation about extra-territorial criminal liability in the course of enactment of legislation to implement Article 23 of the Basic Law. If certain acts done outside Hong Kong would not constitute a*



*criminal offence, but are even protected by the law, should they be regarded as criminal offences in the course of legislation in Hong Kong? Has the Secretary considered whether Hong Kong will still institute prosecution against certain acts if they are protected and recognized by the laws of other countries?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the laws of Hong Kong certainly applies only to events which happen in Hong Kong and involve Hong Kong residents. We will take into account the existing laws of Hong Kong and institute prosecution when necessary. We will also take into account overseas situations. If a certain case has happened in Hong Kong, we will definitely deal with it in accordance with the laws of Hong Kong. However, if only part of it took place in Hong Kong or the motive was initiated in Hong Kong, we will have to conduct further investigations to see if there are evidences to prove that an offence has been committed in Hong Kong.

**MR RONNY TONG** (in Cantonese): *Both sections 16 and 17 of the Ordinance apply to anyone in any place, but it seems that in the reply given by the Secretary just now .....*

**PRESIDENT** (in Cantonese): Please repeat the part of your supplementary question that you think has not been answered by the Secretary.

**MR RONNY TONG** (in Cantonese): *I hope that the Secretary will clarify if amendments will be made to the Ordinance so as to tie in with the reply that he has just made.*

**PRESIDENT** (in Cantonese): Mr TONG, this is not the supplementary question raised by you just now. As far as I understand, you are not satisfied with the reply given by the Secretary.

**MR RONNY TONG** (in Cantonese): *No, President, I am satisfied with the Secretary's reply.*

**PRESIDENT** (in Cantonese): Then can you repeat the part of your supplementary question that you think has not been answered by the Secretary?

**MR RONNY TONG** (in Cantonese): *I am satisfied with his reply. I just wish to follow up by asking the Secretary if legislative amendments will be made.*

**PRESIDENT** (in Cantonese): Mr TONG, you will have to wait for another turn if you wish to follow up, because this will be another supplementary question.

**MR ABRAHAM SHEK** (in Cantonese): *President, section 17 of the Ordinance points out that it is an offence if payment is made outside Hong Kong while the surrogacy arrangement is made in Hong Kong. Insofar as the present case or other future cases are concerned, given that surrogacy arrangements are legal in other countries, is the Ordinance unable to govern cases where payment is made in Hong Kong while the surrogacy arrangement is not made in Hong Kong?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, just now I have deliberately read out the detail of section 17 of the Ordinance, which provides that it is an offence for any person to do any of the prescribed acts as set out in parts (i) to (iii) in Hong Kong or elsewhere. The provision is very clear indeed. However, I must state clearly again that this is our present interpretation of the law. For individual cases, an explanation will only be given by taking into account the merits and facts of each case.

**PRESIDENT** (in Cantonese): This Council has spent nearly 22 minutes on this question. Third question.

### **Policy Study on Standard Working Hours**

3. **MR IP WAI-MING** (in Cantonese): *Some members of the labour sector have pointed out that, at present, it is very common for employees in Hong Kong*

*to undertake overtime work without compensation, and this situation has even spread to various sectors and industries; and with the implementation of the Minimum Wage Ordinance, it is believed that this problem will aggravate. As it is stated in the 2010-2011 Policy Address that the Government will embark on a policy study on standard working hours, various sectors of the community have expressed concern about and attached importance to the matter. In this connection, will the Government inform this Council:*

- (a) whether the authorities have conducted any investigation, statistical survey or study on the working hours of local employees in the past three years to find out the average daily working hours of employees in various industries and hours of overtime work without compensation, and so on; if they have, of a breakdown of the average daily working hours and hours of overtime work performed without compensation in various industries by industry section according to the results of the investigation, statistical survey or study; if not, whether the authorities will expeditiously carry out such investigation, statistical survey or study so as to obtain more data as soon as possible;*
- (b) given that the Secretary for Labour and Welfare had mentioned at the meeting of the Legislative Council on 29 October this year that its policy study on standard working hours would be conducted at three levels: first, to find out more about overseas experience; second, to collect data on the labour force distribution in Hong Kong and the hours of work in different industries and trades; third, to communicate with stakeholders, of the timetable, specific arrangements and details of the study to be conducted by the authorities at these three levels; and*
- (c) of the estimated number of people required to be specifically tasked to handle the study on standard working hours; whether the Government will consider setting up a task force, inviting the participation of academics and the stakeholders concerned, and conducting public consultation on the introduction of legislation for standard working hours; if they will, of the details; if not, the reasons for that; and whether the authorities will regularly report to*

*this Council and the Labour Advisory Board on the progress in the course of the study, so that the public and the labour sector can be kept informed of the progress of the study and give their views?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, it is the Administration's established policy to progressively improve employees' rights and benefits in a way that strikes a reasonable balance between employers' and employees' interests and which is commensurate with the pace of Hong Kong's socio-economic development.

Standard working hours is a complex issue. At present, employers, employees and various sectors of the community have divergent views on whether standard working hours should be introduced in Hong Kong. As the issue would have far-reaching implications for Hong Kong's society and economy, we must be prudent. The Chief Executive has already undertaken in his Policy Address that the Administration would embark on a policy study on the issue.

My reply to the three parts of the question raised by Mr IP Wai-ming is set out below:

- (a) The Census and Statistics Department (C&SD) conducted a special enquiry on "Patterns of hours of work of employees" through the General Household Survey during April to June 2006 and January to June 2008 respectively. The enquiry collected information on the contractual hours of work in respect of employees working in the non-government sector, and the average hours of work as well as the average hours of overtime work performed by these employees during the seven days before enumeration. The findings from the two enquiries showed that the overall average hours of work had decreased slightly. The average hours of work and the average hours of paid and unpaid overtime work of employees in the non-government sector during the seven days before enumeration are at Table 1 and Table 2.

The above surveys conducted by the C&SD provide us with a brief understanding of the working hours situation of employees in Hong

Kong. Nevertheless, as the surveys were not conducted for the purpose of studying standard working hours, some statistics necessary for the study (for example, actual hours of work analysed by employees' monthly income, detailed information on hours of work of individual industries (in particular small and medium enterprises) and occupations, change in employees' pattern of hours of work after the implementation of statutory minimum wage, and so on) were not available. As such, we need to discuss with the C&SD and the Economic Analysis and Business Facilitation Unit on how to further collect necessary statistics to better support the basis of the study.

- (b) The study will proceed on multiple fronts. First, we will study the experience of other places in implementing standard working hours or regulating working hours. Second, as stated in part (a) of the reply, we need to conduct in-depth analyses of, and collect statistics on, the current situation in Hong Kong, so as to get a good grasp of the details of hours of work of the working population and in different industries. Since the implementation of statutory minimum wage should have an impact on the labour market and working hours arrangement, we need to collect, understand and analyse these important statistics fully. Third, we will engage stakeholders, including the relevant Panel of the Legislative Council, the Labour Advisory Board, chambers of commerce, trade unions, employers' associations, labour groups and community members, and so on.

As we are currently mapping out the framework of the study, we will not be able to set out the exact timetable at this stage. We understand the concerns over the issue of standard working hours and have already started the ball rolling.

- (c) We will re-deploy manpower internally for the study on standard working hours. We will closely monitor the progress of the study and its workload and will re-deploy or seek additional manpower resources as appropriate.

We will maintain dialogue with stakeholders in the process of the study, consult the relevant Panel of the Legislative Council and the Labour Advisory Board, and report on the progress of the study at an appropriate time.

### Patterns of hours of work of employees

Table 1 Average hours of work and average hours<sup>(2)</sup> of paid and unpaid overtime work of employees<sup>(1)</sup> in the non-government sector during the seven days before enumeration by industry, April to June 2006

Industry	Average hours of overtime work during the seven days before enumeration						Average hours of work (including overtime work) during the seven days before enumeration
	Paid		Unpaid		Total		
	Hours	%	Hours	%	Hours	%	
Manufacturing	1.1	40.4	1.7	59.6	2.8	100.0	45.9
Construction	0.5	29.4	1.2	70.6	1.7	100.0	42.3
Wholesale, retail and import/export trades, restaurants and hotels	0.3	10.5	2.2	89.5	2.4	100.0	46.7
Transport, storage and communications	1.5	52.1	1.4	47.9	2.8	100.0	46.1
Financing, insurance, real estate and business services	0.4	12.1	3.2	87.9	3.7	100.0	46.2
Community, social and personal services	0.2	7.7	2.2	92.3	2.4	100.0	41.4
Others	0.2	10.7	1.6	89.3	1.8	100.0	41.0
Overall	0.5	18.4	2.1	81.6	2.6	100.0	45.1

Notes:

- (1) Excludes outworkers, foreign domestic helpers, full-time students being on summer vacation and taking up a summer job and employees in the Government.
- (2) Hours of work refer to the number of hours which an employee actually worked in all employment during the seven days before enumeration. All paid and unpaid hours worked at the place of work are included, but meal breaks are excluded.

Source: Social data collected via the General Household Survey  
Special Topics Report No. 46

## Patterns of hours of work of employees

Table 2 Average hours of work<sup>(2)</sup> and average hours of paid and unpaid overtime work of employees<sup>(1)</sup> in the non-government sector during the seven days before enumeration by industry, January to June 2008

Industry	Average hours of overtime work during the seven days before enumeration						Average hours of work (including overtime work) during the seven days before enumeration
	Paid		Unpaid		Total		
	Hours	%	Hours	%	Hours	%	
Manufacturing	0.9	37.9	1.4	62.1	2.3	100.0	43.9
Construction	0.4	34.0	0.8	66.0	1.2	100.0	42.4
Wholesale, retail and import/export trades, restaurants and hotels	0.3	13.9	1.6	86.1	1.9	100.0	46.6
Transport, storage and communications	1.2	46.0	1.4	54.0	2.5	100.0	45.3
Financing, insurance, real estate and business services	0.4	11.9	2.9	88.1	3.3	100.0	45.8
Community, social and personal services	0.2	10.0	1.6	90.0	1.8	100.0	41.1
Others	0.7	22.7	2.3	77.3	2.9	100.0	44.9
Overall	0.4	19.4	1.7	80.6	2.2	100.0	44.8

Notes:

- (1) Excludes outworkers, foreign domestic helpers, full-time students being on summer vacation and taking up a summer job and employees in the Government.
- (2) Hours of work refer to the number of hours which an employee actually worked in all employment during the seven days before enumeration. All paid and unpaid hours worked at the place of work are included, but meal breaks are excluded.

Source: Social data collected via the General Household Survey  
Special Topics Report No. 50

**PRESIDENT** (in Cantonese): Members please note that the word "蒐" in the phrase "蒐集" (meaning to collect) should be pronounced as "收" (sau1) and not "愧" (kwai3).

**MR IP WAI-MING** (in Cantonese): *President, firstly, the Secretary has only provided us with the figures up to 2008. But from what I read in newspapers recently, the hours of work of employees had actually increased in 2009. I do not understand why the Secretary has not mentioned the figures in 2009. Secondly, the Secretary has said that the study on standard working hours would be conducted at three levels and I would like to ask him whether work at these three levels would be undertaken concurrently so as to expedite this study for the legislation on standard working hours; and whether legislation on standard working hours would be expedited?*

**PRESIDENT** (in Cantonese): Are you asking the Secretary whether the three levels of work would be undertaken concurrently?

**MR IP WAI-MING** (in Cantonese): *Yes.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, let me answer the first part of Mr IP's supplementary question first. Just now, Mr IP said that another report had been published earlier this year and why had we not mentioned those figures? I must clarify this point first. The report published by the C&SD this year does not contain any statistics on unpaid overtime work of employees but Mr IP asked about unpaid overtime work. Data on unpaid overtime work were only collected in the two topical studies conducted in 2006 and 2008. As for other data, they were average and median figures. Because the data were collected on different bases, we must conduct another topical study. In the process, we must work together with the experts in the C&SD so that more specific and useful data would be collected. It is a very important aspect of the study. Hence, Honourable Members should no longer question why it is necessary to conduct another survey when some data are already available. That is because the data were collected on different bases. That is the first point I would like to make. Secondly, the press report mentioned by Mr IP should contain no information on unpaid overtime work, but Mr IP's focus is on unpaid overtime work.

Mr IP asked whether the three levels of work could be undertaken concurrently. I remember last week, the President said that "walking on three



legs" could be quite difficult for human beings. Now Mr IP is asking me to walk on three legs because I have said that there are three levels to the study. Actually, it would be quite impossible to undertake the work concurrently. First, Members will recall that we must first study the experience of other places. We have waited no further and embarked on the relevant studies right away. Second, about the data just mentioned, the C&SD must thoroughly consider how to draw up a new methodology for collecting the necessary data. Moreover, we must consider the impact of minimum wage on the labour market including the hours of work of employees. As statutory minimum wage has yet to be implemented, how can we gauge the impact? Therefore, we must not conduct any studies prematurely because it will be meaningless. Timing is critical. Third, in respect of consultation, if we do not have any data or if we know nothing about the experience of other places, how can we conduct any meaningful consultation? Considering the above, we should not aim at immediate results. Instead, we must work in a progressive and orderly manner while bearing in mind the urgency of the matter. I understand the concerns of Members, especially those from the labour sector, on this matter. That is why we are now defining the framework of the study and undertaking preparatory work. We have already done all the things we can right away.

**MR TOMMY CHEUNG** (in Cantonese): *Regarding these questions, I personally have little high hope for both the Secretary and the SAR Government, particularly when the Chief Executive had previously mentioned in the policy address that the establishment of a minimum wage would not have any adverse impact on job loss and Hong Kong's competitiveness. Yet when the minimum wage level of \$28 was announced, he said he understood that the hourly wage of \$28 would have certain impact on job loss and competitiveness.*

*President, I would like to ask the Secretary whether the study to be conducted will examine the impact of legislating for standard working hours on the business sector? Will the authorities engage outsiders to conduct a business impact assessment and consider their findings? I am referring to an assessment conducted by outsider engaged by the Government and not colleagues of the Secretary.*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I thank Mr CHEUNG for his supplementary question. As we are now defining the scope and framework of the overall policy study, we are open to all views at this stage. Nonetheless, we hope that the findings of the study report would be objective and impartial while reflecting the actual situation and pointing to the way forward. Hence, regarding Mr CHEUNG's question as to whether some relevant tests or assessments would be conducted, I can tell Members that we will definitely do so. As to whether these studies would be conducted by outside experts or in-house staff, discussions will be held with our colleagues before a decision is taken. Actually, there are many economists and statisticians in the Government. However, I believe that the study will be evidence-based as far as practicable. As Members are aware, it is a hard-won achievement that we can come to a consensus on setting the minimum wage rate at \$28. This figure is based on hard evidence; it is not based on some imaginary data, personal feelings or intuition. It can actually be substantiated by data and statistics. As the rate is determined by an evidence-based approach, the society will find it more acceptable. We will continue to work in this direction and hence, data collection is an essential part of the study. This is the work that we are going to do.

**MR LEE CHEUK-YAN** (in Cantonese): *President, Tommy CHEUNG just cannot resist the temptation of stepping on minimum wage. The rate of \$28 is unreasonable enough, yet he has to step on it. Nonetheless, I share the view of Mr Tommy CHEUNG about having little high hope for the Government because it is really inept.*

*President, as shown by the data presently provided, 80% of the workers have to perform unpaid overtime work. But even the figure of 80% is not too accurate, why? Because for some workers, they are working 12 hours a day, and 12-hour work is not regarded as overtime work because it is specified in their contracts that they have to work 12 hours a day. But apart from the working hours specified in the contract, they must also work overtime, and 80% of workers are working overtime without any pay or compensation. President, I do not know whether you have ever dined and dashed? I do not think so. Is there any difference between the current situation and those who dine and dash? Employers ask workers to work overtime, yet give them no pay. I would like to ask the Secretary, regarding the issue of unpaid overtime work alone, whether*

*any measures will be taken by the Government immediately? What can be done immediately? Of course, the simplest way is by legislation so that employers are required to pay for overtime work done by employees outside standard working hours. But is the Secretary prepared to do so? If not by legislation, what will the Secretary do to ensure that the rights of 80% of the workers will not be abused? At least, employers should be asked to provide compensatory leave and not be so mean. Or will the Secretary do nothing at all?*

**PRESIDENT** (in Cantonese): Mr LEE, you have asked your supplementary question. Secretary, please reply.

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, the subject matter of today's question is standard working hours. Nonetheless, regarding Mr LEE's concern, I can tell him that the Government's attitude is positive. We have already put in place a practical measure. After the implementation of statutory minimum wage, the principle of work-more-earn-more will get going immediately. Why do I say so? In future, employees at the grass-roots level are "incorruptible" because they have to punch in before commencing work. But unless employers have cheated intentionally, we will prosecute whenever we find any irregularities. Employees who work more will earn more; if they work an extra hour, they will get extra wage of one hour's work which is at least remunerated at \$28. That is the rate of minimum wage. That is the largest improvement in terms of labour protection. Why do I say the legislation of minimum wage is a milestone? Because it will help prevent the situation where the employees at the grass-roots level are being "taken advantage of" as their hours of work will be recorded in the punch card. Hence, with the implementation of statutory minimum wage, the concept of work-more-earn-more will become viable and employers will also understand that this is a new and major initiative in terms of labour protection.

Just now, Mr LEE mentioned the situation of employees working overtime without compensation. As Members are aware, overtime work is a condition of employment stipulated in the employment contract; and like salary, it is an agreement worked out by employer and employee together. Nonetheless, we also urge that as good employers, the companies should, as far as practicable, take

into consideration the morale and feelings of their staff and show more care. In complementing the implementation of statutory minimum wage, we will do more in this respect. But in the long run, the question of whether legislation is desirable would depend on the outcome of our study. We need time to conduct the study and when the findings are available, we will definitely propose some directional proposals.

**MR WONG SING-CHI** (in Cantonese): *I would like to follow up on the supplementary question raised by Mr LEE Cheuk-yan. There are already data showing that many workers have to perform unpaid overtime work. Just now, the Secretary said that after the implementation of the statutory minimum wage, prosecutions would be initiated once irregularities were detected. But from what I heard, the Secretary was merely handling the problem through conducting studies. That is not enough, the Government should conduct in-depth investigation on whether some workers have been abused by their employers and are asked to perform unpaid overtime work. I would like to ask the Secretary whether in-depth investigation will be conducted to see if some employers have really abused their staff? Moreover, what powers does the Secretary have to conduct such in-depth investigation? Whether additional manpower will be deployed to investigate these cases so as to ascertain whether the employees concerned are unwilling to perform unpaid overtime work and whether the employers in question have violated any labour legislation?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): I would like to thank Mr WONG for his question. We will hold discussions with the C&SD so that more specific and useful data would be collected. Members will recall that during the discussions on statutory minimum wage, we have conducted a large-scale survey in the second quarter of 2009 to collect the relevant data. A survey of such scale was unprecedented in Hong Kong as 10 000 enterprises and 60 000 employees were involved. In the first quarter of 2009, we went to the enterprises to conduct detailed surveys including paying personal visits to the enterprises to acquire their records on the hours of work and payroll of the staff. We were really taking the matter seriously. If it is necessary to conduct similar data-collection exercises in future, we might consider adopting the same approach so that we will have the actual data of various industries, jobs and enterprises including small and medium enterprises. By then, we may have the information

asked by Mr WONG, that is, whether the employees voluntarily perform unpaid overtime work or whether there are any other reasons. By then, we will have more objective data to substantiate the directional proposals we put forth. I would like to thank Mr WONG for his suggestion.

**DR LEUNG KA-LAU** (in Cantonese): *Secretary, I want you to understand that the impact of standard working hours on economic development and business environment will depend on the actual level to be set. If standard working hours is set at 44 hours, the operation cost of most enterprises will have to be somewhat increased. But if it is set at 56 hours, I think the impact will be minimal. The setting of standard working hours will not only affect the business environment, but also the health of employees and the safety of service users. If the Government can only set a level of standard working hours after conducting so many studies, it might really take three, five or even seven years before it is done. For the safety of service users ..... For instance, the occupation of doctors, if their standard working hours is 56 hours, I believe it will have minimal impact on business environment. But in terms of the health of employees and .....*

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

**DR LEUNG KA-LAU** (in Cantonese): *My supplementary question is, can a minimum standard be set expeditiously; instead of 44 hours as requested by the labour unions, can a minimum standard of say 50-odd hours be set and in time, this standard can be gradually reduced? Is it possible?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, honestly speaking, we have no plan at this stage to make any proposals expeditiously. We just want to conduct a macro, comprehensive and meaningful study. But it will definitely not take three, five or seven years. As I just said, we have already started the ball rolling by undertaking some preliminary research. Thereafter, the C&SD and the Government Economist will collect the data and consider the timing of initiating the topical study. Thereafter, we hope to engage the relevant stakeholders as soon as possible. I have pledged that the

report will hopefully be submitted within the current term of Government so that the public will know about our direction. Nonetheless, we can incorporate the suggestion made by Dr LEUNG just now into our study and consider whether a not-too-high level of standard working hours can be adopted initially if a standard is to be set early. We can include this suggestion into our agenda for consideration.

**MR WONG KWOK-HING** (in Cantonese): *Insofar as this issue is concerned, I have likened the Government to the tail-less Gibraltar monkey in this year's debate on the Policy Address because there are seven issues which the Government "has started but not finished". This is one of the seven issues. I recall that upon my further questions, the Secretary said then he would definitely provide a direction for this issue before the end of his term of office. But within the last minute, I heard the last sentence of the Secretary's reply to Dr LEUNG Ka-lau's supplementary question and that is, he would submit the policy report. Following up on this point, I would like to ask the Secretary whether he can give us a definite reply as to when this policy report will be submitted? In other words, the findings of the study will be available. It is different from the reply the Secretary gave me previously, that is, he would provide a direction before the end of his term of office. The reply given by the Secretary within the last minute or so seems to indicate that the matter has been advanced one more step than before. Hence, I would like to ask the Secretary, through the President, to give us a clear reply as to when the policy report of the relevant study will be submitted to this Council?*

**SECRETARY FOR LABOUR AND WELFARE** (in Cantonese): President, I have already provided a very clear explanation just now. I can reiterate that I will try my best to complete the study before the end of my term of office. I will make the greatest endeavour on this matter.

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

**Administrative Officers Leaving Civil Service**

4. **DR MARGARET NG** (in Cantonese): *President, it has been reported that more than 10 members of the Administrative Officer (AO) grade had left the Civil Service this year, which was the largest ever surge in departure. In this connection, will the Government inform this Council:*

- (a) *of the number of members of the AO grade leaving the service in the past five years, and the percentage of that number in the total number of members in the grade;*
- (b) *whether the Civil Service Bureau has proceeded with any survey and study to find out the reasons of the high turnover rate of the AO grade this year; if it has, of the outcome of the study; if it has not, whether it will launch such survey and study; if it will not, of the reasons for that; and*
- (c) *whether the Civil Service Bureau will adopt any improvement measure to address the problem of high turnover rate of the AO grade; if it will, of the specific measures; if not, the reasons for that?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): President, on part (a) of the question, the attrition rate of the AO grade varied from year to year, but generally did not fluctuate much. In the past five financial years, the number of members leaving the Grade ranged between 16 and 24 each year, representing an annual attrition rate of about 3% to 4.5%. The relevant figures are set out at the Annex. The reasons for leaving the AO grade include retirement, resignation, termination of agreement or transfer to other grades.

On part (b) of the question, the Civil Service Bureau has been closely monitoring the situation of members leaving the AO grade. Whenever an AO informs us of his/her intention to resign, we endeavour to understand the reasons behind. Generally speaking, some AOs left the service for having found the job not in tune with their characters or abilities; some left for family reasons; some wanted to pursue their own academic goals; some were appointed as political appointees; some took up jobs in other fields outside the Government; and some

left just for a change in life. Members of the AO grade left the service for similar reasons in this financial year.

On part (c) of the question, the majority of the AO grade see their service in the grade as fulfillment of their lifelong goal and have long-term commitment for serving the community. We hope to provide them with a lifelong career in which they can make the best use of their talents and attain job satisfaction. The AO grade Management and I maintain close contact with Grade members. Through regular communication, we can understand their expectation about their career and problems encountered when performing their duties so that we can offer appropriate and timely assistance to them. We pay close attention to the job content and workload, and so on, of every AO post. All proposals from bureaux and departments for creating or deleting AO posts or changing the responsibilities of the posts are thoroughly examined by the Civil Service Bureau.

We have developed and implemented a training and development framework for AOs at different ranks, which is under constant review for improvement with addition of new training programmes. We also provide AOs with exchange opportunities with the private sector, as well as overseas and Mainland authorities and organizations, so as to broaden their horizons. For new recruits, we provide induction training to help them adapt to the work environment and develop a better understanding of government operation. The induction training comprises classroom learning, visits and tours to government departments and other organizations, and experience sharing sessions with other AOs and civil servants in other grades.

AOs stand a chance of being eventually promoted to the highest rank in the Civil Service, that is, as permanent secretaries at Directorate Pay Scale D8. The AO job is also competitive in the labour market. Over the past eight years, we planned to recruit only about 25 to 30 AOs annually, and we received an average of more than 12 000 applications every year.

We will review grade management practices from time to time to ensure that they meet present-day circumstances and are in line with the Government's operational needs and AOs' expectation.



## Annex

Number of Members Leaving the AO Grade and  
Attrition Rate in the Past Five Financial Years

Financial Year	Strength of the Grade at the Beginning of the Financial Year	Number of Members Leaving the Grade		Attrition Rate
		Retirement Note <sup>(1)</sup>	Other Reasons Note <sup>(2)</sup>	
2005-2006	529	10	13	4.3%
2006-2007	533	10	7	3.2%
2007-2008	552	11	13	4.3%
2008-2009	563	9	7	2.8%
2009-2010	578	9	8	2.9%

Notes:

(1) AOs leaving the Grade for retirement by ranks

Financial Year	Directorate	Non-directorate	Total
2005-2006	10	-	10
2006-2007	10	-	10
2007-2008	11	-	11
2008-2009	8	1	9
2009-2010	9	-	9

(2) AOs leaving the Grade for non-retirement reasons by ranks

Financial Year	Directorate	Non-directorate	Total
2005-2006	1	12	13
2006-2007	3	4	7
2007-2008	6	7	13
2008-2009	3	4	7
2009-2010	5	3	8

**DR MARGARET NG** (in Cantonese): *President, the Secretary has touched on the matter lightly. She simply said: First, it was not a problem; and second, the problem had been addressed. However, the public is not only concerned about the number of AOs leaving the service. They are particularly concerned that outstanding AOs had left the civil service team in recent years.*

*According to public opinions, there are two possibilities. First, it may be a problem of morale. The former Secretary for the Civil Service, Mr Joseph WONG, has mentioned this problem in many commentaries. He said that after the implementation of the accountability system, no rationalization has been*

*made to the civil service system, and for this reason, the so-called "sense of political mission of AO" in the past can hardly be sustained, and they can only contribute on practical issues. This is a problem with morale. Another problem is that they consider the conditions of service are more favourable for civil servants to leave the services than to stay, including the "3+3" entry requirement policy, the abolition of pension entitlement, and the many post-service employment restrictions upon retirement. On the contrary, if they leave the service before retirement, they do not have to subject to so many restrictions. Actually, the conditions of services encourage them to leave the service. This is particularly the case for outstanding civil servants, for they can quickly get a better job after leaving the service.*

*I would like to ask the Secretary two questions which the Secretary has seemingly failed to give a focused response in her reply, or that her response is just too implicit. Will the Secretary explain whether she has considered these two factors? If she has considered these factors, what is the result? Will certain solutions be put forth to address these problems?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): President, I have to thank Dr NG for her supplementary question. Dr NG has expressed her concern over two aspects. First, whether the importance of the work of AOs has been undermined after the implementation of the accountability system in 2002, and whether the morale of colleagues in the AO grade has been affected. In this connection, the political accountability system introduced in 2002 met with the aspirations of society. The work and duties of politically appointed officials and AOs are very different. After the implementation of the political appointment system, AOs are still responsible for conducting studies and analyses on policies, and collecting public opinions from various sectors. And for policies proposed by the Government, AOs have to conduct consultation or implement those new policies. AOs have to explain the positions of the incumbent Government on various issues to secure the support of the public and society for policies formulated by the Government and various administrative measures. Hence, I do not see that the importance of the work of AOs has been undermined upon the introduction of the political appointment system.

As I mentioned in the main reply, I always maintain close contact with colleagues in the AO grade, and I care about their morale and workload, and

whether their working hours are long. I have come up with the following conclusion. Under the prevailing atmosphere of higher expectation held by Hong Kong people on the governing standard of the SAR Government, all colleagues in the Civil Service, not only AOs, have to face the higher expectations of the public. This will exert work pressure, in some measure, on colleagues in the Civil Service and AOs, but this is the mission and motivation driving civil servants to serve the public. Our mission is to provide the best service to the public as far as possible and do our level best in performing our work and duties.

The second part of Dr NG question is on the conditions of service of AOs. We adopt a standardized system in managing the Civil Service. Hence, in general, the conditions of service for AOs are roughly the same as those of other civil servants. This is particularly the case for certain important aspects. For instance, all civil servants employed after 2000, including AOs employed after 2000, will be provided with the Civil Service Provident Fund but not pension. Regarding the "3+3" entry requirement highlighted by Dr NG earlier, President, since 1 July this year, the requirement has been modified to a three-year probationary period, and subject to the satisfactory completion of the probationary period, all civil servants, including AOs, will be changed to permanent employment.

Dr NG particularly mentioned that AOs leaving the service upon retirement would be subject to tighter restriction than AOs leaving on resignation. It is right to say so in this context. For all civil servants, not only AOs, at directorate rank, if they leave the Government on resignation, they do not necessarily be subject to the restriction on minimum "sanitization period" but they are still subject to the restriction on control period. However, all civil servants at directorate rank, including AOs at directorate grade, leaving the Government upon retirement have to undergo the minimum "sanitization period" and then the control period. During the "sanitization period", they are subject to more restrictions on taking up work outside the Government. During the control period, they may apply for taking up other work, but they must obtain the permission before they undertake the employment.

President, I know that a select committee chaired by Ms LI Fung-ying has been set up under the Legislative Council, namely the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man

(the Select Committee). As far as I know, the Select Committee will publish a report next Wednesday. According to my understanding, the Select Committee has examined the regulatory mechanism for post-service employment of civil servants at directorate rank now adopted by the Government, and members of the Select Committee will propose whether amendments have to be made and what improvements have to be introduced to the mechanism. I know that the report will be released next Wednesday. I am eager to know the recommendations made by the Select Committee of the Legislative Council on this issue in the report.

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

**DR MARGARET NG** (in Cantonese): *The Secretary has not answered my supplementary question. I had followed up only a small part selectively. I mentioned whether the departure of civil servants was affected by the implementation of the accountability system, but the Secretary only explained in her reply the distribution of work under the system, and said that it should not have affected .....*

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

**DR MARGARET NG** (in Cantonese): *She has not answered whether there is such impact in reality, and if so, to what extent is the impact? The Secretary said that she had talked to the civil servants leaving the service. I am talking about the "reality" but she is talking about a "should be" condition. She only explained the system and that there should not be such impact. My question is whether this is a factor in reality, no matter it should be or should not be the case.*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): President, I understand that Dr NG is concerned about whether the morale of colleagues in the Civil Service, particularly that of the AOs, has been affected adversely by the

introduction of the political appointment system by the Government in 2002. In this connection, I notice that after the introduction of the political appointment system in 2002, colleagues in the Civil Service and officials under the accountability system had undergone a period of transition. I believe Members have also felt and noticed that. However, I do not see that the development of the political appointment system to date has caused any negative impact on the morale of civil servants, including AOs.

**MR ABRAHAM SHEK** (in Cantonese): *President, there is an increase in the number of civil servants leaving the service, AOs in particular, since 2002. President, on the question of whether the morale of civil servants has been affected by the accountability system, I think the morale of civil servants is very important to Hong Kong, for they are serving the public. Have the authorities considered whether the situation has arisen after a long period, that is from 2002 till now ..... President, my supplementary question is, have the authorities considered reinstating the provision of pension to civil servants, AOs in particular, to give them a sense of stability and peace of mind in serving the public?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): President, perhaps I should first explain the situation. Members may have noticed in my main reply that I have specifically made an analysis in the Annex, presenting the situation of AOs leaving the Government upon retirement or for other reasons, both at directorate rank and non-directorate rank. In terms of figures alone, we notice that in the past five years, the number of AOs leaving the Government on the ground of retirement has been quite stable, ranging from eight to 10 persons each year. As for those leaving the Government for reasons other than retirement, the number somehow fluctuates, but the fluctuation does not go to the extent of setting a trend that causes concern. This is the first point

Mr SHEK mentioned particularly whether the pension system should be re-introduced for civil servants to encourage civil servants, AOs in particular, to stay. I would like to share with Mr SHEK that among AOs leaving the Government for reasons other than retirement, namely resignation or completion of probationary period, some of them were entitled to pension and some of them were entitled to the Civil Service Provident Fund. In other words, it is

questionable whether the provision of pension may reduce the number of AOs resigned. I do not think that it is an important factor from this perspective.

Secondly, as I mentioned in my earlier reply to Dr NG, the philosophy we now adopt in managing civil servants, President, is a standardized approach. Hence, for inspectors in the police, Government Counsels, Government Engineers, Government Accountants or AOs in the Government, standardized retirement benefit are provided to all of them. This standard practice is also applicable to the most junior civil servants in the civil service system. But since 2000, newly recruited civil servants are no longer offered retirement benefits in the form of pension but the Civil Service Provident Fund as the benefit they received after leaving the Government. I see no justification for reviewing this policy.

**MR ABRAHAM SHEK** (in Cantonese): *The Secretary has not answered my supplementary question. I asked whether pension would be offered again to civil servants to give them a sense of stability, and I was referring to all civil servants.*

**PRESIDENT** (in Cantonese): I think the Secretary has already given her reply.

**MS LI FUNG-YING** (in Cantonese): *President, the public have the impression that more often than not, AOs will take up work in private organizations and public organizations after leaving the service. Does the Secretary have the breakdowns in this respect? Take the year 2009-2010 as an example, there were eight AOs leaving the service not on the ground of retirement. Does the Secretary have the breakdowns on the number of ex-AOs joining public organizations and private organizations respectively?*

**SECRETARY FOR THE CIVIL SERVICE** (in Cantonese): President, being the Chairwoman of the Select Committee, Ms LI should know that civil servants leaving the service, no matter on the ground of retirement or other reasons, are subject to a control period. During the control period, if they want to take up other work, they have to apply for approval from the Government. Hence, I have the figures in this respect.

However, these figures are only limited to the applications they submitted for taking up work outside the Government during the control period. As for the situation after the control period, since application for approval is no longer required, I do not have the figures in this respect. On this premise, in the past five years, five AOs had resigned during the control period to take up work in public organizations, and five AOs leaving the service upon retirement had taken up work in public organizations. I am not sure if this can answer the question of Ms LI.

**PRESIDENT** (in Cantonese): This Council has spent 21 minutes and 30 seconds on this question. Fifth question.

### **Provision of 15-year Free Education in Hong Kong and Implementation of Small Class Teaching in Secondary Schools**

5. **MR CHEUNG MAN-KWONG** (in Cantonese): *President, the Executive Council of Macao announced on 9 November 2010 that it had finished its discussion on amending the by-law on the Free Education Subsidy Scheme to provide 15-year free education and undertook to implement small class teaching (SCT) in secondary schools progressively. There have been comments that Hong Kong's education policy lags far behind that of Macao because the Government did not agree to undertake implementation of SCT in secondary schools, and it also does not have plans to provide 15-year free education. In this connection, will the Government inform this Council:*

- (a) *of the respective amounts of total expenditure required for each phase of education in providing 15-year free education in Hong Kong based on the estimation of the Government, and of its method of calculation;*
- (b) *whether the authorities will make reference to the practice of Macao and study the provision of 15-year free education; if they will, when the study will commence; if not, of the reasons for that; and*
- (c) *whether the authorities will follow Macao's practice and draw up plans to progressively extend SCT from primary schools to secondary schools so as to enhance the education quality in Hong*

*Kong; if they will, of the amounts of education funding required for secondary schools as a whole on the basis of the declining population if SCT is to be implemented progressively from Secondary One in secondary schools starting from 2011, 2012, 2013, 2014 and 2015 respectively?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, my reply to the three-part question raised by Mr CHEUNG is as follows:

- (a) Since the Government has no plan to provide 15-year free education starting from pre-primary level, we do not have the estimates requested in the question.
- (b) As mentioned above, the Government has no plan to provide 15-year free education starting from pre-primary level. The Government has been providing nine-year free and universal basic education through public sector primary and secondary schools since 1978. The free education provided by public sector schools has been extended to include senior secondary education starting from the 2008-2009 school year. In addition, with effect from the 2008-2009 school year, the Government has been providing full subvention for full-time courses offered by the Vocational Training Council for Secondary Three school leavers to provide them with an alternative and free study pathway outside mainstream education.

Pre-primary education in Hong Kong currently falls outside the scope of free basic education, and has all along been provided by the private sector aiming to offer pre-primary education with diversification. However, the Government has been providing direct fee subsidy for parents to meet towards kindergarten school fees through the Pre-primary Education Voucher Scheme (PEVS) since the 2007-2008 school year. At present, some 85% kindergarten pupils are benefiting from the PEVS. The Working Group on Review of PEVS will later submit a report to the Education Commission, which will in turn make recommendations to the Government. The Government will then study the report and the recommendations in detail.



- (c) SCT is a method of teaching, in that teachers have to undergo relevant training and schools' hardware should also meet the requirements, for example, more support facilities in classrooms. At the same time, we have to take into consideration the supply and demand of school places in each district. As such, it cannot be implemented overnight, and in the case of primary schools, it has to be carried out by phases. Besides, a long-lasting structural change will come with SCT, which has a profound impact on the adjustment of teaching mode and the allocation of secondary education funding. Therefore, containing the decline of population in future as well as the scale of class reduction should not be the basis for the implementation of SCT.

To cope with the issues arising from the impact of the declining student population on secondary schools' development, we believe that encouraging schools to reduce classes voluntarily is the most effective means at the present stage. When we have carried out effectively the enhanced proposal for the Voluntary Optimization of Class Structure Scheme (VOCSS) and stabilized the situations in schools, we are most willing to explore with stakeholders other measures for enhancing the quality of teaching.

We do not have estimates of education funding for the implementation of SCT in secondary schools at this stage.

**MR CHEUNG MAN-KWONG** (in Cantonese): *President, 15-year free education hinges on kindergartens because free education is now provided to students in primary and secondary schools. There are currently 140 000 kindergarten students in Hong Kong. The kindergarten is an indispensable learning phase for students to progress to Primary One. As regards government funding for kindergarten students, the subsidy provided under the PEVS, as mentioned in the main reply just now, will reach \$16,000 per person next year, while the average school fee for non-profit-making unisessional kindergartens subvented under the PEVS now is only \$18,000. The difference in school fee for each student is, in fact, only \$2,000. In other words, with an additional funding of \$2,000 for each kindergarten student, the Government will be able to implement 15-year free education. We are thus only one step away from the*

*goal of 15-year free education. Does the Government agree that this investment is worthwhile and good value for money? In its review on the PEVS, can the Government include the provision of 15-year free education on the basis of the PEVS?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, as pointed out in my main reply, the current pre-primary education, which offers diversified education, is provided by the private sector. As far as this is concerned, we all along encourage private kindergartens to offer diversified services. Thus, this is not a matter of how much money is involved. As the Member has pointed out, our annual subvention is not small, but we hold that this is a better approach to provide education in this regard.

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

**MR CHEUNG MAN-KWONG** (in Cantonese): *President, I know that the authorities are reviewing the PEVS. Can the Secretary clearly answer me whether the Government will use this as a basis in its review of the PEVS to consider the possibility of providing 15-year free education?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, the review is in progress and it will soon be completed. The review is not focused on the basis which the Member said just now. Rather, it looks for improvement of the current PEVS.

**MR ALBERT HO** (in Cantonese): *President, I note that the Secretary said he did not have the estimates of education funding for the implementation of SCT in secondary schools. But I remember the Secretary told the press quite some time ago that if SCT is to be implemented across the board, as much as \$40 billion may be required, which is double of the present cost. Ms Audrey EU later repeatedly asked the authorities in writing for more detailed estimates. The Secretary, however, did not provide these estimates and he only reiterated that*

*these were only estimates. Today, in relation to Member's question, the Secretary did not provide any data either. May I ask the Secretary whether he wishes to take back his remark concerning the \$40 billion and thinks that he should duly conduct more scientific calculation before providing us with the data?*

**SECRETARY FOR EDUCATION** (in Cantonese): I think Members should understand that before a scheme is implemented, we have to make accurate assumptions and projections. When we mentioned SCT last time, the amount mentioned was based on the assumption that in view of the present situation of insufficient students, SCT had to be adopted for the remaining students, it was not based on our subjective view on the number of students in a small class. Thus, last time in reply to a question on this issue, we said that on the basis that the number of Form One students in the following few years would be reduced by half as compared with the number of Form One student this year, the funding per student would then be doubled. As such, the funding will reach \$40 billion.

**MR ALBERT HO** (in Cantonese): *I ask if the Secretary will take back that figure, does his reply mean that he will not take back that figure?*

**PRESIDENT** (in Cantonese): I think the Secretary has already replied your question.

(The Secretary for Education nodded his head)

**DR LAM TAI-FAI** (in Cantonese): *President, since 1997, the Government has made extra efforts to take forward integrated education by arranging students with mental disability, autism or dyslexia to study in ordinary schools. Its intention is good and I fully support this arrangement; but this has also created a gap among students in each class. Moreover, the Education Bureau has also changed the student banding from five bands into three bands. I support this arrangement but it has at the same time widened the gap among students in each class. Hence, many front-line education workers such as teachers and school masters are of the view that the implementation of SCT can narrow down this gap*

*and fill the loophole. I know that the Education Bureau has entrusted a Cambridge University professor to act as the consultant to a SCT study. The professor holds that greater effectiveness can be achieved if SCT is implemented at a earlier phase of primary education and the later it is implemented, the lesser the effectiveness. As far as I know, the Secretary very much echoes and supports his view; and this is also one of the reasons why the authorities refuse to implement SCT in secondary schools. I believe the Secretary agrees that "the moon in foreign land is not necessarily fuller and local ginger can also give a very hot bite". Apart from the opinion of this foreign professor, have the authorities tried to listen to the views of Mainland experts, Hong Kong education experts or local front-line education workers? In fact, teachers are most familiar with the situation. Are their views consistent with that of the Cambridge professor, that is, implementing SCT in secondary schools is futile?*

**SECRETARY FOR EDUCATION** (in Cantonese): As a matter of fact, we did listen to the view of the Cambridge professor, but we have not yet come to any decision on SCT. President, as pointed out in my main reply, when we have carried out the enhanced proposal for the VOCSS and stabilized the situations in schools, we are most willing to actively explore with stakeholders other measures for enhancing the quality of teaching. We are open in this subject and have not closed the door on it. At this point of time, we have not come to a decision on whether or not we will adopt SCT, as the time is not ripe.

**MS STARRY LEE** (in Cantonese): *President, the Secretary has just mentioned in part (c) of the main reply that to cope with the issues arising from the impact of the declining student population on secondary schools' development, the Education Bureau encourages schools to reduce classes voluntarily at the present stage. I know that the Secretary has devoted a lot of time recently on persuading schools to reduce classes voluntarily. However, it has been reported recently that according to some government schools, although it is said that they are free to reduce classes, they are in fact forced to do so. Moreover, graduates of a famous school have posted their objection in newspaper against their mother school participating in the VOCSS. May I ask the Secretary to clarify, are government and subsidized schools truly free to decide whether or not they will participate in the VOCSS?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, if the Government rolls out a policy, we certainly hope that all people will act by it. But Members have to understand that as far as this issue is concerned, who decides whether or not to participate in the VOCSS? This is not a decision made by a few persons but one that is made by the school sponsoring bodies. In the process, the school sponsoring bodies shall consult different stakeholders. We understand that in the course of consultation, responses of the stakeholders may diverse and their views can be very different. The school sponsoring bodies have to come to a compromised view and make their own decision.

**MR LEUNG YIU-CHUNG** (in Cantonese): *President, I remember at a recent Legislative Council meeting, the Secretary said that the Education Bureau has actually changed its attitude on SCT in that it has adopted a less negative view than before, meaning that the Bureau is now more positive about this issue. The Secretary also said just now that the authorities are open to any other measures for enhancing the quality of teaching. Given that the authorities adopt an open attitude, may I ask the Secretary why he does not make a practical assessment on SCT and share the result with us for discussion? Instead of conducting a thorough study, why did he brush aside the responsibility by merely saying "the time is not ripe"? May I ask the Secretary whether a two-pronged approach can be adopted under the VOCSS so as to better implement the VOCSS?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, as Mr LEUNG said just now, our main difference is that they asked whether the two can be implemented at the same time, while I am of the view that a concurrent implementation will be problematic because we should first stabilize the situations in schools. Our present situation is that the population is dropping at a fast pace. We must address this issue first; otherwise, many schools, which have not participated in the VOCSS, will be forced to close down due to under-enrolment. We do not wish to see this happen and thus we must stabilize the situation before considering other options.

**MS AUDREY EU** (in Cantonese): *President, the Secretary's mathematics cannot match up with that of a primary student. How could he tell others that the cost would increase from \$20 billion to \$40 billion? Certainly with less students, the*

*cost per student may be doubled, but the cost as a whole will not be doubled. President, you should know that. You are good at mathematics.*

*However, President, I wish to ask the Secretary another question. He insisted that pre-primary education falls outside the scope of free basic education, and thus he refused to implement 15-year free education. He explained that pre-primary education in Hong Kong has been provided by the private sector aiming to offer pre-primary education with diversification. President, I do not understand why the Secretary only finds the pre-primary education provided by private sector to be diversified. This is another point which I find it hard to understand. There are secondary and primary schools under private operation. Many secondary schools are direct subsidy schools, private schools and international schools. Are they the only schools which offer diversified education? But there are also government secondary schools. Why can the Government not offer 15-year free education? Pre-primary education can be provided by private kindergartens, which, in his opinion, is the only pre-primary education with diversification. Thus, can the Secretary explain to us why only education provided by the private sector is diversified education?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, I think the logic is not hard to understand because private schools can tailor their services to meet the different needs of parents. For example, some parents request or wish that school should be taught entirely in English. By adopting English as the teaching medium, private schools can thus charge a higher school fee. In some cases, parents may have other special requests, such as requests for longer or shorter school hours. From this we can see that private schools are more flexible in responding to the different needs of students. We thus hold that the best approach for the Government is to provide subsidy in the form of school vouchers, which can satisfy most people's needs. As for those who have the means, they can choose to study in better schools; in which case, private schools can meet their needs.

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

**MS AUDREY EU** (in Cantonese): *No. I certainly understand that private schools can offer more choices, as the Secretary has said .....*

**PRESIDENT** (in Cantonese): Which part of your supplementary question just now has not been answered by the Secretary?

**MS AUDREY EU** (in Cantonese): *My supplementary question sought not to abolish private schools. What I meant to say is to add one more option to the diversified education. Apart from private kindergartens, will it be feasible to operate government kindergartens? Will pre-primary education be even more diversified then? This is the crux of my supplementary question.*

**SECRETARY FOR EDUCATION** (in Cantonese): President, in any case, the Government will not operate kindergartens. If we do operate kindergartens, it will be in the form of provision of subsidy. Hence, there will not be government kindergartens.

**PRESIDENT** (in Cantonese): Mr Albert HO, this is your second supplementary question.

**MR ALBERT HO** (in Cantonese): *President, SCT is now carried out in primary schools by phases. In fact, this policy objective is affirmed. If the Government agrees that this policy has brought impressive results and benefits, it should not be difficult for the authorities to formulate a policy to or set a target on progressively implementing SCT in secondary schools. The Secretary said that he needs two years to stabilize the situations in schools before conducting studies on this issue. I truly do not understand why this is necessary. Nevertheless, even if the Secretary needs some time to stabilize the situations, can he promise us that he can complete the review on this issue within his term, that is, before the end of term of this Government? Or, does he intend to secure his place as the next Secretary before accomplishing this mission? Do we need to wait for another five years?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, unfortunately, my term will end in two years' time, so it may be better for me to leave it to the next Secretary to handle this issue. I can assure Members that I will pass all studies, experiences and other relevant information to the next Secretary for consideration.

**PRESIDENT** (in Cantonese): This Council has used over 21 minutes on this question. Last question seeking an oral reply.

### **Implementation of Race Discrimination Ordinance**

6. **MR ABRAHAM SHEK:** *President, it has been reported that a kindergarten pupil failed to gain entrance to a primary school because he scored zero marks in the admission test's "Chinese Activity" section in which he was not asked any question by the school interviewer. As the parents of the pupil were not satisfied with the response of the Education Bureau when they approached it for help in last November, they later brought the case to the attention of the Equal Opportunities Commission (EOC) which found that the case might constitute a breach of the Race Discrimination Ordinance. In this connection, will the Government inform this Council:*

- (a) *of the number of complaints received by the Education Bureau in the past three years relating to discrimination against ethnic minority students in school admission; among these cases, the number of those followed up by the Education Bureau as well as the number of those that the Education Bureau had not followed up and the complainants had turned to EOC for help;*
- (b) *whether the Government has conducted any review of the Race Discrimination Ordinance with a view to increasing the transparency of school admission procedures to prevent discrimination against ethnic minority students; if so, of the details; if not, the reasons for that; and*
- (c) *whether it has considered imposing heavier penalties against acts of race discrimination relating to education; if not, the reasons for that?*



**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS:**  
President,

- (a) In the past three years, the Education Bureau has received two cases of complaints relating to discrimination against ethnic minority students in school admission. The Education Bureau has followed up the two cases. It is believed that the case mentioned in this question is one of the complaints received. For the other complaint, the Education Bureau gave a written reply to the complainant in November 2008 and the complainant has not followed up any further.
- (b) Section 26 of the Race Discrimination Ordinance (Cap. 602) prohibits discrimination by responsible bodies for educational establishments. The section stipulates that it is unlawful for the responsible body for an establishment to discriminate against a person, by refusing, or deliberately omitting to accept, an application for that person's admission to the establishment as a student, or in the terms on which it offers to admit that person to the establishment as a student.

The Education Bureau has provided guidelines to schools on admission matters which include the requirement for schools to define the criteria and scope of admission, the procedures for selection, and so on. Schools are also requested to inform parents properly of these requirements. Besides, the Education Bureau has issued circulars to schools, drawing their attention to the related ordinances, including the Race Discrimination Ordinance, in their admission procedures.

- (c) At present, if an establishment or a person discriminates against another person on the ground of the person's race in providing educational services, the aggrieved person may lodge a complaint to the EOC and undergo conciliation with the EOC's assistance. If the conciliation fails, the aggrieved person may seek assistance (including legal assistance) from the EOC to make civil claims from the Court. An aggrieved person can also make civil claims for unlawful racial discrimination directly under the Race Discrimination Ordinance.

The Court may provide remedies, including ordering the respondent to discontinue the unlawful discriminatory act, ordering the respondent to pay to the claimant damages by way of compensation for any loss or damage suffered by the complainant, or ordering the respondent to pay to the complainant for punitive or exemplary damages.

Therefore, the Race Discrimination Ordinance already provides for appropriate sanctions against racial discrimination in respect of educational services. The EOC will continue to promote racial equality among different sectors of society, including educational establishments. The Education Bureau will also continue to provide guidelines to schools to remind them to follow the requirements under the Race Discrimination Ordinance in providing educational services.

**MR ABRAHAM SHEK:** *President, I always admire the answers given by the Secretary for Constitutional and Mainland Affairs; he always answers questions without answering them.*

*In this particular case, I draw his attention to part (b) of my question: whether the Government has conducted any review of the Race Discrimination Ordinance with a view to increasing the transparency of school admission procedures to prevent discrimination against ethnic minority students; if so, of the details; if not, the reasons for that? In his reply, he just quotes section 26 of the Race Discrimination Ordinance without giving any answers to my question. I ask whether they are going to conduct a review of the Race Discrimination Ordinance in relation to the admission of ethnic minority students to schools.*

**PRESIDENT:** Mr Abraham SHEK, what is your supplementary question?

**MR ABRAHAM SHEK:** *My question is whether the Government has conducted any review of the Race Discrimination Ordinance with a view to increasing the transparency of school admission procedures to prevent discrimination against ethnic minority students; if so, of the details; if not, the reasons for that.*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Constitutional and Mainland Affairs, please reply.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS:** We are very serious about the full implementation and effective implementation of the Race Discrimination Ordinance. Since its implementation in mid-2009, we have followed very closely with the EOC the number of complaints received by the Commission, in particular the number of those relating to educational services. Over 90 complaints have been received by the EOC. Of these, two ..... one relates to educational services. This particular case raised by the Honourable Member is being followed up by the EOC, and I believe that it is being handled according to the law. The complainant is considering together with the EOC whether the matter should be taken up further in the courts of Hong Kong. I can assure the Honourable Member and the Council that the Race Discrimination Ordinance is being effectively implemented, and of course, as the Government, we keep an overview of the extent to which it is being complied with and how effective it is in its implementation.

**MR PAUL TSE** (in Cantonese): *President, before I ask my question, I would like to declare that I am a member of the EOC. President, just now, Mr Abraham SHEK implied with a hint of sarcasm that the main reply was somewhat evasive. Notwithstanding, I would like to ask a direct and focused supplementary question. Without commenting on individual cases, I would like to ask the Government whether a school which imposes certain admission requirements on speaking, writing and reading the Chinese language would be in breach of any existing laws? If so, whether the Government has taken any actions or measures to prevent ethnic minority students from being discriminated against, such as the establishment of special schools or classes for these students and the provision of fee waiver or subsidies for them to take lessons on Chinese after school or participate in extra-curricular activities conducted in Chinese, so that they will not be subjected to unfair treatment forever just because they do not know Chinese?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Constitutional and Mainland Affairs, please reply.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, allow me to respond first. Actually, during the scrutiny on the enactment of the Race Discrimination Ordinance, this matter had been thoroughly discussed in this Council. It was considered that it would not constitute an act of racial discrimination for schools in Hong Kong to adopt either Chinese or English as the medium of instruction. Of course, the SAR Government is very concerned about the education of ethnic minority students in Hong Kong and hope that they can gradually attain higher standards. Therefore, the Education Bureau has adopted measure to allow ethnic minority students to take the Chinese language examination at diploma level awarded by the United Kingdom so as to facilitate their application for enrolment in tertiary institutions in Hong Kong. This measure has been implemented for some time with good results. Last week when I attended the speech day of a school, I asked the principal whether ethnic minority students in his school had made use of the above policy. Replying in the affirmative, he also said that as many as 10 students from his school have been admitted to tertiary institutions and universities in recent years.

President, apart from complementing the implementation of the Race Discrimination Ordinance in respect of education services, the SAR Government has established four service support centres in Kwun Tong, Wan Chai, Yuen Long and Tuen Mun respectively to serve the ethnic minorities living in different districts. Women can go to these centres in day time to learn English, Cantonese and computer skills while students can attend language classes of Chinese and English. I have also visited some of these centres when conducting local visits recently. Since their establishment in mid-2009, these centres have been operating for more than a year and patronage has been increasing. Hence, President, we have been taking active measures to complement the enactment and implementation of the Race Discrimination Ordinance.

**MR TAM YIU-CHUNG** (in Cantonese): *I would like to put a supplementary question to Secretary Michael SUEN. In May this year, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has conducted a survey on 119 mainstream primary schools. Out of these 119 mainstream primary schools, 95% do not allow ethnic minority students to wear ethnic clothing or special clothing with religious meaning to school. This has thus created difficulty in the schooling of some ethnic minority students who cannot study in designated schools.*

*I would like to ask the Government whether any measures have been taken to assist these ethnic minority students resolve their schooling problem? Can it provide us with some details such as whether this type of incident has ever happened and what has been done to resolve the problem?*

**SECRETARY FOR EDUCATION** (in Cantonese): President, I have not personally received many complaints in this regard. As far as I know, there was a case two years ago involving a Sikh student who must wear turban to school because of ethnic culture reasons. When he applied to enrol in a certain school, he mistakenly thought that he was rejected because the school did not allow him to wear a turban to school. He subsequently lodged a complaint with us. Upon receipt of the complaint, we mediated with the school and learnt that it was a misunderstanding and the school did not have any requirement in this regard. That is the only case I know of. As for other cases ..... About this figure of 95% which Mr TAM just mentioned, I have really not heard about it. If there is such a situation, I would like to ask Mr TAM to provide me with the information so that I can follow up on that.

**MR TAM YIU-CHUNG** (in Cantonese): *I would like to clarify that the figure of 95% which I mentioned is the percentage of schools which do not allow ethnic minority students to wear clothing of their ethnicities or with religious meaning to school. I am asking the Secretary whether he is aware of such cases, but he seems to think that 95% is ..... I just worry that he might be confused.*

**PRESIDENT** (in Cantonese): Secretary, do you understand the Member's meaning?

(The Secretary for Education nodded in confirmation)

**MR ABRAHAM SHEK** (in Cantonese): *President, I am grateful for the attendance of two Directors of Bureaux to reply my question. But regrettably, other than Members from the DAB, Honourable Members of other political parties and groupings have not asked any supplementary questions in relation to ethnic minorities. This is a chance they have forestalled because it is my hope*

*that other political parties and groupings, the Democratic Party and the Civic Party alike, can also speak on behalf of the ethnic minorities from the perspective of building up a civic society.*

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

**MR ABRAHAM SHEK** (in Cantonese): *President, all students have the equal opportunity of receiving education. Like ethnic Chinese students in Hong Kong, ethnic minority students should also enjoy equal opportunities. While they want to learn Chinese in Hong Kong, their family members may not know the language. As a result, they lose the equal opportunity of receiving education. I would like to ask Secretary Michael SUEN how much resources have been allocated by the Government to assist children from these families so that they can enjoy the equal opportunity of learning Chinese and English in ordinary mainstream schools?*

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

**SECRETARY FOR EDUCATION** (in Cantonese): President, various kinds of support in respect of counselling services and extra-curricular activities have been provided by schools. Regarding support outside the classroom, we will provide relevant courses when such need arises, and if the relevant training courses are fee-charging, there are schemes to support ethnic minority students in attending such courses. Hence, they do not have to worry about this respect. As far as we know, such courses have been organized by many schools themselves or jointly with outside voluntary organizations. Relevant information about these courses have been disseminated to ethnic minorities who might require such services. They should know about the availability of such services.

**MR IP KWOK-HIM** (in Cantonese): *President, I wish to follow up on the supplementary question raised by Mr TAM Yiu-chung earlier on. I would like to*

*know whether the authorities have issued any guidelines to the schools about the wearing of ethnic clothing, accessories, and so on, to schools? Can the Secretary clarify this matter?*

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, since the implementation of the Race Discrimination Ordinance, we have issued a set of administrative guidelines which covers all relevant policy areas such as education, medical services, home affairs and social services. In fact, these guidelines represent the public pledge made by the concerned departments that the Race Discrimination Ordinance will be implemented proactively with the formulation of complementing policies to facilitate the integration of ethnic minorities into the community. Nonetheless, requirements as detailed as school uniforms have not been covered by the guidelines. Given the concern shown by the two DAB Members and the questions raised in this regard, the relevant Policy Bureau will definitely approach the concerned schools to follow up on the matter as necessary.

**MR PAUL TSE** (in Cantonese): *President, two Honourable Members have separately raised questions about the clothing of ethnic minorities. While this is just a minor aspect, it has highlighted the fact that very little has been done in Hong Kong to take care of the ethnic minorities, embrace their culture or respect the customs or habits of people from different nationalities. Comparatively speaking, the treatment that Hong Kong emigrants get in foreign countries is so much better. I do not know which Secretary is in a better position to reply this supplementary question. But we should look at the support given by the media such as radio stations, television stations and the press in promoting pluralistic culture. Moreover, we should not consider the matter from the perspective of the EOC's work or the restriction or control by law against contravention. Instead, we should positively, proactively and holistically care for the ethnic minorities in Hong Kong, including foreign domestic helpers. This is exactly the attitude Hong Kong should have as a society with such high regard for universal values.*

*We often say we must keep in line with international standards. An example is the Competition Bill we talk about frequently these days. But in terms of embracing different ethnicities, we seemingly lag far behind international standards. In this connection, I would like the Government .....*

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

**MR PAUL TSE** (in Cantonese): ..... *to comment on whether certain measures will be implemented so as to improve the overall policy in this area?*

**PRESIDENT** (in Cantonese): Which Secretary will reply? Secretary for Constitutional and Mainland Affairs, please reply.

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I thank Mr Paul TSE for his concern about how we can encourage the ethnic minorities to preserve their cultural and historic roots. As a representative of the Hong Kong Government, I have also worked in Canada and the United Kingdom. Hence, I am aware that foreign governments do have these relevant policies.

As I have just explained, since the enactment of the Race Discrimination Ordinance, we have established four dedicated service support centres for ethnic minorities. An annual provision of \$16 million has been earmarked by the SAR Government as the operating expenses of these centres. Since these centres commenced operation in mid-2009, more than 26 000 patrons have made use of the services provided including language classes in English and Cantonese, computer courses, tutorial classes and interpretation services. In addition to these services, the centres also organize other activities such as vocational training classes as well as cultural and social activities. As I just mentioned, these activities were attended by more than 26 000 participants. In respect of vocational training classes as well as cultural and social activities, as many as 17 000 participants have attended. When planning for the establishment of these four service support centres for ethnic minorities, we hope that they will not only function as a place for the ethnic minorities to learn the Chinese and English languages or computer skills, but a meeting point for them to interact with their



fellows sharing the same language and ethnicity so as to give mutual support to each other. That is why arrangements are made to organize such activities so that they can spin a community network that can facilitate their integration into the society of Hong Kong on one hand, and preserve their roots and heritage on the other.

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

## WRITTEN ANSWERS TO QUESTIONS

### **Provision of Fare Concessions for Full-time Students by MTR Corporation Limited**

7. **MR ANDREW LEUNG** (in Chinese): *President, recently, I have received complaints on the fare concessions offered by the MTR Corporation Limited (MTRCL) from members of the public pointing out that the MTRCL has refused to provide any fare concession for full-time post-secondary students aged 26 or above. In this connection, will the Government inform this Council:*

- (a) *whether it knows, in each of the years since 2000, the respective numbers of students aged under 26 and aged 26 or above who had enrolled in full-time post-secondary programmes, with a breakdown by the type of programmes (that is, sub-degree, undergraduate and master/postgraduate programmes);*
- (b) *of the difference in age restrictions for eligibility for fare concessions offered to full-time students by the MTRCL and by the Government for using government facilities and services (such as hiring the venues of the Leisure and Cultural Services Department (LCSD) or purchasing tickets for concerts held in its venues, and so on); and*
- (c) *given that the Government is the largest shareholder in the MTRCL, whether it will consider urging the MTRCL to provide fare concessions for full-time post-secondary students aged 26 or above; if so, of the details; if not, the reasons for that?*

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

- (a) According to the information provided by the Education Bureau, the numbers of students aged under 26 and aged 26 or above enrolled in local full-time accredited post-secondary programmes in each academic year since 2001 are tabulated below:

	<i>Aged under 26</i>			<i>Aged 26 or above</i>		
	<i>Sub-degree Programmes</i>	<i>Undergraduate Programmes</i>	<i>Taught Postgraduate Programmes/ Research Postgraduate Programmes</i>	<i>Sub-degree Programmes</i>	<i>Undergraduate Programmes</i>	<i>Taught Postgraduate Programmes/ Research Postgraduate Programmes</i>
2001-2002	26 700	44 800	3 100	500	500	2 400
2002-2003	31 900	46 200	3 700	600	500	2 600
2003-2004	38 200	48 000	4 400	400	500	2 800
2004-2005	47 300	49 800	3 800	400	500	2 700
2005-2006	55 400	52 500	3 600	400	600	2 700
2006-2007	59 900	55 400	3 600	600	800	2 800
2007-2008	65 300	61 400	3 700	600	1 000	3 000
2008-2009	67 000	64 900	3 700	700	1 200	3 100
2009-2010	71 900	68 800	3 900	800	1 200	3 300

Notes:

- (1) The numbers of students are rounded to the nearest hundred.
- (2) Since age-specific data on the numbers of students enrolled in self-financing taught postgraduate programmes/research postgraduate programmes are not available, such programmes are not covered by the above data.
- (3) From the 2007-2008 academic year, the numbers of students enrolled in undergraduate programmes include the numbers of students enrolled in self-financing accredited top-up degree programmes.

- (b) According to the LCSD, it offers concessions to all full-time students. For the hire of recreation and sports facilities, full-time students can enjoy a half-price concession when they use the LCSD land-based recreation and sports facilities (including badminton courts, table tennis tables, tennis courts and holiday camps) during non-peak hours. Moreover, they can also enjoy a half-price concession when using the LCSD swimming pool facilities, water sports centres, American pool tables and bowling greens at all times. Regarding the performing arts and cultural programmes, half-price tickets are also available for full-time students in respect of all performing arts and cultural programmes organized by the LCSD. In addition, full-time students are also entitled to a half-price concession for visits to fee-charging museums and participation in regular fee-charging programmes of the museums. There is no age limit for the abovementioned concessions for full-time students.
- (c) At present, students aged between 12 and 25 who are currently enrolled in a full-time course offered by a Government recognized primary, secondary school or post-secondary institution and hold a Personalized Octopus card with "Student Status" can enjoy fare concessions of up to 50% off normal fares on the MTR Island Line, Tung Chung Line, Kwun Tong Line, Tsuen Wan Line, Disneyland Resort Line, Tseung Kwan O Line, East Rail Line (except for journeys to or from Lo Wu and Lok Ma Chau Stations and First Class Service), West Rail Line, Ma On Shan Line, Light Rail and MTR Bus. Since October 2008, the student fare concession was extended to the pre-merger Kowloon-Canton Railway network. About 540 000 students are now enjoying the fare concession scheme.

In addition, the Student Financial Assistance Agency (SFAA) has put in place the Student Travel Subsidy Scheme to provide travel subsidies to needy students who receive primary or secondary education or attend a full-time course up to the degree level in an acceptable institution, who reside beyond 10 minutes' walking distance from school and have to travel to school by public transport. The scheme has no age limit on the applicants, who are only required to provide relevant information, pass the means test and meet the above eligibility criteria in order to receive the subsidy. In the 2009-2010 school year, the Scheme provided on average a subsidy

of over \$2,300 per eligible post-secondary student, thereby easing the students' burden of travel expenses.

In view of the above, the Government has no plan to ask the MTRCL to extend the student fare concession scheme to full-time post-secondary students aged 26 or above.

The Government has all along been encouraging public transport operators to provide fare concessions to passengers as far as possible to help reduce their travel expenses, taking into account the operators' operating and financial conditions, overall economic environment and the demand of passengers.

### **Treatment of Colon Cancer**

8. **DR LEUNG KA-LAU** (in Chinese): *President, recently, it has been reported that colon cancer has become the number two killer-cancer with a substantial increase of 16% in the number of new cases within a short period of five years from 2002 to 2007. The medical profession has also anticipated that colon cancer will replace lung cancer as the number one killer-cancer. At present, infusional chemotherapy for treatment of colon cancer requires patients to be hospitalized at regular intervals: those using 5-fluorouracil (5-FU), a commonly used infusional drug for colon cancer treatment, have to be hospitalized for 30 hours every six months on average to receive intravenous infusion, while those using a combination of 5-FU and other drugs even have to be hospitalized for 576 hours; these figures indicate that using such treatments has posed a burden on the medical system. On the other hand, orally-administered drugs with the same efficacy, such as capecitabine, allow patients to take the drugs at home, thereby improving the quality of life of both the patients and their carers as well as reducing the pressure of demand for hospital beds. In this connection, will the Government inform this Council whether it knows:*

- (a) *the respective numbers of colon cancer patients of the Hospital Authority (HA) receiving infusional 5-FU chemotherapy (including single agent and combined drugs) and orally-administered 5-FU chemotherapy (including single agent and combined drugs) in each of the past three years; and the total number of such treatments;*

- (b) *calculated on the service costs of the HA, the respective average total costs and average costs by item (including costs of medical and nursing staff, hospital beds, drug administration, drugs, and so on) for each treatment cycle of a colon cancer patient using infusional 5-FU (including single agent and combined drugs) and orally-administered 5-FU (including single agent and combined drugs) in each of the past three years; and*
- (c) *at present, the average time spent by a colon cancer patient in the hospital for each visit for receiving infusional chemotherapy (including single agent and combined drugs) from registration upon arrival to completion of intravenous infusion?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, at present, the treatment options for colorectal cancer offered by the HA include tumour excision, adjuvant chemotherapy, radiotherapy and palliative chemotherapy. As an infusional drug used in adjuvant chemotherapy, 5-FU is listed in the Drug Formulary as a standard drug and can be used for monotherapy or in combination with other drugs (usually with Oxaliplatin) for treatment of various types of cancer, including colorectal cancer, breast cancer, oesophageal cancer, stomach cancer, pancreatic gland cancer, liver cancer, anal cancer, ovarian cancer, cervical cancer, urinary bladder cancer, prostate cancer as well as head and neck cancer, and so on.

Since the clinical conditions of individual patients vary and there are different treatment and medication options for different types of cancer, doctors will assess carefully the clinical needs of individual patients and provide them with appropriate treatment required in accordance with clinical treatment protocols.

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

- (a) There is currently no 5-FU in oral formulation for common use in the global market, and the HA does not provide orally-administered 5-FU chemotherapy (including both monotherapy and combination therapy) for colorectal cancer patients.

As infusional 5-FU can be used for treatment of many types of cancer, and different patients have different treatment and

medication needs, the HA has not kept separate statistics on the number of colorectal cancer patients using this drug for treatment and the total number of such treatments. In 2007-2008, 2008-2009 and 2009-2010, there were respectively 3 213, 3 058 and 3 139 patients receiving infusional 5-FU (including both monotherapy and combination therapy) for treatment of different types of cancer in public hospitals with colorectal cancer patients taking a greater portion.

- (b) Since infusional 5-FU can be used for treatment of many types of cancer, and individual patients have different treatment and medication needs and require different length of stay in hospital; coupled with the fact that doctors will, having regard to different patients' clinical conditions, prescribe the drug for monotherapy or combination therapy with other drugs for treatment and arrange different supplementary procedures and examinations for the patients, the HA is not able to calculate the total costs and a breakdown of the costs for treatment of colorectal cancer patients with infusional 5-FU.
- (c) As the dosage required for infusional chemotherapy varies with the type of cancer and the clinical needs of patients, and different patients will undergo different examinations or supplementary procedures before or after receiving infusional chemotherapy, the HA has not specifically kept statistics on the time spent by patients who receive infusional chemotherapy from admission registration to the completion of intravenous infusion on each occasion. Generally speaking, according to established clinical treatment protocols, it takes about 48 hours for colorectal cancer patients to receive 5-FU infusional chemotherapy.

### **Various Funds Managed by Bureaux**

9. **MR ALBERT HO** (in Chinese): *President, the Civil Service Bureau, the Food and Health Bureau, the Education Bureau and the Home Affairs Bureau, together with related organizations, are responsible for the administration of the following funds:*

<i>Bureau</i>	<i>Fund</i>
<i>Civil Service Bureau</i>	<i>Pensioners' Welfare Fund</i>
<i>Food and Health Bureau</i>	<i>Health and Health Services Research Fund</i>
	<i>Research Fund for the Control of Infectious Diseases</i>
	<i>Health Care and Promotion Fund</i>
<i>Education Bureau</i>	<i>The Hong Kong Jockey Club Life-wide Learning Fund</i>
	<i>Quality Education Fund</i>
<i>Home Affairs Bureau</i>	<i>Sir David Trench Fund for Recreation (Main Fund)</i>
	<i>The Lord Wilson Heritage Trust</i>
	<i>The Hong Kong Jockey Club Music and Dance Fund</i>
	<i>Cantonese Opera Development Fund</i>
	<i>General Chinese Charities Fund</i>
	<i>Chinese Temples Fund</i>
	<i>Brewin Trust Fund</i>
	<i>Grantham Scholarships Fund</i>
	<i>Li Po Chun Charitable Trust Fund</i>
	<i>Sir Edward Youde Memorial Fund</i>
	<i>Sir Robert Black Trust Fund</i>
	<i>The Lord Wilson United World Colleges Scholarship Fund</i>
	<i>Sir Murray MacLehose Trust Fund</i>
	<i>The Board of Management of the Chinese Permanent Cemeteries</i>

*In this connection, will the Government inform this Council of:*

- (a) the expenditure of each of the above funds in the past five years;*
- (b) the current balance of each of the above funds; and*
- (c) the work plan and budget of each of the above funds in the coming five years?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President, please refer to the Annex for the expenditure of each of the above funds in the past five years, the current balance of each of the above funds and the work plan and budget of each of the above funds in the coming five years.

## Annex

Name of Fund	Expenditure in the past five financial years of the Fund (\$ million)	Balance up to 30 Sep 2010 <sup>(1)</sup> (\$ million)	Plan for the next five years	Budget for in the next five years (\$ million)	
				Income	Expenditure
Pensioners' Welfare Fund <sup>(2)</sup>	4.49	0.24 <sup>(3)</sup>	The provision under Pensioners' Welfare Fund is for the payment of one-off grants for reimbursement of funeral or medical expenses to pensioners and dependants in financial hardship. The Civil Service Bureau plans to continue providing financial assistance to pensioners and dependents in case of genuine hardship in the form of a one-off grant for reimbursement of funeral or medical expenses in the coming five years.	Not applicable <sup>(2)</sup>	5
Health and Health Services Research Fund	19.85	200.89	The Fund will continue to encourage, facilitate and support research in human health and health services that will generate new evidence-based knowledge to inform health policy formulation and health services delivery to maximize population health and enhance the standard and cost-effectiveness of the health system.	Not applicable <sup>(4)</sup>	150
Research Fund for the Control of Infectious Diseases	149.1	266.27	The Fund will continue to encourage, facilitate and support research on the prevention, treatment and control of infectious diseases, in particular emerging infectious diseases that will generate evidence-based knowledge to enhance the overall system preparedness for the control of infectious diseases and other emerging infectious diseases.	Not applicable <sup>(4)</sup>	200



Name of Fund	Expenditure in the past five financial years of the Fund (\$ million)	Balance up to 30 Sep 2010 <sup>(1)</sup> (\$ million)	Plan for the next five years	Budget for in the next five years (\$ million)	
				Income	Expenditure
Health Care and Promotion Fund	17.12	52.83	The Fund will continue to encourage, facilitate and support health promotion projects which help people adopt healthier lifestyles by enhancing awareness, changing behaviour or creating an environment that supports good health practices.	3 <sup>(5)</sup>	25
Hong Kong Jockey Club Life-wide Learning Fund <sup>(6)</sup>	152.7	1.6	The Education Bureau will observe the agreed mechanism to follow up on the fund management matters till 2011-2012 school year. Education Bureau is exploring possible funding sources to extend the operation of the Fund.	Not applicable <sup>(7)</sup>	95.4 <sup>(8)</sup>
Quality Education Fund (QEF)	766	6,420	<p>The objectives and plans of the QEF are formulated every three years. The plans for 2009-2011 are as follows:</p> <p>(a) to encourage large-scale applications for QEF with extensive impact on the school sector from potential applicants;</p> <p>(b) to encourage small-scale applications from schools to meet the specific needs of schools;</p> <p>(c) to continue to explore priority themes to address the</p>	Not applicable <sup>(9)</sup>	Not applicable <sup>(10)</sup>

Name of Fund	Expenditure in the past five financial years of the Fund (\$ million)	Balance up to 30 Sep 2010 <sup>(1)</sup> (\$ million)	Plan for the next five years	Budget for in the next five years (\$ million)	
				Income	Expenditure
			<p>prevailing needs of school education; and</p> <p>(d) to enhance dissemination and commercialization activities to promote professional sharing of good practices of successful projects and commercialize good project deliverables.</p> <p>The objectives and plans for 2012 to 2014 will be deliberated and formulated in 2011.</p>		
Sir David Trench Fund for Recreation (Main Fund)	57	154	The Fund will continue to be used, pursuant to the objects set out in the Sir David Trench Fund for Recreation Ordinance, for the provision of, or assistance in the provision of facilities for recreational, sporting, cultural and social activities, and for such objects ancillary or incidental to the said objects as the Chief Executive may direct.	2011:8 2012 to 2015: Not applicable <sup>(9)</sup>	\$50 million reserved in 2009-2010 to 2011-2012 <sup>(11)</sup>
Lord Wilson Heritage Trust	11	66.9	The Fund will continue to preserve and conserve the human heritage of Hong Kong by organizing activities and providing funding support to assist community organizations and individuals to undertake heritage-related activities and research projects.	Not applicable <sup>(9)</sup>	The budget of each year is determined by the Board of Trustees with reference to the Trust's financial conditions.

Name of Fund	Expenditure in the past five financial years of the Fund (\$ million)	Balance up to 30 Sep 2010 <sup>(1)</sup> (\$ million)	Plan for the next five years	Budget for in the next five years (\$ million)	
				Income	Expenditure
The Hong Kong Jockey Club Music and Dance Fund	12.7	55.6	The Fund will continue to promote training and education in music and dance in Hong Kong by awarding scholarships to enable exceptionally talented candidates to pursue integrated programmes of post-diploma studies, post-graduate studies or professional training in music or dance at world-renowned institutions or to undertake less formal studies, projects or creative work, in order to develop their talent in music and dance.	Not applicable <sup>(9)</sup>	The budget of each year is determined by the Board of Trustees with reference to the Fund's financial conditions
Cantonese Opera Development Fund (CODF)	32 <sup>(12)</sup>	84	The Fund will continue to support projects and activities relating to the research, promotion and sustainable development of Cantonese opera.	Not applicable <sup>(9)</sup>	The budget for each year will be drawn up by the CODF Executive Committee annually, having regard to the financial conditions and the funding direction of the Fund.
General Chinese Charities Fund	115	193	The Fund will continue to support the Chinese charity in Hong Kong.	20	35
Chinese Temples Fund	89	679	The Fund will continue its aim for the due observance of the customary ceremonies and the maintenance of the temple buildings and temple properties.	130	15

Name of Fund	Expenditure in the past five financial years of the Fund (\$ million)	Balance up to 30 Sep 2010 <sup>(1)</sup> (\$ million)	Plan for the next five years	Budget for in the next five years (\$ million)	
				Income	Expenditure
Brewin Trust Fund	19	237	The Fund will continue to provide financial assistance for the benefit of widows, widowers, orphans who, being residents in Hong Kong and workmen who having been employed in Hong Kong incapacitated for work.	2011:6 2012 to 2015: Not applicable <sup>(9)</sup>	30
Grantham Scholarships Fund	34	210	The Fund will continue to provide for persons residing in Hong Kong, scholarships and maintenance grants for students in primary school, secondary schools, pre-vocational schools, technical schools and institutions of high education in Hong Kong.	2011:5 2012 to 2015: Not applicable <sup>(9)</sup>	30
Li Po Chun Charitable Trust Fund	32	108	The Fund will continue to encourage education by awarding scholarships to Hong Kong students studying locally or abroad, and promote social welfare by providing temporary relief to persons in distress where adequate relief is not available from other sources.	2011:2.5 2012 to 2015: Not applicable <sup>(9)</sup>	35
Sir Edward Youde Memorial Fund	78	121	The Fund will continue to provide for and encourage the education or loaning of, or research by, the people of Hong Kong.	2011:2 2012 to 2015: Not applicable <sup>(9)</sup>	40
Sir Robert Black Trust Fund	14	81	The Fund will continue to provide grants to persons with exceptional merits for the furtherance of studies, activities or training so as to develop qualities of personal leadership in the service of all members of the community.	2011:2 2012 to 2015: Not applicable <sup>(9)</sup>	20
Lord Wilson United World Colleges Scholarship Fund	11	50	The Fund will continue to provide scholarships to students attending the Li Po Chun United World College of Hong Kong.	2011:1 2012 to 2015: Not applicable <sup>(9)</sup>	10

Name of Fund	Expenditure in the past five financial years of the Fund (\$ million)	Balance up to 30 Sep 2010 <sup>(1)</sup> (\$ million)	Plan for the next five years	Budget for in the next five years (\$ million)	
				Income	Expenditure
Sir Murray MacLehose Trust Fund	58	75	The Fund shall be applied for the benefit of the people of Hong Kong at the sole discretion of the Chief Executive personally.	2011:2012 to 2015: Not applicable <sup>(9)</sup>	Not Applicable <sup>(13)</sup>
The Board of Management of the Chinese Permanent Cemeteries	562	5,872.98	The Board will continue to provide, maintain and administer cemeteries and burial grounds for persons of the Chinese race permanently resident in Hong Kong.	2011:2802012 to 2015: Not applicable <sup>(9)</sup>	2011:4912012:3152013 to 2015: The budget of each year is determined by the Board, having regard to the prevailing financial conditions.

## Notes:

- (1) The Pensioners' Welfare Fund, Health and Health Services Research Fund and Research Fund for the Control of Infectious Diseases are included in the Government Budget while the rest of the funds are independent from the Government Budget. For the funds independent from the Government Budget, the figures have yet to be audited.
- (2) The expenses of the Pensioners' Welfare Fund are provided under the annual estimate of the Government Budget.
- (3) The provision in 2010-2011 is \$910,000. As at 30 September 2010, the expenditure was about \$668,000 and hence the balance was about \$242,000.
- (4) The Fund is a fixed amount committed from the Government. It does not receive any additional amount as a result of investment, if any.
- (5) The Hospital Authority has been authorized to act in the capacity as a custodian and bookkeeper of the Fund, and to invest money of the Fund that is not required immediately. Income earned is subject to the variation of interest rates.
- (6) The Fund was set up in September 2002 and will operate up to August 2012 in accordance with the plan.
- (7) The Fund was set up with the donation of the Hong Kong Jockey Club Charities Trust (the Trust) and does not generate any income since its operation. Subsidy of each academic year comes from the Trust and is distributed to the beneficiary schools via Education Bureau and the Treasury. The unused balance will be returned to the Trust.
- (8) The Fund will cease to operate in September 2012. The figure represents the budget for the academic year of 2010-2011 and 2011-2012.
- (9) The major income of the Fund comes from investment and the return will depend on the global market situation.
- (10) The budget for the next academic year will be prepared in the first half of each year and will be submitted to the Permanent Secretary for Education for approval.
- (11) To further support the sporting activities in the districts, the Fund has reserved \$50 million in 2009-2010 to 2011-2012 to subsidize the building of new facilities or the purchase of new sports equipment by National Sports Associations and District Sports Associations.
- (12) The figure represents the expenditure since its establishment in November 2005.
- (13) Annual expenditure is determined by needs.

## **Public Works Conducted to Compensate for Disturbance to Fung Shui of Villages**

10. **MISS TANYA CHAN** (in Chinese): *President, according to the Lands Department's reply to me, the Government has set up an inter-departmental working group to handle claims for compensation for disturbance to fung shui (fung shui claims) arising from the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL works). The ambit of the working group, which mainly comprises representatives from the Highways Department, the Home Affairs Department and the Lands Department, includes vetting and approving the grant of ex gratia allowances for "Tun Fu" payments in relation to fung shui claims as well as examining works conducted to compensate for the disturbance to the fung shui of villages (compensatory works). Regarding issues relating to compensatory works, will the Government inform this Council:*

- (a) whether the Government has drawn up procedures and guidelines for handling allegations made by rural residents about the impact on fung shui of public works projects; if it has, of the details of such procedures and guidelines; if not, whether it will consider drawing up such guidelines; if it will, of the details; if not, the reasons for that;*
- (b) whether the Government had in the past five years assessed if compensatory works can effectively mitigate the disturbance to the fung shui of villages; if it had, of the criteria adopted by the Government; if not, how the effectiveness of the compensatory works is ascertained;*
- (c) of the total number of applications for compensatory works received by the Government in relation to the XRL works; among such applications, of the number of those approved, as well as the details of each approved application, including the date of application, expected commencement date, location, reasons for undertaking the works, as well as the nature, particulars and costs of the works (set out in the table below):*

<i>Date of application</i>	<i>Expected commencement date</i>	<i>Location</i>	<i>Reasons for undertaking the works</i>	<i>Nature and particulars of the works</i>	<i>Costs of the works</i>

- (d) *of the total number of applications for compensatory works received by the Government in the past decade when undertaking public works projects other than the XRL works; among such applications, of the number of those approved, as well as the details of each approved application, including the date of application, expected commencement date, location, reasons for undertaking the works, as well as the nature, particulars and costs of the works (set out in the table below); and*

<i>Date of application</i>	<i>Expected commencement date</i>	<i>Location</i>	<i>Reasons for undertaking the works</i>	<i>Nature and particulars of the works</i>	<i>Costs of the works</i>

- (e) *given that the Lands Department has indicated that the aforesaid inter-departmental working group is examining the request made by the residents of Kap Lung Village in Pat Heung of Yuen Long for the Government to widen a bridge in compensation for the disruption caused by the XRL works to the village's fung shui, of the total number of residents of that village who have requested the Government to widen the bridge concerned, and the factors it will consider when vetting and approving the works in question?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, in implementing public works projects, works departments will strive to minimize the impact on surrounding environment. However, there may be cases where the works will cause unavoidable adverse impact or inconvenience to the neighbourhood. In such cases, to ensure smooth implementation of the projects as well as to address the concerns of the residents and to maintain a harmonious relationship with them, the works departments will provide certain community

facilities or improve the existing ones, such as Pai Lau, rain shelter or landscaping works, to alleviate the adverse impact of the public works projects. While some residents may consider these compensatory works are related to "fung shui", "fung shui" is actually not a consideration for the departments concerned.

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

- (a) Since "fung shui" is not a consideration in implementing public works projects, the Government has not drawn up any procedures or guidelines for handling allegations made by the residents about the impact on "fung shui". However, as mentioned above, the implementation of public works projects may sometimes cause adverse impact or inconvenience to neighbouring communities. In planning public works projects, we seek to protect the local environment, greening as well as culture and history of the communities. We will try our best to re-provision the community facilities affected by the works as far as possible in order to minimize the impact of the projects on the communities. We also follow the above principles in implementing public works projects in rural areas. Throughout the process, related departments such as the departments responsible for the works projects and the Home Affairs Department, will discuss the details with the relevant District Councils and the local community.
- (b) As mentioned above, "fung shui" has not been a consideration in implementing public works projects. Therefore, we do not have such assessment.
- (c) According to the information from the Transport and Housing Bureau, the Lands Department has received a total of 17 claims related to XRL works which the villagers considered as "fung shui" related, including Tun Fu allowance, rebuilding of Village Office cum Worship Hall, construction of Pai Lau/pagoda/Village Office cum Worship Hall, refurbishment of Village Office and repair of temple/Pai Lau/Worship Place/ancestors' grave. In processing the requests related to the works, the Government will give due consideration to community interests and their technical feasibilities. "Fung shui" compensation is not a consideration. To follow up



these applications, the Government has set up an inter-departmental working group with members mainly from the Lands Department, Home Affairs Department and Highways Department responsible for the XRL works. According to the preliminary information available, the working group will consider the applications having regard to the concerns of the residents and the need to alleviate the adverse impact of the works. After the in principle agreement is provided by the working group to the applications, they will be forwarded to the Highways Department for further consideration on whether approval will be granted.

- (d) Since "fung shui" is not a consideration for implementing public works, the Government does not have detailed information for such compensatory works for the past decade. Based on the records provided by works departments for the past three years, a Pai Lau costing about \$800,000 was completed at Tai Hang Village to address the concerns of the residents. The Government is currently constructing Pai Laus of about \$800,000 each at Lam Hau Tsuen, Yeung Uk Tsuen and Ping Kong Village to alleviate the adverse impact of the works projects.
- (e) According to the information from the Transport and Housing Bureau, the claim which the residents considered to be related to "fung shui" was filed by an indigenous inhabitant representative of Kap Lung Tsuen, Pat Heung who asked for the widening of an existing footbridge.

After initial consideration, the inter-departmental working group set up for the XRL project has agreed in principle to follow up on the compensation claim, taking into account the concerns of the residents and to alleviate the adverse impact of the works. The Highways Department is consulting with other relevant departments (such as the Agriculture, Fisheries and Conservation Department, Water Supplies Department and Environmental Protection Department) to determine the feasibility of the proposed works. The next step will be posting notices to seek the views of nearby villagers, so as to assess whether the proposed works will bring any benefit or improvement to Kap Lung Tsuen or its neighbouring community.

As for the works progress, the proposed works are still under consultation and study and have not yet been approved.

### **Tourist Guides in Hong Kong**

11. **MR VINCENT FANG** (in Chinese): *President, in the middle of this year, a Mainland tourist was suspected to have died after quarrelling with a female tourist guide when shopping at a jewellery shop in Hong Kong. Subsequent to that incident, a female Hong Kong tourist guide insulted her Mainland tour group members on a tourist coach because she was not happy that they did little shopping. There have been comments that such incidents happened one after the other have adversely affected Hong Kong's tourism industry and caused public concern about the quality of Hong Kong's tourist guides. In this connection, will the Government inform this Council whether it knows:*

- (a) *the respective average numbers of part-time and full-time tourist guides employed by each travel agency at present, their remuneration packages, and their average monthly income;*
- (b) *in the past three years, the respective total numbers of new and renewal applications for tourist guide passes (TGPs) received by the Travel Industry Council of Hong Kong (TIC); among these applications, the number of applications approved; among the applications approved, the number of applicants who were new immigrants; and*
- (c) *in each of the past three years, the respective numbers of complaints and reports against Hong Kong tourist guides received by TIC; among them, the numbers of cases relating to tourist guides' poor attitude and forced shopping, and the number of cases where the tourist guides' passes had been revoked?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the TIC established the "Task Force on the Review of the Operation and Regulation of Mainland Inbound Group Tours" (Task Force) in June 2010. It examined the receiving arrangement for Mainland inbound tour groups, with a special focus on the question of zero/negative reception fee and

regulation of tourist guides. The Task Force submitted its review report with 10 proposed measures to the Government in early October. The Government supported these measures. On 19 November, the Board of the TIC approved most of the directives for implementation of the measures. The directives are expected to take effect in early 2011. The Chief Executive stated in this year's Policy Address that the Government would review the operation and regulatory framework of the entire tourism sector, with a view to promoting the healthy development of the tourism industry.

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

- (a) As at the end of October 2010, there were 1 543 licensed travel agents and 6 001 accredited tourist guides in Hong Kong. Tourist guides provide services to travel agents on full-time, part-time or self-employed basis. Their remuneration system depends on the mode of employment. The remuneration package generally comprises basic salary, tour-guiding fee and gratuities, while detailed arrangements are subject to agreement between employers and employees. Given that not all tourist guides are employed full-time, and that travel agents typically recruit more part-time or self-employed tourist guides in the peak seasons, the Government and the TIC do not have data on the average number of tourist guides employed by a travel agent or the average monthly income of tourist guides. In the context of the reception of the Mainland inbound tour groups, the TIC has already formulated a directive requiring travel agents and tourist guides to sign agreements, which stipulate the salary and tour-guiding fee agreed between the parties.
- (b) Between January 2008 and October 2010, the TIC received 1 166 new applications and 4 007 renewal applications for TGPs. Among these 5 173 applications, 5 170 were approved, and three renewal applications were rejected. The TIC does not have any statistics on the number of new immigrants among the applicants, as the length of residence in Hong Kong is not a condition for application.
- (c) The numbers of complaints related to tourist guides received between January 2008 and October 2010 are shown in the table below:

	2008	2009	2010 (January to October)
Complaints against tourist guides*	136	92	134
(i) Complaints about service attitude	68	30	67
(ii) Complaints about coerced shopping	55	60	64

Note:

\* Each case may involve different subjects of complaint.

During the period, there were 16 tourist guides whose TGPs were suspended for violation of the code of conduct, but there was no case of revocation of TGP.

### Small House Policy

12. **MR LEE WING-TAT** (in Chinese): *President, regarding small house policy, will the Government inform this Council:*

- (a) *of the number of indigenous villagers in Hong Kong as at the end of October 2010, with a breakdown by District Council (DC) district, and among those villagers, the respective numbers of male and female;*
- (b) *among the male indigenous villagers in part (a), as at the end of October 2010:*
  - (i) *of the number of those for whom approval was given by the Government to construct small houses on private land, or on Government land with concessionary premiums or by way of private treaty grant;*
  - (ii) *of the respective numbers of those who have applied to the Government but have not yet given approval for the construction of small houses on private land, and on Government land with concessionary premiums or by way of private treaty grant; and*

- (iii) *whether it knows, among the indigenous villagers who have not made the aforesaid applications, the respective numbers of those who belong to various age groups, that is, below 18, 18 to 25, over 25 to 35, over 35 to 45, over 45 to 55 and above 55;*
- (c) *among the cases in part (b)(i), of the number of small houses whose owners have applied to the Government for payment of additional premiums (payment of premiums) so as to sell or transfer these properties to non-indigenous villagers, and among such cases, the number of those approved and the amount involved in the payment of premiums; the number of applications not yet approved, and the average waiting time for vetting and approving such applications; the number of small houses whose owners have not applied for payment of premiums; the number of applications for payment of premiums received and approved by the Government and the amount of the payment of premiums in each of the past five years;*
- (d) *whether it knows, among those cases approved by the Government for payment of premiums in part (c), the number of small houses that have been sold or transferred, and the number of those that are yet to be sold or transferred;*
- (e) *among the cases in part (b)(ii), of the number of applications received, and the number of applications approved in the past five years, as well as the average waiting time for vetting and approving such applications, with a breakdown by DC district; and*
- (f) *of the estimated number of applications for small houses that can be approved by the authorities in the next five years?*

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

- (a) The Government does not have the relevant statistics.
- (b) (i) Since the implementation of the New Territories Small House Policy in December 1972, Lands Department (LandsD) had

approved 35 559 small house applications (including applications for private treaty grant) up to the end of October 2010.

- (ii) As at the end of October 2010, a total of 9 862 small house applications (including applications for private treaty grant) are being processed and have not yet been approved.
  - (iii) The Government does not have the relevant statistics.
- (c) Since the implementation of the New Territories Small House Policy up to the end of October 2010, a total of 10 572 applications for premium assessment have been approved involving total premiums of some 8 188 millions. The New Territories District Lands Offices (NTDLOs) of LandsD are currently handling 175 applications for premium assessment. In general, the NTDLOs will take about 40 working days to complete the processing of an application for premium assessment. The Government does not have the relevant statistics on the number of eligible small house owners who have not yet applied for premium assessment. For the recent five financial years, the number of approved applications for premium assessment and the amount of premiums collected each year are as follows:

<i>Financial Year</i>	<i>Number of Approved Applications for Premium Assessment</i>	<i>Amount of Premiums Collected (\$)</i>
2006-2007	422	375,336,499
2007-2008	473	436,636,987
2008-2009	476	369,395,116
2009-2010	453	369,700,582
2010-2011 (As at end of October )	210	191,589,282

- (d) The Government does not have the relevant statistics.
- (e) The Government does not have the relevant statistics by DC district. For the recent five financial years, the number of small house

applications received and approved by the NTDLOs of LandsD are as follows:

<i>Numbers of Small House Applications Received</i>					
<i>Financial Year</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011 (As at end of October)</i>
DLO/Yuen Long	603	510	525	668	540
DLO/Tuen Mun	73	99	99	93	49
DLO/Tsuen Wan and Kwai Tsing	47	75	71	61	8
DLO/North	280	271	310	234	178
DLO/Tai Po	273	209	410	285	187
DLO/Shan Tin	114	194	97	88	71
DLO/Sai Kung	270	220	178	159	82
DLO/Islands	33	68	97	74	44

<i>Numbers of Small House Applications Approved</i>					
<i>Financial Year</i>	<i>2006-2007</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>	<i>2010-2011 (As at end of October)</i>
DLO/Yuen Long	437	538	451	721	467
DLO/Tuen Mun	55	43	59	54	26
DLO/Tsuen Wan and Kwai Tsing	17	1	6	53	16
DLO/North	142	150	154	120	71
DLO/Tai Po	305	343	236	252	132
DLO/Shan Tin	15	47	16	73	22
DLO/Sai Kung	73	106	82	86	72
DLO/Islands	39	39	22	21	10

As regards the processing time for approval of small house applications, for straightforward cases, it will take about 24 weeks from the date of interview with the applicant to the date of execution. For non-straightforward cases (such as those associated with local objections, land title or boundary problems or prerequisite requirements imposed by other regulatory authorities that need to be settled), a longer processing time may be needed. The actual processing time will depend on the nature and complexity of the issues relating to the case.

- (f) For the coming five years, the LandsD forecasts that some 1 200 small house applications will be approved each year.

### **Measures to Combat Smuggling Activities**

13. **MR LAU KONG-WAH** (in Chinese): *President, it has been learnt that with the frequent business activities and travels between the Mainland and Hong Kong, the types of goods smuggled have been increasing, and some of the smuggled goods even have an adverse impact on law and order as well as people's livelihood in the two places. In this connection, will the Government inform this Council:*

- (a) *from January 2010 till now, of the total number of smuggling cases detected by the Customs and Excise Department (C&ED); the total value of the smuggled goods involved; whether there has been an upward trend in comparison with the same period last year; and the major items of smuggled goods seized in these cases and their quantities;*
- (b) *regarding the types of smuggled goods and the smuggling practices in part (a), whether the authorities have analysed and studied the latest trend in smuggling so as to formulate new measures to combat smuggling activities; if they have, of the details;*
- (c) *given that it has been reported that a particular brand of tablet personal computers (tablet PCs) has been very popular recently and the supply of such tablet PCs cannot meet the demand on the Mainland, resulting in some smugglers commonly known as "couriers" to use the "ants moving home" tactic (that is, smuggling small quantity of goods at a time) to smuggle this brand of tablet PCs into the Mainland, of the quantities of smuggled electronic products, such as the aforesaid brand of tablet PCs and mobile phones, and so on, seized by the C&ED in the first three quarters of this year; whether there has been an upward trend; of the measures implemented by the authorities to combat such smuggling activities; and*



- (d) *given that it has been reported that some smugglers have been smuggling Hong Kong's newspapers relating to the Mark Six lotteries to the Mainland for profiteering purpose, indirectly promoting gambling and affecting the law and order on the Mainland, whether the authorities have stepped up interception of such smuggling activities; of the number of such smuggling cases detected; whether the authorities have conducted thorough investigation into the sources of such smuggling activities so as to curb such activities?*

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

- (a) In the first 10 months of this year, the C&ED detected 169 smuggling cases, involving a total seizure value of HK\$320 million. Compared with the same period last year, there is a slight increase of 5% and 8% in the number of cases detected and the total value of goods involved respectively.

Among the items smuggled into the Mainland, computers and electronic products (such as computers and accessories, mobile phones and accessories, audio-visual products and electronic parts, and so on) were the more common items. On the other hand, cigarette was the more common item smuggled into Hong Kong. Since items seized in each case encompass a wide range of different articles with a multitude of categories, and the computing methods and units for different categories vary, we are not able to provide the relevant statistics on the quantity of goods seized.

- (b) The C&ED has always placed emphasis on intelligence gathering and analysis. In view of the constantly changing types of smuggled goods and the *modus operandi* of the smugglers, the C&ED will continue to step up their intelligence gathering efforts and analysis with a view to further combating smuggling activities. At the same time, the C&ED will keep exploring specific strategies such as stepping up inspection and using advanced equipment to enhance inspection capability and strengthen the effectiveness of its law-enforcement work. In addition, the C&ED will continue to

maintain close liaison with relevant local and Mainland law-enforcement agencies for intelligence exchange and conducting joint anti-smuggling operations as necessary to bring smugglers to justice.

(c) and (d)

Under the Import and Export Ordinance (Cap. 60), it is an offence to import or export any unmanifested cargo. That said, cargo does not include items carried, and imported or exported by passengers on board of a vessel, aircraft or vehicle.

As the C&ED does not categorize its seized items according to the respective brand of personal computers and mobile phones, we are unable to provide enforcement-related data according to brand. As for cases of not having "Mark Six newspapers" recorded in the manifest and exported such items into the Mainland, the C&ED dealt with two cases in the first 10 months of this year. The C&ED will continue to carry out enforcement in accordance with the Import and Export Ordinance (Cap. 60).

### **Safety of Buildings**

14. **DR RAYMOND HO** (in Chinese): *President, on 7 November this year, loose concrete of the external wall of a building of over 50 years old, located at Lok Shan Road in To Kwa Wan, fell off and injured a passer-by. The next day, the mosaic tiles on the external wall of another building of only 11 years old, located at Staunton Street in Central, also came off, and luckily no one was hurt. In this connection, will the Government inform this Council:*

(a) *given that the Buildings Department (BD), after the collapse of a building at Ma Tau Wai Road in January this year, had immediately set up professional teams which inspected a total of 4 011 private buildings aged 50 or above in the territory, of the conditions of the aforesaid building at Lok Shan Road according to BD's report released in April and the follow-up actions taken by the authorities;*

- (b) *focusing on younger buildings which had caused accidents because they have not been properly maintained for a prolonged period of time, whether the authorities will plan to deploy staff to inspect this type of buildings to ensure their structural safety; if they will, of the details; and*
- (c) *given that the authorities commenced a 10-year programme in 2001 to clear unauthorized building works (UBWs) and illegal roof-top structures, and indicated that 800 000 UBWs and structures had to be cleared, and since the programme will end next year and the authorities have indicated that so far about 400 000 cases have been handled, of the plan of the authorities for dealing with the remaining 400 000 cases in future?*

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

- (a) Subsequent to the building collapse incident at Ma Tau Wai Road in January this year, the BD immediately launched a special operation deploying dedicated teams to inspect the 4 011 private buildings aged 50 or above in Hong Kong. The purpose was to ascertain whether these buildings were structurally safe. During the inspection operation, staff of the BD had inspected the building located at Lok Shan Road mentioned in the question and confirmed that the overall structure of the building was safe. Minor concrete spalling was however found at the soffit of the common corridor of the building. The overall building condition at that time was rated as Category III (that is, minor defects were found in the building). The BD then issued an advisory letter to the building owners, urging them to arrange to carry out suitable repair works as soon as possible. Regarding the recent incident of fallen rendering at the external wall of the building, staff of the BD had inspected the building again and confirmed that the overall structure of the building showed no danger. The incident involved loose rendering on the surface of the external wall, but not problems in the building structure. On the day of the incident, the BD had immediately arranged personnel to remove the loose rendering from the external

walls of the building and thereafter issued a letter to the owners again, urging them to carry out the repair works as soon as possible. The BD will arrange to inspect the building again. If there are building safety problems, the BD will take appropriate follow-up actions in accordance with the Buildings Ordinance, including issuing statutory repair orders to mandate the owners to carry out repair works for ensuring public safety.

- (b) The BD has been closely monitoring the conditions of private buildings in Hong Kong and arranging regular inspections to buildings in different districts of the territory, in particular buildings in areas with heavy pedestrian flow. Regardless of building age, prompt follow-up actions will be taken if obvious defects are found on the building exteriors. The BD has arranged enhanced inspections in view of the building disrepair incidents that happened recently. If obvious dilapidation and defects are found on the exterior of a building, the BD will take appropriate follow-up actions under the Buildings Ordinance, including arranging emergency repair works under situations of imminent danger or, issuing statutory repair orders to mandate owners to carry out repair works for ensuring public safety.

In the long run, we will implement the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS) to address the problems of ageing and dilapidation of buildings through preventive inspection and maintenance. The MBIS will require owners of buildings aged 30 years or above to carry out building inspection and repair once every 10 years, while the MWIS will require owners of buildings aged 10 years or above to carry out window inspection and repair once every five years. We introduced the Buildings (Amendment) Bill 2010 for the two schemes into the Legislative Council early this year. We will continue to work closely with the Bills Committee, with a view to implementing the two schemes as early as possible so as to further enhance building safety in Hong Kong.

- (c) The BD's 10-year programme for demolition of UBWs will complete by March 2011. Taking into account the latest conditions of

buildings in Hong Kong and the community's view that a tougher stance should be taken to tackle UBWs, we have completed a review and will adopt a new policy to sustain our effort to tackle UBWs.

Under the new policy, we will extend the coverage of actionable UBWs to include unauthorized works in roof-tops, podiums, as well as yards and back-lanes of buildings. If the UBWs are confirmed to be under the actionable category, irrespective of their degree of risk, the BD will issue statutory orders to require the owners to carry out works to rectify the irregularities. The Department will continue to respond to complaints actively and instigate more and swifter prosecution actions, so as to sanction those owners who do not duly comply with statutory orders with a view to ensuring building safety. The BD will also launch special programmes to tackle the problems of sub-division of flat units in buildings (commonly known as sub-divided units) and unauthorized signboards.

### **Government, Institution or Community Facilities Sites in Hong Kong**

15. **MS STARRY LEE** (in Chinese): *President, will the Government inform this Council of the locations, sizes and planned uses (including those without designated use) of the undeveloped sites among those that have been designated as "government, institution or community facilities" sites in Hong Kong, as well as the anticipated commencement dates and anticipated completion dates of the works of the facilities concerned, and list such information according to Outline Zoning Plan (OZP) in the following table?*

<i>Title and number of OZP</i>	<i>Undeveloped government, institution or community facilities sites</i>				
	<i>Location</i>	<i>Size</i>	<i>Planned use (including those without designated use)</i>	<i>Anticipated commencement date of the works of the facilities concerned</i>	<i>Anticipated completion date of the works of the facilities concerned</i>

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the designation of "Government, Institution or Community" (G/IC) zones on statutory outline zoning plans serves to reflect the existing G/IC uses and reserve land for the future provision of G/IC facilities. The planning intention of this zoning is primarily to provide G/IC facilities serving the needs of local residents and/or the wider district, region or the territory. The sites concerned are used by the Government and relevant organizations for purposes directly related to or in support of their work.

As regards the location and size of the undeveloped "G/IC" sites requested by Ms LEE, available information from the Planning Department (PlanD) is set out at Annex. The PlanD reviews the planned use of these G/IC sites from time to time so as to flexibly cater for the Government's overall policy and meet the changing aspirations and needs of the community. It should be noted that not all the sites planned for "G/IC" uses would have an intended development programme; the provision of these sites in each district enables us to better meet service needs arising from changing circumstances. Generally speaking, the anticipated commencement date of works on the sites designated for specific planned facilities depends on the priorities of the bureaux and departments concerned as well as the availability of resources. The Administration will seek funding under the Capital Works Reserve Fund from the Legislative Council as and when appropriate. In the preparation for new capital works projects, the Administration will need to follow certain statutory, administrative and public consultation procedures. The specific implementation programme of these projects is yet to be confirmed at this stage. At a later stage, when the project is ready, the Administration will apply to the Legislative Council for funding approval and will provide the project commencement and completion dates, estimated expenditure and other relevant details to the Council.

Two of the capital works projects expected to be submitted to the Public Works Subcommittee during the 2010-2011 Legislative Council session involve developing undeveloped "G/IC" sites, including construction of a fire station with ambulance facility at part of the Planning Area 3C1 and 3C2 (near Kai Fuk Road) under the OZP S/K22/2 (anticipated to commence work in 2011 third quarter for completion in 2013 second quarter), and a joint-user complex at a site on Pak Wo Road (near Wo Hing Indoor Recreation Centre) under the OZP S/FSS/14 (anticipated to commence work in 2011 fourth quarter for completion in 2014 first quarter).

## Annex

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
Kennedy Town and Mount Davis (S/H1/17)	Mount Davis	1.91
	Mount Davis Path	0.48
	Mount Davis Road, Pok Fu Lam	0.52
	Sai Ning Street, Kennedy Town	0.05
	Victoria Road, Kennedy Town (near China Merchants Godown)	0.68
	Pokfield Road, Kennedy Town	0.56
	Victoria Road, Kennedy Town	0.50
Sai Ying Pun and Sheung Wan (S/H3/24)	Fung Mat Road, Sai Ying Pun	0.22
	Chung Kong Road	0.31
	Chung Ching Street	0.04
Central District (S/H4/13)	Man Kwong Street	0.08
North Point (S/H8/23)	East of Yee King Road, Tai Hang	0.61
	Tin Hau Temple Road	0.07
	J/O Java Road and Tin Chiu Street	0.12
	Oil Street	0.16
	Wai Tsui Crescent, Braemer Hill	0.71
Chai Wan (S/H20/17)	Cape Collinson Road, Siu Sai Wan	0.54
	J/O Chai Wan Road and Sun Yip Street	0.18
	Leaping Dragon Walk, Siu Sai Wan	0.03
	Tai Man Street, Chai Wan	0.70
	Yee Shing Street	0.99
	Siu Sai Wan Road	0.51
	Lok Man Road	0.19
Quarry Bay (S/H21/28)	Tsat Tsz Mui Road	0.04
	J/O Tai On Street and Lei King Road	0.28
	Mount Parker Road	2.48
Pok Fu Lam (S/H10/15)	Victoria Road	0.12
	Pok Fu Lam Road	0.53
	Near Pok Fu Lam Village	0.38
	J/O Victoria Road and Pok Fu Lam Road	0.71
Aberdeen and Ap Lei Chau (S/H15/26)	Ap Lei Chau Praya Road	0.04
	Heung Yip Road, Wong Chuk Hang	0.21

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
	J/O Ap Lei Chau Bridge Road and Ap Lei Chau Drive	0.27
	Near Tin Wan Estate	2.95
	Shum Wan Road	1.19
	Tin Wan Hill Road	0.77
	Tin Wan Praya Road (near Hing Wai Centre)	0.09
	Tin Wan Praya Road	0.38
	J/O Nam Long Shan Road and Police School Road, Wong Chuk Hang	0.21
	J/O Nam Fung Road and Wong Chuk Hang Road	0.46
	J/O Lee Wing Street and Lee Nam Road	0.05
	Nam Fung Road	2.90
	Police School Road	0.43
	Shouson Hill and Repulse Bay (S/H17/11)	Deep Water Bay Road
Deep Water Bay Road (near The Hong Kong Golf Club)		0.06
Seaview Promenade, Repulse Bay		0.10
Tai Tam and Shek O (S/H18/10)	Shek O Road	2.27
	Tai Tam Reservoir Road (near Hong Kong International School)	0.23
	Tai Tam Reservoir Road	0.52
	Shek O Road (near Shek O Man Sun School)	0.10
Stanley (S/H19/10)	Cape Drive	0.27
	Cape Road	0.22
	Chung Hom Kok Road	0.36
	Chung Hom Kok Road (near Chung Hom Kok Fire Station)	0.26
	Wong Ma Kok Road	0.11
	Stanley Gap Road	0.08
Jardine's Lookout and Wong Nai Chung Gap (S/H13/12)	J/O Chun Fai Road and Moorsom Road, Jardine's Lookout	0.33
The Peak Area (S/H14/10)	Coombe Road, Wan Chai Gap	0.15
Wan Chai North (S/H25/2)	Wan Shing Street	0.26
Ho Man Tin (S/K7/20)	Ho Man Tin Street	0.13



<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
Hung Hom (S/K9/24)	Cheong Tung Road	0.04
	Winslow Street	0.08
	Bailey Street	0.37
	Sung Ping Street	0.77
	J/O Chi Kiang Street and Sung On Street	0.81
Ma Tau Kok (S/K10/20)	J/O Ko Shan Road and Shansi Street	0.34
Kai Tak (S/K22/2)	Kai Fuk Road	2.15
	Planning Area 1J1 and 1J3	1.71
	Planning Area 1D4 (near Prince Edward Road East)	0.94
	Concorde Road	1.01
	Dakota Drive	0.41
	Planning Area 1B4 (near Eastern Road)	0.61
	Planning Area 1A2, 1A3 and 1A4	2.47
	Planning Area 1B2 and 1B3	1.33
	Planning Area 3B1b	0.74
	Planning Area 3C1 and 3C2 (near Kai Fuk Road)	7.70
Ngau Tak Kok and Kowloon Bay (S/K13/26)	Hung Yip Street	0.03
	Kwun Tong Road	0.06
	Wang Chin Street	0.69
	Kai Yan Street	0.10
	J/O Choi Hing Lane and Choi Hing Road	1.70
	Choi Hing Road	1.92
	Choi Shek Lane	0.88
Choi Wing Road	0.67	
Kwun Tong North (S/K14N/13)	Anderson Road	2.12
	Anderson Road (near Tsiu Lan Shue)	0.73
	Anderson Road (near Sau Mau Ping Service Reservoir)	0.64
Kwun Tong South (S/K14S/16)	Hang On Street	0.10
	Near Lin Tak Road	1.74
	J/O Kwun Tong Road and Tsui Ping Road	1.00

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
Cha Kwo Ling, Yau Tong and Lei Yue Mun (S/K15/18)	Lei Yue Mun Path	0.30
	Yau Shun Street	0.09
	Site to the West of the Eastern Harbour Crossing Tunnel's Toll Plaza, Yau Tong	9.11
	J/O Ko Chiu Road and Pik Wan Road	0.68
	Site Opposite to Lam Tin Ambulance Depot at Lei Yue Mun Road	2.21
Shek Kip Mei (S/K4/24)	Lung Cheung Road	0.43
Cheung Sha Wan (S/K5/32)	Cheung Shun Street	0.37
	King Lam Street	0.42
	Wing Hong Street	0.16
	J/O Fuk Wing Street and Kiu Kiang Street	0.22
	Tonkin Street	0.76
Lai Chi Kok (S/K16/14)	J/O Yuet Lun Street and Po Lun Street	3.92
	J/O Mei Lai Road and Cheung Sha Wan Road	0.56
South West Kowloon (S/K20/24)	Sham Mong Road	0.08
	J/O Tonkin Street West and Tung Chau Street (near Fu Cheong Estate)	0.45
	J/O Tonkin Street West and Tung Chau Street	0.80
	J/O Fat Cheung Street West and Sham Mong Road	0.45
	Hoi Fai Road	1.16
	J/O Sham Shing Road and Sham Mong Road	0.18
	J/O Sham Mong Road and Lai Po Road	0.45
	J/O To Wah Road and Jordan Road	0.74
	Hoi Fan Road	0.69
	Hau Cheung Street	0.74
	Hoi Ting Road	1.98
	Yau Cheung Road	1.27
Wang Tau Hom and Tung Tau (S/K8/20)	Lung Cheung Road	0.07
	Tung Lee Road	0.43
Tsz Wan Shan, Diamond Hill and San Po Kong (S/K11/25)	Fung Tak Road	0.19
	Tsz Wan Shan (near Tsz Ching Estate)	0.18
	Po Kung Village Road	0.27

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
	Lok Wah Street	0.24
	Wong Tai Sin Road	1.74
	J/O Wong Tai Sin Road and Shatin Pass Road	0.35
Ngau Chi Wan (S/K12/16)	Wing Ting Road	0.51
	Near Ngau Chi Wan Village	0.18
	Fung Shing Street	0.87
Mong Kok (S/K3/28)	J/O Shanghai Street and Soy Street	0.06
	Reclamation Street and Shanghai Street	0.03
Cheung Chau (S/I-CC/5)	Sai Tai Road (near Sai Wan)	0.04
	Sai Tai Road	0.02
	Cheung Kwai Road	0.36
	J/O Sai Tai Road and Cheung Chi Lane	0.15
	Pak Kok Tsui Road	0.24
	Ping Chong Road	0.08
	J/O Sai Tai Road and Cheung Yan Lane	0.12
Discovery Bay (S/I-DB/4)	Siena Avenue	0.30
	J/O Siena Avenue and Discovery Bay Road	1.04
Lamma Island (S/I-LI/9)	Near Yung Shue Wan Main Street	0.04
	Yung Shue Wan Main Street (near Pier)	0.08
	Sok Kwu Wan	0.02
	Yung Shue Wan Main Street (near Yung Shue Wan Playground)	0.19
	Sok Kwu Wan (near Lamma South Library)	0.25
	Yung Shue Wan (near Lamma Fire Station)	0.72
Mui Wo Fringe (S/I-MWF/8)	Ling Tsui Tau, Mui Wo	0.27
	Silver Bay Road	2.45
Ngong Ping (S/I-NP/6)	Lin Ping Road	0.05
Peng Chau (S/I-PC/10)	Chi Yan Street	0.34
	Nam Shan Road	0.22
	Peng Lei Road	0.06
	Peng Lei Road (near Sewage Treatment Plant)	0.06
	Tai Wo, Peng Chau	0.05
	Wai Tsai Tseng San Tsuen, Peng Chau	0.17

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
Tung Chung Town Centre Area (S/I-TCTC/18)	Cheung Tung Road	0.12
	Hei Tung Street	2.07
	Waterfront Road	0.50
	Tat Tung Road	1.50
	Man Tung Road	1.24
	J/O Yu Tung Road and Chung Yan Road	0.60
Tsing Yi (S/TY/24)	Cheung Fai Road	0.44
	Tam Kon Shan Road	1.32
	Chung Mei Road	0.68
	Cheung Fai Road	0.55
	Liu To Road and Tsing Yi Road West	0.46
	Heung Sze Wui Road	0.37
	Tsing Yi Road	0.97
	Hang Mei Street	2.67
Kwai Chung (S/KC/24)	San Kwai Street	0.31
	Joint Street	0.10
	Kwai Chung Road	0.15
Stonecutters Island (S/SC/9)	Container Port Road South	0.71
	Lai Po Road	0.23
Fan Ling/Sheung Shui (S/FSS/14)	Chi Wah Lane	1.49
	Ming Yin Road	0.46
	On Kui Street	1.63
	Pak Wo Road (near 8 Royal Green)	0.32
	Sha Tau Kok Road — Lung Yuek Tau	1.67
	Pak Wo Road (near Wo Hing Indoor Recreation Centre)	0.17
	Pak Wo Road	0.48
	Luen Fat Street	0.14
Fu Tei Au and Sha Ling (S/NE-FTA/12)	Man Kam To Road	1.02
	Wah Shan Tsuen, Sheung Shui	1.37
Kwu Tung North (S/NE-KTN/8)	Ho Sheung Heung Road	0.75
	Ho Sheung Heung, Sheung Shui	0.93
	Near Ma Tso Lung Road, Lo Wu	0.26
Kwu Tung South (S/NE-KTS/12)	Fan Kam Road, Lin Tong Mei	0.69
Luk Keng and Wo Hang (S/NE-LK/11)	Luk Keng Road, Nam Chung	0.33

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
Lung Yeuk Tau and Kwan Tei South (S/NE-LYT/14)	Kwan Tei, Fan Ling	0.63
Sha Tau Kok (DPA/NE-STK/1)	Sheung Tam Shui Hang, Sha Tau Kok	0.12
	Sheung Tam Shui Hang, Sha Tau Kok (near Shan Tsui Village Road)	0.07
Ping Che and Ta Kwu Ling (S/NE-TKL/14)	Ping Yeung Tsuen, Ta Kwu Ling	1.83
	Tai Tong Wu, Ping Che	0.92
Clear Water Bay Peninsular North (S/SK-CWBN/4)	Clear Water Bay Road	0.98
	University Road	0.29
	Clear Water Bay Road (near Bluet Garden)	0.22
	Wo Tong Kong, Clear Water Bay Peninsular North	0.02
	Mang Kung Uk, Clear Water Bay Peninsular North	0.05
Hebe Haven (S/SK-HH/6)	South of Giverny, Hebe Haven	0.77
	Ho Chung (adjacent to Sai Kung Central Primary School)	0.48
Pak Kong and Sha Kok Mei (S/SK-PK/11)	Hiram's Highway (near Pak Kong Football Field)	0.25
	Tai Mong Tsai Road	0.17
	Near Hiram's Highway, Pak Kong	0.08
Sai Kung Town (S/SK-SKT/4)	Mei Tak Street	0.38
	Tai Mong Tsai Road	0.22
	Waterfront at Tui Min Hoi	0.15
	Hong Kin Road (near Lake Court)	0.16
	Hong Kin Road, Tui Min Hoi	0.37
	Hong Tsuen Road (near Sze Chow Holdings Building)	0.51
	Hong Tsuen Road	0.87
Tseng Lan Shue (S/SK-TLS/8)	Hiram's Highway	0.09
	Clear Water Bay Road	0.22
	Clear Water Bay Road (near Tan Shan Road)	0.09
	Pik Uk, Tseng Lan Shue	0.06
Tai Mong Tsai and Tsam Chuk Wan (S/SK-TMT/4)	Wong Mo Ying, Sai Kung	0.03
	Yan Yee Road	0.07
	Tai Mong Tsai Road, Wong Chuk Wan	0.03

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
	Tai Mong Tsai Road	0.02
	Pak Tam, Tai Mong Tsai	0.27
Tseung Kwan O (S/TKO/18)	Chiu Shun Road	0.32
	Lohas Park Road	0.05
	Near Ocean Shores	0.16
	Pak Shing Kok	0.16
	Pak Shing Kok (Wan Po Road)	1.27
	Po Fung Road	0.51
	Po Lam Road North	0.28
	Po Lam Road North (near Mau Wu Tsai Tsuen)	0.52
	Po Ning Road	0.64
	Wan O Road	1.74
	Tseung Kwan O Village	0.57
	Po Yap Road	5.16
	Po Yap Road (near Bauhinia Garden)	1.09
	J/O Po Fung Road and Yuk Nga Lane	0.23
	Tong Yin Lane	0.34
	Planning Area 67 (near Lai Ngok Street)	2.54
	Chui Ling Lane	0.74
Shek Kok Road	0.70	
Ma On Shan (S/MOS/16)	On Chun Street	0.56
	To Tau, Ma On Shan	0.08
	Lok Wo Sha Lane	0.72
	Ma On Shan Road (near Ma On Shan Health Centre)	1.10
	Hang Kin Street	0.30
	Wu Kai Sha	0.10
	Kwun Hang, Ma On Shan	2.64
	Sai Sha Road, Nai Chung	0.12
Sha Tin (S/ST/23)	Fo Tan Road	0.35
	Sha Tin Wai	2.37
	Yuen On Street	0.06
	Yuen Shun Circuit	0.29
	Ngan Shing Street	0.88

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
	To Shek Path	0.61
	Mei Tin Road	0.20
	Hin Wo Lane	0.06
	A Kung Kok Shan Road	0.25
	Chap Wai Kon Street	0.41
	To Shek Street	1.42
Pak Shek Kok (East) (S/PSK/9)	Fo King Road	0.62
	Chong San Road	0.93
Tai Po (S/TP/22)	J/O On Po Road and Nam Wan Road	0.54
	Shan Tong Road	0.45
	Ting Kok Road	3.10
	Yung Yi Road	0.46
	Tai Fat Street	6.67
	Nam Wan Road	2.01
	Ma Chung Road	1.68
	Wan Tau Street	0.32
	Wan Tau Kok	0.10
	On Po Road	0.14
	Yau King Lane	5.77
	Ting Kok Road (near Fung Yuen Playground)	0.28
	Tung Leung Lane	0.28
Kau Lung Hang (S/NE-KLH/11)	Fanling Highway, Fan Ling (near Yuen Leng Tsuen)	1.53
	Wai Tau Tsuen, Tai Po	0.55
Lam Tsuen (S/NE-LT/11)	Lam Kam Road Interchange, Wai Tau Tsuen, Tai Po	0.69
	Lam Tsuen Heung Kung Sho Road	0.05
Ting Kok (S/NE-TK/16)	Ng Uk Tsuen, Tai Mei Tuk	0.13
	Ting Kok Road (near The Beverly Hills)	0.89
	Ting Kok Road	1.02
	Opposite to Tung Tsz Plant Nursery, Ting Kok, Tai Po	1.26
Tsuen Wan (S/TW/26)	J/O Hoi Hing Road and Hoi Kok Road	0.61
	J/O Hoi Shing Road and Hoi Kok Road	0.72

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
	J/O Wing Shun Street and Texaco Road	0.81
	Kwok Shui Road	0.23
	Wing Shun Street	0.25
Tsuen Wan West (S/TWW/17)	Tsing Lung Tau (near Hong Kong Garden)	0.23
North-East Lantau (S/I-NEL/12)	Penny's Bay, Lantau Island	2.66
Tuen Mun (S/TM/27)	Castle Peak Road — So Kwun Wat	1.22
	Hoi Wah Road	0.97
	J/O Hoi Wing Road and Castle Peak Road — Castle Peak Bay	0.19
	J/O Lung Mun Road and Mong Tat Street, Mong Hau Shek	0.77
	J/O Mong Wing Street and Mong Tat Street	0.34
	J/O Siu Lang Shui and Lung Fat Street	0.43
	J/O Tin Hau Road and Yip Wong Road	0.67
	Near Lung Fu Road	2.93
	Near Siu Sau Village, So Kwun Wat	0.16
	Siu Lang Shui, Tuen Mun	0.70
	Siu Lang Shui Road, Tuen Mun	3.01
	Siu Lang Shui, Tuen Mun (near Pylon)	4.81
	Siu Lang Shui, Tuen Mun (near Service Reservoir)	0.51
	Siu Lang Shui, Tuen Mun (under Pylon)	1.48
	So Kwun Wat Road	0.56
	Tsing Fat Street, So Kwun Wat	0.47
	Wu Shan Road	1.19
	J/O Hing Fu Street and Tong Hang Road	0.91
	J/O Shek Pai Tau Road and Ming Kum Road	0.50
	J/O Hoi Wong Road and Tuen Yee Street	5.83
	J/O Siu Lun Street and Castle Peak Road	0.54
	Siu Hing Lane	0.10
	So Kwun Wat Road (near Mrs. Cheng Yam On Millennium School)	0.34
	Tsing Fuk Lane	1.27
	Tuen Fu Road	0.38
	So Kwun Wat Road	0.59



<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
	Yeung Tsing Road	0.63
	Hang Fu Street	0.32
	Tuen Kwai Road	0.17
	Tsun Wen Road	0.10
	Leung Choi Lane	0.63
	Tsz Tin Road	6.12
Lam Tei and Yick Yuen (S/TM-LTY/6)	Ng Lau Road	0.03
	San Hing Tsuen	0.80
	Fuk Hang Tsuen Road	0.76
	Castle Peak Road — Hung Shui Kiu	3.76
So Kwun Wat (S/TM-SKW/10)	Castle Peak Road — Tai Lam	0.57
Tin Shui Wai (S/TSW/12)	J/O Tin Ying Road and Tin Wah Road	0.96
	Tin Yan Road	0.02
	Tin Chuk Street	0.22
	Wetland Park Road	0.86
	J/O Tin Shui Road and Tin Fai Road	1.09
Yuen Long (S/YL/18)	Hong Yip Street	0.07
	Shan Pui Tsuen	0.38
	Town Park Road North, Yuen Long	0.14
	Wang Yip Street South	0.10
	Yuen Chin Road	2.47
	Shap Pat Heung Road	1.34
Ha Tsuen (S/YL-HT/10)	San Wai Road, Ha Tsuen	8.91
	San Sang Tsuen, Ha Tsuen	0.86
Lau Fau Shan and Tsim Bei Tsui (S/YL-LFS/7)	Lau Fau Shan	0.31
Pat Heung (S/YL-PH/11)	A Kung Tin, Pat Heung	0.50
Ping Shan (S/YL-PS/12)	Hung Ping Road and Hung Shui Kiu Tin Sam Road	2.02
	Ping Ha Road	0.55
	Ping Shan San Tsuen	1.20
	Long Tin Road	1.30
	Ex-Tat Tak School, Ping Shan	0.41
	Hung Shui Kiu Main Street	1.99
Shek Kong (S/YL-SK/9)	Near Shek Kong Camp	1.83

<i>Title and number of OZP</i>	<i>Undeveloped G/IC sites</i>	
	<i>Location</i>	<i>Size (ha)</i>
Tai Tong (S/YL-TT/14)	Shui Tsiu San Tsuen Road, Tai Tong	0.40
Tong Yan San Tsuen (S/YL-TYST/10)	Tong Yan San Tsuen South	0.77

### **Internships Offered to Undergraduates by Statutory Bodies**

16. **MR PAUL CHAN** (in Chinese): *President, some members of the public have relayed to me that some public bodies and public corporations which are statutory bodies have refused to accept applications for unpaid internships by local and overseas Hong Kong undergraduates who are studying disciplines relevant to these statutory bodies' scope of responsibilities. In this connection, will the Government inform this Council:*

- (a) *whether it knows, in the past five years, which public bodies and public corporations had offered internships to undergraduates; the number of internships and when they were provided; in respect of each of these statutory bodies and corporations, the number of applications received, the criteria for screening these applications, the respective numbers of local and overseas undergraduates eventually offered internships, the academic disciplines that the interns were studying; whether the interns were remunerated and their wage levels;*
- (b) *whether it knows which public bodies or public corporations at present do not provide internships for undergraduates, and the reasons for that; whether they have considered providing such internships; if not, the reasons for that; and*
- (c) *when the Government sets up public bodies and public corporations as statutory bodies again in the future, whether it will encourage them to provide internships for undergraduates; if not, of the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, my consolidated reply to the various parts of the question is as follows:

Statutory public bodies and public corporations decide their own human resources policies (including whether internship positions will be offered). As they are not required to report such information to the Government, we do not have any records on the number of internship positions offered.

However, we understand that many public or private organizations would offer internship positions for university students in accordance with their business development needs and human resources policies. Furthermore, many local and overseas tertiary institutions provide career counselling services to their students. Depending on course requirements, students' interests and needs, and the likely benefits that can be obtained from internship programmes, career offices or faculty administration offices of these institutions will, through their established connections with employers, invite private or public organizations to provide internship positions to their students.

The tertiary institutions will disseminate information on the internship positions received to eligible students through various channels and provide them with matching as well as referral services as appropriate. Participating organizations will agree with the interns on whether allowances are payable, having regard to the nature, duties, requirements and training contents of the internship positions.

We trust that statutory public bodies and public corporations would have regard to their missions, business development needs and human resources policies and provide internship opportunities. The tertiary institutions, with well-established connections with employers, ample experience in providing career counselling services and thorough understanding of their students' needs, would be most effective in enlisting the support from individual private or public organizations in providing suitable internship opportunities.

### **Allocation of Public Rental Housing and Applicants on Waiting List**

17. **MR FRED LI** (in Chinese): *President, regarding matters relating to the waiting for and allocation of public rental housing (PRH) flats, will the Government inform this Council:*

- (a) *of the number of applications on PRH Waiting List (WL) as at the end of October 2010 and the average waiting time (AWT) (from the date of registration till the end of October 2010), together with a breakdown by household size (that is, one person, two persons, three persons, four persons, five persons, six persons, seven persons, eight persons and nine persons or above);*
- (b) *of the respective numbers of family applicants, elderly one-person applicants and non-elderly one-person applicants under the Quota and Points System (QPS) on PRH WL as at the end of October 2010, as well as the total number of these three categories of applicants and the AWT (from the date of registration till the end of October 2010);*
- (c) *whether the Housing Department (HD) has a performance pledge in respect of the time taken from the receipt of a PRH application to the allocation of a WL Application Number to the applicant; and, in respect of family applicants, elderly one-person applicants and non-elderly one-person applicants under the QPS on PRH WL at present, of the average time between application and successful registration;*
- (d) *among the cases of applicants having been allocated PRH flats in 2009-2010, of the respective numbers and percentages of cases involving family applicants, elderly one-person applicants and non-elderly one-person applicants under the QPS; and, in respect of these three categories of cases, the average time between registration and successful allocation of PRH flats; in respect of the third category, of their average score points and the AWT for the allocation of PRH flats, broken down by the age group of the successful applicants (that is, under 30, 31 to 40, 41 to 50 and 50 or above);*
- (e) *regarding non-elderly one-person applicants under the QPS on PRH WL as at the end of October 2010, of their respective numbers, percentages, average score points and the AWT (from the date of registration till the end of October 2010), broken down by the age group of the applicants (that is, under 30, 31 to 40, 41 to 50 and 50 or above), as well as the respective numbers and percentages of*

*cases in which the applicants are currently residing in PRH flats and private flats;*

- (f) of the lowest score points for applicants accepting public housing offers under the QPS in each of the four districts at present (that is, Urban, Extended Urban, New Territories and Islands); and the score point of applicants who were registered before 31 October 2010 and have been arranged for investigation for allocation of PRH flats;*
- (g) how many PRH flats were allocated to non-elderly one-person applicants under the QPS by the authorities in 2007-2008 and 2008-2009, and the respective numbers of PRH flats that will be reserved for such applicants in 2011-2012 and 2012-2013; whether they will consider increasing the annual quota so as to shorten the waiting time; and*
- (h) according to the latest General Household Survey conducted by the Census and Statistics Department, of the number of one-person households residing in rooms inside private permanent housing (including permanent rooms and cubicles), bedspaces and cocklofts, broken down by age groups, and how such numbers compare to the number of non-elderly one-person applicants under the QPS on PRH WL; among the one-person households currently residing in rooms inside private housing (including permanent rooms and cubicles), bedspaces and cocklofts, of the number of such households estimated by the authorities to have registered on PRH WL; and whether the authorities will consider requesting non-elderly one-person applicants under the QPS to declare their types of accommodation, so that the authorities could consider adopting more relaxed measures to expedite the allocation of PRH flats to this category of applicants?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, our response to the questions raised by Mr Fred LI regarding the application for and allocation of PRH is as follows. Data covering the period up to October 2010 is still under preparation, we are only able to furnish the data as at August or September 2010.

- (a) There were about 137 000 WL applications as at the end of September 2010. We do not have any breakdown of the number of applications and average waiting period by household size. It should be noted that at the application stage, the family composition of each application may change with the addition or deletion of family member(s), or that the applicant may change the category of his/her application.
- (b) As at the end of September 2010, there were about 75 000 family applications, 5 000 elderly one-person applications, and 57 000 non-elderly one-person applications under the QPS on the WL.

The average waiting period for applications of respective categories is defined as the period between registration and flat offers or end of August 2010, excluding any frozen period during application (such as the applicant not yet fulfilling the residence requirement, the applicant is imprisoned, the applicant has requested to put his/her application on hold pending arrival of family member(s) for family reunion, and so on). The average waiting period was 1.5 years, 0.6 year and 2.4 years for family applications, elderly one-person applications and non-elderly one-person applications under the QPS respectively.

- (c) Our target is to inform the applicant in writing whether he/she has been successfully registered on the WL within three months upon acknowledgement of receipt of his/her application form. At present, we are able to meet the target. We will vet the applicants' eligibility according to the order of receipt of the application forms. Those fulfilling the eligibility criteria will be allocated an application number and issued an acknowledgment letter (blue card) bearing the application number.
- (d) Among the applicants rehoused to PRH through the WL in 2009-2010 (including Express Flat Allocation Scheme (EFAS)), there were 14 989 family applications (representing 72% of the total number of allocations for WL applicants), 3 214 elderly one-person applications (representing 15% of the total number of allocations for WL applicants) and 2 502 non-elderly one-person applicants under the QPS (representing 12% of the total number of allocations for WL

applicants). The AWT of family applicants and elderly one-person applicants for PRH flats was 2.1 years and 1.1 years respectively. The target in respect of the AWT for PRH flats is not applicable to non-elderly one-person applicants. Under the QPS, the priority of PRH allocation to these applicants is determined according to the points they have. Points are assigned to the applicants on the basis of their age, their waiting time and whether they are PRH tenants. In general, those who are older or have waited for a longer period would have higher points. The higher the number of points they have, the earlier the flat allocation. Among the non-elderly one-person applicants rehoused through the QPS in 2009-2010, for those aged 31 to 40, 41 to 50, and 51 or above, their average points were 138, 141 and 147 respectively.

- (e) Average points, average waiting period and type of accommodation of non-elderly one-person applicants under the QPS on the WL in different age groups are listed below (as at the end of August 2010). Please note that the applicants living in non-PRH flats include those living in private housing or subsidized sale flats.

<i>Age group of applicants under QPS</i>	<i>Average Points</i>	<i>Average Waiting Period</i>	<i>Type of accommodation</i>			
			<i>PRH</i>		<i>non-PRH</i>	
			<i>Number of applications under QPS</i>	<i>Percentage in the same age group</i>	<i>Number of applications under QPS</i>	<i>Percentage in the same age group</i>
30 or below	36	2.5	6 300	25%	19 200	75%
31 to 40	78	2.8	2 500	19%	10 600	81%
41 to 50	105	2.2	1 500	13%	9 400	87%
51 or above	125	1.4	600	10%	5 700	90%

Note:

Figures on average points and type of accommodation above refer to the situation as at end August 2010. The average waiting period is defined as the period between registration and flat offers or end of August 2010, excluding any frozen period during application, such as the applicant not yet fulfilling the residence requirement, the applicant is imprisoned, the applicant has requested to put on hold his/her application pending the arrival of family member(s) for family reunion, and so on.

- (f) As the distribution of non-elderly one-person applicants in different Districts is uneven, and the demand and supply of PRH units in different Districts will vary from time to time, minimum points

required for flat allocation in different Districts will also change from time to time. As at the end of September 2010, the minimum points obtained by the applicants for the allocation of flats under the QPS in the Urban, Extended Urban, the New Territories and the Islands Districts were 139, 145, 136 and 135 respectively. At present, we are arranging applicants who were registered before 1 September 2010 and have obtained 134 points or above by then, to undergo eligibility vetting.

- (g) A total of 1 593 and 1 991 PRH flats were allocated to non-elderly one-person applicants under the QPS in 2007-2008 and 2008-2009 respectively. Moreover, in the two financial years, another 767 and 772 non-elderly one-person applicants under the QPS were respectively allocated PRH flats through the EFAS. As for 2011-2012 and 2012-2013, in accordance with existing practice, the quota of flats to be allocated to applicants under the QPS will be set at 8% of the number of flats to be allocated to WL applicants and capped at 2 000 flats. The number of flats to be allocated to WL applicants, including the quota under the QPS, would be submitted together with the Public Rental Housing Allocation Plan for the approval by the Subsidized Housing Committee under the Hong Kong Housing Authority (HA) every year.
- (h) According to the General Household Survey conducted by the Census and Statistics Department in the third quarter of 2010, the number of one-person households living in rooms of private housing (including fixed rooms and partitioned cubicles), bedspace apartments and cocklofts is 14 600.

At present, there is a section in the PRH application form for applicants to state whether they are living in a bedspace apartment but the information is provided on a voluntary basis. According to the administrative records of the HD, as at September 2010, about 20 non-elderly one-person applicants under the QPS stated that they were living in a bedspace apartment. We do not have information on the distribution of applicants living in various types of private housing.



The Government is very concerned about low-income persons living in premises like bedspace apartments. The Social Welfare Department (SWD) will consider the special circumstances of the individuals and provide them with suitable assistance, including short-term financial assistance and arrangement for admission to urban hostels for single persons. Besides, eligible persons with imminent housing needs may also apply for earlier rehousing through Compassionate Rehousing on the recommendation of the SWD. In 2009-2010, over 2 400 applicants were rehoused to PRH through Compassionate Rehousing. The HD staff through visits and contacts with non-governmental organizations reached out to occupants of all the licensed private bedspace apartments. To assist eligible persons to apply for PRH, PRH application forms together with notes on application are distributed to the occupants during these visits. Information on how to apply for PRH and where to make enquiries is also provided. The HA will continue to provide PRH to low-income persons who cannot afford private rental accommodation. In conjunction with the SWD and the Home Affairs Department, the HD will also continue to provide low-income persons with information on and assistance in PRH applications.

### **Expenditure on Drugs Incurred by Hospital Authority**

18. **MR CHAN HAK-KAN** (in Chinese): *President, it has been reported that a deficit of \$30 million in the expenditure on drugs was incurred by the New Territories East Cluster of the Hospital Authority (HA) in 2009-2010. It has also been reported that similar deficits existed in other hospital clusters as well, giving rise to concern about the provision of drugs for patients in public hospitals. In this connection, will the Government inform this Council:*

- (a) *whether it knows the expenditure on drugs incurred by various hospital clusters in the past three years and the percentage of such numbers in the block allocation for the cluster concerned for that year, as well as whether any deficit had been incurred; if so, how the shortfalls were met;*

- (b) *whether it knows if at present the HA requires various hospital clusters to allocate a certain percentage of funding to buy drugs or sets a ceiling for the annual expenditure on drugs; if so, how the percentage or ceiling is determined, as well as what review mechanism is in place; if not, of the reasons for that;*
- (c) *how the authorities ensure that the HA will not resort to buying drugs which are cheaper but may not have the same efficacy of the original brand name drugs so as to reduce the deficits, and how they ensure that the HA will not include innovative drugs in the list of self-financed drugs, thereby increasing patients' expenses on drugs; and*
- (d) *given that it is expected that expenditure on drugs will continue to rise along with the ageing population, whether the authorities need to increase the total funding for the HA; whether they will assess the financial implications of the ageing population on the Samaritan Fund (the Fund), and how they ensure that the Fund can operate on a long-term basis to help more patients with financial difficulties?*

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

(a) and (b)

Every year, clusters and hospitals under the HA will, in light of the HA's strategic planning and service development needs, draw up annual plans which specify the strategies, major initiatives and service targets to meet district demands. When allocating resources to hospital clusters, the HA will also take into consideration the size of population of districts, service priority areas, service demand of the community, the need for provision of primary healthcare and specialist services, new service programmes and initiatives, as well as the resource requirements for upgrading facilities, purchase of drugs and manpower training. The HA will provide a block allocation to various hospital clusters, and will not designate funding for drugs or set a ceiling for the annual expenditure on drug. Various hospital clusters may flexibly deploy the funding and adjust

their expenditures, including the expenditure on drugs, having regard to actual service demands. The HA reviews the financial position of various clusters, including their expenditure on drugs, every three months through an established mechanism. In case of a possible deficit in the overall budget of individual cluster, the HA will discuss with the cluster the measures to address the situation.

The expenditure on drugs incurred by various hospital clusters and its percentage in the block allocation for the clusters in the past three years were as follows:

<i>Hospital cluster</i>	<i>Expenditure on drugs (\$M)*</i>			<i>Percentage in the block allocation for the cluster for that year</i>		
	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>
Hong Kong East	232	243	263	7.36%	7.23%	7.62%
Hong Kong West	300	323	369	8.88%	9.00%	10.10%
Kowloon Central	327	335	364	8.30%	8.01%	8.51%
Kowloon East	299	327	358	10.52%	10.81%	11.59%
Kowloon West	464	493	548	7.08%	7.01%	7.67%
New Territories East	396	404	458	8.44%	8.09%	9.01%
New Territories West	260	283	320	7.22%	7.28%	8.04%

Note:

\* Patients' expenditure on self-financed drugs is not included.

- (c) The operation of the HA is mainly supported by Government funding. The HA has a well-established mechanism to closely monitor the utilization of its finances, so as to ensure proper use of public money and to safeguard public health and patients' interests.

Under the Pharmacy and Poisons Ordinance, all drugs in Hong Kong must be registered with the Pharmacy and Poisons Board before sale. In line with international practice, only products which are safe, efficacious and of good quality will be registered. Unless there are exceptional circumstances in the supply of drugs, the HA will only purchase drugs registered with the Department of Health (DH). The HA Drug Formulary (the Formulary) has included drugs for the

treatment of various diseases. Currently, the vast majority of drugs have been centrally procured, and hospitals cannot decide on their own to purchase drugs outside the Formulary. Hospitals will not buy cheaper but less efficacious drugs because of financial considerations.

The HA has put in place an established mechanism on the procurement of pharmaceutical products. In compliance with the requirements of the World Trade Organization, the HA procures drug items of high volume or in large value with market alternatives through open tenders. All tenders of the suppliers must comply with all quality requirements, including registration with the DH; accreditation of Good Manufacturing Practice of the manufacturing site; detailed product specific information, such as product master formula, method of assay, finished product specification and stability data, as well as bioavailability data of generic drugs, before the tender prices will be considered. In other words, the prices will only be considered after the quality of the products is confirmed in order to protect the safety of patients.

The HA has an established mechanism in place to assess regularly whether new drugs introduced in the market should be incorporated into the Formulary, and to review the prevailing drug classes in the Formulary (including general drugs, special drugs, self-financed drugs and self-financed drugs covered by the safety net) and guidelines of drug treatment through its expert committees, which comprise doctors, clinical pharmacologists and pharmacists. Changes to the Formulary will be made as appropriate. During the assessment and review process, the committees will take into account scientific evidence, safety of the drugs, cost-effectiveness, opportunity cost, technological advances in treatment options, actual experience in the use of the drugs, as well as the views of professionals and patient groups, and so on. This is to ensure that public resources will be used in an equitable and effective manner for provision of appropriate treatment to patients.

Drugs of proven safety, efficacy and cost-effectiveness are generally incorporated into the Formulary as standard drugs, including general

drugs and special drugs. Under the existing mechanism, all general drugs and special drugs prescribed under specified clinical conditions are provided to patients at standard fees and charges by the HA. For drugs which are proven to be of 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 Fund to subsidize the drug expenses of patients whose clinical conditions meet the requirements for the use of these drugs but who have financial difficulties meeting the expenses. Currently, drugs not covered by the safety net only include: (i) drugs which have preliminary medical evidence only; (ii) drugs with marginal benefits over available alternatives but at significantly higher costs; and (iii) life-style related drugs which are not medically necessary (for example, weight-loss drugs).

The expert committees will continue to consider the introduction of new drugs into the Formulary, and review the appropriate positioning of individual drugs in the Formulary, having regard to the latest development of medical technology and scientific evidence to ensure equitable access by patients to cost-effective drugs of proven safety and efficacy.

- (d) Over the past few years, the Government has been providing additional resources to the HA to meet the growth of drug expenses, including the extra expenses arising from the widening of the coverage of the Formulary and expansion of the clinical application of drugs. Should there be any increase in the demand for pharmaceutical products arising from the HA services in future, the HA will conduct assessments through its annual plan mechanism and request additional funding from the Food and Health Bureau as appropriate. The Government will adjust the total amount of funding for the HA as appropriate having regard to the development of and demand for healthcare services.

The objective of the Fund is to provide financial assistance to needy patients to meet expenses on designated Privately Purchased Medical Items or self-financed drugs required in the course of medical treatment which are not covered by hospital maintenance or

out-patient consultation fees in public hospitals and clinics. The operation of the Fund mainly relies on private donations and Government subsidies. The HA reviews annually the income and expenditure account of the Fund and estimate the overall expenditure of the Fund for the next few years, taking into account such factors as the ageing of population, technological advances, increase in demand for healthcare services and inclusion of more drugs under the Fund, and so on. The HA will seek additional funding from the Government if necessary. For instance, in 2008-2009, the Government injected \$1 billion into the Fund to meet the growth of expenses.

### **Promoting Use of Electric Vehicles**

19. **MR CHEUNG HOK-MING** (in Chinese): *President, the Chief Executive indicated in last year's Policy Address that the Environment Bureau had been working with a number of electric vehicle (EV) manufacturers, and the Government expected a supply of around 200 EVs for the local market in this financial year. Yet, it has been reported recently that there would only be 20 EVs available for renting early next year. In addition, under the restrictions of the existing regulations, EV owners have to apply for special permits before they can drive EVs on an expressway. Regarding the ways for actually making Hong Kong the "second in Asia, after Japan, where EVs are most widely used" as stated in last year's Policy Address, will the Government inform this Council:*

- (a) *of the actual number of EVs being supplied to Hong Kong at present; of the discrepancy between the actual supply and the Government's anticipated supply; of the reasons for such discrepancy;*
- (b) *given that the Environment Bureau indicated at the meeting of the Panel on Environmental Affairs held on 22 June 2009 that, since EVs did not have any cylinder, under the existing restrictions of the Road Traffic (Expressway) Regulations (Cap. 374, sub. leg. Q), EV owners who wished to drive their EVs in Hong Kong would need to apply for special permits according to the Regulations, of the time required for the Government to vet and approve applications for*

*such special permits; apart from applying for such permits, whether there are other restrictions in relation to owners' driving their EVs on roads; whether the Government will revise the relevant regulations gearing to the policy of extensively promoting the use of EVs; and*

- (c) *whether the Government has carried out studies together with the Mainland on the support and integration (such as the technology for charging batteries) in relation to the use of EVs in both the Mainland and Hong Kong, so as to complement the long-term development of using EVs; if it has, of the details; if not, the reasons for that?*

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

- (a) To promote the wider use of EVs in Hong Kong, the Government has been discussing with and encouraging different EV manufacturers to introduce their EVs into Hong Kong. Earlier on, Mitsubishi's "i-MiEV", Tesla's "Roadster" and EuAuto's "MyCar" were launched in the local retail market. For Mitsubishi's "i-MiEV" and Tesla's "Roadster", Hong Kong is the first Asian city outside Japan where they have been launched in the retail market. Smith, a commercial EV manufacturer, also plans to launch their commercial EVs in Hong Kong by the end of this year. Nissan has also decided to provide some units of "LEAF" out of its first batch of EV production for supply to corporate clients in Hong Kong. The first "Nissan LEAF" is expected to arrive in February 2011, subject to the placement of purchase orders. Hong Kong will be the first Asian market of this car outside Japan.

As at mid-November 2010, there were altogether 85 EVs for road use in Hong Kong. We believe that the figure will increase as more EVs, which are being developed and put to commercial production worldwide, enter the Hong Kong market.

- (b) At present, if a certain EV model certified by the Transport Department (TD) after a vehicle type approval process is assessed to

be suitable for use on an expressway, its registered owner may apply to the TD for an expressway permit under the Road Traffic (Registration and Licensing of Vehicles) Regulations so that it can be used on an expressway. An EV owner may apply for vehicle first registration and an expressway permit at the same time. In general, the permit, together with the vehicle registration document and the vehicle licence, can be issued to the applicant on the second working day after the application. As for road use, like users of other vehicles, EV users must abide by road traffic regulations and codes. The TD will formulate measures to facilitate the introduction of EVs into Hong Kong with reference to international practices as well as the performance and use of EVs.

- (c) Most EVs currently available for sale in Hong Kong can be charged with the common domestic three-rectangular-pin socket outlet. To support car park operators, property management companies and property developers in the provision of suitable EV charging facilities, the Electrical and Mechanical Services Department (EMSD) has prepared the "Technical Guidelines on Charging Facilities for evs" (Technical Guidelines) and is actively liaising with the trade to provide technical information. The EMSD will continue to keep in view the development in the standards of charging facilities around the world (including the Mainland) to update the Technical Guidelines in a timely manner. It will also ensure that the local EV charging facilities can both meet the practical needs in Hong Kong and keep in line with the international standards.

### **Regulation of Alternation Works Inside Private Premises**

20. **MRS REGINA IP** (in Chinese): *President, in the discussion paper on alteration works in respect of sub-division of flat units (commonly known as "sub-divided units") submitted to the Subcommittee on Building Safety and Related Issues under the Panel on Development of this Council, the Development Bureau advised that it was conducting a comprehensive review of the building safety policy, including the policy of enforcement against sub-divided units. In this connection, will the Government inform this Council:*



- (a) *whether, before the completion of the aforesaid review, individual property owners who wish to carry out works to sub-divide their residential units can apply to the Buildings Department (BD) on an individual basis; if they can, of the number of such applications received in the past three years, and among them, the respective numbers of approved and rejected applications; and*
- (b) *of the existing criteria adopted by the BD in determining whether or not to approve an application for works to sub-divide a flat unit?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, in general, "sub-division of flat units" (commonly known as "sub-divided units") refers to the sub-division of a flat unit into two or more individual units for sale or letting purposes. Each individual unit is usually self-contained with a toilet, and some even have self-contained pantries/kitchens. The works for sub-dividing a unit into individual self-contained units commonly involve knocking down of the original non-structural partition walls, construction of new non-structural partition walls, installation of new toilets, alteration or addition of internal water pipes and drainage systems for the additional toilets, as well as raising of floors to accommodate new/diverted pipes and drains, and so on.

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

- (a) Under section 41(3) and 41(3A) of the Buildings Ordinance (Cap. 123) (BO), certain building works and drainage works that do not involve the structure of a building can be carried out in existing buildings without prior application to the Building Authority (BA) and obtaining his approval. For example, the construction of non-structural partition walls is such kind of exempted works. However, such additional partition walls should still comply with the building standards stipulated under the building regulations, including not causing overloading to the building and not affecting the means of fire escape.

According to the requirements of the BO, if the works involved in the alteration or addition are not exempted works as mentioned above, the owner should appoint an authorized person (AP) to submit an application to the BD and only commence the relevant

works after obtaining the BA's approval and consent. Upon full implementation of the Minor Works Control System (MWCS) on 31 December 2010, owners can follow the simplified requirements to engage APs and/or registered contractors to carry out works that belong to the category of minor works without obtaining the BA's prior approval.

The BD does not have statistical breakdown of cases of works concerning sub-division of flat units. Nevertheless, from 1 November 2007 to 31 October 2010, the Department received some 5 200 applications involving building plans on alteration and addition works. These applications include various kinds of alteration and addition works (including works for sub-division of units) in existing buildings. Amongst these applications, around 4 500 cases and 540 cases have been approved and disapproved respectively. The some 160 remaining applications are being processed.

- (b) All building works, including works involved in sub-division of units and irrespective of whether they are exempted works, have to comply with the building standards stipulated under the BO and its subsidiary regulations, which include standards on structure of buildings, fire safety, means of escape, ventilation, lighting and drainage system. If the proposed works, pursuant to the requirements of legislation, require prior approval and consent of the BA, approval will be granted only if the building plans submitted by the AP appointed by the owner prove that the design and construction of the works concerned comply with the aforementioned building standards. In carrying out minor works, the relevant building professionals and/or registered contractors should also ensure that the works comply with the requirements of the BO and its subsidiary regulations.

The MWCS, which is to be commenced shortly, has already designated an item of works commonly encountered in sub-division of flat units (that is, drainage works within internal flat units) as minor works. In accordance with the measures for enhancing building safety announced in the Chief Executive's 2010-2011 Policy Address (that is, the outcome of the comprehensive review of

building safety as mentioned in the question), we plan to expand the coverage of the MWCS to include other works that are common features of sub-divided flats, such as installation of solid non-structural partition walls and thickening of floor slabs, under the control of the system. By then, owners will have to engage building professionals and/or registered contractors to carry out the works. This will enhance the safety level as well as quality of the works.

## **MOTIONS**

**PRESIDENT** (in Cantonese): Motion. Proposed resolution under the District Councils Ordinance to approve the District Councils Ordinance (Amendment of Schedule 3) Order 2010.

I now call upon the Secretary for Constitutional and Mainland Affairs to speak and move the motion.

## **PROPOSED RESOLUTION UNDER THE DISTRICT COUNCILS ORDINANCE**

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. The purpose of the District Councils Ordinance (Amendment of Schedule 3) Order 2010 (the Order) is to add seven elected seats to six District Councils in the fourth term District Councils commencing on 1 January 2012.

Since the first term District Councils, we have increased the number of elected seats for the Islands, Sai Kung and Yuen Long District Councils to tie in with their population growth relative to the previous District Council election. As for the other District Councils, though the population growth between successive District Council elections was relatively modest, the cumulative growth since 1999 for some districts could be significant. Accordingly, we have undertaken an overall review on the number of elected seats for each District Council having regard to the population forecast for Hong Kong in 2011.

As a result of the review, we propose to allocate an extra seat to each of the following five District Councils: Kwun Tong, Yau Tsim Mong, Kwai Tsing, North District and Sai Kung, and two extra seats to the Yuen Long District Council.

The Constitutional and Mainland Affairs Bureau consulted the Legislative Council Panel on Constitutional Affairs on the proposal in July this year. Members expressed no objection to the proposal. The Chief Executive in Council made the Order at the Executive Council meeting on 21 September 2010. The Order has been scrutinized by the Subcommittee on District Councils Ordinance (Amendment of Schedule 3) Order 2010. I wish to take this opportunity to thank Mr IP Kwok-him and other members of the Subcommittee for agreeing to expedite the examination of the Order. I also thank them for their valuable opinions.

Subject to the approval of the Order by the Legislative Council today, the Electoral Affairs Commission will proceed with the demarcation of constituency boundaries for the 2011 District Councils election having regard to the revised number of seats and in accordance with the statutory criteria for demarcation. The Electoral Affairs Commission will publish its provisional recommendations on the delineation of the 412 District Council constituency areas for public consultation in early December. The final recommendations will be submitted to the Chief Executive by no later than March 2011.

May I ask Members to approve the Order so that the proposed number of seats can be added.

Thank you, President.

**The Secretary for Constitutional and Mainland Affairs moved the following motion:**

"RESOLVED that the District Councils Ordinance (Amendment of Schedule 3) Order 2010, made by the Chief Executive in Council on 21 September 2010, be approved."

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

**MR IP KWOK-HIM** (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Subcommittee on District Councils Ordinance (Amendment of Schedule 3) Order 2010 (the Order), I now report on the deliberations of the Subcommittee.

The major objective of the Order is to amend Schedule 3 to the District Council Ordinance, to add a total of seven elected seats to six District Councils (DCs) (the Kwun Tong, Yau Tsim Mong, Kwai Tsing, Sai Kung and Yuen Long District Councils) from the fourth term DCs which starts in 2012.

Some members are of the view that the numbers of elected seats should be further increased for the DCs where the respective proposed numbers of seats are lower than the calculated numbers of seats. Another member considers it important to ensure that the addition of elected seats would not result in major changes to the boundaries of existing DC constituency areas (DCCAs) which would disrupt the established integrity and cohesiveness of local communities.

According to the Administration, its proposal on the allocation of the seven additional elected seats is made having regard to the projected population of each district and the current number of elected seats of each DC. For DCs where the number of elected seats calculated according to the population quota is lower than the existing number of seats, no change would be made to the number of elected seats so as not to affect the provision of services to the public in the districts concerned. As a result, the numbers of the elected seats for the six DCs mentioned in paragraph 10 above would not be increased strictly in accordance with the projected population in the respective districts and the population quota.

(THE PRESIDENT'S DEPUTY, Ms Miriam LAU, took the Chair)

The Subcommittee has expressed concern that the current timetable for the delineation of DCCAs for the fourth term DCs is a few months late as compared

with that of the last DC election, and has expressed grave concern that this may affect the preparation work of prospective candidates who plan to participate in the next DC election to be held in November 2011. At the Subcommittee's request, the Administration has undertaken to compress the relevant time frame. Upon the Legislative Council's approval of the Order, the Electoral Affairs Commission (EAC) will, commence public consultation on its provisional recommendations on the delineation of DCCAs in early December 2010 for a period of not less than 30 days, and it is expected that the EAC Report will be submitted to the Chief Executive by March 2011.

Deputy President, this is my report on the work of the Subcommittee. On behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), I am going to express our views on the Order.

Following the passage of the constitutional reform package, the constitutional roles of DC members have already changed. The candidates for the five new functional constituency (FC) seats will be nominated by elected DC members, and there will be an additional of 75 DC members in the Election Committee (EC) for electing the Chief Executive. The DC subsector will have a total of 117 seats, which accounts for 10% of the EC that comprises 1 200 members. Therefore, the specific weight of DC members has undergone qualitative and quantitative changes in the course of selecting the Chief Executive of the Hong Kong Special Administrative Region. This reflects that DC members will play more important roles in the course of our political development and a new leaf has been turned.

On the basis of the projected population increase, the Administration has proposed an amendment to add a total of seven elected seats in the fourth term DCs so that the total number of elected seats for the fourth term DCs would become 412. We can actually find from the historical records that the total number of elected seats for DCs have increased from 390 in the first term to 412 in the current term; given the population quota of 17 275, the deviation has been around 25%. Evidently, it is appropriate for the number of elected seats to be increased on the basis of the projected population increase, thus the DAB supports making corresponding adjustments on the basis of the population sizes of DCCAs. We believe that the proposed addition of a total of seven elected seats under the Order is in line with the actual population growth, and this will not cause material changes in the delineation of constituency areas, thereby

disrupting the established cohesiveness of local communities. As members of the community have remarked that the population quota of a DC is too small, hence some DC members are shortsighted; and it is therefore essential to expand the electorate base so as to enhance the representativeness of DC members. The DAB does not agree to this viewpoint and we consider the existing population quota as appropriate. DC members will be able to maintain close contacts with residents in the districts and have a grasp of their needs. For this reason, the DAB thinks that the existing base should be maintained. Certainly, small adjustments can be made on the basis of population changes; but the DAB does not agree that considerable adjustments should be made.

Regarding the DCCA boundary maps, the Administration has indicated that the delineation of DCCAs can only be finalized by March 2011. There are only nine months to go before the official election to be held in November 2011, and the Administration will be about half a year late in announcing the official delineation of DCCAs as compared to the past. The DAB thinks that this will substantially affect the preparation work of prospective candidates who plan to participate in the next DC election, and this is the most undesirable element of the Order. We hope that this extremely unsatisfactory situation will not recur in the future elections.

With these remarks, Deputy President, I support the approval of the Order.

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

**MR RONNY TONG** (in Cantonese): Deputy President, we think that we have missed a very good opportunity in proposing this amendment, and our views are just the opposite of that expressed by Mr IP Kwok-him from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) just now.

Deputy President, under the District Council (DC) structure, DC members are elected on the basis of the boundaries of three buildings and six streets. This method has always been criticized for having some basic structural deficiencies. Under the constraints of a political framework, the elected DC members are very often politically shortsighted, and they are not broadminded enough to serve the community. But, a more important point is that, a system with a narrow

electoral base can hardly attract more people with the abilities, high academic qualification or experience to devote themselves to serving the community. This is a fundamental problem. If we want to enhance the work of DCs, especially to gain more public acceptance of this service structure, we must ponder over how we can fundamentally reform this structure.

Making changes in light of the increase in population on this occasion actually provides a very good opportunity, yet the Government has handled this issue in a very rigid manner. It has just taken into account the percentage taken up by more than 17 000 people in determining the number of seats to be added. In my opinion, we should act in just the opposite direction, and we should reduce the number of constituencies so that DC members would shoulder more political responsibilities. In particular, after the passage of the constitutional reform package this year, we have a new system under which some Legislative Council seats will be returned through election from among elected DC members. Although it is doubtful if the system will go on, the Democratic Party of course would not hope that the system will persist, at least in the next term we can see that many people expect that DC members elected under this system would have a broad political vision and be concerned about the whole territory; and they will not restrict themselves to just handling matters related to three buildings and six streets.

That being the case, this amendment actually provides a very good opportunity for changing this system — even not substantial reform, at least there should be some fine-tunings, so that we can proceed in a more correct direction. Nevertheless, as I have just mentioned, this is a very rigid amendment, and we, Legislative Council Members, may not need to have detailed discussions because this is just a very mechanical amendment made on the basis of population change. Conversely, when we scrutinize this legislation, our focus is on how quickly this amendment can be passed so that prospective candidates who plan to participate in the next DC election can have sufficient time to consider where they will stand for election, and to undertake the preparation work and start serving the community. I think that the focus is now on an inappropriate part of the system. It is a great pity that the Government — perhaps the Secretary — does not agree to these changes, and I understand that the DAB does not support the inclination towards a broader vision.

Deputy President, we definitely will not vote against this amendment but I would like to take this opportunity to remind the Secretary again that reviewing



anew the structure of DCs is an important step forward in respect of a constitutional reform. I hope that the Secretary would carefully consider this issue which will at least be handled in the next term if the Secretary will remain in office.

Thank you, Deputy President.

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

**MR LEUNG YIU-CHUNG** (in Cantonese): Deputy President, I partly agree and partly disagree with the remarks made by Mr IP Kwok-him just now. I agree with his views on the delineation of District Council constituency areas (DCCAs) and I hope that we can discuss this issue as soon as possible. What is the reason? If I have not remembered or estimated wrongly, next year's DC election should be held in around September ..... November, the nominations should be made around September; and if I have not remembered wrongly, the election will be held around November, almost a year from now. However, the problem is that a consultation on the delineation of DCCAs has still not been conducted. As scheduled, a proposal should be made late this year for discussion. After discussions and consultations, the proposal may only be implemented in February, March or even at a later time. In other words, there will be little time left for prospective candidates to carry out their work in the constituencies. This will be unfair and impartial to those candidates who intend to run in the election for the first time. I am not sure how the Secretary would respond to this issue.

As a matter of fact, the delineation of constituency areas in an election will very often be favourable to people who have substantial political power, but undesirable for new candidates. So, I hope that the proposed delineation of DCCAs can be discussed as quickly as possible.

I have once discussed with the Secretary about the delineation of DCCAs. The total number of DC members has been specified before the delineation of DCCAs this time. I do not agree to this practice because DCCAs will be delineated on the basis of the number of electors, and all the electors in the surrounding areas may be grouped under a constituency area, making it very difficult for DC members to carry out their work. In that case, the delineation of DCCAs will not really be made on the basis of the specific characteristics or

geographical environment of districts. This will create immense difficulties for those who really want to serve the districts. This is the first point.

The second point is that if DCCAs are delineated after the number of DC members has been specified, there will be a lack of flexibility, and there will be a lot of difficulties when we wish to express our views in the future. What are the reasons? The Government will say that it is very difficult to delineate another constituency area in view of the number of DC members. I find this highly unsatisfactory and I am definitely concerned about this and it is very important for the Government to take into account the special environment and the characteristics of the districts in the delineation of DCCAs. Yet, huge obstacles will be created if the delineation of DCCAs is conducted rigidly with the number of DC members specified. Thus, I hope that we can undertake the relevant work in a reverse order as the situation would then be more desirable.

Furthermore, I do not agree with Mr IP Kwok-him that the existing provision about the number of DC members to be elected is appropriate and it can promote the relations between DC members and the districts. The relations will certainly be better and closer in smaller areas with fewer members. But, if that is the case, as Mr Ronny TONG has said, the vision of DC members will not be broadened, and they will often focus on interests from a narrow perspective. This is not favourable to the community because DC members may have biased views on the matters discussed. If there can be larger constituency areas, DC members will have to consider issues from a more balanced angle, and more comprehensively cater for the interests of various parties in the districts. This is the third point.

About the fourth point, when the constituency areas are too small, interpersonal relationship will be regarded as more important than political or community development. The DC members elected this way constitute the biggest problem. We frequently make fun of other people — Mr Ronny TONG has just mentioned "three buildings and six streets", but that is not what we frequently mock at. In that case, we will be electing village representatives rather than DC members because the constituency areas are too small and few people are involved. How different is it from the election of the representative of a small village? There is no difference at all.

Nevertheless, we think that a DC member should handle the issues of the relevant district as a whole. If his vision is too narrow, he may be

narrow-minded and have biased views during discussion on issues relating to political and community development, interpersonal relationship and community welfare, which is unfavourable to the community. On this point, I hope that the constituency areas can really be extended in the future, and that this issue can be considered from various perspectives.

Deputy President, I recall that somebody has once suggested that there should not be too many DCs and there should only be five constituency areas and five DCs, just like the case of the Legislative Council. This idea actually deserves consideration, and of course, we may not put it into practice. Nonetheless, this idea brings out a point, that is, if there are fewer DCCAs and fewer DCs, DCs can be in charge of more affairs at the community level and the result will be better.

We had the Regional Council and the Urban Council in the past. The Regional Council and the Urban Council oversaw matters of a large community, they had to consider different viewpoints and interests from various perspectives, and they were more objective in handling matters. This was more desirable than what DCs are doing now. As DCs only deal with matters of small districts, DC members have a narrower vision and they fail to take into consideration issues of a wider perspective, such as the transportation routes and bus stops, and so on, causing a lot of conflicts. Yet, if there is a large constituency area, DC members will have to strike a balance in various aspects. In this connection, I hope that the Secretary would consider the issue from this angle when the number of DC members is discussed in future.

Deputy President, I so submit.

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

(No Member indicated a wish to speak)

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

**SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS** (in Cantonese): Deputy President, I am very thankful to the Chairman of the Subcommittee and Members for taking this opportunity to express new views today and to elaborate on some of the views that have already expressed in the past. I would like to respond to several points.

First, Deputy President, for more than 10 years in the course of development from the first term District Council (DC) election to the fourth term DC election this time, we have tried to increase the number of elected seats to the best of our ability in light of the population growth in various districts on Hong Kong Island, Kowloon and the New Territories; and it doing so, we have provided more room for participation in elections and politics. At the time of the second term DC election, our population has increased by around 231 000 as compared with the time when the first term DC election was held, and there were 10 additional seats. During the period between the second and third term DC elections, our population has increased by around 193 000, and there were five additional elected seats. In the current election, as compared with the third term election, we estimate that our population will increase by around 124 000, and seven more elected seats will be added. In other words, there is one additional seat when the average population increases by 17 700. We consider the present rate of increase as reasonable, and that it can maintain our objective of providing more room for participation in politics and elections through increasing the number of elected DC members.

Second, we have taken into consideration the facts that there may be reduced population or ageing population in certain DC districts. Deputy President, we still maintain the original number of elected DC members in these districts, hoping that the services provided to residents in these districts will not be reduced, and that there will be sufficient DC members to work at the DC level to serve the community.

Third, Mr Ronny TONG, Mr LEUNG Yiu-chung and Mr IP Kwok-him are concerned about whether the proportion of one DC member for about 17 275 persons and the "single seat, single vote" system will be maintained. Some people think that the constituencies are relatively small, but according to the experience gained during the past decade since the reunification, we think that the constituency size is appropriate because DC members can establish closer

contacts with the residents and can solve their problems, which is an important task.

A senior politician once said to me, "The trivial matters of residents are important matters for politicians". What does that mean? If nobody is following up matters such as buses skipping stops or bursting of standpipe, DC members should take the initiative and handle these matters in the first place. For more densely populated communities, elected DC members can serve the public more effectively. A Legislative Council Member has proposed merging three to four constituency areas with over 17 000 people each into a single constituency area, and electing a few representatives under the proportional representation system. Deputy President, I have also considered this option and I would like to respond to the views of Mr Ronny TONG. We think that district work is very important in a geographical election. Although some people think that the existing constituency areas are relatively small, in the Government's view, according to the experience gained for more than 10 years, it is better to have a direct electoral system than an indirect one. We maintain that the "single seat, single vote" system is more suitable for different potential candidates and incumbent DC members because many of them have done a lot of district work in the relevant constituency areas throughout the years. If a fundamental change is made to our electoral system within a short period of time, they will not be able to cope. Regarding this election, we should know that the DC electoral system will become the electoral system adopted for the Legislative Council in the future. The electoral system for the Election Committee is a very important foundation. Now that five new functional constituency seats will be returned through election from among elected DC members in 2012, it is more appropriate for us to maintain this electoral system at present. The Election Committee will also have a total of 117 seats returned through election from among elected DC members.

Apart from these factors of consideration, Deputy President, we are very much concerned about whether the functions of DCs can be expanded. Mr LEUNG Yiu-chung has mentioned once again that some people proposed reorganizing 18 DCs into five or seven larger constituencies. Deputy President, I am going to respond to two points. Firstly, in early 2008 when the current term DCs were elected, we had already enhanced the functions of DCs to facilitate their participation in the management of district facilities such as libraries, sports facilities and community halls. The relevant departments should

report to the DCs and listen to their views in formulating these management measures. Moreover, the Administration has allocated a provision of \$300 million to DCs for undertaking district works, and another \$300 million for providing district services and for organizing activities for the public. We opine that it is more suitable for the functions of DCs to be further enhanced in this direction. Secondly, I would like to say that the existing 18 districts have distinguishing characteristics. If we rashly change their distinguishing characteristics, I believe the local community may not be supportive, so we consider it more suitable to maintain these 18 districts for the time being.

Lastly, the fifth point is about the delineation of DC Constituency Areas (DCCAs). Deputy President, I made macroscopic and microscopic considerations when handling election and the related legislative matters. Concerning macroscopic considerations, we should first determine the general policy direction for the 2012 Chief Executive Election and the Legislative Council Election in June. In particular, we should determine, at the DC level, to what extent and through what channels DC members can participate in these two elections at the constitutional level in 2012. Concerning microscopic considerations, about the DC Election to be held in November 2011, we should consider whether our proposed increase in the number of seats from 405 to 412 will have the support of Members. Deputy President, I need to deal with the "overall situation" first in the middle of the year and then work out the details of the "minor situation".

We have to work within tight schedule on the delineation of DCCAs. Nonetheless, with the support of Members, we hope that, after the approval of the Order today, the Electoral Affairs Commission can begin to brief members, various political parties, the local community and the public on the delineation of DCCAs for 412 seats in early December, and conduct a one-month public consultation, as well as summarize the views collected as quickly as possible after the conclusion of the consultation. When we announce the preliminary proposal on the delineation of DCCAs in early December, the incumbent members from various parties and groupings, and the potential candidates will have clearer and more thorough concepts of the delineation of DCCAs in the 18 districts for 412 seats. Though there may be certain adjustments after the one-month public consultation, we hope that these adjustments would not be substantial and that the relevant adjustments are just made on the basis of the views received. Deputy President, I believe that this task will be expeditiously completed early next year

and even though we will not have a whole year left to make preparations for the coming election, we should roughly know in early December the delineation of DCCAs for 412 seats in the election next November, and I trust that we can start making preliminary preparations for the election.

With these remarks, Deputy President, I hope that Members would support this subsidiary legislation.

**DEPUTY PRESIDENT** (in Cantonese): I now put the question to you .....

(Mr LEUNG Yiu-chung raised his hand to indicate his intention to speak)

**MR LEUNG YIU-CHUNG** (in Cantonese): Deputy President, I am sorry but I .....

**DEPUTY PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, do you have a point of order?

**MR LEUNG YIU-CHUNG** (in Cantonese): I have not declared interest just now; I am a District Council member.

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

(Members raised their hands)

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

(No hands raised)

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

### **MEMBERS' MOTIONS**

**DEPUTY PRESIDENT** (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of 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.

First motion: Comprehensively reviewing the Mandatory Provident Fund Scheme.

**DEPUTY PRESIDENT** (in Cantonese): 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-kin to speak and move the motion.

### **COMPREHENSIVELY REVIEWING THE MANDATORY PROVIDENT FUND SCHEME**

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

Today is the 10th anniversary of the implementation of the Mandatory Provident Fund (MPF) Scheme. It is pertinent to have the discussion on the review of the MPF Scheme today, and I believe it is particularly meaningful. Indeed, reviewing the MPF Scheme and the retirement protection of society as a whole should be the responsibility of the Government; it should take the lead to promote various sectors in society to participate in the discussion in bringing the retirement protection system in Hong Kong to perfection. Regrettably, as the Government shrinks its responsibility in this respect, the legislature has to initiate a discussion on this issue, hoping to draw the attention of society and push the



Government to improve the mechanism, so as to protect the retirement life of all the people in Hong Kong.

Deputy President, it is the Chinese tradition to "give the elderly a sense of security and a sense of support". Everyone wants to enjoy life in their twilight years after retirement and lead a peaceful and stable life. However, this thinking is close to a wild wish in today's society. According to the statistics of the Government, Hong Kong is approaching an ageing society, and by 2039, the ratio of elderly persons to the population in Hong Kong will be 28%. The traditional thinking of bringing up children for secured ageing and relying on the younger generation in supporting parents has become more and more difficult to realize in concept and in reality. We often hear the Secretary for Labour and Welfare, Matthew CHEUNG, say that the retirement protection in Hong Kong relies on three pillars, namely, individual savings, the MPF and the social security net, that is, the Comprehensive Social Security Assistance (CSSA) system. However, the problems of working poverty and low income now prevail in society. Wage earners will consider themselves lucky if they can make ends meet at present, how will they have extra money to save for the rainy days and for their twilight years? Hence, Hong Kong people have to rely on the retirement protection system of society to a large extent in maintaining their retirement life; and this retirement protection system is composed of the MPF Scheme and the CSSA system.

Deputy President, it has been 10 years since the MPF Scheme was formally implemented in 2000. Over the past 10 years, it is undeniable that the MPF Scheme has made preparation for the future retirement life of wage earners. Before the implementation of the MPF Scheme, only 36% of employees in Hong Kong enjoyed retirement protection, but now the ratio has increased to 87%, and the number of employees joining the MPF Scheme exceeds 2.49 million. The total asset value of the MPF has now exceeded \$345.7 billion. It is reported that in the past 10 years, the average rate of return is close to 5%. Hence, I admit that the MPF Scheme has achieved certain effects. It has at least instilled a concept in the people of Hong Kong, in particular the next generation, that one should prepare for their retirement life once they start working in society.

In the past decade, the MPF Scheme is like a container to "collect and save water" for wage earners, but this container is defective as it leaks. No matter how much water is put in the container, it will be in vain as the water will quickly

seep through the container and not much water will be left. Hence, the Hong Kong Federation of Trade Unions (FTU) has all along been urging the Government to conduct a comprehensive review on the MPF Scheme to plug these holes, so that every dollar contributed by employers and employees will be spent on the retirement life of wage earners. Furthermore, the number of employees covered by and the coverage of the Scheme should also be expanded. Hence, today, I put forth nine proposals in the motion, hoping that the Secretary will consider them carefully and take remedial actions as soon as possible.

Deputy President, the largest hole found in the MPF Scheme is surely the offset mechanism. Under that mechanism, employers' contributions will be used to offset severance payments and long service payments. Last month, I put forth a written question at the meeting of the Legislative Council about this issue. The Secretary pointed out in the reply that more than \$2.5 billion MPF contributions were lost under the offset mechanism in 2009. Over the past decade, the total amount of MPF lost under the offset mechanism accumulated to \$13,765 million, which accounts for 4% of the current total assets of some \$340 billion.

Some people mention that the offset mechanism is a compromise the Government made to employers at the time the MPF Scheme was established. However, in the past 10 years, Hong Kong society has changed significantly, particularly in terms of the employment pattern. Fragmentation of employment has now become a trend. A large number of employees are now employed on contract or outsourcing terms, and these employees will be made redundant every two to three years and then enter into new contracts. If the offset arrangement is allowed to continue, these employees will have to sign new contracts one after another and their MPF will be offset time after time. By the time they retire, I believe their MPF accounts will be like the basket of tangerine here, with only one tangerine left.

In the view of the FTU, severance payments or long service payments are payments stipulated under the Employment Ordinance to provide due protection and benefits to eligible employees, whereas the MPF is for protecting the retirement life of employees. They are as different as chalk and cheese. But now, the savings of employees for their retirement are used by employers to offset the statutory labour benefits to which employees are entitled. This arrangement allows employers to transfer money from their left pocket to the

right pocket. Worse still, it reduces the protection for severance payment and long service payment enshrined in labour laws to exist in name only but not in reality. Since MPF contributions have been manipulated by employers to compensate employees being dismissed by reason of redundancy, employees' protection for retirement life has been completely disrupted. The labour sector has been striving for changing this mechanism for many years, but the Government has done nothing in view of its concern about the highly controversial nature of the issue. As this arrangement is unfair to wage earners, I hope the Secretary will deal with the problem once and for all.

Deputy President, in addition to the offset mechanism, management fees of the MPF Scheme is another source for draining away the MPF contributions. Regardless of the performance of the MPF, be it making profit or incurring loss, wage earners have to pay management fees and administration fees to trustees every year, and the management fees may sometimes be charged at a rate of 3% to 4%. Though the rate seems to be low, it actually involves an expenditure amounting to several billion dollars. Take the year 2009-2010 as an example, the amount of MPF contributions was around \$36 billion, but the amount of management fees incurred was as high as \$6.5 billion.

I know that in recent years, the Mandatory Provident Fund Schemes Authority (MPFA) has been vigorously urging trustees to lower their management fees. Certain trustees have indeed lowered the relevant fees to around 2% recently, and some trustees have even charged a rate of less than 1%. But in general, the fees charged are still on the high side. Actually, if the rate of return of the fund is not high, and if administration fees and management fees are charged at 2% or 3%, the accrued benefits wage earners are entitled to in future will not only have no increment but may even be eroded. Some conservative funds under the Scheme are indeed facing this situation. The Government should consider capping the fees charged, or setting up a mechanism to link fees to the return earned, so that the fees charged will account for a reasonable portion of the return, ensuring the continuous growth of the MPF.

Deputy President, another major defect of the MPF Scheme is the default on contributions on the part of employers. At present, some employers default MPF contributions, some employers do not open MPF accounts for their employees and some employers even deduct and pocket the contributions of employees. However, the Government fails to take effective measures to

combat these employers, and the measures taken lack deterrent effect. More often than not, the MPFA fails to make rigorous effort in law enforcement. It only gives advice or warnings, and if employers pay back the contributions while waiting for a court hearing, the MPFA will withdraw the charge. If so, how will employers be deterred? These employers will very often make contributions at the last moment. I think the Government must step up its efforts in enforcement. For instance, it should set up certain penalty mechanism to compensate employees being default of MPF contribution from the fines collected and to deter unscrupulous employers' malpractices regarding MPF contributions.

Deputy President, in the last point in my motion, I propose that the Occupational Retirement (ORSO) system should be reformed. This is a problem left over by history. Since some companies have set up the ORSO system before 2000, they offer two systems after the implementation of the MPF Scheme for their employees to select. However, we find that certain cleaning and security companies exploit this loophole to evade the responsibility of providing retirement protection to employees, for the terms under the ORSO system are determined by the company, and the proportion of accrued benefits received by employees are usually calculated on a pro rata basis according to the years of service. Last year, a large cleaning company was found adding a provision in the ORSO that "contributions can only be obtained upon completion of three years of service or above"; but the employees would be dismissed before they have completed three years of service. As a result, the employees could not even get a dollar under the ORSO. Actually, the Government is obliged to address the problems left behind by the ORSO in the past and plug the loopholes found at present. I hope the Secretary will actively consider this point.

Deputy President, the MPF Scheme is part of the retirement protection mechanism, but it fails to solve the problems faced by employees immediately after retirement. As a result, the problem of elderly poverty has been worsening. Back then, the FTU supported the implementation of the MPF Scheme because the Government had only offered us this option. Actually, at the time, we also supported the universal superannuation proposal. We had proposed an integrated proposal with tripartite contributions in providing social insurance, which enabled the elderly to enjoy immediate retirement protection. Today, poverty has become a deep-rooted conflict in Hong Kong. To ensure that the elderly can have a sense of security, we should start a new round of discussion on universal retirement protection, so that the people of Hong Kong may see the light of being protected under a universal retirement scheme. I hope the

Government will initiate the discussion on this subject as soon as possible. As for other proposals in the motion, my colleagues will give supplementary information later when they speak and I will give my response shortly.

Deputy President, I so submit.

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

"That, according to the projection of the Census and Statistics Department, the ratio of persons who are aged 65 and above to the population in Hong Kong will substantially increase to 26% by 2036; this not only indicates the gravity of population ageing in Hong Kong in the future, but also foretells the public's urgent demand for comprehensive retirement protection; yet, there is at present no retirement protection system in Hong Kong that benefit all people, and after nearly 10 years since its implementation, the Mandatory Provident Fund ('MPF') Scheme is still unable to achieve the objective of protecting people's retirement life; in this connection, this Council urges the authorities to comprehensively review the MPF Scheme and further improve the relevant mechanisms, so as to protect the retirement life of all people; the relevant review should include:

- (a) to implement universal retirement protection, with tripartite contributions from the Government, employers and employees, so as to extend the coverage of protection to all Hong Kong people;
- (b) to abolish the mechanism whereby employers' contributions under the MPF Scheme are used to offset severance payments and long service payments, and retain Hong Kong employees' rights to severance payments or long service payments under the relevant provisions of the Employment Ordinance, so as to provide employees with better retirement protection;
- (c) to implement a system of 'one lifelong account', establish portability of MPF accounts, and require trustees to introduce a simple and easy to understand method to inspect accounts similar to that of 'bank books', so as to enable employees to peruse information on contributions, returns, etc. at any time;

- (d) to lower MPF management fees and administration fees, and at the same time enact legislation to require trustees to set out the actual amounts of management fees in the annual reports of the years concerned, so as to protect the actual amounts of MPFs received by employees upon retirement from not being drastically eroded;
- (e) to implement totally unrestricted choices for employees under the MPF Scheme, allowing employees to choose trustees for both employers' and employees' MPF contributions, and at the same time, through publicity and education, enable employees to understand that they may transfer their MPF contributions according to the levels of risks they can bear;
- (f) to strengthen the regulation of MPF investment products and regularly review the sales practices adopted by intermediaries;
- (g) to review the appropriateness of the existing minimum and maximum levels of income, including that the minimum level of income should be higher than the minimum wage;
- (h) to step up law enforcement to combat the situation of default in contributions, including sentencing employers who default on contributions to immediate imprisonment, and considering blacklisting the companies concerned in the tendering exercises for government services as a form of penalty, etc.; and
- (i) to reform the Occupational Retirement Schemes ('ORSO') system, requiring employers adopting ORSO schemes to provide their employees with accrued benefits not less than those under the MPF Scheme."

**MR CHAN KIN-POR** (in Cantonese): First, I have to declare my interest. I am a member of the Mandatory Provident Fund (MPF) Scheme Advisory Board, and a Member returned by the insurance functional constituency.

Deputy President, the MPF Scheme has been implemented for 10 years, and during these 10 years, there were extensive criticisms about the Scheme,

including high fees, low return and failure to provide substantial assistance to the disadvantaged. I think we really have to face squarely these criticisms. Hence, at the 10th anniversary of the MPF, we should conduct a comprehensive review of the Scheme.

The MPF system is often criticized for failing to cater for the needs of low-income earners, the disadvantaged and persons approaching retirement. These are indeed structural problems, for the MPF is a retirement protection system for people in employment. No matter how the MPF system is enhanced, it will not benefit people not in employment. On the other hand, since the amount of contributions made by low-income earners is small, the final savings they made will be insufficient for meeting expenses after retirement. Hence, I always advocate that the Government should examine, as soon as possible, the introduction of a universal retirement protection scheme to make up for the inadequacies of the MPF system.

Given that the MPF is a large scale mandatory scheme, many problems will surely be exposed in the course of operation, which have to be modified progressively. As we have now gained 10 years of experience, it is now time to fine-tune the MPF system comprehensively.

Let us first look at the current status of the MPF. As at September this year, the balance of the MPF was \$345 billion, and the number of participants, including employees and self-employed persons, was 2.45 million, which means each participant has around \$140,000 on average under the MPF. As for the return, certainly it may vary with the different risk levels of various funds. Between 1 December 2000 and 30 September 2010, the annual rate of return upon deduction of fees — please note that I am talking about the situation after fees are deducted — was 5.1% on average. Members should bear in mind that in the past 10 years, we had experienced two financial crises. Hence, given time, the MPF will be able to act as one of the pillars for retirement protection for the working population in Hong Kong.

In my amendment today, I propose to "streamlining the management and administrative procedures of MPF schemes and reducing the operating costs of MPF on the premise of not affecting MPF scheme members' interests, so as to create room for lowering administration fees". The operating cost of the MPF is very expensive, and the mode of operation of the MPF has a significant bearing

on this. Service providers have to handle the monthly contributions from employers, as well as the investment and withdrawal requests, and the work involved is very complicated. Since the objective of the MPF is to protect employees, and to prevent employers from defaulting contribution, the Mandatory Provident Fund Schemes Authority (MPFA) has been requiring service providers to comply more strictly with the regulations and adopt additional working procedures. For this reason, service providers have to put in additional resources to develop their computer systems and increase manpower substantially.

For instance, in 2008, the settlement period of MPF contribution was changed from 30 days to 10 days after the end of each wage period. As a result, trustees have to increase manpower significantly to follow up the contributions made by employers. Let me cite another example. Service providers have to deploy a lot of manpower to input each sum of contribution recovered from employers, and then transfer the contributions to the accounts of the employees concerned. Members can imagine the vast amount of work involved. Hence, we must review the management and administrative procedures of the MPF in order to reduce the administration fees.

Having said that, I would like to share with Members the changes with regard to administration fees. In fact, administration fees have shown year-on-year decrease in recent years. In March 2008, the average rate of administration fees was 2.09%; in March 2009, it was 1.98%; in March 2010, it was 1.91%, and in October 2010, it has been reduced to 1.89%. Recently, some large MPF companies have launched index funds with administration fees as low as 0.7%. Yesterday, another major service provider introduced funds charging 0.79% to 0.99% administration fees. With the introduction of the "quasi-free choice" MPF scheme, if procedures can be streamlined, I believe the administrative fees of the MPF will decrease gradually in the face of competition.

Another proposal I put forth in my amendment is the review of the percentages of contributions, so as to ensure that the amounts of MPFs are adequate to meet post-retirement expenditure. The initial objective of establishing the MPF is to provide retirement protection for those who are in employment. However, it is now found that the contributions of certain people are insufficient to cover their retirement needs. Many people consider that the current rate of contribution at 5% is too low, and the accumulated contributions



and investment returns in future will be inadequate to support their living after retirement. Hence, the most direct approach is to review the percentages of contribution together with the minimum and maximum levels of income. However, the review must be conducted cautiously, for it involves the contribution amount made by employers and employees, and I believe it will arouse great controversy.

The original motion proposes "abolishing the mechanism whereby employers' contributions under the MPF Scheme are used to offset severance payments and long service payments, and retain Hong Kong employees' rights to severance payments or long service payments under the relevant provisions of the Employment Ordinance". I agree that a review is necessary, but any actual modifications to be made should have the consent of employers and employees. In respect of the offset mechanism, employers and employees have different concerns. We think both sides should be understanding and accommodating, and care about the needs of the other side. Employers should have regard for the interests of employees, while employees have to consider the affordability of employers.

Moreover, Mr Paul TSE proposes in his amendment that the review of the MPF Scheme should include completely abolishing the MPF Scheme. I think Mr Paul TSE often comes up with brilliant ideas and many of his arguments are admirable. But as I said earlier, though MPF cannot provide comprehensive retirement protection to all people, it can help people in employment to accumulate a lump sum for retirement. There is actual value for keeping the system, and it should not be abolished. Moreover, experience has been gained from the 10-year operation of the MPF, and society has invested a lot of manpower and resources in the scheme. If the scheme is to be abolished now, it will cause wastage to society, and the direct result is that tens of thousands of members in the trade will become unemployed.

Here, I would like to introduce the biography of Mr LEUNG Yiu-chung to Members. After reading this book, I have to pay great respect to Mr LEUNG Yiu-chung for his perseverance in working for the grassroots. I notice one point in particular. Mr LEUNG Yiu-chung said that he has all along supported the introduction of a universal retirement protection scheme. In 1995, when the bill on the MPF Scheme was put to vote, he eventually voted against the bill after considering for a long time. He had a different point of view on the MPF, and I

would like to share with Members his remarks in page 102 of his book. I quote, "Despite that, I have to admit that the MPF Scheme is not completely useless. To the very least, it has provided a mechanism for young wage earners to save money and make some preparation for their retirement, which will bring positive effect to individuals and society." (End of quote) I totally agree with this point of view of Mr LEUNG. I highly recommend his biography. Members may read it when they have the chance, and Members will surely benefit a lot.

Deputy President, I so submit.

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

**DEPUTY PRESIDENT** (in Cantonese): Apart from Mr CHAN Kin-por who will move amendment to this motion has spoken just now, four other Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the five amendments.

**DEPUTY PRESIDENT** (in Cantonese): Apart from Mr CHAN Kin-por who has just spoken, I will call upon Mr Paul TSE to speak, to be followed by Mr Ronny TONG, Mr Paul CHAN and Mr LEE Cheuk-yan respectively; but no amendments are to be moved at this stage.

**MR PAUL TSE** (in Cantonese): Deputy President, I have to thank Mr CHAN Kin-por for politely saying that I would sometimes come up with brilliant ideas. I believe he opposes my amendment at heart. But anyway, I have to thank him for saying so. Deputy President, my proposal mainly focuses on the issue of choice. I think in a free society, mandatory measures should be introduced with great cautiousness.

(THE PRESIDENT resumed the Chair)

President, I will use an example for illustration. Suppose a young man starts working at some 20 years old and works till 65. In the first 10 to 20 years of work, we are young and we can choose to do a wide range of things, including setting up our own businesses, studying abroad, travelling around and even buying our first flat. We have all these choices. But now, a mandatory system that denies us those choices has been implemented. We are required to put part of our wages, 5% at least, into a frozen fund, which can only be retrieved when we reach the age of 65.

President, this concept surely has its advantage. There are pros and cons in every issue. But in respect of the Mandatory Provident Fund (MPF) Scheme in Hong Kong, I think the system has inherent inadequacies. Though the Scheme is modelled on the Central Provident Fund Scheme of Singapore, the authorities just copied several but not all the features. The scheme of Singapore represents a holistic concept and system in terms of practices, proportions, government commitments, as well as other measures, for instance, contributions can be used to pay mortgage instalments. However, the MPF system of Hong Kong only adopts part but not all the features of that scheme, hence it turns out to be a "weirdo" system. It can in no way ensure that people in employment will receive proper protection upon retirement, nor can it offer assistance to people in their senior years. Needless to say, people not in employment will have no protection at all. It is evident that many demerits are found in the system. We need not emphasis or say too much about the criticisms against the MPF system in the community, which include the exceedingly high administration fees and the exceedingly low returns, and so on. Above all, the system has deprived us of many free choices that we are entitled to.

President, Chinese people have the habit of saving, which can be said to be the best in the world, among all people and races. I believe no one will dispute this point, for the objective fact speaks for itself. When governments and individuals around the world are on the brink of bankrupt, China is "flooded with cash" and Chinese people are "flooded with cash". No matter how much they earn, Chinese people have the habit of saving for rainy days. We do not need a big government to teach us how to make savings, just as the British need not be taught how to play football and do exercises, for they will naturally do so. If a provident fund system must be set up somewhere, I believe it is the United States which is in need of a mandatory provident fund system, as the Americans do not know how to save money, and they do not have such a habit. However, it is

unnecessary to do so in Hong Kong. We do not need this "weirdo" system that restricts the freedom of choice of many people.

President, certainly, many colleagues may say that the system has been implemented for many years, and as Mr CHAN Kin-por mentioned earlier, if the system is abolished now, it will waste a lot of resources and many people will lose their jobs. However, insofar as strategic measures are concerned, if changes are found necessary in the review conducted years later, we should have the courage to make changes. Back then, the "85 000 units" housing policy just vanished without a sign; and the policy on mother-tongue education had, after undergoing a fine-tuning process under the leadership of Secretary Michael SUEN, vanished as well. If the system, after implementing for 10 years, is found to be not that desirable, not that efficient and not being able to provide proper protection to Hong Kong people, should the authorities consider other options instead of holding on to the system steadfastly?

President, I surely understand and believe that my cry in the desert will not be heard, and not many people will support my amendment, but I hope Members would reflect on this. I notice that after I have put forth this amendment, not only many employers have given their support, but unexpectedly, many employees have also expressed very positive views to me. They support this amendment for they query why their choice should be pre-empted by the Government. Why does the Government not allow them to make their own plans, so that they can freely decide when they should invest, when they should pursue further studies or start a business? Why does it have to restrict all the people to follow one pattern, just like "moulding"? At present, they must put in 5% of their income into this can, and they cannot use the money on education, investment or home purchase, or for any other purposes. Many young people have reflected to me that they support my idea and proposal to abolish the mandatory requirement.

President, for the second best option, even if my view of abolishing the system after the review cannot be accepted immediately, the authorities should at the very least make some substantial and effective changes. Let us not talk about issues like substantially reducing management fees or having better returns, there are in fact other more important choices available for consideration. These include the option of "quasi-free choice/free choice" as the community called it, which allows contributors or wage earners to choose their own investment portfolios or make their own decisions. Naturally, there are some opposing

views in this respect. There are views that employers' contributions may suffer losses if wage earners are too radical in their choices, which will upset the check and balance and undermine the protection. Surely, this problem can be solved. One of the options is to use the contributions already made but not the market value for hedging. These are technical problems relating to specifications, but this option can be examined.

Another issue we may examine is the possibility of not freezing all the contributions. We should not rigidly prohibit the drawing on the contributions for other purposes; contributions should be allowed to be used at suitable time and under proper regulation. For instance, the authorities may offer loans to first-time home buyers. Since mortgage protection is offered in this respect, I believe the risk will be extremely low. In case of certain emergency situations, such as medical and education needs, the authorities may consider adopting a more lenient approach to offer loans to the people concerned, so that they have a choice. The basic concept of my whole speech and my amendment is choice and choice again. We should not stipulate what everyone should do at certain age and what investment they should make, they should be allowed to have more choices.

President, I have mentioned the issues on returns and management fees earlier. As shown by many figures, the average rate of return is 5.1%, but in comparison with the returns contributors may make if they are allowed to manage their own investment, this rate of return is in no way attractive. As for the management fees, though Mr CHAN Kin-por said earlier that fees were charged at some 2% on average, have Members ever calculated the amount of management fees incurred on each individual or as a whole; and the percentage the management fees to the total amount of contributions made? We cannot just compare the management fees of the MPF with the management fees of funds in the market, where some are higher and some are lower, and come up with an average rate. On the contrary, we should find out how much society as a whole has spent on managing the MPF. Let me be more accurate, how much money has been wasted in forcing every citizen to find a trustee to so-called "manage" his money. This is the only way to truly reflect the wastage of social resources in this respect.

President, to conclude, I do not oppose the Government's act of nurturing the public to develop the habit of saving. On the contrary, as I said earlier, it does not have to spend much effort in nurturing Chinese, including Hong Kong

people, to developing this habit. I strongly oppose the micromanagement approach of the Government. As in a recent case in a city in California where the chain stores with the letter "M" gave out gifts to promote their products, the authorities intervened because it considered that the practice of offering gifts would encourage people to take junk food, hence, they did not allow the stores to carry out such promotion activities. Do we want the situation to go this far? Or should Hong Kong, still being a free society, try its best to encourage people to make their own plans, so that it is unnecessary to adopt a broad-brush approach to restrict the freedom of all people. This is the essence of my speech. I also hope that the Government will consider this possibility in the review. It should not only focus on perfecting the scheme and rule out all other possibilities. When the authorities consider this issue, will it consider this second best proposal? I even encourage the Government to consider the universal retirement protection scheme together. It can only solve the problems by doing so, instead of relying on the current MPF system, which is neither fish nor fowl but a "weirdo" system. Thank you, President.

**MR RONNY TONG** (in Cantonese): President, retirement protection is not a subject concerning welfare. The Government is obliged to ensure that everyone who has contributed to society will lead a life of acceptable standard upon retirement. Those who have so-called contributed to society do not just refer to wage earners alone. Hence, President, when the Government proposed the Mandatory Provident Fund (MPF) Scheme 10 years ago, many members of society pointed out that this was not a genuine retirement protection scheme.

However, as Mr Paul TSE said earlier, at that time when there was no other alternatives, some protections were better than none. After a lapse of 10 years, we find out that many aspects of the MPF Scheme are unacceptable.

President, as early as 2007, the Chairman of the then Mandatory Provident Fund Schemes Authority (MFPA), Mr Henry FAN, said that the management fees of the MPF were too high and it lacked transparency, and if no improvement was made, the benefits of contributors would vapourize by as much as 40%. He had cited the following example to illustrate his point. For a contributor making \$2,000 monthly contribution for 40 years and the rate of return was set at 5%, the contributor would eventually receive \$3.05 million if no management fees were charged by the trustee. But if the trustee charged a minimum management fee at

2% per annum, the contributor would only receive \$1.85 million in the end. Hence, we propose implementing the free choice MPF to introduce real competition into the MPF market, so that the protection of contributors will be enhanced. The Government has originally agreed to implement the proposal this year, but regrettably, it has not done so in the end. Therefore, we are now looking forward to the improvement of this mechanism.

Another issue that many colleagues have mentioned today is the mechanism whereby employers' contributions are used to offset severance payments and long service payments. This is a deprivation of the rights of employees, and it defeats the purpose of the MPF in providing retirement protection for employees. If an employee has been made redundant many times during his period of employment, the amount of contributions accumulated and the return earned from the contributions will be insignificant. Even if an employee has been working for 40 years and his employers have made contributions, the amount of contribution the employee receives in the end will be inadequate for him to lead a life of an acceptable standard upon retirement.

Moreover, the large number of family carers working without paid in society have been completely ignored under the MPF Scheme. Though they receive no wages, they have made actual contribution to society, for their labour has enabled other members in their families to take up employment.

President, as mentioned by the incumbent Chairperson of the Equal Opportunities Commission, Mr LAM Woon-kwong, at a forum on universal retirement protection, among the 680 000 family carers, 98% are women. These women do not have a retirement life, and if they really want to stop working, they can only rely on the support from their husbands or children. They have no retirement protection at all. This is a very serious negligence to family carers.

President, if that is the case, should we simply abolish the MPF Scheme as proposed by Mr Paul TSE? Will the problem be solved in this way? I think this approach is too passive. In my view, the MPF Scheme should be abolished on the premise that a universal retirement protection scheme will be established immediately, and this is a logical approach which may be considered and accepted. In the absence of a universal retirement protection scheme, if this tiny umbrella is taken away, it will only make all people soaking wet.

President, on the establishment of a universal retirement protection scheme, the community has brought up the problem of an ageing society as early as five years ago. Particularly for labourers and low-skilled workers, their retirement life lacks proper protection. As I mentioned earlier, family carers are also not covered under the MFP Scheme. Hence, we consider that there is a pressing need to set up a universal retirement protection scheme.

President, in September this year, the Centre for Social Policy Studies of The Hong Kong Polytechnic University (PolyU) issued a report on an opinion poll on the MPF and retirement protection. The Centre for Social Policy Studies of PolyU pointed out in the report that over 60% of MPF account holders interviewed considered that the existing MPF system failed to alleviate their worries about their retirement life, 80% of the interviewees considered that a universal retirement protection scheme should be established, and 90% — President, it is 90% — of the interviewees considered that the Government should make contribution to the universal retirement protection scheme. On the other hand, the report revealed a rather worrying phenomenon, that is, over 40% of the interviewees had not made extra savings or investment for their future retirement life. In other words, they rely on the MPF as the only support of their retirement life. To put it crudely, the MPF is their lifelong saving.

President, this is a social problem. When these people approach or reach their retirement age and they have no protection for their retirement life, they may be compelled to request additional social welfare from the Government. This situation may bring instability to society. However, the Government does not deal with this time-bomb now, it just leaves the problem to the future Government.

Not only MPF contributors worry about the sufficiency of MPF in meeting their needs after retirement, even members of the MPF trade doubt so. According to the report of a survey conducted by the MPF trade on scheme contributors, over 40% of contributors say that during the 10 years of the implementation of the MPF Scheme, Hong Kong has experienced two financial crises, and their MPF contributions may only meet their primary expenses for five years after retirement. At the same time, according to the estimate of the Census and Statistics Department, the average lifespan of Hong Kong people will keep rising. By 2036, the average lifespan of men will reach 83, and that of women will reach 88. In other words, upon retirement at the age of 65, Hong Kong



people may still live for 20 years on average. Apart from the primary expenses for the first five years, what can they live on for the remaining 15 years? Can the Government just wash its hands of it? I think the Government is utterly adopting an ostrich approach.

Though the insurance sector has brought up this worrying figure, the Government just remains indifferent. To encourage contributors to think about issues relating to their retirement, the Government is obliged to explain the case to wage earners and convince them to prepare for the rainy days and start saving. However, if the grassroots are only earning subsistence wages or even lower, they can in no way make savings even if they want to do so.

President, according to the paper provided by the Secretary for Financial Services and the Treasury in response to my oral question in March this year, for employees now aged around 40 and earning a monthly salary below \$5,000, when they reach the retirement age of 65 in 2030, which will be the peak year of the ageing population, they will only receive \$169,000 accrued benefits from the MPF Scheme. However, this is still subject to the conditions that the return rate of their MPF can maintain at 5% and no large scale financial crises have occurred. In other words, without these two conditions, they may get even less than \$169,000.

President, under this circumstance, we see no reason for the Government to procrastinate the establishment of a universal retirement protection scheme and adamantly refuse to face this serious practical social problem.

President, I hope Mr Paul TSE will convince his supporters with his persuasiveness to support the establishment of a universal retirement protection scheme, instead of adopting a negative and passive approach of simply abolishing the MPF Scheme. President, society cannot afford this choice.

Thank you, President.

**MR PAUL CHAN** (in Cantonese): President, I put forth my amendment today to urge the Administration to pay attention to the needs of the middle class, for this group of people are often neglected by the authorities. More often than not, they cannot benefit from the housing and welfare measures, and when the economy is

in the doldrums and taxes have to be increased, they will be the first to bear the brunt. Besides, they have to take care of their parents on the one hand and their wives and children on the other. Hence, the burden, responsibilities and pressure they are facing can hardly be expressed in words.

President, I know that the Mandatory Provident Fund Schemes Authority (MPFA) is now conducting a review on the minimum and maximum levels of income of the Mandatory Provident Fund (MPF) Scheme. I hope they will listen to my views and those of my colleagues and consider those views thoroughly before making any recommendations.

I notice that the retirement protection mentioned by the Government is composed of three pillars, namely, the safety net of the Comprehensive Social Security Assistance (CSSA), the MPF Scheme and voluntary individual savings. As the middle class are not eligible for CSSA, the MPF Scheme is the most important pillar of retirement protection to them. The success of the MPF Scheme lies in the contributions made by employers and employees. Will the existing monthly contribution, being capped at \$1,000, provide retirement protection to the middle class? We may perhaps look at the figures.

President, in the Government's reply to a question from Mr Ronny TONG this year, it undertook to provide information on the amount of MPF accrued benefits an employee might receive at the age of 65 according to different income groups. However, the supplementary information later provided by the Government included only five income groups, where all people earning \$20,000 or above a month were included under the same group. It then came up with the calculation that this group of employees would receive \$2.28 million at the age of 65. The Government glibly includes all employees earning \$20,000 or above a month under the same group, and those "King Wage Earners" earning several hundred thousand dollars a month are also included under this group in calculating the accrued benefits. I thus consider the result inaccurate and incomprehensive, and may be misleading as well. As for those high-income earners, even though the monthly contribution ceiling is set at \$1,000 by the Government, many scrupulous employers will make the 5% contribution according to their actual wage instead of the contribution ceiling of \$1,000.

President, I propose raising the ceiling of employers' monthly contributions to employees' MPFs to \$2,500 a month per person — that means the maximum

levels of monthly income of employees will be \$50,000 — so that employers can make more active commitment to employees' retirement life. The proposal seeks to provide the middle class earning \$50,000 or below a month with more meaningful protection upon their retirement.

President, allow me to quote another set of figures. Earlier on, the Census and Statistics Department announced the information on the number of domestic households by monthly household income and household size. The information indicates that in the third quarter this year, 300 000 domestic households are earning a monthly income of \$50,000 and above, accounting for 12.8% of the total number of households. There are 352 700 domestic households earning a monthly income of \$10,000 to \$14,999, which accounts for 15% of the total number. As for domestic households earning a monthly income of \$15,000 to \$19,999, there are 286 200 households, accounting for 12.2%. How about the number of domestic households earning a monthly income of \$20,000 to \$49,999? President, there are 802 100 households, accounting for 34% of the total, that is, more than one third of the total number of domestic households in Hong Kong.

President, the MPF Scheme has been implemented for 10 years. At the early stage of implementation, the business sector worried that it would increase their operating costs. But today, after a lapse of 10 years, I think we should draw a conclusion. For areas where the performance of the Scheme is far from satisfactory, such as the high administration and management fees mentioned by Members earlier, I believe we may work harder to monitor and rectify the problem. However, I strongly believe that if we keep on putting aside some money for saving, the Scheme can still be a retirement protection plan.

Why would I choose to set the maximum income level at \$50,000? I think we should progress gradually. For employees earning \$50,000 a month, their employers are only required to make a monthly contribution of \$2,500, which is only \$1,500 more in comparison with the existing level. There is no question of high income earners or super-high income earners getting special benefits, but this can provide better protection to the middle class earning a monthly income of \$50,000 or below. President, I have made some estimates, if the maximum income level is set at \$50,000 as I proposed, contributions made for 25 years with a rate of return of 6% will bring approximately \$3.5 million for the contributors upon retirement. Why do I use 25 years as the basis for my

estimate? This is because a fresh graduate can hardly earn \$50,000 a month during the first few years of work. Besides, Members have to understand that the \$3.5 million is not only for meeting the needs of the employee himself, but for meeting the needs of the whole family on most occasions.

President, I have been a wage earner for 10 years, I believe the level I propose in my amendment will benefit many middle-class families. President, I am also the owner of a small and medium enterprise (SME), and I believe the proposed level will not unnecessarily increase the burden of enterprises. If an employee of a SME is paid a monthly salary of \$40,000 to \$50,000, the employee should be very helpful to his employer, and it is only natural for the employer to take care of the retirement life of that employee. President, if the Government accepts my proposal, it will benefit 802 100 middle-class households earning \$20,000 to \$49,999. Moreover, the 300 000 households earning \$50,000 or above will also benefit. That means 1 103 000 households in total will benefit, which accounts for 47% of the total number of households in Hong Kong.

President, apart from increasing the contribution of employers, I think we should correspondingly increase the tax deduction for employees' contributions. At present, the tax deduction is set at \$1,000 a month, which is \$12,000 per annum, and I now propose to increase it to \$2,500 a month, which is \$30,000 a year.

President, regarding the universal retirement protection proposed by Mr WONG Kwok-kin, I strongly support the principle involved. There are proposals in the community of increasing the monthly contributions of employers and employees by 2%, but the extra amount will not be put in individual contribution accounts and will be shared among all retired persons. President, this practice is *de facto* an increase in salary taxes and profit taxes. In the case of salary taxes, since the amount is levied before the deduction of other tax concessions, it will impose extremely heavy burden on employees and employers. It is no easy task to forge a consensus on this in society. Besides, if we look at the cases in other places around the world, certain countries adopting similar approaches have eventually failed due to the ageing population. Therefore, if this approach is to be adopted, I can hardly support it.

However, I recalled that when I first became a Member, the Secretary for Labour and Welfare, Matthew CHEUNG, revealed at a meeting of the Panel on

Welfare that the Central Policy Unit (CPU) was examining a universal retirement protection scheme and there would be new initiatives and directions. At that time, I hoped that the study could be comprehensive. Regrettably, two years have passed, but we see no hint of the scheme. I hope that the authorities will put forth several feasible options, so that society may have thorough discussions and come up with a conclusion. I hope this will put a full stop to this important subject that has been disputed for a decade or so. It should do justice to the elderly and this generation who have been working hard, and no more stopgap measures should be adopted to address temporarily to public opinions. President, I hope the Secretary can give a detailed account of the study conducted by the CPU mentioned by me earlier when he gives his reply shortly.

I think retirement protection is an important subject which society should face squarely. I support conducting an in-depth study on universal retirement protection, and that feasible options should be proposed for early and proper implementation.

President, I so submit.

**MR LEE CHEUK-YAN** (in Cantonese): President, it is a good choice to have this debate today, for 1 December this year happens to be the 10th anniversary of the implementation of the Mandatory Provident Fund (MPF) Scheme. However, Members should think about the following point, how come for such an important system affecting all wage earners in Hong Kong and relating to the retirement protection of all Hong Kong people in the long run, the Government does not propose conducting a review. I think it is a dereliction of duty on the part of the Government for not initiating a review of the Scheme. We have proposed this to the Mandatory Provident Fund Schemes Authority (MFPA), and they replied that a review within their purview would be conducted. However, many policy-related issues have to be dealt with by the Government. First, I feel extremely disappointed about this. Perhaps Secretary Prof K C CHAN should explain shortly why the Government does not initiate a comprehensive review on its own accord.

I am particularly disappointed with Chief Secretary Henry TANG, for he is the Chairman of the Steering Committee on Population Policy. The primary function of the Steering Committee is to get Hong Kong prepared at present for the challenges posed by the future population to society as a whole, so that Hong

Kong can cope with challenges brought by the population in future. For many years, the Government has been talking about the problem of an ageing population to be faced by Hong Kong in future. We always hear the Government mentioning this problem, but we have never heard Chief Secretary Henry TANG or the Government stating how the ageing population problem should be addressed. Members all know that the future dependency ratio will be four young persons to one elderly person, which is an extremely low ratio. As time passes, the ratio will decrease further. By then, who will support the elderly? How should their retirement protection be dealt with? Actually, the Steering Committee should examine these issues. But regrettably, there is dereliction of duty on the part of Chief Secretary Henry TANG, for he has failed to consider these issues within his purview. Certainly, he now has to deal with the Community Care Fund (CCF), and who in the Government will be responsible for these long-term issues. Actually, the MPF Scheme is now facing the problem of being totally neglected. Secretary Prof K C CHAN will consider the issue from the financial perspective; the Labour and Welfare Bureau says that the issue is within the policy area of Secretary Prof K C CHAN and not related to the Bureau. Yet, retirement issues should be within the purview of the Labour and Welfare Bureau and the policy area of Chief Secretary Henry TANG. But they just ignore their duties and shift the responsibility to Secretary Prof K C CHAN and let him consider the issue from the financial perspective, where not much can be considered in that context. Therefore, the policy has an inherited deficiency to a certain extent, with no one being actually responsible. In this way, the situation just prevails without addressing the problems, and no review is conducted even though the Scheme has been implemented for 10 years by now.

I now return to the Steering Committee on Population Policy I mentioned earlier. In previous replies given by the Government, it kept using the excuse that studies were in progress. On 21 December 2007, in response to the recommendations on retirement protection made by the Council for Sustainable Development in the Report on the Public Engagement Process on Population Policy, the Government pointed out that two studies were in progress under the CPU and were expected to be completed by the end of 2007. It was said that the Government would refer to the findings of the studies when they were completed. The studies were completed by the end of 2007. Where can we find the report? No one can answer this to date. In 2009, the Chief Secretary for Administration said in a reply to Mr Abraham SHEK's question that studies would be conducted. But again, no one knows the findings of the studies. The studies started in 2007, but no findings have been provided. By now, it is still saying that studies are in

progress, but no one knows the results. Recently, I asked the CPU about this, and it told me that studies were underway. I at once indicated my wish to meet with the researchers to discuss issues on universal superannuation and universal retirement protection, but no arrangement has been made up to this moment. I wonder how long this study will take. Everything seems to be sinking down a black hole. No one knows the findings of those studies. It is regrettable that the Government is unwilling to share the result of studies with society, and no one knows the scope of those studies. Has the Government identified a lot of problems in the process, and it eventually has to cover up the results of those studies and dare not publish the results? We do not know. I do not want to make any guess basing on the conspiracy theory. But since the studies had been completed in the end of 2007, and if it is frank and just, why has the Government not announced the findings? This is one big problem. It is disgusting that the Government has never announced the results of those studies.

President, the second problem is about the inherent inadequacy of the MPF. As Members can see, this is a tangerine. The MPFA says that it is a mandarin<sup>1</sup>. May I ask the MPFA or Secretary Prof K C CHAN one question, if a person plants tangerines, he will only get tangerines; how will he get mandarins by planting tangerines? That is impossible. A tangerine will be a tangerine. If one only invests a small amount, he can only get a tangerine in return. Just think of this, the first major problem of the MPF system is that certain people may not even get a tangerine in return. Who are these people? They are those not in the workforce, particularly housewives or family workers. They should not be called housewives, but family workers or family helpers instead. These people have all along been excluded from the coverage of the MPF scheme. In other words, these people do not fall within the scope of the MPF scheme, for the MPF scheme is only set up for wage earners. Hence, the first group of people who do not even get a tangerine are those who do not go out to work in order to take care of their families. We are doing a disservice to them. Elderly person will also get nothing. The MPF has nothing to do with them, for they have already retired. We are doing a disservice to them too, for they cannot even get a tangerine.

The second group of people who will only get a tangerine are the low-income earners. Every employers and employees will have to make a 5% contribution, but employees earning less than \$5,000 do not have to make

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<sup>1</sup> The word "柑" is pronounced as "gam1", which sounds similar to another word "金", which means gold

contributions, only their employers have to make the 5% contributions. The amount receivable by this group of people is even less than a tangerine. In other words, apart from the bigger tangerine, there are some smaller tangerines. Retirement is meaningless to them. Even if they have been saving for 40 years, their savings will be spent in three to four years. If so, what is the meaning of retirement? Should the Government not take care of their needs? This is the second structural problem. The scheme utterly fails to offer adequate protection to low-income earners.

As for the third major problem, I will say that the system is a measure to rob the poor. Why do I say so? Under the MPF system, fund management is a pre-requisite, which means management organizations will first reap profit by charging management fees, and workers are only left with the remaining amount. If it is not robbing the poor, what is it? Some people estimate that at the current 2% management rate, the amount incurred will be equal to 40% of the contributions made in 40 years, leaving only 60% of the contributions for employees. The money earned by workers after years of toil has to be shared with fund management companies at a ratio of 6:4, with workers getting 60% and fund management companies getting 40%. Though there are requests for lowering the management fees, I wonder when this can be done. The 2% management fees charged will erode the contributions by 40%. This is another structural problem, for it allows fund management companies to eat up a certain amount by charging fees.

The fourth problem is the offset mechanism which has been discussed for many years. How should employers' contribution be allowed to offset severance payments? Under this offset mechanism, if I have been dismissed for reason of redundancy four times in my life, I will get nothing upon retirement, for the contributions have been used to offset the severance payments. This arrangement will make the MPF Scheme meaningless, and the Scheme should instead be called the "severance payment fund", for it is a means for employers to pay severance payments. This is the fourth ridiculous point.

The fifth inadequacy is about the current Occupational Retirement Scheme (ORSO). President, the ORSO is still allowed to operate at present. Under the ORSO, there is a point fooling the public, that is, the requirement that employees may obtain 50% of the benefits after five years of service. If an employer dismisses an employee after two years of service, the employee will not get a



dollar, but the employer can get back his contribution under the ORSO. Since ORSOs are presently subject to no regulation, we request that the Government should discontinue the operation of certain old ORSOs which provide protection inferior to the MPF Scheme.

President, I would like to focus on the two specific proposals I put forth. The first specific proposal is about the contribution method. Many people propose using the bank saving approach in making contributions, where no management fees will be charged, but I cannot think of any feasible approach. Eventually, I come up with the idea of depositing the contributions in the Exchange Fund as a public option. This involves adding a new product under the fund, and making the Exchange Fund an investment option. As in the case of fiscal reserves, 6% from the fiscal reserves can be set aside to provide an average return of 6% for every six years. The authorities may examine the rate of return every six years according to the performance of the Exchange Fund. To employees, they will be on the same boat with the investment put in the Exchange Fund, which is a favourable arrangement to them. I believe the administration fees and management fees of the Exchange Fund are very low, this can thus provide a secure means of investment to employees. Moreover, since their investments are pegged to the performance of the Exchange Fund, they receive better protection than investing in other high-risk options and it is more meaningful than investing in certain conservative funds.

Finally, I would like to bring forth the concept of contribution for low-income employees. If the Government can help people earning less than \$5,000 to make contributions, they can at least get a bigger tangerine in future. If the Government can provide a supplement to those earning \$5,000 or above, there is hope that the tangerine will become a mandarin. Thank you, President.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, I am thankful to Mr WONG Kwok-kin for proposing the motion on "Comprehensively reviewing the Mandatory Provident Fund Scheme" on this very special day when the Mandatory Provident Fund (MPF) Scheme has been implemented for 10 years, and five Members for proposing amendments.

The retirement protection system currently adopted in Hong Kong has drawn reference from the three-pillar model advocated by the World Bank in

1990, which includes a publicly-managed social security protection system where all expenses are met by the Government from General Revenue, voluntary personal savings and insurance and the MPF system. The legislature endorsed the adoption of the system in 1995 after prolonged discussions by different sectors of the community. In 2005, the World Bank made reference to the experience of different countries in pension reform and expanded the model from three pillars to five pillars. Non-contributory assistance for the alleviation of poverty and protection of the elderly, and other support, such as family assistance, are added as new pillars of retirement protection. In other words, the MPF system is still an essential part of the retirement protection system. However, just as the Chairman of the Mandatory Provident Fund Schemes Authority (MPFA) Mrs Anna WU has pointed out in a recent interview with the media, the MPF Scheme is only one of World Bank's advocated pillars. It does not intend to sufficiently meet one's needs after retirement, neither does it cover people who are not employed.

The MPF system aims to accumulate retirement savings for the employed population through contributions by both employers and employees. In the face of an ageing population, the MPF system may also help relieve the pressure on social welfare expenditure over the long term. Before the inception of the MPF system, only one third of Hong Kong's population had some form of retirement protection. By the end of September 2010, the MPF Scheme has amassed assets totalling \$345.7 billion for nearly 2.5 million employed and self-employed persons. Together with other retirement protection schemes, about 90% of the employed population has currently joined the retirement protection scheme. Since the implementation of the MPF in 2000, it has an after-fee rate of return of 5.1% on average, which is even higher than the 0.4% increase in annualized composite consumer price index for the same periods. Furthermore, the figures show that the percentage of voluntary contribution to the total MPF contributions has increased year-on-year from 9.2% of 2002 to 15.4% of the third quarter of 2010. This demonstrates that the employed population is making retirement savings more proactively through the MPF Scheme.

Therefore, as a pillar of Hong Kong's retirement protection, we believe the MPF system can enhance the retirement protection of employees. As the MPF system has only been launched for 10 years, there is definitely room for improvement in terms of the system or the actual operation. As a matter of fact, the Government has maintained close liaison with the MPFA. Continuous

review will be made with a view to making improvement proposals for practices in different perspectives under the MPF system in the light of the actual operation experience and the stakeholders' views. Since 2000, seven sets of legislative amendments proposed by the Government have been endorsed by the Legislative Council. They included amendments to raise the penalty for default on contributions, to streamline and improve the overall operation of the MPF system, and to introduce a system for employees to choose their own schemes. Meanwhile, the MPFA is reviewing certain areas of operation, for instance, the adequacy of the contents of the information disclosed and the channels of disclosure of information to scheme members, and the possibility of allowing scheme members to withdraw their accrued benefits by phases. Appropriate follow-up actions will be taken in the light of the findings of the MPFA, and the Legislative Council will be consulted on the proposed legislative amendments.

President, our staff and those of the MPFA will listen carefully to the speeches made by Members on today's motion and amendments, with a view to further improving the MPF system. A more detailed response will be made later on after Members gave their speeches.

President, I so submit.

**MR WONG KWOK-HING** (in Cantonese): President, today, on the 10th anniversary of the implementation of the Mandatory Provident Fund (MPF) Scheme, Mr WONG Kwok-kin from the Hong Kong Federation of Trade Unions (FTU) puts forth this meaningful motion debate. He has put forth nine proposals earlier, and I would like to focus on three major points.

Before I explain those points, I would like to point out that as early as in the 1980s of the last century, the FTU had proposed to the Government the universal retirement protection system with tripartite contributions from the Government, employers and employees, to solve the problem of unemployment and to provide retirement and medical protection. Regrettably, the Government had not accepted the proposal. It had let the golden opportunity slip. In 1995, the Government passed and implemented the MPF system, but the system has been fraught with problems since its implementation. At the 10th year of its implementation, the Government still lacks the resolve to review the system comprehensively. I have to express my regret about this.

Hence, I would like to put forth three points. First, the existing MPF system is fraught with problems. Mr WONG Kwok-kin has put forth nine proposals and the press has listed ten sins of the system. In fact, it does not matter whether there are nine or 10 problems, for the point is that the existing MPF system is fraught with problems. Since the system has been implemented for 10 years, I hope the Secretary will tell us whether the Government will conduct an open and comprehensive review. I notice the Secretary said in his earlier speech that the Mandatory Provident Fund Schemes Authority (MPFA) would conduct reviews in individual aspects. But if the review is only focused in certain aspects, it is not a comprehensive review. In May last year, the Chairwoman of the MPFA, Anna WU, said that a comprehensive review would be conducted. Since the Chairwoman of the MPFA has already promised doing so, will she honour her words? If the promise cannot be honoured, is it because the Government and the Secretary disallow her to do so? We may disregard whether the promise of Chairwoman Anna WU has been honoured, but will the Administration conduct an open and comprehensive review? I earnestly hope that the Secretary will give a clear reply to this question later. If a review will be conducted, what is the timetable? When will the comprehensive review be carried out? I hope that in the debate today, the Government will be pressed to submit a timetable for the comprehensive review. This is the first point.

Second, at the debate on the Policy Address this year, I pointed out that the seven responses made by the Government could be likened as a Gibraltar monkey, which has a head but not a tail. One of the examples is the quasi-free choice MPF scheduled to be implemented this year. In the course of arrangement, it was suddenly discovered that there is no regulatory legislation on monitoring intermediaries, and that licensing requirements had to be introduced. We agree that a regulatory regime should be put in place, but how come the Government lacks the foresight to identify this problem in advance? Since this problem was brought up all of a sudden, the quasi-free choice MPF had to be called to a complete halt at its impending implementation. At present, nearly 2.5 million wage earners have joined the MPF, the accrued benefits involved amount to \$345.7 billion, and the management fees paid each year amount to \$6.5 billion, which is approximately 2%. The delayed implementation of the quasi-free choice MPF can be compared to the object in my hand now, which is a symbol of the MPF. The quasi-free choice arrangement is not applicable to one half of the contributions, which are contributions from employers. As for employees' contribution, if the implementation of the quasi-free choice MPF is delayed for two years, this object will loss one clove in the first year and another

clove in the second year, and each of these cloves equals to \$6.5 billion. Secretary, a delay of one year or half a year will cause tremendous loss to wage earners. The two cloves lost will cost \$13 billion in total, which is a colossal amount. Hence, may I ask the Secretary of the progress of the legislative work on regulating intermediaries? I hope you can give an account in this respect.

Some days ago, at a meeting of the Panel on Financial Affairs of the Legislative Council, I asked the secretary from your Bureau about this issue, and he told us not to worry and be patient. He said that we would be informed of the progress of the preparatory work on the regulatory legislation of intermediaries in the first quarter next year. I heard it very clearly that it was about the progress of the preparatory work. It was not about the submission of the bill or the provision of policy documents, but only about the progress of the preparatory work. Moreover, we had to wait till the third quarter of 2011. My heart sank as he went on. When will the legislative work on the regulation of intermediaries be completed? There is no final timetable for this. If the work in this aspect cannot be settled, will it really be possible to implement the quasi-free choice MPF in 2012? I think the chance is pretty slim. Hence, will the Secretary tell us whether it is necessary to carry out legislative work or introduce legislative amendments for the implementation of the quasi-free choice MPF arrangement? You must give us a clear account today. If legislative work is required, can this be carried out as soon as possible? If another problem arises after the first one is settled, I am afraid the quasi-free choice MPF will not be implemented till the end of the term of this Government, not to mention the loss of the two cloves.

President, now that I have only 10 more seconds to speak, I would bring forth the third point. In view of the loss of the two cloves amounting to \$13 billion, does the Government have any new initiatives or methods to help wage earners during the two-year transitional period, so that they will not lose so much money and their MPF contributions will not be eaten up by the 19 trustee companies. Does the Government have other alternatives to help them? It seems that the Government has not considered this issue at present. We do not see any proposals put forth by the Government. It just let time pass away during the transitional period and allows the 19 trustee companies erode the MPF contributions without doing anything. I urge the Government to explain this. Thank you, President.

**MR IP KWOK-HIM** (in Cantonese): President, many Members have pointed out the inadequacies and problems of the Mandatory Provident Fund (MPF) system earlier on. Honestly, the MPF has been implemented for 10 years, but the fees charged are still on the high side. Despite the efforts made in the past two years, the fees have only been reduced from 2.1% to 1.9%. However, the overall rate of return has been far from satisfactory, which is only around 5%. The accrued retirement benefits of employees have been significantly eroded by the high management fees. Since MPF trustees have long since recovered their costs of investment in the businesses, and the net asset value of MPF have been increasing, there will be more and more requests from contributors for the lowering of MPF fees in future. I hope the Secretary will pay attention to this point.

Since the implementation of the MPF system, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has all along been raising proposals on MPF fees. In 2003, we requested streamlining and standardizing charge items, drawing up standardized benefit statements and requiring the provision of benefit statements to scheme members at half-year intervals. Later, we continued to strive for the "portable individual account system" and the lowering of MPF fees. We expect that with the implementation of the quasi-free choice MPF, the trade may change the mode of charging fixed-rate management fees. Management fees may be charged at concessionary rates on an account-based or individual-based, so as to match with the frequent adjustments of accounts made by employees according to the market situation. Certainly, with increased competition in the market, the Government must take corresponding measures to step up the regulation on intermediaries selling MPF products.

President, Mr Paul CHAN has proposed an amendment to enhance the retirement protection for the middle class. Actually, in order to enhance the protection for the retirement life of employees in the relevant classes, the DAB had, in the past few years, made various proposals to the Government on providing tax deductions for voluntary MPF contributions. If the voluntary contributions are kept in the account till retirement, the contribution made by the employee may be deducted from the taxable income of the employee concerned, and the tax concession may be capped at 5% of the salary or \$1,000 the maximum. At the same time, to cater for the needs of certain type of contributors, we propose introducing certain MPF contribution accounts adopting

purely fixed-term deposit mode for employees, which offers a choice to contributors who are senior in age. Moreover, we hope that the Mandatory Provident Fund Schemes Authority (MPFA) will allow contributors to apply, under special circumstances, for the suspension of contributions, retrieval of part of their contributions or retrieval of contributions by instalments to meet with their pressing needs.

All along, default on MPF contributions by unscrupulous employers has been a common problem, particularly in cases where food establishments and restaurants suddenly cease operation, employers would default payment of wages, severance payments and long service payments to employees. In those cases, the MPFA has to make all efforts to recover MPF contributions from escaped employers for the employees concerned. Recently, the MPFA disclosed that though the number of complaints against default on MPF contributions by employers has decreased, employers have come up with new tricks in defaulting contributions. For instance, some employers defend that they think no contributions are required for employees earning less than \$5,000 a month. Regarding the date of entry of service of employees, some employers delay the entry date of employees for six months to reduce the amount of contributions they have to make.

In 2008, the Government amended the legislation to increase significantly the penalty on employers violating the requirement to a maximum fine of \$350,000 and three year's imprisonment. However, although the MPF has been implemented for 10 years, so far no one has been convicted by the Court, and the heaviest penalty sentenced is only a fine of \$250,000. The DAB proposes that apart from setting up a blacklist of employers, the authorities should consider imposing heavier penalty on repeated offenders.

President, the DAB supports the original motion and the various amendments. Regarding the proposals therein, we consider they are worthy of review and should be referred to the Labour Advisory Board for discussion with a view of reaching a consensus. However, regarding the amendment proposed by Mr LEE Cheuk-yan, that is, allowing employees to deposit part of their MPF contributions in the Exchange Fund and receive a rate of return equal to that of the investment income of the fiscal reserves of the Government, the DAB considers that this approach may be inappropriate. In our view, the investment activities of the Exchange Fund involve government assets and public money, but

employees' pension is under the investment item of the social welfare mechanism, the two should not be merged in investment. At the same time, as a minimum rate of return is guaranteed, if the Exchange Fund experiences loss, the arrangement will *de facto* require the Exchange Fund or the Government to underwrite the investment return of the MPF. Hence, we consider this approach inappropriate.

Moreover, regarding Mr Paul TSE's amendment on completely abolishing the MPF Scheme under the review, the DAB considers that though there is room for improvement under the MPF system, the system has been effective in some ways in providing retirement protection to the labour force in general in Hong Kong. Hence, we do not support abolishing the system arbitrarily and starting all over again. Thank you, President.

**DR PAN PEY-CHYOU** (in Cantonese): President, the Mandatory Provident Fund Schemes Authority (MPFA) uses a mandarin as its logo, but I bring some tangerines to this Chamber today. I cannot find tangerines of inferior quality and have thus brought these "sugar tangerines". But in reality, the tangerines offered under the Mandatory Provident Fund (MPF) Scheme are dry and tasteless. Why do I say so? The MPF Scheme has been implemented for 10 years, but we still see that it is fraught with problems. One of the problems causing wage earners to feel deeply aggrieved is that employers may use their contributions to offset the severance payments and long service payments for employees.

According to the reply of the Secretary for Financial Services and the Treasury to a question from Mr WONG Kwok-kin at a meeting of the Legislative Council earlier, the total amount of MPF accrued benefits used to offset severance payments and long service payments had increased from \$166 million in the second half of 2001 to \$1,138 million in the first half of 2010, an increase of nearly 10 times. The total amount for last year was as high as \$2,587 million. It is evident that the problem of using MPF contributions to offset severance payments and long service payment is worsening. If this offset arrangement is allowed to continue, the retirement protection which employees are entitled to will be eroded. For every time an employee is being dismissed, the employer will deduct a certain amount from the employee's MPF account under the offset mechanism. If so, how can employees save money? How much will be left in employees' MPF account when they retire?



Nowadays, more and more jobs are offered on contract terms in society. These employees with specified years of service will be made redundant after a certain period of time, and a certain amount will thus be deducted from their MPF accounts at intervals. It is very unfair. Hence, we propose abolishing the offset mechanism to ensure that employees can get their entitled severance payments and long service payments, and that their benefits in the MPF accounts will not be deducted, in this way they can enjoy comprehensive retirement protection. On the other hand, we have to pay attention to how much the public know about the MPF Scheme. Many citizens and wage earners only know that 5% of their salaries will be deducted when they receive their salaries, and that 5% will be their MPF contributions, but they do not understand the content of their contributions.

Although the Government will soon implement the quasi-free choice MPF scheme to allow employees to choose freely the trustee to manage their MPF contributions, we think it is far from adequate. Employees have the right to entrust their own contributions and the contributions of their employers to a trustee which they trust. Hence, the FTU always supports converting the MPF Scheme to a complete free choice scheme, as all contributions to the MPF will eventually belong to employees. For this reason, how can we tell the public that part of the contributions which they own cannot be handled by them freely, and they are only allowed to handle part of their contributions?

Moreover, I think the authorities should step up its efforts in promotion and education, so that the public will understand how to choose funds of different risk levels for their retirement protection. Moreover, the existing minimum and maximum levels of income for contributions under the Scheme should be reviewed. As the minimum wage will be implemented next year, we think that the reasonable approach is to set the minimum level of income for contributions under the MPF Scheme at a level above the minimum wage.

According to the figures provided by the Census and Statistics Department, in the third quarter this year, 114 500 people are earning \$5,000 to \$5,999 a month and 194 700 people are earning \$6,000 to \$6,999. For grass-roots wage earners earning meagre income, the 5% contribution is a tremendous sum to them. At present, they have to face inflation and price hikes — Members should know the great increase in prices this year. Even if the Government returns the 5% contribution to them in full, they can hardly meet their daily needs with their

meagre income. If the Government has to deduct 5% of their salaries as contribution, this would increase their financial burden significantly. Hence, in order to allow these people to plan for their retirement and save for the rainy day, we opine that they should be exempted from making contributions.

In other words, people earning below the statutory minimum wage level should be exempted from making MPF contributions. At present, Hong Kong relies on the MPF system to provide retirement protection to wage earners. But when the MPF system was first introduced, we already knew that if the system was compared to an umbrella, it could at most be a small and broken umbrella. The existing system has been implemented for 10 years ..... We surely hope that the Government will eventually be willing to introduce a universal retirement protection scheme. But before that scheme is introduced, we think that a comprehensive review should be conducted on the existing MPF Scheme. The authorities should ensure that this small umbrella will not be tattered, so that it can at least shelter the public from showers of rain. It should ensure that the system can provide basic protection to the grassroots, so that they have some protection upon retirement. I so submit.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, today is the 10th anniversary of the implementation of the Mandatory Provident Fund (MPF) system; yet regrettably, the whole community and in particular the general public has not staged any celebration activities. The Government has not organized any activities to promote the merits of the MPF system. We can thus imagine the popularity and acceptability of the MPF system in society.

Today, Mr Paul TSE proposes abolishing the system. I actually support this idea, but I can hardly accept and support his amendment. The main reason is that, though the MPF Scheme is fraught with problems, as pointed out by many colleagues earlier, it is just impracticable to abolish the MPF scheme if no other system is set up in replacement. How should the contributions made by employees who have already joined the MPF scheme be handled? How should their retirement problems in future be dealt with? Given these considerations, we can hardly support the present idea proposed by Mr Paul TSE.

Though we do not support his amendment, it does not mean that we consider the MPF system completely acceptable. As mentioned by many

colleagues earlier, the system is fraught with problems. In fact, as Mr CHAN Kin-por pointed out earlier, I voted against the system back then. To date, I still consider I was right to vote against it at that time. Why? President, as I said at that time, once the MPF system is passed, the Government will at most make some minor adjustments to the system. It will be difficult to ask the Government to think of other systems. As proved by the reality today, after a lapse of 10 years, the Government has been unwilling to make even minor amendments. If so, how will it think of other systems and alternatives? Back then, we were aware of this attitude of the Government. Today, our very worry has come true.

Though my words have come true, I will still, like other Members and the public, make continuous effort to urge the Government to think of other alternatives to solve the retirement problem. We earnestly hope that a universal retirement protection scheme can be set up as soon as possible. Why? President, the problems in the present retirement protection system are too serious, and the impact is far reaching to employees. In what ways the impacts are far reaching? As I said in the past, this system brings harm instead of benefits many workers. President, why do I say so? Had Members paid attention to the situation, they will notice that tractor drivers are the first to bear the brunt. They are in dire straits. They used to work for their employers in the past, where they were entitled to employees' compensation insurance, annual leave, sick leave and other benefits. But regrettably, upon the implementation of the MPF system, these drivers are forced to undertake self-employment. What happens after they become self-employed? They are no longer entitled to employees' compensation insurance. Worse still, they have to take out the third party risk insurance or life insurance for their own protection. For this reason, this group of employees have suffered severely. They do not have any protection. Besides, they have to make business registrations on their own and take up the work of the so-called bosses. But in actuality, they are not bosses; they work for others, yet they have to take up such responsibility. Under this circumstance, they are not entitled to any benefits, not even the MPF, and they do not have to make any contribution. What should we do about this group of employees?

Apart from drivers who are forced to undertake self-employment, I would like to talk about the situation of other workers. Today, after a lapse of 10 years, how are they doing? Now, they have to pay their own contributions as well as

that of their employers. Some employees have complained to us about this. But what can they do? Since they are senior in age, they can hardly find other employment, so they are forced to accept this arrangement. It poses a heavy burden to them to set aside \$1,000 from their \$10,000 salary as contributions. Though the contributions belong to them, it imposes great pressure on their daily lives. Besides, the money belongs to them not the employers. Employers should make their own contributions, but they do not. This is another problem.

Apart from this, Members should know that many people, including many housewives, are not covered by the MPF system. We all know that they are not in employment. However, President, it does not mean that they do not have to work. Members should know that. We have explained their cases repeatedly that they are working for their families and they should be regarded as in employment. But who will make the contribution for them? No one will make the contribution for them. When they retire, they will have to ask their husbands and children for money, which is really sad. Moreover, this is not only a problem faced by some women, the unemployed are also affected, for they cannot make contributions when they do not have a job. What should they do about their future? In the face of the retirement protection problems of these people, the Government just keeps saying, "It is serious; the population is ageing, and by 2030, one out of four people will be an elderly person." However, the Government does not give a thought about who will take care of those elderly persons in their retirement. It has not answered this question, and it just keeps saying that the three pillars should be further developed. One of the three pillars is personal savings. However, if a person is unemployed, how can he save? How can housewives make savings? How will they have the money for savings? Has the Government not thought of this point? Since not everyone wants to receive the Comprehensive Social Security Assistance (CSSA), and the MPF system fails to offer protection to them, what can they do? The Government acts like an ostrich in this incident, it turns a blind eye and a deaf ear to the problem. It knows that there is a problem, but it just ignores it. What can the public do then?

President, today, on the 10th anniversary of the implementation of the MPF Scheme, many colleagues have asked why the Government does not conduct a comprehensive review. I definitely agree that a comprehensive review is necessary, but the most important issue is, how will the Government take care of all the people mentioned above? This is the greatest problem, but the

Government does not attempt to find a solution and it simply ignores the problem. Today, I hear many colleagues saying ..... President, I have to make one point, that is, I hope the Government will "walk on two legs". On the one hand, it has to improve the MPF system, which I think no one will oppose; on the other hand, the Government has to set up a universal retirement protection system, so that all people will receive a maintenance fee at their retirement age to support their needs in retirement. This is the right thing to do. Regrettably, when we request the Government to conduct a comprehensive review of the MPF system, the Government acts like "pressing a toothpaste", and after being pressed for years, nothing has been resulted. It is lamentable that under the MPF system, employees have to work for employers for 60 consecutive days before employers are required to make contributions for them. This puts employees in a more difficult situation. After working for the employers for 58 to 59 days, employees will have a "day off", meaning that they will be suspended from work. One to two days later, they will start working again. Employers will make use of this cycle to avoid making MPF contribution for their employees. Upon the implementation of statutory minimum wage in future, this problem may worsen. Therefore, a universal retirement protection system must be established.

President, I so submit.

**MRS REGINA IP** (in Cantonese): President, as the problem of an ageing population worsens, there is a pressing need to deal with the issue on universal retirement protection. Earlier on, I heard colleagues saying that the Government failed to take the initiative to review the MPF Scheme though the Scheme had already been implemented for 10 years. I agree that this is disappointing, for a responsible government should not act this way. Since certain colleagues have pointed out earlier the inherent inadequacies of the existing MPF Scheme, I would now provide some background information to illustrate how the Scheme is inherently inadequate.

The enabling legislation of the MPF system implemented at present was passed in 1995, and five years have been spent in preparation before the Scheme was implemented. The existing MPF system originated at the time of Governor Chris PATTEN. When Chris PATTEN came to Hong Kong in 1992, he was aware of the worsening problem of an ageing population in Hong Kong, and he

started requesting officials to step up efforts in examining the issue. Back then, there were two options available for consideration. Under the first option, the Government would take the lead to inject capital into the scheme and manage the scheme, and the rate of return was guaranteed. Legislation had to be enacted to require mandatory contributions from employers and employees. The social security system in the United States is an example. Under that system, employers and employees have to make substantial contributions, and employees can only receive social security after working for a certain period of time. Sorry that I have to disappoint certain colleagues and members in society, for as far as I understand, even in the most advanced countries like the United States, Canada and Australia, people without employment will not receive social security. For people without employment, the governments will take care of them in the form of social welfare, which can be achieved by means of budgets, tax revenues or other measures. Retirement protection scheme will not be able to take care of people without employment.

According to my understanding, the Hong Kong-British Government chose the MPF Scheme at the time for two reasons. First, the mandatory contribution could not be too high. For though the economy was good at that time, both the business sector and employees were against making substantial contributions. The Hong Kong-British Government had another consideration. The senior official responsible for handling the case, a former colleague of mine, Mr LAM Woon-kwong, had also disclosed that the Hong Kong-British Government had considered the Central Provident Fund Scheme adopted by Singapore. Under that scheme, the government has to inject capital, it would have to collect a large sum of money first and then be responsible for investment and underwriting. However, the Hong Kong-British Government did not want to adopt this mode, for fearing that the large sum of money might be taken away by Beijing after reunification. President, you are staring at me, but it was actually the case. Back then, no one could imagine that our great mother country would become so wealthy today. People scared that the money would be taken away by Beijing, or that the Central Government would spend the money through the SAR Government. At that time, there was such a conspiracy theory. President, I might as well tell you so.

As a result, the existing MPF system, which is neither fish nor fowl, has been adopted. We may refer to an article written by the former Deputy Chief Executive of the Hong Kong Monetary Authority, Mr Tong LATTER, at that

time. I have quoted his article for a number of times. Though there has not been much press coverage, it is worthy of mentioning it again. In an article issued in February 2009, he said that the MPF Scheme was too little, too late. He said it was too late to implement the Scheme, for people above the age of 30 could hardly benefit. On the other hand, the contribution amount was too little, which would in no way help the public. He asked the authorities to refer to the case of Singapore. He said that though the burden of employers and employees in Singapore were very heavy, where the rate of contribution for employers was 20% and that for employees was 14.5%, and people without employment still could not benefit from the scheme, the Government was the underwriter of the fund, providing a guaranteed rate of return of 2.5%. In comparison with the interest rate today, 2.5% is really not bad.

Moreover, the Singapore government had also provided pre-funding. The government had injected a large amount of capital and was responsible for the management of the fund. Besides, since the large sum of money was in the hands of the government which worked for the public, it could do more than providing pension, it had — according to Mr LATTER — also dealt with the problems on housing, medical services and medical insurance. In other words, the government had used the money to achieve the redistribution of benefits. Hence, Mr LATTER considered that the Central Provident Fund Scheme of Singapore was far better than the MPF Scheme in Hong Kong. However, if Hong Kong has to adopt this mode, the Government will have to make significant commitment and introduce bold reform to the existing Scheme. The Government has to provide the first lump sum in capital investment and undertake great responsibility in management, or even be the underwriter. It is a completely different approach. I believe the Secretary has no intention to do so at present. But still, I think he should read that article. I do not know whether he has read that article before, yet it is worthwhile for us to draw reference from that article in addressing the problem of an ageing population and retirement protection. One of the options is to adopt the Central Provident Fund Scheme of Singapore, which has a strong tint of socialism and where the government has to play a more significant role. The other option is to reform the tax regime to achieve redistribution by means of taxation, and provide certain measures to take care of the needy through the budget.

Finally, President, I would like to point out that I have met with the alliance striving for universal retirement protection and listened to their complaints.

However, given the existing narrow tax base in Hong Kong, I think it will be extremely difficult to rely on a pension scheme to take care of people without employment. If the Government has to take care of them by means of other welfare measures and budget funding, the tax regime in Hong Kong has to be reformed after all. Otherwise, there is no way to address the various calls for improvement of social services.

President, I so submit.

**MR WONG TING-KWONG** (in Cantonese): President, first, I have to make a declaration of interest. I have been appointed to be the non-executive Director of the Mandatory Provident Fund Schemes Authority (MPFA).

"How many decades does a man have?" The Mandatory Provident Fund (MPF) Scheme was set up in 2000, and it had passed the first 10 years amid controversies in society. The first 10 years should be the development stage of the MPF Scheme. When it was first established, its net assets were only \$5 billion, but by now, it has increased to more than \$345 billion. Some 238 000 employers and more than 2 million employees have joined the Scheme, accounting for 71% of the employed population. I believe the implementation of the Scheme has never been an easy task in the past decade, and if it has to get through another decade, it is high time to conduct a review.

A number of proposals on review have been put forth in the motion, and I would like to talk about the few points I am much concerned about. I agree with the proposal of lowering MPF management fees and administration fees in the original motion. When the MPF Scheme was first introduced, MPF charges had not been standardized and they lacked consistency. Numerous charges were imposed and the transparency was extremely low. The MPFA then introduced some measures, including the full implementation of the Code on Disclosure for MPF Investment Funds, and the setting up of a Fee Comparative Platform to facilitate scheme members to compare the fund charges of MPF. Last year, the authorities proposed the "Employees' Choice Arrangement" (the quasi-free choice scheme), hoping to lower the fees charged through market competition. According to information, the overall MPF fund expense ratio is 1.91%. In comparison with the expense ratio in 2007, ranging from 0.7% to 4.1%, the level of overall charges has decreased slightly. However, I think there is still room



for further reduction. As the scale of the MPF increases, the investment amount will also grow, hence even if trustees lower their rate of charges, the total amount of charges receivable will only increase but not decrease.

According to the Mandatory Provident Fund Schemes Ordinance, the MPFA must conduct a review of the minimum and maximum levels of income not less than once in every period of four years beginning with the commencement of the Ordinance. Hence, I support the proposal in the original motion of reviewing the appropriateness of the existing minimum and maximum levels of income. To cope with the implementation of the minimum wage legislation that has just been passed, as well as the first minimum wage rate at \$28, the MPFA may consider amending the existing method for calculating the minimum levels of income, and change to a mechanism linking to the minimum wage level. I also propose increasing the existing minimum level of income from \$5,000 to \$6,000. The calculation method is: \$28 x 8 hours x 26 days, which will arrive at the actual amount of \$5,824.

Regarding the proposal on abolishing the mechanism whereby employers' contributions under the MPF Scheme are used to offset severance payments and long service payments, I oppose it. Over the years, the labour sector has been striving for the abolition of this arrangement incessantly. In fact, before the implementation of the MPF system, employers were allowed under the Employment Ordinance to offset severance payments or long service payments under their pension scheme. The offset arrangement, which has been in operation for a long time, was extended to the MPF Scheme after extensive consultation. Besides, it was a compromise reached after balancing the concerns of various sectors, which is in line with the established arrangement under the Employment Ordinance. The offset arrangement involves the overall relationship between employers and employees. A proposal to abolish the arrangement should not be raised hastily, and if any amendment has to be made, prior negotiations involving all stakeholders have to be carried out to arrive at a consensus. However, I do not think this is the proper timing to negotiate this issue. Given the uncertainties like the slow recovery of the external economy, the increase in production costs and the pressure for Renminbi appreciation, the small and medium enterprises (SMEs) are already facing many challenges. And if a review of the offset arrangement is launched at this juncture, it will only add burden to the SMEs and deal double blow to them.

Moreover, the motion proposes the implementation of totally unrestricted choices for employees under the MPF, which allows employees to choose trustees for both employers' and employees' MPF contributions, I have reservation about this. This proposal will increase the administrative work of employers and thus their operating costs, which will add further difficulties to SMEs. Besides, many employers will consider choosing those banks with credit transactions with their companies as their trustees, for they have closer ties which are conducive for their communication. I think that in the long run, there is room for exploring the implementation of totally unrestricted choices arrangement for MPF. But the authorities have to ensure that additional administrative burden will not be imposed on employers when it address the aspiration of employees, and that the arrangement should be introduced on the premise of promoting competition in the market.

The MPF Scheme is a new initiative. To date, the MPF Scheme has developed to a certain scale, but further enhancement is required in order to provide proper retirement protection for the public.

President, I so submit.

**MR IP WAI-MING** (in Cantonese): President, Members have been saying that today is the 10th anniversary of the implementation of the Mandatory Provident Fund (MPF) Scheme. Heaven is on our side, so that Mr WONG Kwok-kin gets the slot to put forth this motion today. I hope the Secretary has heard our views and will respond to them by conducting a comprehensive review of the MPF system. It may be superstitious to say so, but I hope he will think about the revelation of heaven, that is, why we are given the debate time slot today for proposing this motion.

Actually, many colleagues have pointed out that the existing MPF system is neither fish nor fowl. To many people, the scheme can be likened as chicken bones: want not, waste not. Hence, I hope the scheme will be improved to better meet the needs of workers in Hong Kong.

As mentioned by Mr WONG Kwok-kin earlier, we think that there are a lot of inadequacies under the existing MPF Scheme and the contributions of workers are being eroded. One of these problems is the offset mechanism. Since Mr WONG Kwok-kin has already explained this point, I will not go into the details

again. Another inadequacy that is eroding the MPF of wage earners is the excessively high fund management fees. Many people have raised this point and a number of colleagues have also mentioned it. At present, more than 450 types of constituent funds are charging an average fee of 1.91%, and the fees of certain guaranteed funds are as high as 2.36%. According to the calculation of the Consumer Council, if a wage earner with a monthly income of \$20,000 makes contribution for 40 years, whereas the annual rate of return is 5% — I doubt if we can get this rate of return, for my MPF suffered lost a few years ago — the 2% management fees charged will erode 30% of his pension which should have been \$3.05 million. President, how much management fees are charged by fund managers now? I do not know. Sometimes, despite reading the entire annual benefit statement, I do not know clearly how much is charged. Is it some 1% or 2%? I really do not know, not to mention the case of the majority of wage earners. Actually, people will just look at the total amount. They may have a rough idea whether they are making profit or suffering loss, but they do not know the exact amount of management fees charged by the fund. The transparency is inadequate in this respect. We urge the Government to consider whether legislation should be enacted to require the management agents to state in the annual benefit statement the actual amount of management fees charged for the year. For this will allow workers to understand the case and make easy comparison of the existing management fees charged, and it will be easier for us to monitor the situation.

Another problem is about the default on MPF contributions, which is also eroding our contributions. In the first nine months of this year, there are 3 520 complaints on default contributions, whereas complaints against employers failing to register MPF accounts exceed 30%. Take the construction industry as an example. In the first eight months of this year, the Hong Kong Construction Industry Employees General Union has recovered \$14.2 million contributions in default for 759 workers, which is close to the \$14.7 million recorded for the last year as a whole. Furthermore, some unscrupulous employers force workers to undertake bogus self-employment to evade their responsibility for making MPF contributions. Hence, this is in a way eroding the MPF contributions of wage earners. I have just handled a case where the worker is forced to undertake self-employment, and we know at heart how much MPF contributions he will get.

Moreover, since the MPF is regarded as a retirement protection policy, we hope that the scheme will be supported by a stable and secure capital source. The authorities should not rely solely on transactions of private funds as a means

to help workers save money. Actually, we think the Government should make greater commitment in this respect. At present, the Government requires workers to make MPF contributions, but the MPF Scheme relies on fund trading. We think the Government is *de facto* forcing wage earners to gamble with their money in a casino. In fact, how many wage earners will know what is happening in the financial market and what is happening to those funds? Officials responsible for financial affairs remind workers and investors every day that the financial market changes rapidly, and that we may be in the most complex financial labyrinth in the century. If they say this is the most complicated labyrinth in the century, how will wage earners know anything about that? I do not understand the situation as well. But the Government still requires us to put the money in those funds, and then leave it to fund managers to make the investment and then charge us. Under this circumstance, many wage earners are in fact being forced to gamble. What do they gamble on? On their luck. If the performance of funds is satisfactory and the stock market is buoyant when I retire, I can get a larger sum of pension, but if the performance of funds is unsatisfactory, I may have lost a large part of my pension.

In that case, how can the MPF serve the purpose of providing retirement protection? I hope the Government will examine ways to manage this large sum of money. Some people suggest that it should be given to the Exchange Fund, and I agree to this. This may be one of the options. It is better to give the money to the Exchange Fund than to those existing funds, for we do not know how much of our contribution will be eroded. Hence, I hope the Secretary will drum up the courage to conduct a comprehensive review of the MPF system. For 20 years later, the problem of retirement can (*The buzzer sounded*) .....

**PRESIDENT** (in Cantonese): Mr IP, your speaking time is up.

**MR IP WAI-MING** (in Cantonese): ..... hardly be addressed.

**MR WONG SING-CHI** (in Cantonese): President, the subject of today's discussion is on the Mandatory Provident Fund (MPF). Since the MPF Scheme has been implemented for 10 years, it is now time to draw a conclusion, or conduct an interim review for drawing a conclusion. President, I have looked up

the Official Record of Proceedings of the Legislative Council meeting on 26 April 2006. I have the speech of Mr Albert HO, the Chairman of the Democratic Party, at hand, and I notice that the content of the speech is similar to the speeches made by many Members today. They are generally similar with some minor differences. They all pointed out that the MPF had failed to take care of the public and requested for the provision of universal retirement protection. Between the years 2006 and 2010, I wonder what the Government has done. Regarding the many views and proposals put forth by Members for perfecting the system, the Government continues to turn a deaf ear and persist on the wrong course, and thus impeding the steady development of the retirement protection for wage earners.

President, we surely support the motion proposed by Mr WONG Kwok-kin today, for the call for a review is made out of the concern for wage earners. As for the amendment of Mr Paul TSE, I have the impulse to render support as many problems have still not been properly addressed up till now, and the whole scheme might just as well be scrapped. However, we as Members cannot act this way. Should the system be scrapped when no improvement is made to the situation? I think we should not think this way. President, for this reason, the Democratic Party cannot support Mr Paul TSE's amendment. But we will support the original motion and the amendments proposed by other Members.

President, if my memory has not failed me, when I served as a Member in the Legislative Council in 1990s ..... in early 1990s, in 1991 indeed, I was still a member of the Meeting Point; at that time, the Meeting Point had not yet merged with the United Democrats of Hong Kong to form the Democratic Party. Members of the Meeting Point, including TIK Chi-yuen, Anthony CHEUNG, YEUNG Sum, and I had proposed the setting up of a provident fund with tripartite contributions. The tripartite-contribution arrangement does not equal to "walking on three legs", for it is impossible to do so. I wonder what it will be like if one is walking on three legs. I am referring to the three pillars, the three sources of funding. This is a very good support to wage earners. Hence, we will support the motion proposed by Mr WONG Kwok-kin today, for it is in line with the stance we always maintain.

According to the information as at March 2010, 2.47 million people have joined the MPF. Two million odd participants is a very great number. It is projected that in 2039, the number of elderly persons will increase from 19% to

28%. In the past 10 years, people have learnt from the development of the MPF Scheme that it will not offer protection to their livelihood. But still, they have been making contributions to the MPF for 10 years, which is not a short period of time. I recalled that I worked as a social worker in 1979. By 1991, I had been working for nearly 12 years, during which I had spent four years in studying, and my salary had increased from \$1,200 to some \$18,000 to \$20,000. At that time, I had around \$100,000 in my provident fund, which required contributions from both employers and employees. I thought this was a large amount at that time, but of course I might have spent all the money overnight. However, for wage earners today, who have been saving under the MPF for 10 years, I do not know how much they will get. As for my wife, who has been working for 10-odd years, she only has \$100,000 or \$80,000 in her MPF account, which is a very small amount. In my previous job, I have saved \$30,000 in the MPF account, though this is not a large amount. I recalled that there was \$35,000 in the account when I left my job, but when I check my account this year, the amount has decreased to \$24,000. I do not know why, it is really ridiculous. Hence, how can the MPF alone offer proper retirement protection to the public?

Recently, there were reports in newspaper stating the ten sins of the MPF. That is why I have the impulsive to support the amendment of Mr Paul TSE, for there are so many faults in the system. Some of the faults are technical issues which can be solved. If tripartite contribution is also introduced, these problems can easily be solved.

First, employers are allowed to use their contributions under the MPF Scheme to offset severance payments and long service payments, which will erode the retirement protection of employees. Second, the administration fees of the MPF scheme are too high. Members have had extensive discussion in this aspect. Third, when an enterprise goes bankrupt, employees have no way to recover the employers' MPF contributions in default. Fourth, home helpers and casual workers in certain industries are shut out of the MPF scheme. Fifth, the maximum level of MPF contribution fails to catch up with the income level. Sixth, employees have no right to choose the trustees. In this connection, Members have mentioned the unrestricted choice arrangement for MPF scheme earlier, but no one knows when this will be implemented and whether or not it will really be implemented. The seventh point, which is a problem of gravest concern to the public, is that the MPF scheme does not provide protection to housewives, people incapable of working or retired persons.

President, the MPF Scheme has been implemented for 10 years, but it is still fraught with problems. As I mentioned earlier, the content of the speech made by Mr Albert HO, the Chairman of the Democratic Party, in 2006 is repeated today. Members are repeating the same remarks. It means the Government has made no improvement at all. What is the Government doing? Why does it not provide comprehensive retirement protection to retirees?

President, the Democratic Party supports the MPF or provident fund schemes with tripartite contributions. In addition, we consider that universal retirement protection has to be provided. Apart from the working population or wage earners saving 5% of their salary for their retirement protection, the universal retirement protection scheme will extend the protection to the 700 000 to 800 000 housewives working without pay. These housewives cannot retire even when they reach the retirement age, for they have to continue with the housework and take care of their families. By the time they reach the retirement age, they still cannot retire, and they will not receive any pension. It is really ridiculous. If a universal retirement protection scheme is set up, this group of housewives, around 700 000 to 800 000 people, will receive certain retirement protection. Moreover, the scheme will enable the elderly to have (*The buzzer sounded*) .....

**PRESIDENT** (in Cantonese): Mr WONG, your speaking time is up.

**MR WONG SING-CHI** (in Cantonese): ..... some protection upon retirement. Thank you, President.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, both Mr Chris PATTEN and Mr Donald TSANG are religious believers. When I spoke on the topic of people with disabilities earlier on, I had teased Donald TSANG that the miracle stories described in the Bible are actually imaginative. People who wrote or compiled the Bible hoped that they could work miracles, like five loaves and two fishes, when they became God one day. When people had no food to eat, they could work miracle and gave them more bread and fish, or even turned water into wine for them to drink. Both Chris PATTEN and Donald TSANG — we are not going to talk about TUNG Chee-hwa, the former Chief Executive who

came to office after Chris PATTEN but before Donald TSANG, because he is inept — claimed to have religious belief. One is a Protestant whereas the other is a Catholic. I wonder how they read the Bible as both of them are vested with powers. Chris PATTEN had used his power to stir up political disputes in Hong Kong. In fact, he had not done anything except introducing this Mandatory Provident Fund (MPF) Scheme. This is what he left for Hong Kong people. As the Governor of Hong Kong, he had decided to give us something upon his departure, so that more people would shake hands with him when he comes to Hong Kong to eat egg tarts in future.

At that time, the Hong Kong Federation of Trade Unions (FTU) also rendered support to the MPF Scheme. I remember they said that even a rotten orange would be taken as there was no choice. This is politics. In this Council, everything is politics. Today, the FTU is crying out loud in this Chamber; why did they not do so at that time? The reason is that someone called CHEN Zuor, who is not a religious believer, said at that time, "Be careful of getting killed in a car crash." President, you might have the experience that if your car is suddenly on fire, you would then run away, right? The FTU is controlled by the Beijing Government, which told them to "stop voicing for the workers at a certain point." This is why they would even accept a rotten orange. Let me tell you, eating rotten oranges will kill you. The consumption of tannin can kill you. What is it if this is not politics?

At that time, a labour organization or one which worked for the interests of the grassroots was forced to accept a rotten orange. But when it saw this rotten orange some 10 years later, it has instead wilfully attacked it. In fact, all Hong Kong people can see that this is a rotten orange. However, fearing the capitalists, the Communist Party could only say, "Let us make some compromises and accept this orange called the MPF." What is this MPF Scheme all about? MPF means mandatory savings. We are forced to save, and what is more, we also have to seek mercy from employers; for if we did not concede to their requirements, they would not accept the Scheme. This gave rise to the offsetting mechanism. Mr Andrew LEUNG has mentioned this point time and again, saying that this was the term of the contract signed at that time. Someone acted as a banker and suggested finding an orange for Hong Kong. This is indeed similar to the present case where some people support Hong Kong's bid to host the Asian Games.



What else can it be if the issue under discussion in this Chamber today is not politics? Although the second religious believer whom I mentioned earlier on — the one who is a Catholic — has the power, he could not work miracles. It would be terrible if he were Jesus Christ because there would not be any miracles in the Bible. That person is indeed as bad as a tax collector or a Pharisee. Being cold-blooded, he does nothing even if he sees people suffer. He will not use his power to make a paralyzed person walk. At one time, this Donald TSANG encouraged speculation and issued bonds, hoping to turn our city into a financial centre. He even introduced the securities and futures legislation to fool us, and asked us to give him a blank cheque. It is this legislation that caused the present Lehman incident.

This Council always approves proposals for the benefits of the rich people, and when it approves proposals for the poor, there would be some after-effects. Simply put, take the universal retirement protection as an example. Mr MOK Tai-kee was a scholar in his early thirties when I knew him, now he has retired. He suggested that every person should contribute 5% in return for a golden twilight years. However, after consideration, he lowered the standard and proposed the so-called universal retirement protection scheme, thinking that one might as well choose a rotten mandarin instead of a rotten orange. Yet, the proposal was again turned down. Many colleagues insisted that the MPF system should be launched. In fact, the reasons are very simple, the Government does not need to pay from its own purse, neither do the capitalists. Nowadays, the capitalists have made a good fortune out of the prosperous property and stock markets. Given that our tax regime will not change, the costs for any reforms would have to be paid by the poor people's hard-earned money. If the extra 5% contribution is to be paid by employees under the universal retirement protection scheme or the MPF system, there would certainly be unanimous support. The capitalists would strongly support the idea because they consider it fair for employees to assume greater responsibility for their own matters. Why should employers be held responsible for their employees? Why should employers pay contributions for the employees after paying them wages? What is it if this is not politics?

Our wage level is pretty low. It is too low when compared with our neighbouring countries having similar GDP. On the other hand, the tax imposed by the Government on the rich people is also low. What is more, we have to beg the Government to develop a universal retirement protection scheme. This Government really has no conscience at all. Donald TSANG is definitely not

raised by his mother because he has ignored our great housewives. It is these housewives who have raised their children and the large labour force of Hong Kong. Despite the decreasing wages of workers, the Government still refused to adopt FTU's proposal and do something. The FTU only requested the Government to conduct a review, call on the employers to contribute more and impose higher tax, such as stamp duty, on the capitalists to help the people of Hong Kong. Yet, the Government still refused to do so. What is it if this is not politics? This is certainly politics. However, the FTU is politically inept because it has to look towards the north all the time. We must learn a lesson and be tougher. We should disregard the Communist Party and carry on the struggle to the end.

**MR JEFFREY LAM** (in Cantonese): President, today is the 10th anniversary of the Mandatory Provident Fund (MPF) Scheme. Yet, it is obvious to all that the performance of the MPF has been less than satisfactory. I believe it is the exorbitant management and administration fees charged by the trustees that have attracted the most criticisms. Assuming that the rate of return is 5% and the yearly MPF management fee is 2%, an employee earning a monthly income of \$20,000 would have paid more than \$1 million management fee after 40 years of contribution. This accounts for more than one third of his total contributions. Given that elderly people are frail and infirm, a drastically eroded MPF may not be sufficient to meet their needs. They can hardly make both ends meet.

Furthermore, given that the average administration fee charged by MPF trustees is presently 2% of the assets, the yearly administration fee will be over \$6.5 billion when our MPF assets is more than \$340 billion at present. The hard-earned money of employees will eventually be eroded by the high administration fees. No wonder many people query that the MPF system would only keep fund managers well-fed. We can see that it is the employees who suffer.

In fact, the problem of an exorbitant management fee has been discussed for many years. However, nothing has been done by the authorities to improve the situation. Not to mention the "quasi-free choice" scheme, which has also been delayed for a number of years. Take the United States as an example. Although the authorities charges a management fee of 0.4% and 0.6% only, the services provided are not only better than of Hong Kong, but are even more

diversified, such as free online trading of funds. When compared with local funds, the management fee of the Tracker Fund of Hong Kong (Tracker Fund) is only 0.05%. In comparison, the average 2% management fee of the MPF system is 40 times that of the Tracker Fund.

The rate of return of MPF is also less than satisfactory. While equity fund has the highest rate of return among different funds, it is only 7.9% over the past five years. On the other hand, Hang Seng Index has recorded an increase of nearly 45% for the same period. It can therefore be seen that the MPF has failed to accumulate the intended wealth for members of the public, so as to enable them to have something to lean on in their twilight years. I suggest that the Government should immediately introduce measures to promote competition in the MPF management market, and increase the variety and flexibility of investments with a view to effectively lowering the MPF management fees.

President, while I agree that the protection provided by the MPF to the public should be enhanced and improved, I have reservations about certain proposals. For instance, someone proposed to review the existing minimum and maximum levels of income and implement totally unrestricted choices for employees under the MPF Scheme. I personally do not object to reviewing the minimum level of income after the introduction of the minimum wage, but I have reservation about the proposed increase in the maximum relevant income levels for MPF contributions. This is because some 30 000 employees in Hong Kong, who are earning \$20,000 a month, and their employers will have to increase their monthly contributions. To employers, the proposed increase will impose a heavier burden on them. They do not only have to face the increase in rent and costs brought about by the appreciation of Renminbi and inflation, but also have to prepare themselves for the forthcoming minimum wage legislation. It is still uncertain how detrimental this minimum wage legislation will be. Yet, an increase in labour cost will further undermine Hong Kong's competitiveness.

For the employees, in view of the numerous investment instruments available in the market, they can make more flexible investments if they have more capital in hand. Moreover, people may even choose to contribute to the voluntary healthcare financing scheme in future. Thus, if they are required to pay a higher MPF contribution, this would enhance their financial burden.

I have reservation about the implementation of the totally unrestricted choices for employees under the MPF system. While I have no objection to the

contributions made by employees, I hope that employers' MPF contributions can still be invested on selected trustees as they wish. First of all, employees should not deprive employers of their right to choose pertaining to the 50% contribution made by them. Furthermore, if employees can change the trustees of contributions made by employers, the administration fees to be paid by employers would be greatly increased. And if the approximately \$340 billion aggregate assets can be freely transferred, the market may suffer a serious setback and be exposed to high risks. I therefore consider that decisions on the contributions made by employers should rest with the employers themselves.

The Economic Synergy also disagrees to the proposed abolition of the arrangement for offsetting severance payments and long service payments. This is because before the implementation of the MPF system, the Employment Ordinance had allowed employers to offset their contributions to the retirement schemes against the severance payments or long service payments. The extension of this offsetting mechanism to the MPF system is the consensus reached among different parties after prolonged and extensive discussions. Any change made to this mechanism must obtain the consent of both employers and employees. Also, the abolition of the offsetting mechanism will definitely increase the labour cost of employers, who might then try to evade the severance payments by other means, such as the introduction of a contract system or dismissing employees every five years. This does not serve to protect the welfare of employees.

President, employees who have toiled for the greater part of their life might think that they can rely on the MPF and spend their twilight years in contentment, yet the problem-plagued MPF fails to give people reasonable protection. I hope that the authorities will actively review how the MPF system should be reformed so that employees can have a more fruitful life and greater protection upon retirement.

President, I so submit.

**MS MIRIAM LAU** (in Cantonese): President, today is the 10th anniversary of the Mandatory Provident Fund (MPF) Scheme and it should be a case for celebration. However, I would like to bring Members back to the same day 10 years ago. At the press conference of the inception of the MPF Schemes, the

then Chairman of the Mandatory Provident Fund Schemes Authority (MPFA) Mr Charles LEE Yeh-kwong said (I quote): "It is imperative that a suitable protection system should be put in place in order to provide the elderly with a reliable source of income after retirement ..... The MPF system is set out to be an equitable and prudent system. And it will be a pillar of a more solid social infrastructure in the future."

Ten years have passed, but it seems that this great blueprint has yet to be implemented. In view of the low rate of return and significant erosion by the exorbitant fees, the only impression that an employee has of the MPF is that the account balance seems to remain unchanged and they are extremely worried about their retirement life. I am afraid that such descriptions as "a reliable source of income after retirement" and "an equitable and prudent system" have become mere slogans. The Liberal Party therefore supports the proposal in the original motion that a comprehensive review of the MPF system is necessary.

In fact, I had moved the motion "Lowering the Mandatory Provident Fund management fees" on behalf of the Liberal Party in June 2007, requesting the Government to study how the management fees of the MPF schemes could be lowered. The amended motion was carried. And yet, what has the MPFA done to respond to our request over the years?

The figures tell us that the percentage of the management fee over the total contribution has only dropped slightly from 2.1% of 2008 to 1.89% in October this year. Among the seven funds charging management fees of over 3%, three of them have even increased their management fees and the increase was as high as 1%. The amount of contribution of wage earners is still less than what it should be, and a large portion of it will be eaten before retirement.

Therefore, at that time, the Liberal Party also supported the implementation of the "quasi-free choice" scheme to lower management fees by promoting competition. Legislative amendments have been passed by the Legislative Council in July last year, and it is hoped that scheme members may benefit as early as possible.

Unfortunately, after one year or so, the "quasi-free choice" scheme suddenly came to a halt as the Government had to explore the regulation of MPF intermediaries by way of legislation. As a result, the "quasi-free choice" scheme

will not be implemented before 2012 and many people are therefore very disappointed.

The explanation given by the MPFA on the sudden halt was that the Legislative Council's pace of deliberation on the legislation concerning "quasi-free choice" scheme was faster than expected. They thought that we were too efficient. In my opinion, such an excuse is really absurd and irresponsible. It also reflects that the authorities always act in hindsight. How come they only found out, after the Ordinance came into force for more than one year, that there is a need to plug the loophole of regulation by making legislative amendments before the "quasi-free choice" scheme can be implemented? Is it because the consideration made was not thorough enough? Due to a lack of thorough consideration, employees are now unable to shake away the exploitation of the exorbitant management fees. Their hard-earned money being saved over the years is being eaten up. Someone has estimated that if the management fee is reduced by 0.5% and the implementation of the "quasi-free choice" scheme is postponed for one year, the 2.2 million employees in Hong Kong will have to pay an additional management fee of \$770 million. Who is going to pay this sum of money?

The only solution is that the authorities should expeditiously improve the work of the intermediaries. It would be best to implement the "quasi-free choice" scheme by early next year or no later than the middle of next year. Its implementation should not be postponed to the year after next.

The Liberal Party also calls on the trustees to take the initiative to reduce their fees. We strongly support the amendment proposed today by Mr CHAN Kin-por, a representative of the insurance sector, to lower the administration fee. It is hoped that he will help to urge members of the trade to think about the employees and be kind to them.

Mr CHAN Kin-por said that as the contributions made by some employees are pretty small, the accumulated sum may not be sufficient to cater for their future needs. He therefore proposed to increase the percentage of contribution. I am convinced that the sector which Mr CHAN Kin-por represents must be very happy hearing this and will certainly support his proposal. However, as contributions are made by both employers and employees, Mr CHAN Kin-por has already mentioned in his speech earlier that this proposal is very controversial. The Liberal Party considers that this proposal warrants further discussions. We

cannot just courageously go ahead simply because an increase in the contribution is beneficial to employees. Although this proposal is worthy of support, it has far-reaching implications. Members may discuss about it, but they should not think too ideally that we can make it if we try.

Regarding the rate of return, the latest figures provided by the MPFA show that the overall annual after-fee return rate is only 5.1% over the past 10 years. The Liberal Party therefore hopes that the authorities can increase the investment options. As regards Mr LEE Cheuk-yan's proposal to allow employees to choose to deposit part of their contributions into the Exchange Fund, such that it will have the same income sharing arrangement with the fiscal reserves, this proposal is also worthy of consideration.

President, while the Liberal Party agrees to improve our MPF system, no measures should bring any adverse impact on the overall business environment. Before the inception of the MPF system in 2000, the Employment Ordinance has already allowed employers to offset their contributions to retirement schemes against the severance payments and long service payments. After extensive consultation, this mechanism was extended to the MPF system and was used by the Government to convince employers to accept the MPF system. If no offsetting is allowed, employers will have to bear an additional burden. In Hong Kong, there are not only large consortia and enterprises, but also more than 280 000 small and medium enterprises which do not have much capital flow. Many of them are indeed striving very hard to sustain their business. I believe they will find it hard to accept if they are required to bear an extra burden.

Similarly, the Liberal Party considers that the proposed review of the maximum level of income must be dealt with carefully, and the impact on operating costs must be taken into consideration. As for the implementation of the totally unrestricted choices for employees, I am afraid that it would be too hasty to implement this practice in view of the fact that the "quasi-free choice" scheme has yet to be implemented.

Last of all, the Liberal Party is of the view that the MPF system has failed to provide protection for people who are not employed, like housewives. Hence, the Government should consider how universal retirement protection can be launched.

**MR ALBERT HO** (in Cantonese): President, the greatest pitfall of the Mandatory Provident Fund (MPF) Scheme is that it fails to address the retirement problem of the grassroots. For most retirees who do not have much savings, the MPF is nothing but an arrangement to postpone their reliance on the Comprehensive Social Security Assistance Scheme for a few years. Is this the objective of establishing the MPF Scheme?

In Hong Kong, a civic organization — the Alliance for Universal Pension — has recently completed a report entitled "An opinion poll on MPF and retirement protection". The report was compiled by commissioning the Social Policy Research Centre of the Department of Applied Social Science of The Hong Kong Polytechnic University to conduct a telephone survey between 26 July and 3 August 2010, which had successfully polled 1 057 Hong Kong people. The findings indicated that more than 60% of the respondents opined that the MPF system has failed to address their concern about future retirement, and 40% supported the abolition of the existing MPF system. Furthermore, as high as 80% of the respondents considered it necessary for the Government to propose the establishment of a universal retirement protection scheme in this year's policy address.

President, whenever the issue of MPF is discussed, we opine that there are serious deficiencies of the system, either from the perspective of labour or welfare. As reported in the press these days, while complaints of default on MPF contributions by employers have reduced, the tricks used by unscrupulous employers are still plenty. What is more, many unscrupulous employers still refused to pay the outstanding contributions even after their malpractices were reported. There are indeed a great number of such reports. The Democratic Party has all along insisted that in order to tackle the problems pertaining to the MPF system at root, the best, as well as the most comprehensive and appropriate way is to set up a universal retirement protection scheme, so as to genuinely provide the elderly people with a sense of security so that they can spend their twilight years in contentment. However, the Government still refuses to face squarely the severity and urgency of the issue, and is reluctant to set up a universal retirement protection scheme. Therefore, the Democratic Party will continue to fight for the expeditious implementation of a universal retirement protection scheme. Meanwhile, we also wish to express our grave concern and call on the authorities to comprehensively review and improve the existing system, with a view to safeguarding the interests of people who are forced to



make contributions. It is hoped that people under this deficient system can at least enjoy minimal protection.

As we all know, the management fee and administration fee of the MPF have all along attracted serious criticisms. The current levels of fees are definitely too high. The average management fee was as high as 2% three years ago. Due to the strong media pressure, a number of trustees had reduced their management fees and introduced the Hang Seng Index Fund, a relatively simpler fund with lower management fee.

However, as at the end of last month, the average management fee of the MPF in Hong Kong was still as high as 1.89%. Only a slight reduction of 0.11 percentage points was recorded. When compared with many other developed countries — they certainly have lots of experience in fund management — the management fee of our MPF is undoubtedly too high. Take the example of the United States, as the local pension market is open to competition, the management fees of most pension schemes do not exceed 0.5%. We can therefore use this as a yardstick to fight for a reduction of our management fees.

In this connection, we support part (d) of the original motion, which proposes to lower MPF management fees and administration fees, and part (e) which proposes to implement totally unrestricted choices for employees under the MPF system, thereby allowing employees to choose trustees for both employers' and employees' MPF contributions. This will enable the local MPF market, its intermediaries and trustees in particular, to have healthy competition. A reduction in management fee and an enhancement of service quality by the trustees will definitely benefit the general public in the end. I consider this reasonable as the money does belong to employees. There is no reason why up till now, it is still agreed in principle that employees can only choose trustees for their 50% MPF contribution. Furthermore, the implementation of the "quasi-free choice" scheme has been delayed time and again. We are therefore regrettable about the blunders of the Government and the governing authority.

Amidst uncertainties of the overseas financial markets, the local investment market will definitely be subject to great fluctuations. I therefore agree with part (e) of the original motion, which proposes that efforts should be made in respect of publicity and education, so as to enable employees to understand how

trustees should be chosen and the levels of risks they can bear before making their investment plans and choices.

I so submit.

**MS LI FUNG-YING** (in Cantonese): President, I would like to declare interest before delivering my speech. I am the non-executive Director of the Mandatory Provident Fund Schemes Authority (MPFA). From the inception of the Mandatory Provident Fund (MPF) system in 1995 to its introduction on 1 December 2000, it is now its 10th anniversary today. Ten years have passed so fast. As a matter of fact, people from all walks of life have a unanimous view on the MPF. They query whether the MPF can sustain their retirement life. There are voices both inside and outside this Council calling for a comprehensive review of the MPF.

Since the inception of the MPF, disputes about the offsetting arrangement of MPF benefits against long service payments or severance payments have never been settled. It was reported that such an arrangement is a compromise made to secure employers' support for the MPF contribution. In fact, retirement protection and severance payments are different employee benefits, serving different purposes and functions. There is downright no reason for such an offsetting arrangement. After a decade of operation, we can see that the employers' pensions are actually being eroded under the offsetting arrangement. Worse still, globalization has entailed fragmentation of jobs. It becomes very difficult for one to have a job that can last a lifetime. Employees may be forced to change jobs time and again throughout their life. As a result, their pensions will be partially or substantially offset. Therefore, it cannot be said that the MPF is a safeguard of retirement life. So, I opine that the arrangement of offsetting MPF against long service payments or severance payments should be expeditiously changed.

Furthermore, the MPF is linked with employment. It thus completely fails to provide any protection for housewives or people who are unemployed. For low-income employees, it is impossible for them to have savings as there is not much money left after paying the daily expenses. They can hardly save for their retirement life. As a result, the three pillars of retirement protection which the Government always advocates, namely the Comprehensive Social Security

Assistance, the MPF and personal savings, have completely failed to support employees' retirement life.

President, as the MPF has been implemented for 10 years, it is now the right time to carry out a comprehensive review. However, we also understand that the function and operation of the MPFA are governed by the Mandatory Provident Fund Schemes Ordinance (Cap. 485), under which the function of the MPFA is confined to reviewing the existing ordinance. The strong public call for the setting up of a universal retirement protection system is actually beyond the authority of the MPFA. The responsibility of carrying out a comprehensive review of people's retirement protection should be taken up by the Government directly.

While I support a universal retirement protection system, I must stress that this does not mean that the MPF Scheme should be replaced. It is only an additional protection provided to the existing system to cover people from all walks of life. At present, public concern and recognition of universal retirement protection are increasing. The Government should therefore grab this opportunity when the problem of an ageing population is imminent, and expeditiously carry out a full-scale consultation and planning to avoid imposing greater financial pressure on the community in future. President, I am aware that the Central Policy Unit is examining the sustainability of the three pillars. I hope that it can release the findings as early as possible and put forward concrete proposals on universal retirement protection for public consultation.

Last of all, I must talk about the penalty imposed on employers who violate the MPF legislation. So far, most of the complaints received by the MPFA are about employers defaulting contribution payments. And yet, sentences handed down by courts on employers defaulting on contributions are pretty light. Between 2008 and 2009, the average fine is \$12,500 per person, and the lowest fine is only \$500. I therefore call on the courts to impose heavier sentences on employers who default on contributions. In the meantime, information of employers who repeatedly default on contributions should be published to get the deterrent effect.

President, despite the numerous deficiencies of the existing MPF system, we cannot rule out the active meaning of the MPF in employees' retirement protection as a whole. Notwithstanding that, the MPF should only be regarded

as the starting point of the process of retirement protection in Hong Kong. We hope that with the promotion by the public and the Government, a universal retirement protection system that is suitable for Hong Kong can be developed to provide stable retirement life for members of the public. Thank you, President.

**MR TAM YIU-CHUNG** (in Cantonese): President, the Mandatory Provident Fund (MPF) system has been implemented for 10 years. During the initial period of implementation, I was one of the non-executive directors of the Mandatory Provident Fund Schemes Authority (MPFA). Since we did not have much experience at that time, we had to work very hard to ensure the smooth operation of the system. Now that 10 years have passed, we can thus conduct a comprehensive review to see if the system can be further improved. During this motion debate, I would like to talk about three points which I have observed in the course of implementation that are worthy of review. They include the target and effectiveness of the system, the benefits and protection of scheme members, as well as law-enforcement assurance.

The establishment of the MPF aims to provide people with a certain degree of economic protection upon retirement. The presumption made under the system when it was designed in the 1990s was based on the average lifespan of Hong Kong people. Under the system, it is assumed that all scheme members would retire after making contributions for 40 years. If the accumulated sum is then withdrawn and apportioned for use, it would mean that each month a sum which approximately equals to one third of the last-drawn income can be used in the following 10-odd years for living. However, in order to achieve this target, a very important presumption is that the yearly rate of return must reach 5% or above. According to the statistics of the MPFA, as at September this year, the aggregate MPF asset in Hong Kong was \$345.7 billion and the yearly internal rate of return is 5.1% since its inception in December 2000. And yet, the investment return of different funds varies greatly. Except for the 5.4% rate of return of Equity Fund, which is higher than average, the other five funds have failed to achieve the desired target. The annualized return of Conservative Fund was only 1.2%, whereas Guarantee Fund was 1.6% and Money Market Fund was just 0.9%. These three funds account for 21.6% of the aggregate assets. By simple computation, at least 20% of scheme members have investment returns lower than the desired level. If scheme members follow the MPFA's advice in investment, that is, the level of risk one can bear should decrease with age, then

the abovementioned three funds which have relatively lower risks should be chosen when they are approaching retirement age. It is therefore believed that only very few scheme members can achieve the desired return. These figures are therefore a serious alarm of the long-term social impact brought about by the MPF system.

Secondly, regarding the protection of benefits of scheme members, I think that it is imperative to protect employees' assets from being eroded by the fees charged. In mid-2003, the Democratic Alliance for the Betterment and Progress of Hong Kong had conducted a survey on 10-odd major MPF companies in Hong Kong. It highlighted the existence of many problems, such as the existence of various fee-charging items in their systems; inadequate disclosure; the lack of common basis for comparing the charging patterns among various companies; and the adoption of certain practices which are in effect hiding certain charges. Later, the MPFA promulgated the Code on Disclosure for MPF Investment Funds and established the Fee Comparative Platform. However, this measure can only help employees compare the fees charged by different companies when they are choosing constituent funds. For employees who have already joined certain MPF schemes, so far no MPF companies would provide details of the amount of fees charged every year. It is indeed very unreasonable for these companies to ignore the benefits of employees. The Government should mandatorily require all MPF companies to provide periodic reports to employees on the fees deducted from their contributions in each transaction. Furthermore, the Government should also cap the fees of various investment funds, instead of relying purely on the self-regulation of the market mechanism. As the MPF is a kind of mandatory universal contribution, it is different from ordinary investment funds in the market. Being protected by the policy, the risk of operation borne by the trade is relatively lower. If fees are charged on a fixed rate, contributions from employees will gradually be eroded. The rate and structure of MPF fees should be linked with the aggregate assets; the rate of fee should therefore be lowered in accordance with the increase in assets.

Thirdly, law enforcement assurance. The Government should minimize employers' default on contributions by improving the design of the system and stepping up its enforcement. Also, trustees should be required to issue to employees a proof of receipt of contributions from employers on a monthly basis. Once a trustee discovers any default on contributions by employers, the employee concerned should be notified directly in writing. If the MPFA issued a notice of

payment to employers who have defaulted on contributions, the employees concerned should also be notified to enhance employees' self-protection awareness of their benefits. On the other hand, the MPFA should promptly clear the backlog of cases of default on contributions, and investigate and prosecute unscrupulous employers who defaulted on contributions with full effort, with a view to assuring the credibility of the MPF system.

We all understand that the MPF system may not fully address the issue of employees' retirement protection. Thus, the Government should proactively look for other alternatives.

**MR CHEUNG KWOK-CHE** (in Cantonese): President, the purpose of establishing the Mandatory Provident Fund (MPF) system is to enable the elderly people to enjoy a good retirement life. To our great regret, however, this target cannot be achieved. During the 10 years' implementation of the MPF Scheme, its effectiveness has been questioned time and again. The investments concerned are highly susceptible to the economic cycle and the administration fees are exorbitant. The most important point is that it has failed to provide retirement protection for all people, and in particular, low-income employees and family carers are being totally neglected. In that case, should the Government consider the value of existence of the MPF Scheme?

Let me say something about the plight of low-income earners. For a low-income middle-aged person earning a monthly income \$6,000, the period of contribution is about 20 years. The amount of MPF which he will withdraw when he retires at the age of 65 is only around \$300,000. Assuming that his monthly expense is \$3,000, he will spend all the money in around eight years. If it so happens that the economy experiences a downturn and the stock market plunges when he retires, the MPF which he has saved for a good retirement life might be eroded without a trace.

The case of family carers is even worse. They have spent the whole life taking care of their children or parents at home, but does it mean that they have no contribution to society? Why is the Government so hostile to these family carers and ignores their efforts, so that they cannot lead a dignified living in their twilight years?

Apart from calling on a review of the MPF Scheme, it is our ultimate wish to fight for a universal retirement protection system. This is because only the implementation of a universal retirement protection system can free employees from worrying about their living upon retirement.

Early this year, the Alliance for Universal Pension commissioned the Social Policy Research Centre of the Department of Applied Social Science of The Hong Kong Polytechnic University to conduct a large-scale survey. The findings showed that over 80% of the respondents considered it necessary for the Government to establish a universal retirement protection system to extend protection to Hong Kong people who are not covered by the MPF Scheme as well. I want to stress that not only people with low academic qualifications or low income support the universal retirement protection scheme, 78% of respondents who have attained undergraduate education or above also indicated their support.

Unfortunately, the Government which claims to respect public views has no intention to accept their views at all. Neither does it have the interest to explore such a system. This is indeed very worrying. As Hong Kong's ageing problem deteriorates, not only will more and more grassroots fail to secure protection for their retirement life, the burden of welfare expenditure on the Government will also reach an unbearable state in the end.

The Alliance for Universal Pension suggested that the existing MPF system can be maintained, but an additional universal retirement protection scheme will be introduced. As a result, all Hong Kong permanent residents reaching the age of 65 or above will receive \$3,000 per month regardless of their status.

This universal retirement protection scheme entails tripartite contributions from employees, employers and the Government. Employees and employers will each contribute half of the monthly MPF contributions, that is, 2.5% of their monthly salary. For the Government, apart from the provision of a \$50 billion seed fund, there will also be a monthly contribution to be made on the basis of the current CSSA payments and "fruit grants" for the elderly. Provisions for these two payments will then be suspended and the money will be transferred to the universal retirement protection scheme. Furthermore, an additional 1.9% profit tax will be imposed on large consortia and enterprises earning an annual profit of

over \$10 million. According to this formula, the accrued reserve may be as high as \$300 billion by 2056. The relevant expenses will definitely not put any financial burden on the Hong Kong Government.

The Government can never foster a caring society with empty words or by merely blowing its own trumpet. It should take real actions in response. I hope that the introduction of a universal retirement protection scheme is only the first step. In such a civilized society, it would be very sad if elderly people cannot get any warmth and care when they enter the countdown stage of their life. While I believe that government officials need not worry about their retirement life, can Members step back and think of doing something during their terms of office for these "buddies", as we would join them years later?

President, I so submit.

**MR FREDERICK FUNG** (in Cantonese): President, every time this Council discusses the issue on retirement protection, I am emotionally aroused. While claiming how it cares about the elderly people, the Government has failed to provide any solution to address their retirement problem. It has totally failed to provide any effective solutions to solve the livelihood problems of the aged retirees, and worse still, it regards the elderly issue as "great scourges", fearing that the ageing population will impede economic development on the one hand, and impose long-term expenditure on the other.

In view of a rising percentage of the elderly population in Hong Kong, it is expected that people aged 65 or above will account for 28% of the population by 2039. To meet with this situation, there is a dire need to develop a comprehensive retirement protection system. Nonetheless, the Government has all along side-stepped the problem and refused to shoulder any responsibility. What is more, it has maintained its governance philosophy of "small government" and stuck doggedly to outdated approaches. It has not only refused to accept the approach of tripartite contribution, but is also reluctant to introduce the concept of shared responsibility into Mandatory Provident Fund (MPF). Rather, it has relied on the MPF system which was introduced 10 years ago. Not only is this system neither fish nor fowl, the protection provided by it is also extremely insufficient. The majority of people are unable to secure genuine and sufficient protection after retirement.



President, the MPF system completes its 10th anniversary today. Ever since its inception in Hong Kong in December 2000, the system is becoming more mature in terms of its management and operation. The amounts of its assets are also growing. So far, its aggregate net assets have exceeded \$345 billion with more than 2.45 million scheme members, consisting of employees and self-employed people. Nonetheless, the MPF system is still flaw-ridden with lots of loopholes.

I recalled that when the MPF system was developed, many approaches and regulations are relatively lax in order to relieve employers' opposition and attract service providers' participation. For instance, the arrangement of offsetting the MPF against long service payments and severance payments are permitted under the Employment Ordinance; the absence of provisions to require an enhancement of transparency of MPF operation; the existence of different categories of fees charged by trustees; a lack of effective control which has resulted in the current exorbitant management fees, and failure to effectively deter employers from default on MPF contributions.

As a result of the abovementioned measures, which are tilted in favour of the trustees, problems have gradually cropped up as time passes. Way back in mid-2007, I had raised a question on the management fees of the MPF, and queried the overcharging of management fees by trustees. As a result, more than 40% of the accrued benefits that are entitled to an employee upon retirement will be eroded by the management fee. For instance, if the calculation is based on the average fund expense ratio of about 2%, the benefits due to an employee who have made contributions for 40 years will be nearly 40% less than that without any fees. It can therefore be seen that the profits of the MPF trustees are unproportionally great.

However, when I proposed introducing measures to lower the management fees, the authorities had used free market as an excuse and stressed that "the MPF System mainly relies on market forces to set the type and level of fees". This is again influenced by the philosophy of "big market".

What is more, when the authorities were requested to make legislative amendments to allow employees to choose their MPF trustees freely, with a view to lowering the management fee by increasing market competition, the decision made was again neither fish nor fowl. Employees are allowed to choose a scheme for the accrued benefits derived from their contributions, which is the

so-called "quasi-free choice" scheme. Although the relevant legislation was endorsed by the Legislative Council and will come into force in April next year, the scheme cannot be implemented as the issue on the supervision of MPF intermediaries has not been solved. I am worried that the "quasi-free choice" scheme will be shelved indefinitely in the end.

President, regarding measures to address the exorbitant management fees of MPF trustees, it can be said that no progress has been made. Why would those MPF trustees not reap the maximum profits by eating people's hard-earned money when the Government is so lax and "toothless"? In the end, all Hong Kong employees would suffer a loss in their retirement benefits.

As for the practice of allowing MPF to be offset against long service payments and severance payments, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I consider that, the objective of long service payments and severance payments are in nature different from that of MPF. We therefore consider that such an offset is extremely unfair to employees and should be abolished.

In the long run, it is impossible to genuinely safeguard people's retirement life just by patching up the existing MPF system. The financial tsunami has already amply reflected the considerable risks and unpredictability of the investment market. Members of the public have clearly witnessed the volatility of the market. It is possible to lose a large portion of one's accrued retirement benefits in a split of a second. Retirement protection requires stability, it is a total contrast to the high volatility of the investment market. It is a fruitless pursuit to look to the operation of the free market for the protection of our retirement.

From the inception of the MPF system to the present moment, we think that the Government's involvement in the whole process is highly insufficient, and no commitments have been made. At present, the problem with the MPF is not just the excessive reliance on the market, there are other serious problems, such as inadequate coverage. For instance, the system does not look after the retirement life of people like housewives, elderly citizens and low-income workers. Although the potential contributions of these people to the economy are generally recognized by society, they cannot be placed under the coverage of the MPF system because the employment relationship cannot be established by the conventional means, and as a result, their basic living cannot be guaranteed.

Therefore, the ADPL and I think that the Government should combine the MPF with the existing welfare system and make every effort to implement a universal retirement protection scheme, so that people who are abandoned by the mainstream society can also have retirement protection. Also, through government involvement, the impact of the volatile market on accrued retirement benefits can be lessened.

I so submit.

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

**MR WONG YUK-MAN** (in Cantonese): President, Hong Kong is a developed area, but only a small number of people can enjoy the fruits of economic prosperity. On the Senior Citizens Day this year (21 November), Chief Executive Donald TSANG repeated other people's words like a parrot on Facebook, the social networking site. He said, loving and taking care of the elderly is a long-standing meritorious culture of the Chinese society. The SAR Government will "give the elderly a sense of worthiness, a sense of joy and a sense of support". However, at present, many old people still live in poverty. The poverty rate among the elderly has reached 33.9%, with 290 000 old people living in low-income or underprivileged families. The population of those aged over 65 will soar to 2.1 million in 2030. Every one out of four people will be an elderly person aged over 65 by then.

The SAR Government has stressed that the Mandatory Provident Fund (MPF) is only one kind of retirement protection among others. The Government has the so-called "safety net" which protects the people's basic living. Just now many Members already responded to this saying, and we all know very well that basically, this net has started to have holes.

Hong Kong lacks a retirement protection scheme. It was not until 2000 that the MPF Scheme, which requires one to wait for 20 to 30 years and which does not offer enough protection, was implemented. It cannot provide the elderly with sufficient money for living. The proportion of medical expenses for the elderly is huge. As the remaining amount is not enough to pay the daily expenses, the only way out is to cut down the expenditure on food. Very often

when we see what the old people eat, we feel miserable. I often see the elderly picking up vegetable leaves in the markets, trying to save whatever they can.

A large number of the elderly unfortunately passed away while waiting for places in residential care homes for the elderly. The League of Social Democrats (LSD) asked the Secretary for Labour and Welfare about this issue every year, but the answer received every year was the same. Among the tens of thousands of old people waiting for places in residential care homes for the elderly, 1 500 to 1 800 people died every year. The increase of 500 residential places in the next three years is already a great favour bestowed. It is unbelievable that there is such a situation in this wealthy society. Of course, the elderly of our officials will not have such a problem. All of you are rich, with high salaries and handsome pay. But would you take a look at the plight of hundreds of thousands of old people? The situation in the future will become even more serious because we suffer from inter-generational poverty. Nowadays, young people are basically unable to support the elderly. Twenty years later, the consequences will be really unimaginable.

The elderly have worked hard for Hong Kong most of their lives, contributing to the prosperity and progress of society. Yet, having done no wrongs, they are unable to live a decent life today in their twilight years.

Can you give me a very convincing reason why the MPF is worth keeping? Of course you cannot. The "ten sins" of the MPF are listed in the appendix to this article of mine. I hope the Secretary will take a look when he has spare time. If he does not read it, never mind. Regarding the operation of the MPF Scheme, some people will ask, how come I have to offer my hard-earned money to other people to speculate in stocks and pay for other people's salaries? Such a concept is indeed hard to accept, and yet it is being implemented now.

The LSD insists that the Government should implement universal retirement protection in order to solve the problem. We have voiced such views for years, but it will be meaningless if it is only voiced by us. The MPF system is already beyond cure. The authorities have merely made adjustments to the small and trivial matters, which is actually unable to solve the problem. In our view, the only way to settle the problem is to implement universal retirement protection.

In developed countries or on the Mainland, retirement protection schemes have been introduced. In this affluent society of Hong Kong, however, it is still nowhere to be seen. In fact, civic groups and political parties have already talked about it for years. Although not many political parties in the Legislative Council support the implementation of universal retirement protection, can other political parties give some serious consideration to this measure? Such an approach can really solve the retirement problem at root. Should the Government undertake one third of the responsibility for retirement protection? Suppose the elderly and employees take up one third, employers take up one third and the Government takes up one third; what problem will there be? If it is introduced now, medical expenditures or other expenditures will be correspondingly reduced in the future. Regarding this universal retirement protection scheme with tripartite contributions, the relevant proposal is very clear. Not only can universal retirement protection sustain its operation financially, it can also provide full protection to everyone and avoid the problem of elderly in poverty. As both the ordinary citizens at large and the next generation can be benefited, it is far better than the MPF. Every year the Legislative Council will discuss and review the MPF Scheme, including issues about the ceiling of contributions and the administration fee. All these are just minor technical issues. No matter how they are revised, they will not be able to solve the root problem, that is, the problem of an ageing population and retirement without protection.

However, the Government will not implement universal retirement protection after all. I wonder whether the Government is afraid, or it wishes to hold on to the money and pass it on from one generation to another, from K C CHAN to K D CHAN, and then from K D CHAN to K E CHAN, passing it on forever. Why hold on to the money? The money is not yours. Why act like that? I just cannot understand. This is a very simple way of working. If there is no money, I would have nothing to say. "One cannot make bricks without straw." However, the Government enjoys fiscal abundance, but still it will not implement the measure. How can it say it will "give the elderly a sense of security and support"? Donald TSANG will certainly have support when he gets old because he is very rich. Yet the elderly in Hong Kong live without any support in their old age. They may even have to sleep in the street. Just look at how they wait for residential places and you will know it. Are we going to keep them waiting until they die? So I have made a suggestion to the Financial Secretary before. If he has so much dislike for providing subsidies to the elderly, maybe he could help the elderly commit collective suicide when they

reach the age of 65. By doing so, he can both save a lot of money and spare himself the trouble.

Thank you, President.

**MR ALAN LEONG** (in Cantonese): President, if we look at the figures, we will know that at present, one out of every four elderly people aged over 65 in Hong Kong lives in poverty. Actually we do not need to look at the figures. As I believe the President has also seen before, suddenly one day many elderly people go to the supermarkets to buy shrimp roe noodles, and suddenly on another day many elderly people go to buy a certain brand of biscuits. At first I do not understand why there is such a scene. Later, I realize that the elderly wait in the long queues so as to buy certain food products which are about to expire and sold at discounted prices. In order to save \$3, some old people at the grass-roots level will buy lunch boxes only after the peak time, that is, after 2 pm. From images in television programmes and photos in the newspapers, we often see that in this prosperous, well-off and affluent city of Hong Kong, there are still many old people scavenging for aluminum cans and cardboards in the street. Such a situation takes place every day. Maybe we have already become inured to it and no longer feel surprised.

Such a situation is really heartrending. President, if we think deeper, such a situation should not have appeared, since Hong Kong's reserve (whether it is disposable or otherwise) amounts to some \$2,000 billion. It is really weird that such a situation would arise. As many Honourable colleagues have pointed out, today is the 10th anniversary of the implementation of the Mandatory Provident Fund (MPF). For the elderly I have just mentioned, the MPF has no meaning for them. Their income is low, and when they worked in their youthful days, they did not need to make any contributions. Nor can housewives and people with disabilities be benefited in any way. The Government has proposed two financial sources to support the living of the elderly, namely, savings and the Comprehensive Social Security Assistance (CSSA). With regard to savings, how will the elderly have any savings? If they have savings, they would not have to scavenge for aluminum cans and cardboards. As for the CSSA, the CSSA Scheme has all kinds of flaws. We always think that this safety net has holes, and this Council has conducted a number of debates on the CSSA Scheme. The President must be very familiar with these issues.

Facing such a situation, I really do not understand why the Government did not consider implementing universal retirement protection. Besides, the MPF indeed has some very obvious problems. The MPF has been implemented for 10 years. I think Hong Kong people are already well aware of its demerits, for example, high administration fees and low return rates. If we are to rely on the MPF to support our post-retirement lives in our old age, we would certainly need to check in advance when supermarkets will sell biscuits which are about to expire at discounted prices and then queue up to buy them.

President, according to some figures which I now have in hand, in the first nine months this year, the Mandatory Provident Fund Schemes Authority (MPFA) received more than 4 100 complaints; among them 85% of these cases were complaints against employers defaulting contributions. However, since the law was relatively lax and the Court did not impose heavy penalty, these unscrupulous employers continued to evade their responsibility of making contributions. Some unscrupulous employers even forced their employees to engage in false self-employment. Besides, under the MPF Scheme, employers may use MPF contributions on the employer's part to make severance payments or long service payments to their staff. The President must have heard about the various demerits of the MPF, and this Council has held a lot of discussions about it. Some Honourable colleagues also mentioned it just now. Owing to such demerits, the MPF Scheme is absolutely unable to serve as any reliable retirement protection.

President, recently I have met with some scholars of actuarial science. Since I have only about one minute left in my speaking time, I am not going to repeat how those scholars made the calculations. However, they gave me a very clear message. That is, if we do not introduce universal retirement protection in Hong Kong within five years, basically we can forget about it. The situation which we are faced with is that the working population begins to shrink. The number of young people in employment who can make contributions and save enough money to support themselves in their old age after retirement keeps decreasing, while the number of old people keeps increasing. Hence, if we do not implement universal retirement protection immediately, I am afraid we really should forget about it. I hope, and the Civic Party urges, that the Government will review the MPF Scheme right away and implement a universal retirement protection scheme immediately. Such an approach can, on the one hand, alleviate wage earners' concerns about their post-retirement lives in their old age;

and on the other hand, it will enable retirees to live in dignity and enjoy their twilight years.

I so submit.

**MR ALBERT CHAN** (in Cantonese): President, in all the developed countries and areas where there is democracy, universal retirement protection is already part of the people's lives. There is no need to strive for it. However, in Hong Kong, a place which is described as developed and affluent but which does not have democracy, universal retirement protection is still a distant and unattainable dream. Many years ago LIN Cho-shui said in Taiwan, "Democracy has already become part of our lives in Taiwan." President, why is there no universal retirement protection in Hong Kong? It is simply because Hong Kong still does not have any democratic system. With no democratic system, there will be collusion between the Government and the business sector, transfer of benefits and inclination towards the big consortiums.

The tripartite contributions scheme which we strived for many years has ended up in requiring contributions from employers and employees, and the Government in evading its responsibility. Furthermore, the Government refused to set up a statutory body to be responsible for managing the contributions. Instead, the Mandatory Provident Fund (MPF) is regulated by way of investment in the private market. Thus it has turned out to be another kind of transfer of benefits, that is, transferring benefits to those financial institutions which manage the MPF, further raising the so-called financial status of Hong Kong. Obviously, for any welfare or measures which the Government claims to be beneficial to the general public, the final beneficiaries will certainly be the big consortiums. The final beneficiaries will certainly be the senior management staff. Hence, among the numerous amendments, the one which is most worthy of support is actually the amendment proposed by Mr Paul TSE. In the view of Marxists, all oppressive policies should be overturned. When the people are so oppressed that they can hardly find any food to support their lives, they will revolt. Therefore, this radical amendment of Mr Paul TSE should have the full support of all members of the Revolutionary Marxist League, Marxists and revolutionary Marxists.

President, at present the MPF has a heap of problems which many Members have already mentioned. Regarding the current MPF situation, firstly,



a number of wage earners who need to make MPF contributions get part of their pay deducted in order to make the contributions, thus further impoverishing their livelihood which is already on the brink of poverty. So, "before we can enjoy any benefit, we suffer from its harm" — this is what "Long Hair" has just taught me to say. We can thus see that presently, the MPF has negative impact on the general public.

The second sin is "stealing food from a beggar's bowl". The MPF forces people to make contributions. What is more, it charges an administration fee for those who manage the MPF to engage in speculation and then receive high salaries and handsome pay. The salaries of those responsible for supervision and the benefits they get are greater than those of wage earners. Thus the whole system is absolutely preposterous. If you ask the general public whether there is collusion between the Government and the business sector in Hong Kong, the vast majority of Hong Kong people will agree that there is such collusion in the present system. Not only is there collusion with the big consortiums, any channels and any modes which can transfer benefits and facilitate collusion will lead to the formation of such influence.

The third problem is that, even after making all the contributions, the MPF contributions and the associated investment returns which many people receive are insufficient for them to live a decent life after retirement. The reason is that the amount of MPF contributions received may be as little as \$1,000 to \$2,000 a month. For those who enjoy a high income, they will not be affected; but for the vast majority of wage earners, if they solely rely on the money received from MPF contributions, they will be absolutely unable — I will say the same thing 10 years from today — they will be absolutely unable to live a decent life. They will still have to depend on their children, relatives, friends or their own savings to support their living. Hence, the sheer absurdity of this system is that originally this system is to enable retirees to live a life which is relatively free from pressure, free from influence or at a living standard above the poverty line. However, even in full compliance with the Government's policy and instruction, one is still unable to achieve this. Ten years from today, one will still have to suffer from poverty.

However, in such a situation, the Government still said that it wants to bid for hosting the Asian Games. The Government said that hosting the Asian Games would not affect the people's livelihood. These words are absurd to the extreme. If the some \$13 billion originally mentioned by the Government is

injected in the tripartite contributions scheme or the proposal made by the Alliance for Universal Pension earlier, it is already enough for the general public in Hong Kong to live a decent life after retirement. So, do not say to me such ridiculous words and claim that hosting the Asian Games will not affect the people's livelihood. As the Government said at the beginning that they would be able to host the Asian Games by spending \$13 billion, if they drop the Asian Games, they can use this \$13 billion to help the poor to live a decent life after retirement. Whoever says again that hosting the Asian Games will not affect the people's livelihood, please stand out and give us the proof. Please take out \$13 billion to help the poor. Only then shall we discuss whether or not to support bidding for hosting the Asian Games. This request also extends to those athletes who have won medals. The authorities request the athletes to support the Asian Games. Why not ask LI Ka-shing if he supports "inflated flats"?

President, during the discussion on the livelihood issues, when we see such a face of the Government and when we see senior officials eulogizing their own achievements, whitewashing to create an illusion of peace and ignoring the plight of the general public, we must denounce them and tear off such a mask. The vast majority of Hong Kong people are still living in dire straits. Do not say any irresponsible words here. I hope every Member will be aware of the absurdity of the present system. I do not care whether they represent the financial, property or whichever sectors. The MPF is indeed an extremely absurd system. To rectify such absurdity, it is necessary to implement a universal retirement protection scheme as early as possible. Thank you, President.

**PROF PATRICK LAU** (in Cantonese): President, the initial objective of setting up the Mandatory Provident Fund (MPF) was to provide wage earners with retirement protection. However, 10 years after its introduction, the wage earners have more criticisms than praises for the MPF. There are even negative comments like "the ten big loopholes" and "seven sins" used by the League of Social Democrats just now to describe this congenitally defective MPF scheme. In particular, problems like the administration fee being too high, capital preservation turning out to be capital loss, and employers using it to offset severance payments have made the MPF unable to achieve the objective of "giving the elderly a sense of security and protecting the retirees". Thus I agree that this system should be reviewed immediately.

The first problem is that the administration fee is too high. As many Honourable colleagues have clearly stated, the annual average administration fee of 2% amounts to \$6.5 billion, which is much higher than that in other developed countries. Should there not be a satisfactory return to make it worthwhile for people to pay such a high administration fee? However, the present MPF return rate is on the low side. Even the capital preservation funds cannot preserve the capital. They incur losses more than they gain money. In this situation, it is really very unreasonable they still charge such a high administration fee.

Hence, I support what is proposed in the motion. The Government should provide universal retirement protection while the Mandatory Provident Fund Schemes Authority should assist members of the public in managing the MPF. At the same time a system allowing free MPF choices should be implemented expeditiously to bring in competition. Most importantly, members of the public should be allowed to choose freely whether to let the Government manage the funds with the provision of a fixed return rate, or leave them to the market for management and make their own choices of investment risks and returns.

Now the biggest problem is insufficient transparency in management fees while the charges are not proportionate to the return rate. This is very unreasonable. In my opinion, we may consider following the practice in Singapore, where the Central Provident Fund Board of the Government is responsible for management and guarantees a return rate of 2.5% to 5%. The treasury acts as an underwriter. Wage earners do not need to pay any expensive administration fee. As for the universal retirement protection scheme, many countries have already implemented it for a long time. Why is Hong Kong still unable to go in line with the international practice in this regard?

In fact, our mother country has implemented a central provident fund scheme (covering old age insurance, medical insurance, unemployment insurance and a housing provident fund) since as early as 1992 (almost 10 years ago). The retirement protection scheme is jointly undertaken by employees and employers. Taiwan has also implemented a new system of labour pension since 2005, whereby employers must make contributions for their employees in the amount of 6% of the employees' monthly salaries. Australia introduced a pension scheme in 1992, under which employers have to make contributions for their employees in an amount equivalent to 9% of their monthly salaries. Employees can also freely choose from more than 30 000 types of funds.

As for Hong Kong's MPF, firstly, it is not a universal retirement protection scheme. Secondly, the contribution rate is not enough to cater for the employees' post-retirement needs, which is the main reason why the MPF scheme has turned from something good into something bad. Thus I think this must be reviewed.

To address the problem of the insufficient contribution rate, apart from increasing the employers' contributions and raising the MPF tax allowance, the most important thing is to abolish the mechanism of offsetting severance payments and long service payments. The most practical example, President, concerns the Legislative Council. During the earlier discussion on the issue of remunerations of the assistants of Legislative Council Members, a number of assistants pointed out that every four years they may have to switch over to another employer. In other words, severance payments may be deducted from their MPF contributions every four years, and thus money is continuously deducted from their MPF accounts, affecting the future protection for their post-retirement lives.

Lastly, I would like to talk about the problem of low investment return. In my view, the best approach is to allow members of the public or employees to make their own choice and leave it to the Government for management so as to guarantee a certain return rate, rather than letting the market manipulate everything with the possibility that people may lose their hard-earned capital anytime without getting the protection they deserve. Most importantly, never repeat the Lehman incident which we are studying now, do not wait till there is a tsunami that one suddenly realizes there are problems. Yet, it will be too late by then. Thank you, President.

**MR CHIM PUI-CHUNG** (in Cantonese): President, the reason why the Mandatory Provident Fund (MPF) was passed 10 years ago was, of course, due to the work of some very competent people. However, we still need to review, who are the targets to be served by the MPF scheme, and what is the purpose of setting up the MPF system? I hope the Secretary will not try to make excuses in his usual tone. This is not your responsibility. We have to face the truth. Those who have done a good job will be commended; those who have done a lousy job will be criticized. Do not make any superficial act to make excuses for the Government. Secretary, you are a professor and a representative figure in

the financial field. If the Government has really done something wrong, make your criticisms. If what is done is wrong, stop doing it. It does not matter, does it?

President, the original concept of the MPF was to pave for future retirement protection for the working class. However, now that it has not achieved such an effect and the employers are being criticized even after paying so much money, the Government should immediately conduct a review and abolish the scheme. Why not? Alright. We expressly demand that the Government should spend money to do this and do that. President, where does the Government's money come from? It comes from the people of Hong Kong. Have all Hong Kong people authorized the Government to do that? We put the request to the Government. If some other people raise objection, what should be done?

President, this year, Macao — I often mention Macao because Hong Kong people should take a look at this place which we have looked down before. This year, the average income made by Macao from the betting business in the past 10 months was about \$152.1 billion. Calculating on this basis, the Macao Government will receive an income of about \$70 billion from the betting duty this year. With Macao's population being 450 000, it is calculated that each citizen will get a share of \$155,000 on average. The Hong Kong Legislative Council Members often say that the Government has an enormous reserve, which amount to some \$2,000 billion. Let the seven million of us share it. How much will each person get? The amount is \$3.5 billion. The income made by Macao in two years' time is already equivalent to the savings which have been kept by Hong Kong till now. The Government has been acting frugally, but it is severely lashed for being stingy, holding on to the money for such a long time, while Macao spent only two years to attain more or less the same level.

So, in all fairness, what does the Government represent? As the Chief Executive has said, he only wishes to "get the job done". He is only an "employee". Of course, I never agree that he only needs to "get the job done". In fact, a responsible government should carry out its duties properly for the people of Hong Kong, including the financial aspect. It has to manage Hong Kong's finance properly on behalf of Hong Kong people, so that Hong Kong will have better opportunities for development in the future. I always say that the Government is not stingy, it must try to make use of the reserves to develop

infrastructure. Of course, if you think we should hand out the reserves, just hand them out. But after handing them out, what should be done next? This question has to be considered by you. I strongly believe that the Government will not do so.

The motion debate today requests for a review, but I just wonder, how come every time when we have to conduct a review and when something wrong has been pointed out, the Government will always speak in its favour. We originally intend to work for the well-being of the working class, but now they say we need not do so, and they even claim that they are being exploited, which is true. Looking back, as we can see from the statistics, over the past 10 years the MPF has accumulated about \$350 billion. If calculated on this basis, the annual fees reached \$6 billion to \$7 billion, which means about \$70 billion have been spent in the past 10 years. The percentage of \$70 billion to some \$300 billion is over 20%, that is, the fees took up about 22%. Why do we have to pay fees to them? I strongly believe that the sector to which I belong has been benefited substantially. If what I have said is correct, if that is the case, in the next election (of course, I have already stated clearly that I will not stand for election again), people in my sector who have benefited may refuse to vote for me because I have not safeguarded their interests.

In my opinion, the Government has to conduct an in-depth review on this issue. It cannot allow such unfairness to prevail in society. All sectors should unite together in harmony, strive for progress, and point out the inadequacies, if there are any. However, President, regarding such a practice, in order to look after their employees, employers have actually paid out of their pocket, but still they are being scolded. Why do they have to pay money to get scolded? I would rather hand over the money directly to workers or the working class. Doing so may not bring any profits, but at least the principal will not be eroded. Although the current interest rate is very low, or even without any interest, the working class understands this situation. On the contrary, if the Government disregards their interests, ignores their direct interests and hands over the money to other people for investment — of course, not everyone is as competent as me, (*Laughter*) they may not stand a chance. Investment carries risk. In this regard, the Government ..... I hope the Secretary ..... though later when he replies, he will definitely say that the scheme is not bad. He will say that for sure. But he should not act like that. If he is capable and responsible, he should urge the department concerned to conduct a review, so as to do justice to

employers and do justice to those formally engaged in investment work. Otherwise this will be unfair to everyone. President, I hope the Government can face up to the problem and do justice to society.

**MR ABRAHAM SHEK:** President, today's motion is appropriate. It again reflects the Government's unintended blunders in measures of throwing good money after bad. It has been 10 years since the launch of the MPF scheme in Hong Kong. Since then, there have been growing concerns that both the performance and the management of the MPF scheme have not lived up to the public's expectations, little as it may be.

Why has the MPF scheme failed to gain people's trust and confidence? Among other things, the scheme has failed to meet its primary objective of providing for the retirement life of the working population — their hard earnings. Participants of the scheme are most concerned about performance and returns. However, according to the latest information provided by the Mandatory Provident Fund Schemes Authority (MPFA), the average administration fee for the 458 funds under the MPF scheme is 1.89%, with 3.92% being the highest rate, which is inordinately high given that the ultimate returns on an MPF account will be reduced by 40% over 40 years, if they are calculated on the basis of a 2% annual administration fee. A guaranteed fund under the MPF scheme with a 4.03% administration fee yielded an annual return of only a meagre 0.12% in each of the past three years; another Global Diversification Fund with a 3.9% administration fee yielded negative returns of -7.96% over the past three years. Employees seeking an aggressive investment may choose equity funds in their MPF portfolios for higher returns. However, high administration fees for equity funds erode their returns, as the current average administration fee for 144 equity funds under the MPF scheme is 1.94%. In contrast, the Tracker Fund of Hong Kong, which was launched by the same Government in 1999, has risen by over 70%, and its administration fee is only 0.05%. Would it not have been wiser for people to have been allowed to invest in the Tracker Fund of Hong Kong in the open market rather than in the equity funds provided by the MPF scheme? Secretary, please answer this particular aspect.

President, in the face of the public clamour against these excessively high administration fees, the Government has passed the buck to the participants of the scheme by introducing the so-called "quasi-free choice" which allows employees

to choose the trustees for their MPF contributions. The Government has adopted a "sunshine policy", whereby the MPFA publishes on its website details of the administration fees charged by individual trustees, so that participants can look up the fees with a view to enhancing the transparency of the scheme. These steps, however, are merely distractions rather than a direct response to the problem, for the Government has still not directly addressed concerns about high MPF management and administration fees.

Worse still, it has been reported that the provision of the "quasi-free choice" for employees will be deferred indefinitely, as the Government has discovered that the MPFA has no authority to supervise the 27 000 licensed MPF agents from banks, the securities industry and the insurance industry whose licences are registered by the HKMA, the SFC, and the Commissioner of Insurance respectively. Thus, legislation has to be made to clarify the rights and responsibilities of various regulators before realizing the "quasi-free choice". This has left the public with the impression that the Administration's work on overseeing and improving the MPF scheme has been lax, if not negligent.

Since the passing of the Mandatory Provident Fund Schemes (Amendment) Bill 2009 on 8 July 2009, companies and employees have been preparing for the heralded "quasi-free choice", as the Administration stated clearly that it would come into effect after a period of about 18 months, that is in early 2011. This procrastination is like throwing a wet blanket on all employees. A local press report estimated that if "quasi-free choice" was to be deferred by one year, employees would have to pay an extra \$770 million in administration fees. For that, the Administration should be reprimanded.

President, another glaring weakness of the scheme is the limited investment choices. Last month, the Secretary for Financial Services and the Treasury published an article on developing the local bond market. It stated that currently only 10% of the MPF money is invested in HK dollar-denominated bond funds, compared with 36% in Hong Kong equity funds. As conservatively-minded employees and employees nearing retirement age tend to take lesser risks, they prefer to have their MPF portfolios capital guaranteed to high returns; bonds can serve this need. But with our lacklustre local bond market, we have not many choices for people to choose, forcing them to opt for the US dollar-denominated global bond funds, which increases their exposure to currency risks in increasingly volatile foreign exchange markets. Needless to say, the Government should spare no effort to develop the local bond market, and a



Government Bond Programme was indeed set up last year. Yet, the Government has yet to formulate the target scale of the local bond market it aims to attain. What the local bond market will look like in five or 10 years is still vague. Apart from issuing more HK dollar-denominated bonds and Renminbi-denominated bonds, it is also imperative to explore the secondary bond market to activate our bond market.

Thank you.

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

**MR JAMES TO** (in Cantonese): President, many Honourable colleagues have spoken, and I am not going to repeat what they have said. At first when we set up the Mandatory Provident Fund (MPF), we actually intended to devise some investment formula or basic design which we could generally master and implement in the next few decades. However, during this period some basic rules in the whole world might have changed. In that case, do we really need to conduct a review? In my opinion, there is indeed such a need.

There are actually many ups and downs in the financial world. In particular, as the Secretary is an economist, he will certainly talk about the big slump of the Wall Street market in the 1920s. Speaking on the present situation, he may say that in the long run, value investing and dollar cost averaging in buying stocks with an upward trend should be feasible in theory. However, we have to bear in mind, if we think this way, will this cycle be the same as those before? Suppose a person or a generation makes contributions for 25 or 30 years, and if we are to cut out a part from the big chart in history, which 20 or 30 years should be cut out in order to get a bigger return?

Of course, in different social and economic situations, everyone will get a different return. But if the formula is not what we ..... of course I am not saying that we will be able to master it for sure, but if members of the public are given more choices, they may find it more acceptable. To put it simply, when the market slumped a few years ago, some people said that holding only cash would be more advantageous. Of course, this might be rather short-sighted because it focused on just a few years. Not even a single cycle had been completed. Once the market was on the upswing again, dollar cost averaging

would bring greater benefits. When I attended some MPF carnivals, I also said the same thing. However, the question is, can we really rely on it now? I think if there are more options, after all — unless those options are extremely dangerous and "lethal", otherwise, if more options are available, I think at least members of the public will find it more acceptable.

For example, some Honourable colleagues have just mentioned the Tracker Fund of Hong Kong. Is it very risky? Of course, the reason for saying so may be attributed to the fact that its constituents are mostly Hang Seng Index constituent stocks, and all Hang Seng Index constituent stocks are Hong Kong and Mainland stocks. Will fortune rotate at some point in time? Now we say that the future of Hong Kong and China will definitely be good, but is it possible that it will not be so good some day? If Hong Kong and China are both not so good, what will happen then? No matter what, members of the public should be given a choice. Moreover, people can switch over, right? The "quasi-free choice" is the most desirable option. At least it will give members of the public choices at different times. Then naturally they will not put so much blame on the Government. Hence, the Government should really give members of the public more choices.

Of course, the MPF in some foreign countries does not allow people to use the contributions to buy properties. Mr Paul TSE and other Members have just mentioned this point too. This is right, because this is also a matter of choice. In short, if members of the public have more choices, they will have less complaints about the Government, unless the Government says, no, even the purchase of Hong Kong properties is not reliable. Once the Hong Kong property price plunges ..... Buddy, we live in Hong Kong. When we set up the MPF, we made the same assumption. So, if members of the public use the contributions to buy properties, this is actually closely related. Therefore I think it is good to allow members of the public to have more choices. With my limited ability, I am afraid I cannot elaborate any further.

Besides, just when the quasi-free choice of the MPF was about to be introduced, it was suddenly said that there was the need to supervise the intermediaries. Negligence in this regard has caused the implementation of the quasi-free choice to be deferred for at least a year. It is even highly likely that it will be postponed to the next term of Government. If that is the case, there will really be a big problem. Regarding this, I hope the Secretary will understand that he has to undertake the political responsibility. Even if he said that the

senior management of the Mandatory Provident Fund Schemes Authority (MPFA) was in dereliction of duty, he should still be punished because when the authorities conducted the study, all these should form a complete set of measures. Secretary, please do not forget that members of the public have suffered a loss because of this. Those maintained ..... At least there will be two more years before competition will be introduced. Of course, according to some source, HSBC, the biggest participant, has joined the battle too. Its administration fee has been adjusted downward. However, as 2011 is coming soon, is that the maximum adjustment that can be made to the administration fee? Members of the public have indeed suffered losses these two years. I am not asking the authorities to make compensation. However, since this is a supporting measure with all items closely connected to each other, when such negligence emerges, we just cannot say that no one needs to take the responsibility. By taking the responsibility, I do not mean that someone must step down. I did not say so. But at least the authorities should apologize to the public, rather than saying that they suddenly noticed this point. This does not make any sense, since the authorities should have been able to notice this problem.

Recently, I have received some emails raising doubts as to what the high-salaried senior employees of the MPFA have been doing. They are responsible for drawing up this scheme, but what have they done? Some people even made a joke. There is a couple, one of whom works for the Hong Kong Monetary Authority while the other one works for MPFA. Both of them work at the top level and receive top salaries. Do they really have so much work to do? Members of the public actually think this way. When something happens, no matter how small the issue is, they will find a lot of work to do. Why do I say that? The reason is that if they are only responsible for the MPF but still they have done such a lousy job, frankly speaking, how can you convince people who one actually in control now? By then, it will not be possible to give any explanation, however reasonable it is.

Hence, Secretary, I hope you will fix this scheme as soon as possible. Otherwise, members of the public will make you pay.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mr WONG Kwok-kin, you may now speak on the five amendments.

**MR WONG KWOK-KIN** (in Cantonese): President, in the motion debate today, five Members have proposed amendments to the original motion. I feel very grateful because their amendments have set off discussions and have aroused greater concern for the original motion in society.

Mr CHAN Kin-por's amendment is mainly about simplifying the management and administrative procedures of the Mandatory Provident Fund (MPF), which will lower MPF's operational costs and thus reduce the administration fee. This is in line with the direction of the Hong Kong Federation of Trade Unions (FTU). So we will express our support. With regard to reviewing the contribution percentage so that the MPF will be able to cover post-retirement expenses, this proposal is also very reasonable. The present contribution rate is 5%, but actually employers and employees may discuss between themselves whether this rate is appropriate. The FTU adopts an open attitude in this regard.

Mr Paul TSE mainly proposed to abolish the MPF, but regrettably, he did not put forward any measure as replacement. The MPF entails problems which await improvement, but if it is completely abolished, we cannot see what advantages it will bring in respect of employees' retirement protection, unless a scheme better than the MPF has been devised now and it can replace the MPF. Hence, at the moment we cannot support Mr Paul TSE's amendment.

Mr Ronny TONG's amendment is to review the MPF and commence public consultation on universal retirement protection. We find this appropriate and necessary. So we will support this amendment.

Mr Paul CHAN's amendment is mainly about increasing the ceiling of the employer's contribution to \$2,500 a month and raising the existing tax allowance for employees from \$12,000 to \$30,000. All these are favourable to wage earners' retirement protection and can encourage employees to make more contributions. So we will give our support to this amendment.

Regarding Mr LEE Cheuk-yan's amendment, he proposed to allow employees to deposit their contributions into the Exchange Fund for investment,

we adopt an open attitude. It is because with the inclusion of the Exchange Fund, workers who are less educated or wage earners who do not know about the different MPF portfolios or even have no knowledge of investment may leave their contributions to public organizations to make investment. This will help to boost the people's confidence. It is also likely to bring in more competition, which will make private trustees in the market offer more reductions in charges and increase the returns in order to compete with the Exchange Fund. We consider the relevant idea creative. We concur with it and support it.

President, I have to make an additional declaration, because I am also a non-executive director of the Mandatory Provident Fund Schemes Authority.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, I have to thank Mr WONG Kwok-kin again for proposing the motion on "Comprehensively reviewing the Mandatory Provident Fund Scheme" and other Members for expressing views.

Just as I have said in my opening speech, the three-pillar model for retirement protection currently adopted in Hong Kong was advocated by the World Bank, and was implemented after lengthy discussion by different sectors of the community. This system is the basis of our retirement protection. Any fundamental changes must be thoroughly considered, and should only be implemented after a consensus is reached in the community. When the Secretary of Labour and Welfare spoke on the motion "Reviewing the coverage of the safety net" on 17 November, he stated clearly to the Legislative Council that a study on the sustainability of the three pillars was underway. Careful consideration would definitely be made to important factors such as safeguarding traditional family values, maintaining our overall economic competitiveness and simple tax system, and ensuring the sustainable development of the existing social security system, and so on. The Central Policy Unit is currently studying the sustainability of the three pillars. The Government will consider the findings of the study and other factors before deciding on the future course of action. During the process, it will certainly take heed of the extensive views obtained from different sectors in the community.

As the MPF Scheme is under my policy portfolio, I will give a detailed response to the suggestions and views relating to the MPF Scheme.

In my opening speech, I have pointed out that the Government is aware that the Mandatory Provident Fund (MPF) system does have room for further improvement and enhancement. Active discussions have been conducted with the Mandatory Provident Fund Schemes Authority (MPFA) on the matter. I would like to point out to Mr WONG Kwok-hing that no limit has been set on the scope of review of the MPF. Apart from the technical and institutional improvements which I have mentioned earlier on, there are also improvements of the policy, like whether people are allowed to withdraw their MPF before the age of 65. Such changes in the policy are also covered in the review. This is the priority work of the MPFA in the coming year. The Government will closely follow up the matter with the MPFA and submit the proposals to the Legislative Council for consultation in due course.

I consider that, in exploring the improvements to be made to the MPF system, recognition must be made to its importance and contribution in the community's retirement protection. Under the three-pillar retirement protection scheme, the MPF system is a privately-operated system which complies with the model as advocated by the World Bank. On our part, it has always been the wish of the Government and the MPFA to lower the fund fees by market forces through the implementation of initiatives to enhance market competition and transparency.

Regarding the enhancement of market competition, under the Mandatory Provident Fund Schemes (Amendment) Bill 2009, an employee may choose to transfer the mandatory contributions made in his present post to other schemes of his own choice. The MPFA estimated that upon implementation of the Employee Choice Arrangement, more than 60% of MPF assets will become freely transferrable. In order to safeguard the benefits of MPF scheme members, the Government and the MPFA have joined hands with other regulatory bodies to prepare legislative proposals on the regulation of MPF intermediaries. The relevant legislative amendments will be expeditiously completed so as to tie in with the implementation of the arrangements concerned. We aim to consult the Legislative Council on the regulatory arrangements early next year.

On the other hand, the MPFA will continue to issue letters to employers in Hong Kong to encourage them to provide more than one MPF scheme for their employees to choose. It is believed that these measures will further enhance

market competition, thereby exerting greater pressure on trustees to lower their fees.

In order to enhance transparency, an online Fee Comparative Platform (FCP) was set up on the MPFA website, which sets out the fees of different funds for scheme members' reference. The FCP does not only inform scheme members of the rates of fee of their schemes, it also enables them to compare the performance and fees of different funds, thereby assisting them to make a choice that fits their needs. Meanwhile, the MPFA will keep up its efforts on education and publicity.

As a matter of fact, ever since we started to discuss the proposed fee reduction, the implementation of the above initiatives and the growing MPF assets have effectively helped lower the fees. As at the end of October 2010, the average fund expense ratio (FER) of 458 funds is 1.89%, which is lower than the 2.1% in January 2008. The FER of individual fund is even as low as 0.13%.

President, I wish to reiterate that the Government is gravely concerned about the level and transparency of fund fees. I have requested the MPFA time and again to continue putting forward effective measures to make trustees respond to public aspirations on the level and transparency of fund fees. The measures include increasing the choice of funds with low fees, and providing scheme members with more information on fees and returns in the Annual Benefit Statement. As far as I understand, some major trustees have drastically reduced their fees lately, which have already been mentioned some Members. Both the Government and the MPFA will keep up our efforts in this regard.

Apart from relying on market forces, the Government and the MPFA will also continue to discuss with trustees on streamlining and improving the operational procedures of the MPF system, with a view to lowering the compliance costs and allowing more room for fee reduction.

Insofar as the regulation of MPF investment products is concerned, permissible investments of MPF constituent funds are subject to the strict regulation of MPF legislation, which sets out the requirements of all investments. The MPFA will ensure that all trustees strictly comply with the investment requirements through various means, such as inspecting the statutory declaration forms and reports, conducting on-site inspections and investigating into the relevant complaints. The investment of all constituent funds must be managed

by asset managers authorized by the Securities and Futures Commission. Furthermore, the MPFA is reviewing the scope of funds that suit the retirement purpose of scheme members.

President, the Government and the MPFA have all along attached great importance to combating default contributions by employers. Over the past decade, the Government has tabled a number of amendment bills to step up enforcements. For instance, upon approval by the Legislative Council in 2008, the maximum penalty for employers defaulting on MPF contributions had increased from a fine of \$100,000 and imprisonment for six months upon the first conviction, to a fine of \$350,000 and imprisonment for three years. For employers who have deducted MPF contributions from employees' wages but failed to remit the contributions, the maximum penalty had increased to a fine of \$450,000 and imprisonment for four years. To tie in with a policy to step up enforcement, the enforcement team of the MPFA has expanded from about 160 people in 2006-2007 to about 220 people at present. These measures have achieved certain effects. The number of employers convicted upon criminal prosecutions has increased from 45 in 2006-2007 to 83 in 2009-2010. We will consider whether the maximum penalty should be further increased in the light of the situation of employers defaulting contribution payments.

Furthermore, in the course of tendering, the Government has taken into consideration previous non-compliance records of contractors, including non-compliance records of MPF contributions. In order to increase the deterrence effect, the MPFA is considering uploading the names of non-compliant employers convicted by the court onto MPFA's website. This measure is expected to take effect in the first half of next year.

Regarding a Member's opinion that the minimum income level should be higher than the minimum wage level, I wish to point out that the MPF system is a long-term retirement protection provided for employees. Therefore, it has apparent differences, both in nature and institution, with the statutory minimum wage legislation, which requires that the wage received by employees should not be lower than the wage floor.

Also, according to the MPF Ordinance, the determination of the maximum and minimum levels of income must make reference to the General Household Survey compiled by the Census and Statistics Department. The thresholds are respectively set at monthly employment earnings at the 90th and 50th percentile



of the monthly employment earnings distribution. However, I believe some Members may aware that the maximum income level should have been increased to \$30,000 if the threshold was calculated according to the findings of the review conducted in 2006-2007. However, due to the fact that the Legislative Council and the community failed to reach a consensus at that time, thus the maximum income level had not been revised accordingly in the end. This year, the MPFA has reviewed the maximum and minimum income levels under the MPF system in accordance with the law, and the findings have been submitted to the Government for consideration. We prepare to consult the Legislative Council Panel on Financial Affairs on the proposed increase of the maximum income level to \$30,000 again early next year. Also, consultation on an upward revision of the minimum income level from \$5,000 to \$5,250 will be conducted in parallel.

President, we agree that reasonable channels should be made available to employees for checking the contributions and accrued benefits of employers. Therefore, apart from the current provisions requiring employers to submit remittance statements to employees on a monthly basis and requiring trustees to provide scheme members with annual benefit statements, the MPFA has also introduced other measures to facilitate scheme members to check the status of their MPF accounts for the past three months. These measures include the setting up of a central enquiry hotline to facilitate employees to update the latest contribution status. In addition, different trustees have also set up their own enquiry hotlines for scheme members to inquire details of their MPF accounts. What is more, the majority of trustees have provided online services for scheme members to inquire about details of their accounts. The MPFA and trustees had discussed the proposed provision of MPF passbooks to scheme members. However, after considering the costs incurred, the necessary skills and practical operational difficulties, it is noted that the proposal is not feasible for the time being.

The Government and the MPFA will continue to explore other possible ways to facilitate the employees' checking of the contribution status of their MPF accounts.

Regarding the offsetting arrangement, before the launching of the MPF system in 2000, the Employment Ordinance has allowed employers to offset the severance payments or long service payments by their contributions to the retirement schemes. As this offsetting arrangement has implications on the

overall labour relations, any changes must obtain the consent of both parties. Furthermore, this long-standing offsetting arrangement was extended to cover the MPF system after an extensive consultation, and has balanced different factors.

Last of all, regarding a Member's proposal to reform the Occupational Retirement Schemes System (ORSS), I wish to point out that this is a voluntary retirement scheme designed by individual employers for employees according to their prescribed labour welfare policy and operational objectives. There are current provisions requiring employers to provide occupational retirement scheme in parallel with the MPF system for employees to choose from. The MPFA will request employers, on this basis, to give a clearer explanation and disclose sufficient information to facilitate employees to make a suitable choice for themselves.

President, after operating for 10 years, the MPF system has no doubt contributed to the enhanced retirement protection of Hong Kong's employed population. The Government will work with the MPFA to continue reviewing the existing MPF system and its operational arrangements, with a view to further improving the mechanism. During the process, we will make reference to and properly take heed of views from Members and stakeholders, and conduct appropriate consultation on the legislative amendments.

**PRESIDENT** (in Cantonese): Mr CHAN Kin-por, you may move the amendment to the motion.

**MR CHAN KIN-POR** (in Cantonese): President, I move that Mr WONG Kwok-kin's motion be amended.

**Mr CHAN Kin-por moved the following amendment: (Translation)**

"To delete "according to the projection of the Census and Statistics Department," after "That," and substitute with "enormous changes will occur to the population structure of Hong Kong in the future, and"; to delete "in Hong Kong" after "to the population"; to add "by, for example, streamlining the management and administrative procedures of MPF

schemes and reducing the operating costs of MPF on the premise of not affecting MPF scheme members' interests, so as to create room for lowering administration fees" after "administration fees"; and to add ", as well as the percentages of contributions, so as to ensure that the amounts of MPFs are adequate to meet post-retirement expenditure" after "minimum wage".

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Kin-por to Mr WONG Kwok-kin'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): Members have already been informed, as Mr CHAN Kin-por's amendment has been passed, Mr Paul TSE has therefore withdrawn his amendment.

**PRESIDENT** (in Cantonese): Mr Ronny TONG, as Mr CHAN Kin-por's amendment has been passed, you may now move your revised amendment.

**MR RONNY TONG** (in Cantonese): President, I move that Mr WONG Kwok-kin's motion as amended by Mr CHAN Kin-por be further amended by my revised amendment.

**Mr Ronny TONG moved the following further amendment to the motion as amended by Mr CHAN Kin-por: (Translation)**

"To add "; (j) to conduct comprehensive public consultation on the effectiveness and various aspects of the MPF Scheme, given that it has already been implemented for 10 years; and (k) when implementing universal retirement protection, to conduct public consultation on the specific proposal" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr Ronny TONG's amendment to Mr WONG Kwok-kin's motion as amended by Mr CHAN Kin-por 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 the amendments by Mr CHAN Kin-por and Mr Ronny TONG have been passed, you may now move your revised amendment.

**MR PAUL CHAN** (in Cantonese): President, I move that Mr WONG Kwok-kin's motion as amended by Mr CHAN Kin-por and Mr Ronny TONG be further amended by my revised amendment.

**Mr Paul CHAN moved the following further amendment to the motion as amended by Mr CHAN Kin-por and Mr Ronny TONG: (Translation)**

"To add "; (l) to increase the ceiling of employers' monthly contributions to employees' MPFs to HK\$2,500 a month per person, so that employers can make more active commitment to employees' retirement life; and (m) to correspondingly increase the maximum tax deduction for employees' mandatory contributions to MPF schemes to HK\$30,000 each tax year, so as to strengthen employees' protection" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr Paul CHAN's amendment to Mr WONG Kwok-kin's motion as amended by Mr CHAN Kin-por and Mr Ronny TONG 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 LEE Cheuk-yan, as the amendments by Mr CHAN Kin-por, Mr Ronny TONG and Mr Paul CHAN have been passed, you may now move your revised amendment.

**MR LEE CHEUK-YAN** (in Cantonese): President, I move that Mr WONG Kwok-kin's motion as amended by Mr CHAN Kin-por, Mr Ronny TONG and Mr Paul CHAN be further amended by my revised amendment.

**Mr LEE Cheuk-yan moved the following further amendment to the motion as amended by Mr CHAN Kin-por, Mr Ronny TONG and Mr Paul CHAN: (Translation)**

"To add "; (n) to allow employees to choose to deposit part of their contributions into the Exchange Fund, and compute the annual return rate based on the average return rate of the Exchange Fund investment portfolios over the past six years, plus a minimum return guarantee, so as to ensure that the annual return will not be lower than the average yield rate of Exchange Fund Bills of 3-year maturity in the preceding year; and (o) to provide low-income employees with a contribution supplement, so as to strengthen their retirement protection" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That Mr LEE Cheuk-yan's amendment to Mr WONG Kwok-kin's motion as amended by Mr CHAN Kin-por, Mr Ronny TONG and Mr Paul CHAN 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 IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him 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, Ms LI Fung-ying, Dr Joseph LEE, Mr CHIM Pui-chung, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Dr PAN Pey-chyou and Mr Paul TSE voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN and Mr IP Kwok-him voted against the amendment.

Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Mr CHAN Kin-por and Dr LEUNG Ka-lau 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 KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Ms Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP 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, 25 were present, nine were in favour of the amendment, 11 against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, 20 were in favour of the amendment and seven against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr WONG Kwok-kin, you may now reply and you have one minute 56 seconds.

**MR WONG KWOK-KIN** (in Cantonese): President, today is the 10th anniversary of the implementation of the MPF. It is very timely and appropriate for the Legislative Council to have the opportunity to conduct the discussion here. Apart from the original motion and amendments, 22 Members have just spoken. The total number of Members who have spoken is almost half of all Members. It proves that we are all very concerned about the existing problems of retirement protection in Hong Kong.

I have noticed that Members who have spoken actually unanimously agree that the population of Hong Kong is ageing. We would like to ask the Government, what measures are in place to prepare for the emergence of an ageing population?



Besides, I notice that many Members have requested the Government to expeditiously examine and explore how to take forward and implement a universal retirement protection scheme. So, here in this Chamber we would also like to ask the Secretary, when will the Government start to examine and explore the commencement of a universal retirement protection scheme?

As regards the reply made by the Secretary just now, we find it utterly regrettable that the Secretary opined that the abolition of the offsetting mechanism for employers' contributions was not negotiable and very difficult to achieve. Just now Mr WONG Sing-chi remarked that what his Honourable colleagues said in the discussion in the Legislative Council in 2006 was more or less the same as what has been said today. I do not wish to see that 10 years later, when we — of course, probably I will not have such a chance — when other people discuss the issue again at the Legislative Council meeting, someone will point out again that what we say is more or less the same as what was said 10 years ago. I hope the Secretary will reflect deeply on these issues.

Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mr WONG Kwok-kin, as amended by Mr CHAN Kin-por, Mr Ronny TONG 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.

**PRESIDENT** (in Cantonese): Second motion: Reviewing the operation of the Land (Compulsory Sale for Redevelopment) Ordinance.

**PRESIDENT** (in Cantonese): Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mrs Regina IP to speak and move the motion.

### **REVIEWING THE OPERATION OF THE LAND (COMPULSORY SALE FOR REDEVELOPMENT) ORDINANCE**

**MRS REGINA IP** (in Cantonese): President, Mr IP Wai-ming has just said that Mr WONG Kwok-kin is blessed by the Lord because he can move his motion today on the 10th anniversary of the implementation of the Mandatory Provident Fund Scheme. President, in fact, I am also blessed by the Lord because I have been allocated this time slot to move this motion today (on 1 December), eight months after the implementation of a lower application threshold for compulsory sale (*Laughter*); and I am a bit lucky, right?

President, during this eight-month period, I have adopted the most objective attitude with regard to this issue. When we scrutinized the Bill, we asked the government officials concerned what were the expected effects on the market after the application threshold had been lowered. I remember that an official told me that there were only 21 applications for compulsory sale in the past decade, and he believed that a lower threshold would have not much effect on the market. However, within eight months after the application threshold has been lowered, the effect on the market is actually substantial.

First of all, the applications for compulsory sale have considerably increased from seven to eight cases each year in the past to 15 cases to date. According to a press report, the record has already been broken. We are caught between tears and laughter in the face of another phenomenon, which may be

regarded as a good thing. From this perspective, a lowered threshold can allow small developers to participate in development. As we have noticed, the developers applying for compulsory sale not only include familiar large developers such as Wharf, New World and Henderson, there are also many other developers such as Far East Consortium, MCC, Evergreen and Emperor. We have also found that some companies which acquired old buildings such as Soundwill and Richfield have become developers. I learn from the press that Soundwill has employed 30% additional staff, and I am caught between tears and laughter when I learn from the press that the share of Richfield, code number 8136, has gone up, and a certain "Uncle" has bought a large number of Richfield shares. I am also caught between tears and laughter because Richfield shares are listed on the Venture Board. I thought that only technology or technology related shares are listed on the Venture Board, and it is surprising for me to find that the shares of an acquisition specialist are also listed on the Venture Board. Its business is so prosperous that I think that it can even be listed on the Main Board. I hope Honourable colleagues would not think that I was mean in asking the Secretary years ago whom he had promised for lowering the threshold, because many people from the business sector could actually benefit from that measure. If I look at this issue from the positive side, a lower threshold may make the property market less concentrated in the hands of a few developers and facilitate the development of some small developers.

Nevertheless, can a lower threshold really speed up urban renewal and increase land supply? We still need more time for observation. If this Ordinance has still not been repealed after the new term government has taken office, I hope the Secretary can analyse whether a lower threshold can actually speed up the acquisition of old buildings and how much faster the process has become. I know that while some people may feel happy, some may feel sad; actually how many people are disturbed and perplexed by a lower threshold; how many people have lost their homes, have their communities torn apart, and have their shops handed down from the older generation being acquired, the shops affected may be the shop selling soya sauce or the noodle shop which wrongly assumed that it would be subject to compulsory sale. The Secretary should think about these questions.

I am delighted to find that several Honourable colleagues have proposed amendments today. I am especially thankful to Dr Margaret NG. She told me that after reading my motion, she would raise one point to emphasize a matter of

principle. Under the Basic Law, our free economy and capitalist society is subject to a principle, that is, the sanctity of private property rights. According to this principle, under what circumstances can the Government allow other private developers or owners to forcibly take away the property of people?

Regarding the origin and course of development of this Ordinance, Mr CRUDEN, a former President of the Lands Tribunal, who knows a lot about land precedents, stated very clearly in his book *Land Compensation and Valuation Law in Hong Kong* the original intent of the Ordinance. As he has written, "The Ordinance was the culmination of long voiced complaints by developers." President, is that the case? I think that is more or less the case. The developers definitely want the threshold to be lowered. In fact, a former colleague of mine, Mr Bowen LEUNG, was responsible for the introduction of this Ordinance back then, and he made reference to the situation in Singapore. I would like to cite the description by Mr CRUDEN: "A major obstacle to private redevelopment of multi-owned buildings and land was frequently claimed to be the difficulty of assembling all the shares of different owners of multi-owned buildings and land with separate units in the exclusive occupation of different owners into sole ownership." At that time, it was difficult to locate all the owners for some properties, thus Bowen LEUNG introduced this Ordinance with a view to making it more convenient to handle redevelopment projects with the difficulty of assembling all the shares of different owners. "The claim was that a redevelopment proposal could be frustrated by dissenting minority owners." Also, there was a matter of principle: "The problem raised fundamental issues of the extent to which, in the interest of desirable private redevelopment, the law should permit inroads to be made into the right of private ownership of property." This is the most basic issue of principle. Furthermore, Mr CRUDEN made two points: the biggest difference between private redevelopment and the repossession of buildings by the Urban Renewal Authority (URA) and the land resumption by the Government was that private redevelopment did not involve significant public policy objectives. Unlike the repossession of buildings by the URA, private redevelopment did not involve a Comprehensive Development Plan. In other words, many development problems might arise. We have already noticed such a situation in the past 10 months or so.

I have noted that Mr CHAN Kam-lam's amendment has mentioned a merit of the Ordinance, that is, it contributes to the redevelopment of buildings with potential dangers. Actually, the applications for redevelopment are not

concentrated in dangerous buildings on Hong Kong Island or Tsim Sha Tsui. President, there has recently been an incident where a pedestrian was hit by cement falling from a 50-year-old Chinese tenement. Would anybody acquire such buildings? Who would acquire buildings with no redevelopment value? How many developers acquire dangerous buildings at present? I have visited Kension Mansion on Caine Road after receiving a complaint. My impression is that the building is still solidly built, the problem only lies in the fact that it is located on a prime lot. Is acquisition currently conducted under this Ordinance intend to achieve the original objective? Is the Ordinance invoked because of the failure to find the owners of buildings with potential dangers that require redevelopment? The Secretary should seriously ponder over this question. Have the objectives of invoking this Ordinance nowadays run counter to the objectives when the Ordinance was enacted years ago? The Ordinance has been invoked by developers to extort by trick or by force; the developers have taken away the properties of many small owners while they have gained considerable benefits from redevelopment.

I do not oppose profit making by the business sector, however, due to the time constraint, I can only say that much. I would like to raise a major point of principle, I hope that the Secretary would bear in mind when she formulates similar development policies, that is, we do not oppose development. Urban renewal is essential, but the policies formulated by the Government should be skewed in favour of small owners. Honourable colleagues will raise a number of proposals later on, and I hope that the Secretary would improve the existing mechanism though I am not asking that this mechanism must be abolished.

With these remarks, President, I beg to move.

**Mrs Regina IP moved the following motion: (Translation)**

"That the Administration, by publication of the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice in the Gazette in January this year, specified that with effect from 1 April this year, in respect of three classes of land lot, the application threshold for compulsory sale shall be lowered from 90% to 80%; although the lowering of the threshold can help facilitate urban renewal, the existing old building acquisition mechanism lacks transparency, and owners of old buildings are unable to negotiate with developers on a more equal footing;

in the half year since the implementation of the new legislation, the acquisition of old buildings for private redevelopment has mostly occurred in prime land lots or even the Mid-levels, while no one is interested in the dilapidated communities that are in great need of redevelopment, indicating that the legislation has failed to fully fulfil its objectives; in this connection, this Council urges the Administration to review the Land (Compulsory Sale for Redevelopment) Ordinance ('the Ordinance'), including:

- (a) to examine the operational problems in old building acquisition: when dealing with experienced developers or agents, individual flat owners often cope with very great mental stress, and many of them are even subject to harassment suspected to be acquisition-related, which causes anxiety and seriously affects the life of individual flat owners;
- (b) to review the compensation mechanism for old building acquisition: flat owners at present have to fight lone battles against developers or agents who are financially powerful and influential in sale price negotiations and, given their lack of help and support, the sale prices often fail to reach the price levels of similar properties they look for in nearby places of the same districts and even fall far short of many flat owners' expectation of 'flat for flat, shop for shop' for urban renewal; and
- (c) to conduct an overall review of the Ordinance: given that compulsory sale involves deprivation of private property rights and the Ordinance currently has various deficiencies, it is necessary to conduct an overall review of the Ordinance (including the administrative arrangements therein), in order to enhance the protection of the rights of flat owners."

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

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

**PRESIDENT** (in Cantonese): I will call upon Mr CHAN Kam-lam to speak first, to be followed by Dr Priscilla LEUNG, Dr Margaret NG, Mr WONG Yuk-man, Mr Ronny TONG, Mr CHEUNG Kwok-che and Mr James TO respectively; but no amendments are to be moved at this stage.

**MR CHAN KAM-LAM** (in Cantonese): President, eight months ago, we had a debate in this Chamber about the application threshold for compulsory sale, and we endorsed that the threshold should be lowered from 90% to 80%. After the Ordinance has been in operation for eight months, I think that the 80% threshold has performed fairly well and has achieved certain results. We have become more certain that this legislation on compulsory sale brings substantive results to society, and I more resolutely believe that we made the right decision in voting for the legislation at that time.

It has been more than 10 years since the commencement of the legislation on compulsory sale in 1999, and the Lands Tribunal has just issued compulsory sale orders in 21 cases. At that time, as it was very often difficult to assemble the shares of more than 90% of owners, redevelopment could not be undertaken at full speed, and the progress of the renewal and redevelopment of old districts were slow. Let us take a look at the situation this year since the threshold has been lowered. The number of applications for compulsory sale of old buildings has obviously increased, there are already 15 applications within a short period of eight months since the implementation of the new measure. Undoubtedly, there is a breakthrough insofar as the redevelopment stalemate is concerned.

It is not easy to handle the issue of the redevelopment of old districts. If this legislation on compulsory sale had not been enacted, I believe that the high threshold of 90% would be maintained, and the redevelopment of old districts would not move a single step forward. The problems of old buildings have become increasingly serious because many old buildings are out of repair due to poor maintenance. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) initially intended to include old buildings aged 40 years or above in the scope covered by the legislation on compulsory sale because we

noticed that quite a number of buildings aged 40 years, not to mention those aged 50 years, have problems with the external walls and the interior to various extents. However, the Government opined that we could start with buildings aged over 50 years in lowering the threshold, we also agreed that buildings aged over 50 years have more problems and have urgent needs for redevelopment, thus, we accepted the imposition of certain restrictions in lowering the threshold.

Regrettably, the redevelopment of old districts have been progressing slowly because individual owners are used to opposing acquisition. There are "nail households", and it is an arduous task for owners to collect various views. As a result, redevelopment is held back because of the failure to get the fragmented shares of owners, and residents miss the chance to improve their living environment. Similar cases often occur in respect of building maintenance, as there are always a small number of owners who are unwilling to pay for the maintenance works.

President, there are around 41 000 buildings in Hong Kong, and 4 000 of them are aged over 50 years. We estimate that, in the coming decade, more than 500 buildings will reach the age of 50 on average each year. If redevelopment of old districts cannot move forward, there will be around 10 000 buildings in Hong Kong aged over 50 years by 2020.

If we do not speed up the redevelopment of old districts, the amounts to be paid by small owners for the maintenance of these old buildings would be enormous. The old buildings have problems including exposed bar tendons, concrete spalling, water leakage, external wall cracking, and even broken drainage culverts, and it will be a very difficult task to tackle these ageing problems. It will be a heavy burden for small owners, and the maintenance expenses may not be affordable by each and every owner. All these problems will create potential dangers for residents and the public. Although beginning from next year, all buildings that have Owners' Corporations should take out third party risk insurance; to be frank, I think none of us would like to receive compensation from insurance.

To avoid the continuous aggravation of the problems of old buildings, we think that compulsory sale is worth supporting; however, we should assess the effectiveness of the legislation on compulsory sale in promoting the redevelopment of old buildings in a positive and proactive manner.



It is stated in the original motion that the acquisition of old buildings for private redevelopment has mostly occurred in prime land lots while no one is interested in the dilapidated communities, indicating that the legislation on compulsory sale has failed to promote the redevelopment of old districts. Even though prime land lots did take up a certain proportion of the 15 applications for compulsory sale in the past eight months, I must say that there are also cases involving old districts such as To Kwa Wan and Shek Kip Mei, hence it is not really true that no one is interested in the dilapidated communities. Actually, the buildings in old districts and dilapidated communities generally have fragmented ownership, and it takes rather long time to assemble all the shares of 80% of owners. Yet, we cannot overlook the realistic situation that the redevelopment of old buildings have development potentials, and this is a very important point. To put it more explicitly, I am talking about the redevelopment and development value of old buildings in old districts. Developers will certainly be interested when these buildings have high development potentials, and nobody will be interested if their development potentials are relatively low. This is going to be determined by the market.

Another reason why the acquisition of dilapidated communities for redevelopment has been slower is that the owners' organizations are not well developed, causing immense difficulties in reorganizing the shares of owners. Also, some developers or agents without sufficient capabilities want to engage in acquisition, causing some owners to be controlled or deceived. There are a large number of relevant examples. Recently, there is an evident sign that the property market will undergo downward adjustments. Frankly speaking, small developers will shelve the redevelopment projects at any time because of the unclear market situation, and many small owners worry that the development projects would be scrapped. I have contacted quite a few small owners, and they all hope that large developers would acquire their buildings for redevelopment. There are views that compulsory sale helps large developers rob people's property, I think this saying does not tally with the facts.

Nonetheless, we must pay attention to certain situations in the course of acquisition. For the sake of collecting sufficient shares, some developers unscrupulously resort to illegal means and force owners to sell their properties. For example, they will destroy the flats already acquired or shut down the lighting system causing problems in security; under these circumstances, owners can no longer lead a normal live. Sometimes, they send people to harass and even

intimidate the residents, causing nuisance and putting mental pressure on the owners. Hence, we think that government departments must step up law enforcement and protect the residents' rights from being infringed upon.

President, we think that small owners should have the rights to participate in the redevelopment of old buildings, thereby safeguarding their due interests and allowing them to share the benefits after development. Yet, as small owners have divergent views, we need reliable organizations to assist these owners in undertaking private redevelopment projects. Earlier on, the DAB has proposed a bottom-up urban renewal process, which perfectly meets the needs of these owners. The URA can play the role as agents of small owners and assist them in the tender process, and in negotiating with developers over the details of the redevelopment, so as to safeguard the rights of small owners in the redevelopment process. Such bottom-up arrangements can best promote the renewal and redevelopment of old districts. So long as we can enable owners to gain in-depth understanding of the relevant operation and give them more support, I believe that the redevelopment of old districts will be undertaken in a smoother and more effective manner.

President, I also hope that the Government can expeditiously make a decision to conduct a review on the Urban Renewal Strategy and then carry out effective urban renewal work in old districts. Thank you, President.

**DR PRISCILLA LEUNG** (in Cantonese): President, since the Legislative Council passed the legislation on compulsory sale in March this year, there have been a great deal of controversies, and there was at least one incident in which there is some misunderstanding. Not long ago, I invited some estate surveyors to explain to residents in districts such as Tai Kok Tsui, Sham Shui Po and To Kwa Wan the procedures for the acquisition of properties, the operation of the applications for compulsory sale and the owners' interests, and we received very enthusiastic responses. Many old people, with the help of walking sticks, attended the talks and all seats were filled up. For this reason, we have organized similar talks several times. The residents have responded actively because they were not clear about the provisions under the legislation on compulsory sale. Quite a few residents handed me letters with trembling hands and asked me to read the letters and tell them whether they should sell their flats. The largest number of such cases happened in To Kwa Wan because there are

many old buildings in the district. Actually, most of these residents want to sell their flats because they want the district to be redeveloped, and they would like to move into new flats. However, they fear that they may be deceived because of the rumours they have heard. Thus, many owners in old districts and some other districts have mixed feelings when developers contacted them.

I have brought with me a letter to this Chamber; in fact, I have quite a number of similar letters. It is stated in this letter, "As the application threshold for compulsory sale has been lowered to 80%, please seize this opportunity to sell your flat without delay lest the acquisition price of your flat should become lower as a result of compulsory sale". An old lady whose surname is LEE showed me this letter. After the construction of the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL), similar incidents have happened in Tai Kok Tsui, and the famous property developer involved has also been mentioned by Mrs Regina IP a while ago. Similarly, it is stated at the very beginning of the letter that "As the recent tunnel boring works for the XRL has caused settlement risks and that the future redevelopment will be subject to restrictions, quite a few owners have called us and asked for the acquisition of their flats". In the letter, the developer also thanked owners for their trust.

We cannot tell what has gone wrong regarding the practice on the basis of these words in the letter. Nevertheless, owners who have received these letters would have numerous associations and they would also be scared. They are scared whether the prices of their flats will go down. The XRL works have already affected the safety of old buildings in Tai Kok Tsui for quite some time. Regarding compulsory sale under discussion, we find that there are still some deceptive acts with the intention of fishing in troubled waters. This has run counter to the principal legislative intent of lowering the application threshold for compulsory sale that we discussed early this year. I think that the Government and the Legislative Council must face the situation squarely.

Personally, I think the effect of the 80% threshold for compulsory sale may not be the requirement itself, but that the media has concentrated on reporting the threatening malpractices of the unscrupulous acquisition party in acquiring properties; describing the 80% threshold for compulsory sale as if it was a nuclear bomb. Actually, the acquisition party need not go into details to make people feel the pressure. Just like the United States and the USSR, both sides were

bluffing about nuclear power; in fact both sides will not use nuclear bombs. Yet, owners are affected by the atmosphere and they immediately ask people around whether their buildings will be sold. In particular, owners of buildings aged 50 years will have such response.

On the other hand, I have also received quite a number of cases in which owners of old buildings want to sell their flats. The small owners may have erroneously estimated the overall situation and suddenly ask for unreasonably high prices. Some people may try to push up the prices of the flats. I have come across a case where the potential buyer withdrew during the negotiation process, and nobody made any enquiries about the prices of the flat since then. Some owners really want to sell their flats and they just want someone to tell them whether the prices are reasonable or not. As some owners might ask for unreasonably high prices, so buyers withdrew and the negotiations came to an end. In that case, there are very serious conflicts among the owners, and they blame each other; the overall situation may also change such that they cannot sell their flats at the prices they originally asked for. Hence, in reviewing the legislation on compulsory sale, I think we should consider this factor. Should a measure be introduced in the legislation on compulsory sale, such as a mediation mechanism?

I remember that I supported two amendments when we passed this legislation on 17 March this year. The first one is about delaying the implementation by one year, so that the general public can have better understanding of the legislation; and another amendment is about conducting mediation first. In this connection, a main obstacle in respect of building redevelopment is the failure to get 90% of the shares of old buildings, such that many owners in old districts cannot sell their flats even if they want to. The main intention of the legislation on compulsory sale should be to facilitate the redevelopment of old districts, so as to benefit the residents of these districts. In fact, during the negotiation, the buying and selling parties are suspicious of each other. In that case, can we put in place a mechanism, so that people with no interests involved but are competent in professional assessment, or other related professionals can help the parties reach a consensus; this can avoid people asking for too high a price due to some emotional or impulsive factors that differ too much from the actual prices.

How can both parties complete the deal under a win-win situation? An important point is that this mechanism must be reinforced and perfected. In

reviewing the legislation on compulsory sale, we must consider if the public have a sufficient understanding of their interests under the legislation.

The incident involving Leung Fat Noodle that happened a few months ago clearly reflects that the Government, Legislative Council Members, developers and even small owners may have made mistakes. All of us fail to fully grasp the situation, or have limited knowledge about the situation. We can well understand why those old people are so frightened. For this reason, they are in dire need of help.

President, in the event of disputes, the cases will be referred to the Lands Tribunal as the Tribunal is after all the first step in the judicial process. Appeals can be eventually filed to the Court of Final Appeal, but many small owners or both parties involved will have to bear enormous expenses for the legal proceedings and litigation. That is the situation we do not wish to see, we do not want to see unfair negotiations among large developers, the acquisition party and small owners just because someone cannot afford the litigation fees. We know that the Government is now promoting a pilot mediation scheme. For voluntary mediation, the participation is voluntary and the mediation result is not binding on both parties. As this kind of negotiations involve huge financial benefits, even if buyers have to spend tens of millions of dollars on the legal proceedings, they can eventually earn the full amount back. Hence, we must put in place a simpler procedure. I think that a mandatory mediation mechanism that I have been advocating can provide very simple procedures, through which a consensus can be reached as far as possible with the assistance of professionals.

About the amendments today, I just want to comment on the amendments proposed by two Honourable colleagues. I support Dr Margaret NG's proposal to "promote" the rehousing of affected flat owners in the original districts. But, I have to say that this arrangement should not be made mandatory. A reasonable rehousing arrangement is the most important factor, whereas a mandatory arrangement may sometimes lack flexibility. Yet, I understand that Honourable colleagues would support the proposal to "promote" rehousing in the original districts. Another amendment by Mr Ronny TONG proposes that the developer concerned should bear all the litigation fees, I have reservations about this. It is because this will also encourage owners to abuse the judicial procedures. They may initiate legal proceedings in all cases, yet judicial procedure involve

extremely high costs. We should solve this problem by means of legal aid, and extend the scope of legal aid to cover such legal proceedings (*The buzzer sounded*) .....

**PRESIDENT** (in Cantonese): Dr LEUNG, your speaking time is up.

**DR PRISCILLA LEUNG** (in Cantonese): ..... so that there will be regulation and approving criteria in this connection. Thank you, President.

**DR MARGARET NG** (in Cantonese): President, the purpose of the amendment that I propose is to place the discussion on compulsory sale under the general principle of not infringing upon the right of ownership of private property. The most fundamental difference between societies under the communist system and the common law system lies in the protection of the right of ownership of private property. Under "one country, two systems", it is stated at the very beginning of the Basic Law that the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region (SAR), and the SAR shall protect the right of ownership of private property in accordance with law. Protecting the right of ownership of private property is a building block for maintaining our prosperity and stability. The right of ownership does not only include the right of using or developing; a person who possesses the right of ownership has the basic rights of not being forced to sell his right of ownership or being relocated. It is different from what Secretary Carrie LAM has said. According to her, the majority rule can still be observed, and the difference only lies in a higher threshold when acquisition is involved; however, 80% of the shares is a reasonable threshold. If the right of ownership of the minority can be taken away at the will of the majority, will there be any right of ownership? I must say that if the Government wants to legislate on forcing people to hand over the right of ownership, it must take into consideration material public interests; and put in place fair and impartial procedures so that small owners will be given adequate compensation and can buy flats in the original districts. Concerning the first point, government officials told us when we scrutinized the motion on lowering the threshold that the legislation on compulsory sale only facilitated private development and it did not involve public interests in respect of old district redevelopment. On the second point, the procedures set out in the

legislation on compulsory sale are extremely unfair, and this is an indisputable fact.

President, many middle-class people purchase their own flats not for the sake of making money, they just want to continue to live in their homes after retirement. If the buildings can be put up for compulsory sale by people with 80% of the shares when the buildings reach 50 years of age, in what ways are flat owners protected? Some people bought shops premises for business operation to support their families and avoid paying high rents. Once these buildings aged 50 years, they will be forced to put up for compulsory sale and the residents will have to move out. The minor impact is that people will be deprived of their means of living; while the major impact is to create social instability. These people do not rely on the Government and are willing to be self-reliant, how can they understand why the Government has to sacrifice their rights to facilitate profit making by developers? The Secretary may say that developers are not seizing the flats; they just ask owners to put up the flats for sale; and owners can buy other flats after their flats have been sold. However, let us take a look at the examples of compulsory sale. Can any owners buy another flat to live in or operate the original business in the same district with the money he has received from compulsory sale?

While the legislation on compulsory auction did in fact prohibit auction, but among 20 successful applications since the implementation of the legislation, 17 cases involved the sale of flats at the reserve prices proposed by developers, and two cases involved prices higher than the reserve prices because the Judges of the Lands Tribunal accepted the valuation reports. Why do those who offered lower prices win the bid? It is because only one developer is bidding. Nobody else is bidding because the developer already owns 80% to 90% of the shares. Who will contend against it? As a result, owners whose buildings have been put up for compulsory sale are forced to sell their flats and relocate to another district. Some of them have even been forced to relocate from North Point to Tin Shui Wai. Miss Tanya CHAN will elaborate this point further in a short while, so I am not going to go into the details.

When the Government lobbied Members to support a lower threshold for compulsory sale, it said that the Court would play the role of a gate-keeper insofar as the auction prices were concerned. Yet, we all know that the Court can only adjudicate according to the law. As the Court will not conduct a

valuation, the developer has to engage an assessor to conduct a valuation. If small owners fail to arrange for a valuation to be conducted, the Judge can just be satisfied with the developer's valuation. The developer is wealthy and powerful, and it will make profits if the acquisition is successful. For them, engaging a lawyer for the legal proceedings and a surveyor for valuation is an investment with low costs but high returns. Furthermore, the conditions set out in the legislation are basically favourable to the applicants for compulsory sale. We have gone over this legislation many times during the scrutiny process, and we know that the Court may not need to consider whether the buildings have become dangerous due to dilapidation; it approves the applications on the basis of the age and maintenance conditions of the buildings. Since small owners who wish to defend the right of ownership do not have as much money as developers, even though they manage to protect their right of ownership, they can, at most, just maintain the existing building conditions. Yet, if they lose the case, they will have to pay the other party huge amount for litigation costs, and they may lose everything. We can find such examples in newspapers. Hence, this is a contest of strength with the big bullying the small from the outset. I hope that Mr Ronny TONG who proposes an amendment would discuss this point in greater detail later.

The primary legislation on compulsory sale was passed by the Provisional Legislative Council before an elected Legislative Council came into being. In mid January this year, the Government submitted to the Legislative Council the Notice about lowering the threshold for compulsory sale. Two weeks later, the Ma Tau Wai Road building collapse incident unfortunately happened. Some Members seized the opportunity to support the Government, saying that a lower threshold would help promote the redevelopment of old districts. Nevertheless, as I have just said, the officials told us at that time that this was not the Government's intention, and the legislation had nothing to do with this issue. Yet, we can reconsider the relevant facts again. For seven months since the threshold has been lowered, has any dilapidated buildings won the favour of developers who will put it up for compulsory sale? There is no such buildings. Facts speak louder than words, and I hope that Mr Alan LEONG will go into the relevant details in a while. Today, a concern group comprising small owners have given Members some information containing concrete examples.

President, I criticized the practice of compulsory sale during our debate on the Policy Address, and I said that that was a flaw in the SAR Government's



administration last year. In her lengthy speech, Secretary Carrie LAM asked me to consider the Government's policy objectives. She also said that many relevant aspects had been covered. I have humbly gone over these policy objectives very carefully. Nonetheless, I have noted that there are only three measures: first, enhancing publicity; second, proposing a pilot mediation scheme; and third, the Government's introducing surveyors to small owners to help them obtain professional advice. Of course, these measures are better than nothing. Yet, how much substantive help can these measures offer? Will the unfair compulsory sale mechanism become fair when public education has been enhanced? The proposed pilot mediation scheme asks for mediation among developers and small owners. Nevertheless, if the legislation is not amended to change the situation of small owners, there will not be an equal basis for a deal. Mediation will be conducted merely for formality, and the so-called auction will still be conducted. If the Ordinance is not amended, merely introducing surveyors to small owners to help them obtain professional advice cannot solve the actual problems faced by small owners in handling the legal proceedings for compulsory sale.

I find that some members of the legal profession who are ordinarily not very interested in politics have very strong views about compulsory sale. It is not just because they hold strongly to the concept of the right of ownership, but because they have also witnessed how greedy businessmen employ ugly tactics to coerce, threaten and even cheated some small owners to sell their property titles. Hence, members of the legal profession cannot stand such practices.

When the Legislative Council passed the legislation to lower the threshold for compulsory sale, the Civic Party proposed an amendment and made two requests. First, the threshold for compulsory sale can only be lowered in connection with the redevelopment areas designated by the Government, and this element focuses on public interests; and second, before applying for compulsory sale, developers must propose exchanging the property titles with small owners as a condition for mediation. The aim is to make the process less unfair so that small owners can have equal-value exchanges with developers. They give up their property titles in exchange for another title, so that their basic rights to live in the original district can be safeguarded. To prevent a lower threshold from creating a greater social crisis, I hope the Government would seriously reconsider this issue. Thank you, President.

**MR WONG YUK-MAN** (in Cantonese): President, when people lobby for policies or measures to narrow the wealth gap, the SAR Government often shield them off with the principle of "big market, small government". When the League of Social Democrats (LSD) advocated that the progressive tax band of salaries tax and profits tax should be widened so as to secure funding for implementing better social welfare policies, Donald TSANG said that he would "encourage enterprise through small government and low, stable and predictable taxation". When the LSD urged that the Government should buy back The Link Real Estate Investment Trust (The Link REIT) so as to reduce large consortia's exploitation on the people, the Secretary for Transport and Housing said that the facilities, after divestment to The Link REIT, are "owned and managed by a private organization with a view to improving their operational efficiency to the benefit of both commercial tenants and residents". When the LSD called on the Government to utilize public power to prevent the MTR Corporation Limited, which yielded \$9.6 billion a year, from increasing its fares, the Secretary for Transport and Housing said, "The Government has all along been encouraging public transport operators to introduce fare ..... concession ..... to help reduce passengers' travelling expenses".

When the SAR Government implements policies to strengthen the predominance of property developers, it forgets about the principle of "big market, small government". From John COWPERTHWAITTE's *"laissez-faire"* policy, Philip HADDON-CAVE's "positive non-interventionism" to Donald TSANG's "big market, small government", they are all running along the same vein. Protection of private property rights is the foundation of a capitalist society. Hong Kong is a capitalist society, and this will remain unchanged for 50 years, which is clearly enshrined in the Basic Law. For a government which advocates the principle of "big market, small government", it will spare no efforts in defense of private property rights. However, the Land (Compulsory Sale for Redevelopment) Ordinance (legislation on compulsory sale) has lowered the threshold for compulsory sale and has seriously infringed on the rights to private property; it runs counter to the Government's advocacy. It is impossible to find any logic in the capricious administration philosophy of the SAR Government.

President, the only logical explanation is that the property developers' predominance is the main political power which influences the SAR Government's administration. The Chief Executive, who is elected by an 800-person coterie dominated by property developers, uses the "big market, small government" principle as an excuse to shield off policy proposals conducive to

the public. On the other hand, he uses grand justifications such as "old district renewal" to repackage policies which benefit property developers. For instance, the Residence Bel-Air development was repackaged as the Cyberport project and the West Kowloon Cultural District was used to glamorize the property development in the area.

The legislation on compulsory sale was passed by the Provisional Legislative Council in 1998. The Provisional Legislative Council was an unauthorized establishment that trampled on the Basic Law; it had made so many unjust decisions that it is impossible for me to name them all. These unjust decisions include the reinstatement of the Public Order Ordinance, which is an evil law, and the abolition of the workers' rights to collective bargaining and the overriding power of the Hong Kong Bill of Rights. The passing of the legislation on compulsory sale, which runs counter to private property rights, is another sin and a far-reaching havoc which it has wreaked.

This evil law passed by the Provisional Legislative Council had conferred enormous power to the Chief Executive. In order to lower the threshold for compulsory sale, all the Chief Executive has to do is to table an amendment to the subsidiary legislation by means of "negative vetting". In other words, the Chief Executive in Council will first publish a notice in the Gazette, which is then subject to the scrutiny of the Legislative Council. If directly-elected Members wish to oppose the amendment, they will have to move an amendment which has to pass through a separate voting system. The result is obvious. Under the separate voting system, the Government only needs to secure the support of half of the functional constituency (FC) Members to veto amendments supported by the majority Members. A recent example is about the minimum wage, regarding the argument whether a review should be conducted biennially or annually, 33 Members supported an annual review while 10-odd Members opposed it. But in the end, the one with 33 votes lost.

Early this year, a notice made by the Chief Executive in Council was gazetted, providing that the threshold for compulsory sale of buildings aged 50 years or above was lower to 80%. Despite the strong opposition by the general public and all democratic Members, the threshold was passed as a matter of formality with the support of FC Members and pro-government Members, further weakening the bargaining power of small flat owners and opening an easy door for large property developers to take over the properties of these flat owners.

President, the collusion among the SAR Government, the pro-government camp and the large property developers has formed a solid tripartite relationship, taking hegemonic control of the executive and the legislature. We will not be surprised if large property developers later ask the SAR Government to further lower the compulsory sale threshold to 70% or 60%.

The SAR Government said that the lowering of the threshold is for the sake of old district renewal. Let me quote the remark of the helmsman of the largest estate agent in Hong Kong. He said, "The lots at Mid-levels and Wan Chai of Hong Kong Island have the highest redevelopment value, while those in old districts such as Sham Shui Po and To Kwa Wan only possess mediocre redevelopment value because they are not the buyers' cup of tea." In fact, property developers or acquisition intermediaries alike take redevelopment value as their priority concern and have no interests in old districts which have low redevelopment value. "Old district renewal" is only a cover-up, and the connivance of large property developers' monopoly of land resources is the real intention. Thus, in my amendment I have deleted the words "the lowering of the threshold can help facilitate urban renewal" in the original motion to indicate my objection to the Government's justification for lowering the threshold.

Since the gazettal of the relevant Notice to lower the compulsory sale threshold to 80%, the stock price of Richfield Realty Limited, as pointed out by Mrs Regina IP, has been rising. I really find the influence of Richfield Realty Limited everywhere. Its bold red banner with its company name and logo printed on it is seen everywhere. It has copied the concept of the Hang Seng Bank logo. The two logos are very similar. It has set up a branch office in Kowloon City right next to my restaurant. Feeling provoked, I set up an office in Kowloon City in return which is right in its opposite. I held a seminar recently at the HKICC Lee Shau Kee School of Creativity where lawyers were invited to give a talk on old district renewal for property owners and residents in Kowloon City. On our flyers we wrote, "Are you approached for building acquisition? Ask Yuk-man. I will defend your interests." It is very common to see buildings "nailed" for acquisition. What is more ridiculous is that you do not need to reach the 80% threshold. Only 21% will be enough to acquire a building. This is a regression. This is obviously a transfer of interests to them.

Let's listen to what members of the Minority Owners' Alliance Against Compulsory Sale have said. According to members of this alliance, minority owners, in face of the financial power of large consortia and unregulated

acquisition practices, have been subject to exploitation, harassment or even violent treatment by property developers. In fact, I was also afraid that something might happen to me when I distributed those flyers. Recently, the hot-pot restaurant opposite to my restaurant was vandalized by five men at 2 am in the morning. Thus, I was also a little afraid. I have already told my staff to be more cautious when they work in the office. Who can guarantee nothing will happen? But we have no choice because we have to do our job. Hence, if something has happened to me, you can probably follow this clue.

The legislation on compulsory sale has given property developers the privilege to force flat owners to sell their property, but it does not provide any corresponding measures to regulate and monitor building acquisition or provide any support for small flat owners to safeguard their own rights in the course of acquisition and redevelopment, and be spared from undesirable acquisition practices in the course of acquisition and redevelopment.

I wish to take this opportunity to read out in Putonghua a remark made by Chairman MAO in his early years.

(The following was delivered in Putonghua)

Chairman MAO said, "A few years ago, the authorities planned to build an airport in a place in Henan province, without making any proper arrangement for local farmers or sorting out the situation with them, they forced farmers to move to another place. These farmers said, if you stroke or knocked a bird nest down from a tree, the birds inside would chirp in protest. DENG Xiaoping, you also had your nest. If I damage your nest, would you not protest? The people in that place then set up three lines of defense: children stood in the front line, followed by women and young men. The surveyors going there were all expelled. In the end, the farmers gained victory ..... There are many such examples. Now, there are people who become domineering once they are in power, thinking that they can sit back and relax. If they are opposed by the people, or stoned and beaten with a hoe, I think they deserved such treatment and I most welcome it. Sometimes, only beating can solve the problem.

(The following was delivered in Cantonese)

These were Chairman MAO's words.

President, there is nothing new under the sun. The contention in Choi Yuen Tsuen of Hong Kong is an example. In order to construct the Express Rail Link, the authorities forced the farmers out of their homes without making proper arrangement or sorting out the situation with them. Chairman MAO said .....

(The following is delivered in Putonghua)

"These domineering officials should be stoned and opposed by the people."

(The following is delivered in Cantonese)

The lowering of the threshold of the legislation on compulsory sale is not meant for infrastructural projects, but for the convenience of large property developers to extort more private profit by forcing people to sell their property at a low price. Should the people not stone them and beat them with a hoe, so as to show their opposition to these domineering officials and avaricious tycoons?

I so submit and move the amendment as contained in the Agenda. Thank you, President.

**PRESIDENT** (in Cantonese): Mr WONG, you cannot move your amendment at this stage.

**MR RONNY TONG** (in Cantonese): President, Article 6 of the Basic Law clearly provides that the Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law. This protection of the right of private ownership of property not only prohibits infringement on a person's private property rights, but also prevents the compulsory sale of his property at a low price against his will. President, after the SAR Government formulated the Land (Compulsory Sale for Redevelopment) Ordinance (legislation on compulsory sale), this Council has repeatedly reflected at different stages criticisms about the legislation to the SAR Government. However, every time the SAR Government has brushed aside our concern, explaining that the legislation has conferred power to the Court (that is the Lands Tribunal) to act as the gate-keeper, and thus small flat owners who are subject to compulsory sale will not fall victim to the legislation. An amendment to the legislation was passed recently in this Council to lower the threshold for

compulsory sale from 90% to 80%. During the debate on the amendment, the Secretary still used the same reason, saying that the Court could play the role of a gate-keeper. But facts always speak louder than words. We can see from the numerous cases in the past few years that the Lands Tribunal has completely failed to play the role of a gate-keeper and protect small flat owners.

President, I only need to cite two cases for Members' reference. The latest case is about a lot at Upper Kai Yuen Lane of North Point. The Lands Tribunal approved the auction of this lot in January this year with the reserve price at \$709 million, that is, at \$3,500 per square foot in terms of floor area. However, at the same time, two other lots in Tai Po of New Territories, President, I repeat, they are in Tai Po, were auctioned at the transaction price of over \$7,000 per square foot. Even a child knows that the price of the lots in Tai Po cannot exceed the price of those in North Point by more than double. What is most despicable is that not long after (in October this year) the acquisition of the lot in Upper Kai Yuen Lane, the person who acquired the lot resold it to his grandfather's corporation at \$1.66 billion (that is, at an average \$8,180 per square foot), profiteering over \$900 million. Thus, we can see that the Lands Tribunal has seriously undervalued redevelopment and undermined the interests of small flat owners.

Another case is about a soya sauce shop (溢利油莊醬園) located at No. 44-46 Haven Street in Causeway Bay. A 90-year-old lady Ms LEE has been living and running the soya sauce business at the site for almost 50 years, and she regards the business as her only means of sustenance. However, after losing her shop to compulsory sale, she filed an objection which was rejected by the Court. After deducting the litigation fees, she can only get \$2.5 million in compensation for her 1 200-sq ft street-level shop. Only \$2.5 million, that is, about \$2,000 per square foot. How can this system be accepted by people who defend social justice? President, this is totally unacceptable. I do not know what the Secretary will say later, but the hard fact is right in front of us. The Lands Tribunal simply has not played its role as the gate-keeper.

In fact, what difficulties has the Lands Tribunal encountered? What mistakes, which it has made, should be rectified? I have put these into three points as stated in my amendment today. The first mistake is that in the event of a large property developer filing an application for compulsory sale of a building against the will of minority owners, the Lands Tribunal has treated the application as an ordinary litigation. In other words, the party losing the case shall bear the

litigation fees. However, this is not an ordinary litigation. The large property developer and the minority owners are not on equal footing in terms of litigation capacity. The litigation is not initiated by the minority owners against the large property developer either. The minority owners are the ones being affected. In fact, a lot of such precedence can be found in our judicial proceedings. If an applicant applies for the granting of a privilege called indulgence, or the granting of a permission by the Court, the litigation fees so incurred in such judicial proceedings shall, in most cases, be borne by the applicant. The objective is not to punish the applicant, but rather it is because the application is initiated by him. Coupled with the fact that the other party has the right to challenge or even object the application, the litigation fees incurred in these proceedings should thus be borne by the applicant. The privatization of companies is a very good example. Hence, why can we not apply this principle in handling litigation fees related to compulsory sale of buildings?

President, Dr Priscilla LEUNG is now not in the Chamber. She questioned just now whether such judicial proceedings will be abused. Generally speaking, the Court does play a gate-keeping role. If the law provides that large property developers, under a general circumstance, shall bear the litigation fees, unless it is proved that the judicial proceeding has been abused, the Court will treat the litigation as a general case and award the litigation fees against the property developer. Of course, if the Court discovers that the minority owners have abused the proceeding, it has the right to digress from this established practice on litigation fees. Hence, this is no reason for opposing this practice.

On the other hand, large property developers regard the litigation fees as a trivial cost of the development project, which can be recovered from the profits in future. However trivial such litigation fees may be to the property developers, this is not the case for minority owners, such as the 90-year-old lady I mentioned just now. In order to defend her own shop where she has lived for 50 years, she has almost spent all the compensation on the litigation. In the end, she could only recover \$2.5 million. I know that this case is under appeal, but the point is that the Lands Tribunal must be able to genuinely play its role as the gate-keeper. Clear guidelines should be laid down in the law, so that the Lands Tribunal will be able to come to the understanding that this is not an ordinary judicial proceeding.



President, the second point I wish to raise is that minority owners often have no ways to make an objection, nor can they make proper judgment on whether or not they should make an objection. Why? Because they almost have no information. For instance, large property developers have no obligation to provide the information contained in the report which they submit to the Lands Tribunal to the minority owners. Such information may cover the structure, condition and repair status of the building concerned and the development potential of the lot. As a result, the minority owners do not have the confidence to make an objection. They often dare not take this risk. Hence, apart from the litigation fees which often intimidate the minority owners, having insufficient information to make proper judgment on whether or not they should make an objection is another important reason why they do not raise an objection.

The third point I wish to deal with is that large property developers generally are not required to be abided by any restrictions in relation to their development projects. The case of Upper Kai Yuen Lane which I mentioned just now is a very good example. The developer, who has acquired the property with \$700 million, can sell the property to his own corporation at \$1,000-odd million. We often receive complaints from victims, claiming that the developers have used the value of a single building in calculating the value for acquisition, but the developers actually intend to acquire all buildings along the street for redevelopment. The price differs greatly between acquiring all the lots in one street and acquiring one single building.

Hence, another problem which should be rectified by legislation is that the acquisition made by a large property developer should reflect the scale of its ultimate development project. Under normal cases, the property developer should be prohibited from digressing from this development project or selling the property acquired to other parties before the completion of the project for profiteering or transferring interests. Legislative amendments should thus be introduced to rectify these problems. These amendments are instrumental in defending the rights of small flat owners. Otherwise, under the present situation, making applications to the Lands Tribunal is only a matter of procedures and cannot serve the function of protecting small flat owners.

President, I believe the Ordinance is an evil law. If legislative amendments are not introduced to protect the rights of small flat owners, (*The buzzer sounded*) ..... , the Ordinance should not be allowed .....

**PRESIDENT** (in Cantonese): Mr TONG, the speaking time is up.

**MR RONNY TONG** (in Cantonese): ..... to exist.

**MR CHEUNG KWOK-CHE** (in Cantonese): President, the amendment to the Land (Compulsory Sale for Redevelopment) Ordinance was passed in March this year in the midst of objection. On that day, Secretary Carrie LAM promised us that the lowered threshold is conducive to the people and it has answered the call of the "people". Thus, she asked Members to trust the SAR Government.

As a matter of fact, in less than a year since the legislative amendment came into effect in April, 14 applications for compulsory sale of buildings were received, which is twice the number of applications received in the whole of last year. What does this tell us? Apart from accelerating redevelopment, we note that the lowered threshold has made it easier for developers to gather sufficient shares of a lot for compulsory sale, leaving minority owners, who have become the easy prey, more susceptible to selling their property at a low price. I truly wish to ask the Secretary a question: is this evil law meant to answer the call of the "people" or the "developers"?

Hong Kong has little land resources but a huge population. Old district redevelopment is an inevitable means to increase land supply. However, in the process of acquisition, minority owners are often very passive as they have limited information and bargaining power. They are like a piece of meat on the chopping board. In order to give greater initiative to minority owners, I propose that when small property owners employ independent surveyors to assess the market value of their units, the acquisition parties should bear all professional valuation fees, which include a report on the building condition, a valuation report by the surveyor and the formula for calculating the acquisition price. By so doing, small property owners will be able to bargain with the acquisition parties on a more level playing field and the pricing information provided by the acquisition parties will not be the only information used in considering the acquisition.

Perhaps Members may say that such valuation generally costs a few thousand dollars, which will not be a great burden to those property owners who may be compensated with millions of dollars. However, many small property

owners living in old buildings are often poverty-stricken, particularly the elderly people who live on "fruit grant". It will be very difficult for them to make available a few thousands dollars or even \$10,000 to pay for the valuation fees before acquisition.

Moreover, flat owners are not the ones who take the initiative to ask the developer to acquire their units. The responsibility of conducting the valuation should thus be on the developer who wishes to acquire the building. For the sake of fairness and justice, it is reasonable that the surveyor is chosen by the flat owner, so as to avoid his unit being sold at a low price. Moreover, given the fact that most small flat owners have no power, influence or money, they are the weakest party in the acquisition. Thus, if the Government wishes to answer the call of the "people", it should accept this proposal.

Moreover, nowadays, acquisition parties are not only interested in acquiring a single building, and very often they will amass the lots in the vicinity for acquisition. If the acquisition is successful, the land price will rocket. It is thus unfortunate that the valuation being done at present does not take these factors into consideration, while developers may not provide a comprehensive development blueprint for valuation, so as to avoid increasing the valued price and in turn the acquisition cost. In assessing the acquisition price of a unit, the surveyor should factor in the price of the building after redevelopment and the additional value to be brought by the future development project. A retrospective mechanism should be put in place to prevent developers from taking advantage of this loophole.

Nevertheless, in the absence of supporting legislation and measures which uphold fair acquisition, the legislation on compulsory sale will become a tool for developers to bully small flat owners. Eighteen out of 20 compulsory sale transactions taken place since the legislation came into effect in 1999 to January 2010 were made at the reserve price with no bidder. The transaction prices were about half of the prevailing market price. Although small flat owners who are dissatisfied can lodge an appeal, they know that they will lose the case in the end because the acquisition parties are mostly large property developers with abundant human and financial resources for the appeal. By then, these small flat owners may have to use over a million dollars to pay for the litigation fees, in addition to having sold their property at a low price.

Some front-line social workers told me that some of these small flat owners living in old districts are elderly people with no family or relatives. The consortia will inevitably resort to misleading or even deceptive means to acquire their properties. In particular, since the threshold for compulsory sale is lowered to 80%, developers have used this new measure to intimidate small flat owners, urging them to sell their units as soon as possible and telling them that the compensation will be even less if their units are sold by compulsory sale. Many small flat owners will then give in and sell their units to the developer.

Regarding this problem, Secretary Carrie LAM, in her reply to a question put at the Legislative Council meeting last week, said that they will engage a social welfare agency early next year to provide outreach service for the elderly owners of old buildings, so as to explain to them the practice of property acquisition and the procedures of compulsory sale. The social welfare agency will also refer relevant cases to surveyors for follow-up. I welcome this idea, but I hope that this service can be extended to cover small flat owners in need and that more support services can be provided at district level, so that these owners whose property is under acquisition will not feel so helpless.

I earnestly hope that the Secretary can seriously consider and adopt our views, and use a more humane perspective, rather than the cold economic mindset, to take forward social development. Admittedly, the building collapse incident that happened in To Kwa Wan has highlighted the existence of many age-old buildings which lack maintenance. These buildings should be renovated or demolished for redevelopment. However, will the Secretary throw the child out along with the water? That is, will she pass this evil law at any cost and put the people to suffer? I hope the Secretary can take this opportunity to think this question through.

President, I so submit.

**MR JAMES TO** (in Cantonese): President, the legislation on compulsory sale under discussion today was enacted by the Provisional Legislative Council which had no mandate from the people. Thereafter, Secretary Carrie LAM of the SAR Government has relaxed the requirements of the legislation to enable property developers to manipulate the loopholes to put pressure on minority owners and further rob them of their assets.

President, I am disappointed by the amendment proposed by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Have Members from the DAB not heard the calls and cries made by minority owners in the district? Noting that the Member from the DAB has proposed an amendment to item (c) of the original motion which reads, "to conduct an overall review of the Ordinance", I wonder what the amendment is about? And what the review is about? It turns out that the Member from the DAB is saying that the current legislation is without any deficiencies. Why do I say so? Because the amendment has deleted the phrase "the Ordinance currently has various deficiencies" from Mrs Regina IP's original motion. In other words, the legislation does not have "various deficiencies". Then, when he comes to the part about the review, the phrase "enhance the protection of the rights of flat owners" is deleted as well. In other words, the Ordinance needs to be reviewed but it has no deficiencies and it is not necessary to enhance the protection of the rights of flat owners. His review is proposed under such conditions. "Buddy", come on. Has the DAB done any work in the district? Of course, it has. But why they always come up with such amendments? Other Members from the DAB have yet to speak on the motion and I hope they can respond to this question. Has Mr CHAN Kam-lam been a bit too "rightist"? Have other Members from the DAB not noticed this? If he says the Ordinance is without deficiencies, let me immediately list out its seven sins, to say the least.

The first sin: The Ordinance has not specified that the property must be in a very dilapidated state before it can be put up for compulsory sale.

The second sin: The Ordinance has not specified the requirement of mandatory mediation before the property can be put up for compulsory sale.

The third sin: The Tribunal is not obliged to set the reserve price according to an independent valuation report, which is not conducive to safeguarding the minority owners.

The fourth sin: The Ordinance will not consider the redevelopment value of the lot after consolidation.

The fifth sin: The adoption of the tribunal system would place minority owners in an unfair situation during the litigation process because of the unequal resources available.

The sixth sin: It is related to the conduct of public auctions. Past records have shown that the auctions are merely "shows" and this mechanism cannot achieve the *bona fide* market price of the concerned properties.

The seventh sin: The timing of the auctions is solely determined by developers as they have acquired 80% or 90% of the shares.

President, how come some of our Honourable colleagues propose the deletion of the phrase "various deficiencies"? How come we cannot enhance the rights of flat owners? Is that not the direction the review of the Ordinance should follow? If we do not establish the fundamental principles first, how can a review be conducted? How can the problems be identified? I really would like to have a response from Members from the DAB.

President, the Ordinance can actually provide a basis for promoting urban renewal. Nonetheless, the Ordinance must safeguard the rights of minority owners on the one hand, and enable them to determine the proper market value of their properties on the other. President, as we can see, very dirty tricks are used by the intermediary companies (sometimes they are also the developers) to acquire the ownership of old properties. I heard the speeches made by some Honourable colleagues just now ..... if I am right, that should be Dr Priscilla LEUNG. When speaking on her amendment just now, Dr LEUNG said that some owners have demanded unreasonable prices for their properties. Are there cases like that? Probably. But the question is the Government should strengthen the advice provided by professionals so that owners can have a better understanding of the situation. Sometimes, if owners do not know the situation well, they may over-estimate the value of certain areas. This is one of the reasons why they have demanded for excessively high prices.

However, the current situation is ..... We have tried to enquire with the Hong Kong Housing Society (HKHS) — bear in mind that it has been eight months since the relevant legislation has become effective. We have tried to enquire with the HKHS by asking our research officers to pose as property owners or by making formal enquiries. We asked, "Given that the distribution of shares of a certain building is such and such, can you tell us whether the newly-amended legislation on compulsory land sale is applicable?" The reply we got is, "I will only explain to you what amendments have been made to the law, but I cannot give you any analysis or advice about the lot where your

building is situated." I am not sure whether the services or professional services given by social workers as mentioned by Mr CHEUNG Kwok-che would include the provision of opinions in this regard. If not, what services are actually involved? Does it mean just a meeting with the social workers? Of course, if flat owners can meet with the social workers, they might stand a better chance of seeking some better professional advice. But the question is whether such service will be included? I recall that when ..... Mr WONG Kwok-hing happens to be in the Chamber now. I do not mean to direct against him but whenever this Ordinance is mentioned, I would invariably think about him. At that time, he swore to God that he would not allow the passage of the legislative amendment if no mediation mechanism was established. As such, the Secretary had undertaken to set up a mediation mechanism. Mr WONG Kwok-him, it has been eight months but has the mediation mechanism been set up? Have you followed up on that? What was the promise she made to you? Are you just a glib talker? I have no idea. I only know someone has said that it is alright as long as a mediation mechanism is established and the Secretary has promised to do so. This is something we are quite familiar now. It is the same with the Octopus incident.

President, when I spoke during the previous debate about this matter, I pointed out that the Secretary was also aware of the inherent inequalities of this Ordinance. There were inequalities in judicial proceedings, the valuation process and so on. The developers would resort to tacky tricks to intimidate (not compel by threat and lure with money, it would be alright to lure with money if the developers are willing to do so) and threaten the minority owners, turning their living area into a filthy and dilapidated place. They would also hang up some banners resembling "exorcist scripts", which even unaffected members of the public find extremely frightening. What should we do? I only want to strengthen the powers of the minority owners, that is, the concept of empowering, so that they have some bargaining power when facing such a situation. At that time, I have specially urged Secretary Carrie LAM to organize the minority owners, and to give them detailed explanation about the situation they face. At that time, I said that in organizing the minority owners, they did not have to bundle forever. In consideration of different people, different prices and different "margins", some of them might want to accept the offer while others might want to keep on fighting. They would not be bundled forever. But the question is, if they wanted to stay bundled, say, for a certain period of time such as three months or six months, and aimed at getting 21% of the shares for

bargaining, what will you do to help them? What kind of people you have lined up to help them? Eight months have passed already. How much time do you need to consider the matter? Are there any difficulties? Is it so difficult to line up the professionals and social workers? How many minority owners have to be sacrificed; how many helpless minority owners have to be knocked down one by one and left to suffer miserably; how many elderly owners are forced to sell their properties before you will take actions to save them? I have to ask Secretary Carrie LAM, how many such cases do you need before actions will be taken? Is this what you mean by in line with the so-called overall public interest? President, if we do not take some remedial measures expeditiously, every owner might stand to sacrifice their interests, including their homes, their "cosy nest", their safe haven ..... this is unethical.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, since the Land (Compulsory Sale For Redevelopment) (Specification of Lower Percentage) Notice (the Notice) came into operation on 1 April 2010, this motion debate moved by Mrs Regina IP today gives me the chance to discuss again with Honourable Members this inherently highly controversial issue. I welcome the opportunity. Nonetheless, I welcome this motion debate not because I have any confidence of winning over those Members who had previously not supported the Notice or the principal legislation; but at least, I have the chance to report to all Honourable Members the follow-up work that we have done since the commencement of the Notice.

First of all, I would like to recap that during the previous debate on the Notice, more than a dozen amendments had been proposed and with the exception of the one seeking to defer the implementation of the Notice for one year, other amendments had been voted down by a simple majority of Members. In other words, the Notice proposed by the Government has the support of the majority of Members of the Legislative Council. Hence, the Notice was not, as depicted by Mr WONG Yuk-man, passed with the blessings of Members returned by functional constituencies and Members from the pro-establishment camp. I think Members who then supported the Notice proposed by the Government share with me the belief that it is only through private sector redevelopment that the dire livelihood problems of residents living in old districts could be improved.

First of all, as the Land (Compulsory Sale For Redevelopment) Ordinance (the Ordinance) has been described as contravening the principle of respecting



private property rights and depriving private property rights in both the original motion and some of the amendments, I must first reiterate the objective and spirit of the Ordinance.

With the prevalence of multi-storey buildings in Hong Kong, when individual units in a multi-storeyed building are sold to different buyers, it will give rise to the situation of joint ownership of the lot on which the building is situated. In Hong Kong, land lots under joint ownership are generally dealt with in the following manner.

- The developer will nominally divide the title of the lot on which the building is situated into a number of undivided shares;
- Through the deed of mutual covenant, the rights and responsibilities of individual owners of the building will be regulated under the said contractual document including the owners' right to the exclusive enjoyment and use of their respective units. Owners will be allocated, in accordance with the number of undivided shares they acquired, the right to the exclusive enjoyment and use of the relevant units as well as other parts in the building;
- When selling the "flats", the developer is actually selling "the undivided shares" to the owners who, by their ownership of the undivided shares, shall have the right to the exclusive enjoyment and use of specified units in the building; and
- Of course, any owner is free to sell the undivided shares he owned, together with his right to the exclusive enjoyment and use of the concerned unit.

Nonetheless, President, we must understand and accept that as owners of a building are also joint owners of the lot on which the building is situated, when redevelopment of the lot is necessary, all owners of the undivided shares of the lot will also be affected and hence, they must consider and decide their future direction.

The objective of the Ordinance is to provide a legal and reasonable mechanism to deal with the situation where the redevelopment of a lot is

necessary, yet owners of all of the undivided shares fail to reach a consensus, so that persons who own a specified majority of the undivided shares in the lot (that is, 90% as specified in the Ordinance or 80% for the three classes of land lot provided specifically under the Notice) may make an application to the Lands Tribunal for an order for the sale of all of the undivided shares in the lot for the purpose of redevelopment. The Lands Tribunal will make such an order only if it is satisfied that two conditions are met, respectively "the redevelopment of the lot is justified due to the age or state of repair of the existing development on the lot" and "the majority owner has taken reasonable steps to acquire all the undivided shares in the lot".

In other words, the situation is not as depicted by some Members that as long as some owners have acquired the majority shares of ownership of the building, they can force their will upon the minority owners. The Judiciary has an important role to play under the framework of the Ordinance. In fact, the objective of the Ordinance has been clearly explained by the Court of Final Appeal in the case of *Capital Well Limited vs Bond Star Development Limited* in 2005. According to the judgment, the Ordinance on the one hand aims to facilitate urban renewal in respect of old and dilapidated buildings by assisting private developers to complete their acquisition where they already own at least 90% of the lot in question and by preventing the indefinite obstruction of a redevelopment by any minority owners who may seek to extract a wholly unreasonable price or "ransom" for permitting the redevelopment to proceed. On the other hand, the Ordinance aims to ensure that minority owner receives fair and reasonable compensation for his interest in the lot.

Mrs Regina IP just cited Mr Gordon CRUDEN's interpretation on the Ordinance as contained in his book and he was quoted as saying that the original intent of the Ordinance was the culmination of long voiced complaints by developers. I am afraid that is Mr CRUDEN's personal view. In fact, Mr CRUDEN has not been personally involved in any cases under the Ordinance. His book was written through researches and not related to court judgments in this respect. The whole debate on the Notice held previously by the Legislative Council was related to land redevelopment. I hope Members are clear that today's discussion should also be held against this background and premise.

In order to learn more about the experience of other cities facing similar issues as Hong Kong about the redevelopment of land under joint ownership, I

have visited the Singapore Strata Titles Boards (STB) in June this year while on a duty visit to attend an international conference in the country. On that occasion, I have met with the President, Deputy Presidents and Panel Members of the STB. The STB is a local statutory body responsible for adjudicating applications of en-bloc sales under the Land Titles (Strata) Act of Singapore. Regarding this Act, the local officials told me that each strata owner had the right to live undisturbed in his flat. At the same time, majority views on whether there should be a sale of the development should be recognized as well. This is similar to what I said just now.

Similar to Hong Kong, strata owners in Singapore who apply for collective sales must also meet with many different wishes: some owners may want to sell their flats while others may not want to. For this purpose, the Land Titles (Strata) Act was enacted in Singapore as early as 1985 to provide a legal framework for all strata owners to carry out en-bloc sales. Under the Act, for strata developments aged 10 years or above, the majority owners must control at least 80% of the total share values and account for at least 80% of the total area of all the units in the development before an application for collective sale can be made to the STB. For developments less than 10 years old, the corresponding percentages are 90%. It is evident that when compared with the requirement in Singapore, the threshold for making an application to the Lands Tribunal for a compulsory sale order in Hong Kong is more stringent.

Moreover, the Singaporean Government has also examined whether the age or state of repair of buildings should be factors of consideration when approving en-bloc sales. Its conclusion is that the market should decide the economic benefits of redeveloping buildings of a lesser age because for buildings aged 10 years or above, the threshold is only 80% of the shares. Hence, comparatively speaking, the legislation of Hong Kong is geared towards the redevelopment of old and dilapidated buildings with a heavy emphasis towards achieving social objectives than the so-called economic objectives.

Legal principles aside, the Ordinance serves to deal with the different demands from owners of old buildings as well as the social problems brought by building dilapidation in Hong Kong. From the views I gather from various sources including public discussions, the professionals, letters from members of the public as well as my personal experience, I know that many owners of old buildings, particularly the elderlies and those who do not have any regular

income, would welcome the offer from developers to buy their flats for redevelopment. After the flats are sold, they can move away from the buildings which they cannot afford to renovate, or use the sale proceeds to improve their living environment, or use the cash received to meet other livelihood needs. In this regard, the Urban Renewal Authority has recently completed a tracking survey on the redevelopment project at Hai Tan Street in Sham Shui Po. According to the survey findings, many owner-occupiers affected by the said redevelopment project would retain a substantial amount of the compensation in cash.

Of course, I also completely understand that for some owners of old buildings, they may be unwilling to sell their flats for various reasons and would feel annoyed by the acquisition moves as well as the possibility of being subject to compulsory sale. Opinions for and against the Ordinance do exist. Nonetheless, President, as a government obliged to carefully deal with the different opinions in the community so as to achieve the right balance, we must ensure that applications for compulsory sale can be dealt with under the fairest of circumstances by putting in place a reasonable framework under the law, safeguarding the rights of minority shareholders, launching public education and providing support for small owners. During the debate on the Notice held early this year, I had already explained in detail the safeguards for minority owners provided under the law. As the speeches made by Members just now are more or less similar to those they made in March this year, I will speak more about our follow-up work for enhancing public education and support for small owners because suggestions in this respect have been made in a number of amendments proposed by Members. I would also like to take the opportunity to thank the Judiciary, the Department of Justice, various mediation service providers, the Hong Kong Housing Society (HKHS), the Estate Agents Authority (EAA) and the Hong Kong Institute of Surveyors (HKIS) for their support in the past few months.

In order to enhance public understanding on the rights of small owners under the Ordinance, the HKHS has since 1 April this year provided free over-the-counter information service to minority owners as well as interested members of the public on the compulsory sale process under the Ordinance through its 10 Property Management Advisory Centres. To publicize its information service, the HKHS has recently published a leaflet which has been distributed to all owners' corporations and mutual aid committees over the

territory. As at 20 November 2010, the HKHS has received a total of 201 enquiries, with 35% related to the eligibility for application of compulsory sale order under the Ordinance; 24% related to the assessment of sale price and compensation; 18% related to the rights and protection of property owners; and 10% related to the application procedures for compulsory sale order. In cases where HKHS's front-line staff is not able to fully address questions on the operations of the Ordinance, the HKHS will refer such enquiries to the HKIS for professional advice. The HKHS has so far referred one inquiry case to the HKIS. The inquiry was mainly about the valuation criteria adopted by the majority owner when making an acquisition offer for the properties of the minority owners, how minority owners could protect their own rights and interests, and discussion on the main points of the major judgments handed down by the Lands Tribunal, and so on. The HKIS has contacted the enquirer and taken appropriate follow-up action.

Given that members of the public have yet to fully grasp the classes of land lot where the 80% application threshold applies, comprehensive information in this regard will be provided by the HKHS. The HKHS would explain to the enquirers what the three classes of land lot specified under the Notice are and how to ascertain if their buildings are situated in lots which belong to either one of the three classes of lot. For the first class of lot, that is, a lot with units each of which accounts for more than 10% of the undivided shares in the lot, it can be ascertained through the registration records of the Land Registry; for the second class of lot, that is, a lot with all buildings aged 50 years or above, it can be ascertained through the records of occupation permits kept by the Buildings Department; as for the third class of lot, that is, a lot that is not located within an industrial zone and with all the buildings on the lot being industrial buildings aged 30 years or above, it can be ascertained through the outline zoning plans available at the Planning Department. For enquiries on the specific circumstances of individual buildings, as the HKHS is not an organization to offer legal or other professional advice, it will suggest the enquirers to seek independent legal or other professional advice.

I am fully aware of the deficiencies of this kind of relatively general enquiry service. Just now, Mr James TO has also shared his experience with us. Therefore, in order to provide further assistance to small owners, particularly elderly minority owners of old buildings, arrangements are being made by the Development Bureau to engage a social welfare agency to provide outreach services to elderly owners and to liaise with elderly centres in various districts so

that a service network, as mentioned by Mr CHEUNG Kwok-che, will be established to proactively explain to elderly owners the general practice of property acquisition and the procedures of compulsory sale under the Ordinance. Unlike the service provided by the HKHS, the social welfare agency will refer the cases of elderly owners to the professionals, such as surveyors, for advice and assistance according to their wish. I hope the social welfare agency will launch such service in early 2011.

As I just said, the kind of service provided by the social welfare agency is more tailor-made and targeted than that by the HKHS. As we understand, elderly owners may find it difficult to conduct the necessary checking with different government departments (such as the Land Registry, the Buildings Department and the Planning Department I mentioned earlier) whether the buildings in which they are residing fall within any of the three classes of lot specified under the Notice. Hence, the social welfare agency to be engaged will further assist elderly owners in making the verification about their individual cases. In respect of providing information to the owners, I would like to express my thanks to a number of Honourable Members in particular for they have helped the Government disseminate the relevant information through their work in the district level. As Members just heard, Dr Priscilla LEUNG had organized seminars as part of her district work and professionals were invited to give explanations on the Ordinance and the Notice. Ms Starry LEE has worked twice with the Development Bureau to organize relevant seminars. Even Mr WONG Yuk-man has told me just now that he would gladly help distribute the leaflets and organize some seminars. I am glad to say to Members that complementing arrangements would be made by the Development Bureau accordingly.

Apart from providing information to members of the public and the owners, we are also very concerned about the role of intermediaries. As such, in August this year, the EAA issued a Practice Circular on estate agents' practice in the acquisition of old buildings (the Practice Circular) to remind the practitioners the relevant guidelines and code of conduct they should comply with. Under the Practice Circular, the EAA has listed out the guidelines for appropriate actions of estate agents when carrying out the relevant activities. Moreover, the EAA has incorporated the contents of the Practice Circular into the programmes of its Continuing Professional Development Scheme to further remind estate agents on matters to which they should pay attention when engaging in such acquisition activities.

The Practice Circular requires that estate agents carrying out acquisition of old buildings must inform their clients whether they are acting on behalf of the owner or of the purchaser and disclose to their clients the monetary reward or other benefits they will receive in relation to the acquisition. They must not harass owners or employ any improper tactics to exert pressure on the owners to sell their flats, and they should advise elderly owners to be accompanied by family members or close relatives when entering into price negotiation. They must also explain the terms and conditions contained in the agreement for sale and purchase to the owners. Moreover, all blank spaces in the provisional agreement for sale and purchase listing the flat, the parties, the price and all other terms of the sale and purchase must be filled in. Unless the provisional agreement for sale and purchase has been signed by the purchaser, estate agents must not arrange for the vendor to sign thereon.

Where an estate agent provides any information to the vendor in relation to the acquisition of the building, he must ensure that all such information is accurate and up to date. Such information includes the price of other units in the building, the position of the other vendors in relation to the acquisition, the progress of negotiation with other vendors about the acquisition of their flats and the percentage of ownership in the building which has already been acquired by the purchaser.

Under the Practice Circular, practitioners must not, without the consent in writing of the vendor(s) and the other owners of the building, put up any banners, boards, posters or other materials on the building in relation to the acquisition of flats in the building. Nonetheless, the owner shall have the right to post or display items inside his flat as long as no law of Hong Kong has been violated.

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

If an estate agent is suspected to be involved in any malpractice, the EAA will investigate the case and take disciplinary action against the estate agent concerned if the case is substantiated.

Dr Priscilla LEUNG and Mr James TO both mentioned the establishment of a mediation mechanism in their proposed amendments. This is in fact the

undertaking I gave in March this year when the Notice was scrutinized by the Legislative Council. Over the past few months, with the support of the Department of Justice, the Development Bureau has been working closely with the Joint Mediation Helpline Office Limited (which comprises the eight major mediation service providers) to set up a pilot mediation scheme for compulsory sale cases in January next year. The pilot mediation scheme aims to facilitate parties involved in or contemplating compulsory sale applications under the Ordinance to undertake mediation on a voluntary basis. The pilot mediation scheme will be financially supported by the Government. Our financial support includes the setup and operating costs of the scheme; and most importantly, financial assistance to eligible elderly owners towards mediation fees. In other words, eligible elderly owners who join the mediation scheme do not have to pay any mediation fee as such will be borne by the Government. The trial period of the pilot mediation scheme is one year. If both parties (the majority owners and the minority owners) who are or who will be involved in compulsory sale applications are willing to join the mediation scheme, staff of the service provider of the pilot mediation scheme will first explain the operation of the mediation mechanism to both parties. To enhance transparency, we will request the service provider of the pilot mediation scheme to provide a list of their accredited mediators and their standardized charges to facilitate both parties joining the scheme to make their choice. All accredited mediators are independent professionals who are professionally trained in mediation. They will, in an unbiased and confidential manner, help to get both parties into dialogue and negotiate, with a view to reaching consensus.

I understand that some Members share the concern expressed by Dr Priscilla LEUNG about the effectiveness of this mediation service, which is after all voluntary. Hence, in order to further promote the usage of mediation service, the Judiciary has drawn up a Practice Direction and is now holding consultation with the industries. I believe this Practice Direction will have a major role to play because under section 4(2)(b) of the Ordinance, one of the conditions to be met before a compulsory sale order shall be made by the Lands Tribunal is that it must be satisfied that "the majority owner has taken reasonable steps to acquire all the undivided shares in the lot". If the majority owner refuses to make genuine effort to mediate with the minority owner, this should be a factor of consideration for the Lands Tribunal when determining whether or not the compulsory sale order shall be made.



To step up publicity and public education on the rights of minority owners and the services provided by various organizations, as well as the caveats that these owners should watch out for when approached by developers or intermediaries on voluntary acquisition or compulsory sale, the Development Bureau will launch a video explaining the Ordinance early next year. The video will explain the scope of the Ordinance and the procedures of compulsory sale of land and properties in a simple and straightforward manner so as to help the affected owners understand their rights and the protection for them under the Ordinance. The video will also briefly explain what the three classes of lot specified under the Notice which took effect early this year are, and how to obtain further relevant information from the 10 Property Management Advisory Centres of the HKHS. The video will also explain to the public the available support and assistance which I just mentioned, including explaining the role of the EAA in regulating the estate agents' role when acquiring old buildings and the possible assistance that the EAA can provide to the owners. Of course, the video will also introduce the pilot mediation scheme soon to be launched by the Development Bureau and the support services to be provided by the social welfare agency.

Regarding the amendments proposed by the seven Honourable Members just now, I would like to respond to some of the points raised.

We concur with the suggestion made by Mr CHAN Kam-lam in his amendment that law enforcement should be stepped up to eradicate the nuisances caused in the course of property acquisition, so as to protect small flat owners. Just now, I have explained in detail the role played by the EAA. Apart from seeking help from the EAA, small owners who are subject to harassment suspected to be acquisition-related (including building management, public hygiene or security issues) may also approach the relevant government departments including the Home Affairs Department, the Food and Environmental Hygiene Department and the police for assistance. As I have indicated in a previous Panel meeting, if Honourable Members receive any such cases, they can directly refer them to the Development Bureau. The Development Bureau will closely monitor the situation in relation to property acquisition and review periodically the effectiveness of current enforcement measures.

Dr Margaret NG and Mr James TO both mentioned in their proposed amendments that property acquisition would aggravate the disrepair of buildings.

The truth is building dilapidation is a serious problem in Hong Kong and a tremendous amount of work has been done by the Development Bureau in the past two years to target the problem. Nonetheless, we cannot confirm how many of such dilapidation cases are related to property acquisition. In any event, the Buildings Department will, having regard to the prevailing policy and its existing manpower, closely monitor the building conditions, conduct regular building inspections, as well as handle complaints against dilapidated buildings in all districts across the territory. If problems concerning building safety are identified, enforcement action will be taken promptly, and where necessary, contractors will be engaged to carry out the required works on behalf of the owners, with the cost of the works recovered from the owners concerned afterwards in accordance with the Buildings Ordinance.

Apart from government enforcement actions, the Urban Renewal Authority and the HKHS have put in place various schemes to assist owners of dilapidated buildings in carrying out maintenance works.

Deputy President, I think it is worth mentioning that unlike what has been said in the original motion, the buildings where applications for an order of compulsory sale have been made under the Ordinance are not mostly situated in prime land lots and the Mid-levels. Since January this year, 15 applications have been made to the Lands Tribunal and most of the sites are located in areas with a high concentration of old buildings including To Kwa Wan, Yau Ma Tei, Kennedy Town in Western District, Mong Kok, Tsim Sha Tsui and Ma Tau Kok. This shows that the Ordinance is conducive to promoting the redevelopment of old districts.

Mr Ronny TONG suggested in his amendment that the Lands Tribunal should recruit professionals to conduct independent property valuations. In fact, each case on compulsory sale of land lot will be heard by a judge of the Tribunal together with one experienced surveyor sitting as a panel member. This panel member who is a qualified surveyor will assist the judge independently in reviewing the valuations submitted in relation to an application for compulsory sale. As such, there is no need to engage another professional to assist the Lands Tribunal in handling property valuations.

Regarding Mr Ronny TONG's suggestion that the developer should submit to the Lands Tribunal a "final development blueprint" as the basis of valuation, I wish to point out that as currently stipulated under the Ordinance, an applicant for

compulsory sale must submit its valuation taking into account the redevelopment potential of the lot to the Lands Tribunal for its consideration and approval as the reserve price for open auction. I think this requirement has already achieved a balance among various considerations and duly safeguarded the rights of minority owners in the apportionment of sale proceeds.

Regarding Mr Ronny TONG's statement that in these cases, the report on the condition of the concerned buildings would generally not be provided to small owners, it is not the understanding we have on this matter. Although the law only requires the submission of valuation reports, the report on the condition of the concerned buildings would generally be submitted in order to make the Lands Tribunal satisfied that redevelopment is justified due to the state of repair of the buildings.

The above supplement and response I give to Mr Ronny TONG's amendment is also applicable to the suggestion made by Mr CHEUNG Kwok-che in his amendment about the mechanism for determining acquisition prices.

Deputy President, I am sorry that I have made such a long response in my initial speech because I honestly hope to impress upon Honourable Members that the Development Bureau has not stopped concerning about the operation of the Ordinance just because the Notice has become effective. I always remember Mr KAM Nai-wai's criticism that government officials would completely forget about their promises once they got their way and that they would do nothing after voting was over. At least, this does not apply to our case given what we have done about the operation of the Notice. In fact, more manpower and efforts have been deployed for the follow-up work than those on lobbying Members' support for the Notice. We adopt this stringent work attitude because we are truly convinced that by carefully ensuring the proper operation of this Ordinance (which facilitates private-sector redevelopment of old districts) through the complement of appropriate administrative measures, it will be conducive to promoting urban development of Hong Kong and benefitting the residents of old buildings.

Deputy President, I will listen carefully to the speeches made by other Honourable Members and give my response later on in my reply as necessary. Thank you, Deputy President.

**MR WONG KWOK-HING** (in Cantonese): Deputy President, there are many old districts in Hong Kong which are in need of redevelopment. In dealing with the redevelopment of old districts, apart from attending to development issues, the Government also has to consider the actual needs of small owners so as to strike a balance between the interests of various parties. Every effort should be made to minimize the misunderstanding and grievances of the people, so that the redevelopment or development of old districts would be more meaningful. When introducing legislative amendments to the Ordinance earlier this year, the Government has taken on board my suggestion on introducing a mediation mechanism before an application for compulsory sale is submitted to the Lands Tribunal. Since then, the Government has been actively studying the matter. Moreover, I must thank Secretary Carrie LAM for her detailed explanation about the implementation and actual operation of the pilot mediation scheme. Notwithstanding this, I consider that this legislation (which has become effective for eight months) still has much room for improvement. I hope the authorities would closely monitor the problems arising from the implementation of the Ordinance so that timely rectifications can be made. Furthermore, every effort should be made by the authorities to provide timely support to the helpless small owners and to properly safeguard their lawful and reasonable rights so that they are given fair treatment in the redevelopment of the community.

Speaking on the mediation mechanism which I managed to secure in the arrangements for compulsory sale, I must say I am perplexed by the hysterical and spiteful remarks made by Mr James TO just now about the success I made. He asked me if I had followed up on the matter — it would be so much better if Mr TO could ask me this question before lashing out his criticism. He could have talked to me first before making his accusations. Moreover, without apparent reasons, he linked this to the success I made in the Octopus incident. I think Mr TO must be quite infuriated recently so much so that his utterances are neither true nor logical. Although I can sympathize with his situation, I think he should work harder.

Deputy President, although the new requirement under the legislation on compulsory sale has come into operation on 1 April, the general public has no idea what it is really about. Members may recall the earlier case about Leung Fat Noodle — a noodle-making factory with a history of several decades in Sham Shui Po. As other units in the building where Leung Fat Noodle is situated have been acquired by a developer, rumour soon spread after the new legislation

became effective about the developer's plan to apply for the compulsory sale of the shares held by Leung Fat Noodle by the end of this year. Upon hearing such rumour, the operator became very restless and worried. This incident had aroused much concern and discussion in society as members of the public wondered whether Leung Fat Noodle would become the first "sacrificial lamb" under the new requirement of the legislation on compulsory sale. Given the situation, I managed to raise a timely question with the Secretary at a meeting of the relevant Panel, and the Secretary had clarified the case right away at the meeting. As the matter was clarified in a timely manner, the case and all its repercussions had subsided. Deputy President, as we can see from this case, not only ordinary citizens and small owners have uncertainty, misconception and misunderstanding about the Ordinance, even some developers and the stakeholders concerned have misunderstanding about the details of the Ordinance so much so that this controversial case of "false alarm" has happened. We must ask the question: why has such incident ever happened? Maybe the stakeholder concerned thought that as the threshold for compulsory sale had been lowered from 90% to 80% by the Notice, a lower threshold for compulsory sale would likewise apply for the lot where it had acquired all but one flat. Moreover, as the small owner did not have a good understanding of this Ordinance, the developer in question might try to take advantage of the lack of understanding on the small owner's part. As a result, the noodle factory was almost led to believe that the shop premises fall under the scope of compulsory sale. Judging from this case, I think government departments should step up publicity on the relevant legislation by clearly explaining to the public the contents of the Ordinance and the detailed requirements of compulsory sale. Apart from safeguarding the rights duly enjoyed by small owners in obtaining information, the Government must ensure that channels are available to offer timely support and assistance to small owners who are involved in property acquisitions so as to protect their lawful and reasonable rights. This is the most important point.

Deputy President, most of the old buildings in need of redevelopment were built more than several decades ago. Whenever renowned old specialty shops or shops which have been operating for a long time become the target of acquisition, the owners might only get very little compensation in return. Take the example of Leung Fat Noodle, the size of its shop premises is 1 050 sq ft and the initial offer made by the developer is said to be \$8 million. The average price is only \$7,000-plus per square foot and the owner cannot possibly buy a street-level shop of comparable size in the same district with the compensation. As such, some

people consider that these kinds of property acquisitions would turn these renowned old specialty shops into history. Therefore, I think the authorities should be concerned about the situation so that lawful and reasonable re-housing arrangements can be made to preserve the valuable renowned old specialty shops that are part of the collective memory of the Hong Kong people.

As time is limited, I would just call on Secretary Carrie LAM to take note of the situation I just mentioned. Maybe when the Secretary speaks again later on in reply, she can tell us more about how the "Leung Fat" case is handled.*(The buzzer sounded)*

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

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

**MS STARRY LEE** (in Cantonese): Deputy President, when Mr James TO spoke just now, he must have missed the spirit behind the amendment proposed by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Our amendment proposes to add onto the original motion the fact that the law on compulsory land sale is conducive to expediting the renewal development of old districts. I call on Mr TO not to take things out of context. The DAB is asking the authorities to continuously conduct an overall review of the Ordinance in order to ensure that, on the premise of protecting the rights of flat owners, the redevelopment of old districts can be effectively facilitated.

Mr TO, I think you must have visited the districts as well and I do not know if you agree that it is the local residents' aspiration for expediting the renewal development of old districts and facilitating the redevelopment of old districts. Whenever I meet with the residents, they will tell me their wish to see a quicker pace of redevelopment of old districts. They always hope that some developers or acquisition companies would make them an offer.

Deputy President, the threshold for compulsory sale has been lowered for just eight months. During the period, acquisition activities of old buildings have become so rapid and prolific that I would liken them to "flowers that blossom

everywhere and anywhere". The increasing number of branch offices opened by Richfield in old districts over the past six months is a good illustration. According to the original motion, compulsory sale has mostly occurred in prime lots, while no one is interested in lots in other areas. I cannot concur with this saying. In the case of To Kwa Wan — the district where the building collapse incident occurred early this year, it is evident that acquisition activities in that district have become more rapid after the implementation of the 80% threshold for compulsory sale. In fact, I am quite worried that as the Government has failed to put in place adequate complementing measures, it will fail to catch up with such extensive acquisition activities.

The 80% threshold for compulsory sale has in fact provided an additional option for small owners apart from maintaining their old buildings. In To Kwa Wan — the District Council constituency where I was elected — for instance, the acquisition of an old building aged over 50 years is near completion as a result of the implementation of the 80% threshold for compulsory sale. During my term as a District Council member in the past 10-odd years, I have been helping the owners in this building to set up an owners' corporation (OC). However, given the dilapidated conditions and poor living environment of the building, owners who have better means have all moved out, leaving behind residents with little or no financial means. During the past 10 years, my office, the local District Office and the Urban Renewal Authority have made continuous efforts to send letters and visit the residents to lobby for their support to set up an OC, but to no avail. It was not until two years ago that there was a breakthrough, and the OC was finally established. But unfortunately, as owners have divergent views on maintenance matters, a lot of disputes have arisen. Most owners think that the building is too dilapidated for repair, they would rather have it redeveloped than continuously paying the maintenance expenses. Finally, as a result of the implementation of the 80% threshold for compulsory sale, most of the owners have their wish fulfilled and their properties were sold.

I must stress that during the entire acquisition process, the owners themselves have actually received offers from the acquisition company. Not too many complaints have been received by my office and we only have a few enquiries. This is my personal experience of a case where the owners have benefited from compulsory sale. Hence, the things said by Mrs Regina IP do not represent the entire truth.

Nonetheless, I must admit that not every acquisition case of old building is so smooth and successful. Deputy President, I think all District Council members serving in old districts have dealt with the covert tricks used in property acquisition and are thus quite familiar about them. These tricks will become more bizarre especially during the final stage of acquisition and the culprits are invariably untraceable.

Why do acquisition activities become so prevalent? Because developers know that once they have acquired 20% of the shares, they will have the deciding power. Any player who manages to acquire 20% of the shares will be able to increase his bargaining power tremendously. Hence, in order to partake in the acquisition market, some unscrupulous acquisition companies will employ all sorts of extreme measures to get what they want. Some even resort to dirty tricks in order to drive owners away. From the complaints I received, the tricks can be broadly categorized as follows.

First, the acquisition company will strongly persuade owners to sign an undated sale and purchase agreement. Second, it will lie to owners that 80% of the shares in the land lot have been acquired, and then persuade owners to sell their flat while the offer price is still good; otherwise, the selling price will be very low if the lot is put up for compulsory sale. Third, it will make continuous efforts to "demonize" the acquisition price for compulsory sale. Fourth, it will use psychological tactics and create white terror within the building, so as to disrupt the livelihood as well as the emotions of owners and force them to sell their flats early. Fifth, it will sabotage the OC's operation by appointing representatives as members of the OC, so as to pre-empt any maintenance works, causing a rapid deterioration of the conditions of the building.

Owners are both angry and helpless in face of these covert tricks. Therefore, with the enactment of legislation on compulsory land, the most important task to be undertaken by the Secretary is to assist and empower members of the public, so that they know how to deal with these incessant acquisition activities.

In addition to the proposals we made in the amendment, I would like to ask the authorities to consider implementing the following measures so as to enhance the protection for small owners:



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- (a) Instead of waiting in the office for public enquiries, the Housing Society of Hong Kong (HKHS) should go into the community. In land lots with prolific acquisition activities, the HKHS should actively conduct home visits and explain to small owners various bizarre traps of property acquisition. The HKHS should also provide professional advice including legal counselling to small owners;
  - (b) Seminars should be held in old districts on a regular basis to explain to members of the public the latest development in cases of compulsory sale and answer their questions of concern;
  - (c) The Government should put in place the mediation mechanism as soon as possible and actively contact the stakeholders so that arrangements for mediation can be made;
  - (d) The Government should ask the HKHS to actively collect information about land lots with prolific acquisition activities. Once a certain percentage of shares (say, 50%) in the building have been acquired, the relevant information should be released to small owners periodically. While I am aware that it might be difficult to get hold of the actual percentage of shares acquired, the HKHS can help collect certain basic information, that is, an approximate figure derived from the percentage of shares acquired through limited companies. In this way, small owners can get hold of more accurate information. President, Secretary Carrie LAM, such information is extremely useful to small owners in bargaining or understanding the latest situation;
  - (e) For areas teemed with old buildings, the local District Officer should be asked to set up a co-ordination team. I suggest that the co-ordination team should consist of representatives of the HKHS and local District Council members. If the co-ordination team detects any irregularities or problems in the management of certain buildings, the local District Office must interfere proactively to ensure the normal operation of building management. The Development Bureau should also maintain contact with the

co-ordination teams of various districts so as to gain the latest information about the covert tricks of property acquisition;

- (f) The HKHS should be asked to provide professional support services, including surveying and legal services, to small owners faced with compulsory sale; and
- (g) The Government should timely review the operation of the legislation on compulsory sale. I think one of the areas for review must be the establishment of a mechanism requiring developers to give small owners the choice of participating in redevelopment projects.

Lastly, Deputy President, I must honestly say that these covert tricks of property acquisition are not caused by the implementation of the 80% threshold for compulsory sale. They have been frequently employed since the implementation of the 90% threshold or in the collection of debts. However, after the implementation of the 80% threshold for compulsory sale, the use of such covert tricks of property acquisition has indeed been aggravated. Hence, the authorities must implement the above suggestions immediately so as to give assistance to small owners.

Deputy President, I so submit.

**DR PAN PEY-CHYOU** (in Cantonese): Deputy President, the property market has experienced some major changes within the short span of several months after the Government's lowering of the application threshold for compulsory sale from 90% to 80%. Among the 20 previous cases of compulsory sale, there were 18 cases in which the shares were acquired by the applicant in auction at the reserve price. These so-called public auctions are merely "formalities". It has been proven by facts that compulsory sale has become compulsory acquisition. As a result, many unscrupulous estate developers can acquire land with high appreciation potential at extremely low prices.

Deputy President, there is an English proverb which goes "a man's home is his castle". Safeguarding the right of private ownership of property is a core value of Hong Kong. The Basic Law has clearly stipulated at the outset that

Hong Kong shall protect the right of private ownership of property in accordance with law. Moreover, members of the public unanimously agree that the Government can only mandatorily require a citizen to relinquish his personal property when it is well-justified and there is adequate safeguard of personal rights. However, given the deficiencies in the current system of property acquisition and compulsory sale, there is no way adequate safeguard can be given to small owners.

Deputy President, the original intent of compulsory sale is to require developers to pay small owners reasonable compensation as determined by market competition in the acquisition of old buildings, so as to promote urban redevelopment and development. However, it turns out that things have developed in the opposite direction. The system of compulsory sale has not only failed to introduce more competition and properly reflect market value of the properties, it but also undermined the protection for small owners. At present, when a developer has successfully acquired enough shares of ownership, other developers will stay away from the competition. In fact, this is the consensus of the industry and it is an open secret.

Many owner-occupiers in old buildings are retired elderly persons. The flat in which they live is the only property they have. For these owners, a stable life is everything. Why then should they be forced to live elsewhere? Why then should they be forced to live in a strange environment? Even though some buildings are more than 50 years of age, we know that as long as the buildings are well-maintained, people can live there for 20 or even 30 more years.

Under the current system, the bargaining powers of small owners surely have no match for that of the developers. Actually, the developers and small owners are in an unequal position. Through prolonged legal procedures, the developers can force small owners to hand over their shares and deprive them of their entitled rights. As pointed out by some Honourable colleagues just now, some developers even resort to "covert tricks" to force small owners to hand over their shares. While the developers are beamed with smiles for the huge profits gained, what have the small owners got? As the present policy on compulsory sale is clearly tilted towards the acquisition parties, we think it is unfair.

Deputy President, the community well understands that the renewal of old districts cannot be successfully promoted merely by the efforts of the

Government and the Urban Renewal Authority. Hence, private sector participation can also be considered as an alternative. However, we think that the Government should first review the system of compulsory sale and its many loopholes, so as to avoid private properties being usurped. At the same time, the Government should try its best to safeguard the rights of small owners, so that they can get reasonable compensation for selling their properties in old buildings, and they can also share the fruits of development.

Regarding the present system, my impression is that it is a game of musical chair. When the music is playing, the players can find a chair to sit on. Once the 80% threshold is reached, the music stops and the player with no chair to sit on is penalized. Why does the Government have to create such a system? This is the greatest reservation we have for the 80% threshold for compulsory sale.

At this point, I must also talk about the comments made by Mr James TO just now about the Hong Kong Federation of Trade Unions (FTU). I do not know why he is so concerned about us that he cannot stop mentioning us in his speeches or why does he even talk about the Octopus Incident. Regarding the Octopus Incident and the 80% threshold for compulsory sale, their only link that I can think of is that the number "eight" appears in the Chinese version of the two terms. *(Laughter)* As Mr James TO has mentioned it time and again, I must make a clarification here.

Members from FTU — as the Secretary can testify — Members from the FTU have reservation about lowering the threshold for compulsory sale to 80%. That is why when the matter was first debated in the Council, we had voted in support of the amendment proposed by Mr James TO. All four Members from the FTU had voted in support of his amendment. Today, I have this uneasy feeling which might best be described by the Chinese saying, "Dog bites LU Dongbin", the hidden meaning is that the goodness one has done is lost on the ungrateful.

I so submit.

**MISS TANYA CHAN** (in Cantonese): Deputy President, as I had already resigned when the Legislative Council discussed the issue about lowering the threshold for compulsory sale, the content of my following speech should have no

repetition. As eight months have passed, I think many people as well as my Honourable colleagues should know very well whether it is a good or bad thing to lower the threshold for compulsory sale.

The Government said that lowering the threshold for compulsory sale could expedite the redevelopment of old districts. But seemingly, it is only a good deed according to the Government's wishful thinking. Has the lowered threshold for compulsory sale really expedited the pace of redevelopment of old districts? Every day, the grassroots living in dilapidated old buildings still feel threatened by concrete spalling, water seepage or even the collapse of the entire building. Then, is the situation better for owner-occupiers of old buildings in prime lots? It turns out to be not the case as well. These owner-occupiers of prime lots feel even more threatened because they are afraid that their flats might become the target of acquisition, and that they are forced to sell their properties to the developers at a very low price. Under the circumstances, can the policy objectives of the Government be achieved?

Subsequent to the building collapse incident at Ma Tau Wai Road, the Buildings Department has inspected all residential buildings aged 50 years or above in Hong Kong. Amongst the some 4 000 buildings inspected, 1 088 buildings are located in the districts of Kowloon City, 645 in Yau Tsim Mong and 515 in Sham Shui Po; whereas in the districts of Central & Western and Wan Chai, their numbers only add up to 983. If the development tallies with the Government's policy objective, Kowloon West should be the area having the greatest benefit from the lowered threshold for compulsory sale. That area should be the first to undergo redevelopment or long-term development. However, as we can see, there are still many cubicle apartments in Sham Shui Po and the grassroots are still living in dilapidated tenement buildings. Is there a gap between the reality and the wish of the Government?

If we turn to the Central & Western, Wan Chai and Eastern districts where there are relatively fewer old buildings, they have, however, become the disaster zones after the threshold for compulsory sale was lowered. My office received a case last week concerning an old building aged over 60 years in Robinson Road. Although the building is structurally safe, it becomes the target of a developer and an application for compulsory sale is made. The acquisition price is only one third of the market price of buildings in the same area. Furthermore, my office often receives cases concerning the Central & Western, Wan Chai and Eastern

districts. I do not know if the Secretary should also thank me because I have organized this kind of legal seminars at least twice. It is just that we have not invited the attendance of officials from the Development Bureau. At least two such seminars have been held for the Eastern district and each seminar was attended by more than 100 participants. We are now planning to organize the third seminar because the Eastern district is also a disaster zone. During our discussions, we asked the participants to indicate by a show of hands whether they wanted to be subject to "compulsory sale", the majority indicated that they did not want to. Or maybe I should put it in a more appropriate way, we asked them if they wanted someone to acquire the flats they were living in, and most of them said they did not want any acquisition.

If one says the threshold for compulsory sale is lowered to resolve the problem of poorly-maintained buildings and ensure building safety, I do not know if this is only a story in *the Arabian Nights*. According to the report of the Buildings Department, amongst the 1 032 buildings where emergency remedial works are required or obvious defects found, 320 are located in Kowloon City, 272 in Yau Tsim Mong, 149 in Sham Shui Po; whereas in the districts of Wan Chai and Central & Western, their numbers only add up to 161. Just now, the Secretary said ..... Just now, some Members who were either proposing their amendments or delivering their speeches, indicated that it could not be said for certain that the legislation would aggravate the disrepair of buildings. I would also like the Secretary to tell us what the true picture really is. After the implementation of the lowered threshold — the Secretary also mentioned some figures just now about the applications for compulsory sale — are the majority of those applications related to buildings where emergency remedial works are required or obvious defects found? I would like the Secretary to give us some explanation later on.

Since its implementation, the lowered threshold for compulsory sale has failed to achieve the objective as stated by the Government. Instead, it has put more fear and pressure onto small owners. Apart from the case I just cited, I want to talk about two scenarios based on factual cases. Regarding the first scenario, we all know that whenever an application for compulsory sale is made, the Court will make reference to the average sale price. What we now see is that the relevant acquisition party or developer would artificially suppress the acquisition price through unscrupulous tricks. What is the trick they use most? They would make an under-the-table deal and sign another contract so that the

sale price will appear to be lower and the shortfall will be made up by other payments such as decoration or removal fees. I think it is something that the entire industry knows about and it is no secret at all. I hope the Government will follow up on that. We have consulted legal opinion about the arrangement and it is uncertain as to whether the vendors can eventually receive these payments of decoration or removal fees.

Furthermore, there is another case which I have come across. In this case, some owners of a building were suspected of conspiring with the chairman and members of the owners' corporation (OC) so that some strange arrangements could be made. In one of the two agenda items for the OC meeting, it was proposed that as the acquisition of properties in the building by a certain group was near completion and the group had paid the initial deposit of \$50 000 to the relevant contracting parties, consideration was being given by the OC to reimburse, by way of waiving the management fee due from owners, the funds of the OC totalling some \$200 000 (from bank deposits of the OC and the balance of management fees) to owners of the building. The chairman of the OC suggested that two months' management fees (that is, for November and December 2010) would be waived for the owners (with the exception of those owners of certain flats) initially, and further consideration would be given subject to the progress of acquisition. The motion was unanimously agreed by the chairman and all members of the OC and the OC had notified a particular person to follow up. Naturally, the identity of this particular person would not be revealed because it was not convenient to do so. Nonetheless, what I want to tell the Secretary is that, these people are divesting all the funds of the OC so that no money is left to hire security guards or carry out maintenance works. What will the Secretary do to follow up on these cases? When things like that happen, the state of disrepair for these buildings will become more serious.

Turning back to the amendment proposed by Dr Margaret NG earlier, one of the proposals is in fact the request we put to the Secretary about the establishment of redevelopment areas when the amendment to the law on compulsory sale was passed. I think the Secretary knows them very well. In fact, one of the proposals under the Urban Renewal Strategy Review is to set up the so-called DURFs (District Urban Renewal Forums). Hence, I think the Secretary knows very well what her target areas are. Then why do the authorities not establish these redevelopment areas? Moreover, regarding the code of practice issued by the Estate Agents Authority (EAA), while the intention is good, it will be difficult to ensure actual compliance. I hope the EAA will

follow up on the matter more closely. Previously, we had accompanied some members of the public to lodge their complaints with the EAA, but as the relevant agreements were entered into before the code of practice became effective in October, the EAA did not have the authority to make investigations.

**MS CYD HO** (in Cantonese): Deputy President, in old times, local despots and evil gentry would forcibly buy any houses or land they like with cheap prices. The prices were so low that it was in effect plunder. These acts only happened in old times. But nowadays, the Government is helping the consortia perpetuate these villainous acts through legislative amendments. This piece of legislation is really doing a disservice to the Hong Kong people.

I generally support the various amendments proposed to today's motion, particularly the one from Dr Margaret NG, for she has highlighted the fact that compulsory land sale should only proceed when public interest factor is involved. The only amendment that I cannot support is the one proposed by Mr CHAN Kam-lam. First, he said that the existing legislation was without deficiencies and no improvement was needed. Second, he said that the legislation on compulsory sale could speed up the redevelopment of old districts. There is really a great gap in our cultures. The "redevelopment of old districts" may sound very positive by getting rid of the old to make way for the new, but after all, the most important and apparent effect of this legislation is to increase the supply of expensive land lots in urban areas because the limited floor area of old buildings are increased by multiple folds through redevelopment.

Actually, in the process of redevelopment, it should be the land owners who stand to gain because land supply is increased. It turns out that these land lots are owned by illiterate, penniless and powerless small owners who do not have any professional legal knowledge. With the establishment of the compulsory sale mechanism, many intermediaries can acquire these land lots through their professional knowledge, power and wealth. As the land titles are transferred, all the benefits from redevelopment will be transferred from the penniless and powerless small owners to the consortia.

I still remember that in mid-March, the Secretary and Members had debated about this legislation in this Chamber. According to the Secretary, many owners actually hoped for compulsory sale and the authorities had received



many letters. I honestly believe that there are divergent views in the community. At that time, the Secretary said that she was fighting for the people, but we were very doubtful indeed. I call on Members not to cause any division in the community. Actually, the so-called issue of "interests" is not about the difference between small owners with 80% shares of ownership who want to sell and those with the remaining 20% shares of ownership who do not want to sell yet. It is indeed a question between the developers and all the small owners. Soon after the new legislation was passed, acquisition companies had already launched large-scale publicity amongst local residents, calling on small owners to grasp the opportunity to sell their properties when someone was still willing to make an offer. Otherwise, if they became owners of the last 20% shares of ownership, they would have no bargaining power left when the mechanism of compulsory sale was applied. That is why we can see right away the sea of red flags put up by Richfield all over the Central & Western district where land is sold for a high premium. The sight has really frightened the small owners. This is absolutely not about the "different demands from small owners" as claimed by the Secretary. Instead, the interests of all small owners will be plundered as a result of the implementation of the 80% threshold for compulsory sale. It is most ironic that the relevant Notice has become effective on 1 April, the April Fool's Day.

The Secretary also said that if the reserve price was too low, other people could join in the competition. But even at land auctions held by the Government, cases had happened where the consortia were suspected of joining hands not to put up any bids or bid-rigging. So what will happen at these auctions for compulsory sale? How can an ordinary citizen who just owns one residential flat compete with a consortium which will eventually purchase the whole building?

Regarding the mediation mechanism, eight months have passed and the Secretary is now saying that this mechanism will be up and running on 1 January next year. But I must point out that this mediation mechanism should after all work in accordance with the rights of both parties as conferred by the law. If the law has conferred so little bargaining power on small owners, they will always be the weak party from a legal point of view. During the mediation process, the most important consideration may be to persuade small owners not to waste any attorney fees because they will lose eventually. Or the authorities may suggest to the other party to give part of the attorney fees to small owners, so that small owners can win the game by keeping their losses to the minimum. Nonetheless,

nothing can change the fact that small owners will lose eventually. Hence, I will keep on questioning why small owners are not allowed to sell their properties in the free market so that their bargaining power can be brought into full play. Why must the authorities use the law to help the consortia, so much so that the SAR Government can never dissociate itself from being suspicious of collusion between the Government and business?

Earlier, Dr Margaret NG mentioned that the deprivation of private property rights has happened in the history of the Communist Party of China (CPC). But I wish to point out that when CPC embarked on land reform upon the founding of the country, private property rights were nationalized and in theory, this might also constitute a public interest factor. However, this legislation is plundering the private property rights of small owners so that such rights are transferred to the pockets of the "big crocodiles". Why do these things happen? Why does the SAR Government treat small owners so harshly? For property transactions in the free market, the purchasers should entice the vendors by offering a good and clearly-marked price and there must be no intimidation involved.

Deputy President, lastly, I must spend the little time left to talk about the social impact of the implementation of the new legislation on compulsory sale. Just now, no Member has talked about the rights of tenants. But in fact, the tenants have been seriously affected by the implementation of the new legislation, especially when owners are unwilling to sign long tenancy with tenants after the removal of rent control. Owners are only required to serve one month's notice and the tenants must move away. As a result, the tenants might have to move to a new place every year and wander around at the lower spectrum of old districts in the community. Actually, when we talk about complementing measures, the most important one must be to give owners the option of "flat-for-flat" so that they can share the fruits of increasing land supply after redevelopment. Moreover, the Government should increase the supply of public rental housing and relax the eligibility criteria. These are the complementing measures which the Government must implement expeditiously, regardless of whether the cases are subject to the 80% or 90% threshold for compulsory sale (*The buzzer sounded*) .....

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

**MS CYD HO** (in Cantonese): ..... and these measures must be implemented expeditiously.

**MR FREDERICK FUNG** (in Cantonese): Deputy President, since April when the application threshold for compulsory sale has officially been lowered from 90% to 80%, small owners in old districts have repeatedly had nightmares and they have been in a constant state of anxiety. The parties with absolute superiority in terms of financial strength and legal knowledge, that is, the consortia and developers, have become even more overbearing and they have their full swing given a lower threshold. Disadvantaged small owners do not know how to ward off. They fear that unscrupulous developers may have a finger in and crave for the pie, and that they may even commit acts of nuisance. Coupled with threats and inducements, these owners may eventually lose their warm and cosy homes, as well as the long-established interpersonal networks. Many small traders have been forced to wind up their business, the community economy has been throttled, and the traditional culture and customs cannot be passed on. Is this the redevelopment mode of old districts that our society pursued? We can say that this runs completely contrary to the Urban Renewal Strategy that is already in the final review stage.

Deputy President, everybody knows that I have always opposed strongly to all measures for lowering the threshold for compulsory sale as far as principles and operation are concerned. To promote old district redevelopment, the Administration has brought in private developers to nibble up the interests of small owners in old districts. This is basically unacceptable and has essentially contravened the general principle of protecting the right of ownership of private property.

Respect for the right of ownership of private property is the Heaven's commandment in a free, capitalist society. As a general rule, the right of ownership of private property should not be taken away. As stated in Article 6 of the Basic Law, "The Hong Kong Special Administrative Region shall protect the right of ownership of private property in accordance with law". If the property of an individual is by no means protected, and the authorities and consortia can take away property from an individual, how can a capitalist society operate in an effective manner? The whole economic transaction network

established on the basis of credit-worthiness and the flow of property will then collapse.

When the Government wants to take away property from an individual by law, its action will certainly involve public interests that are beyond question and overwhelming. Past examples include railway construction, dilapidated old buildings that must be demolished, and buildings seriously jeopardizing the safety of residents and the pedestrians nearby. In that case, there should be a reasonable and transparent compensation mechanism (just like the transparent acquisition and compensation approaches currently adopted by the Urban Renewal Authority). These reasons are strong enough, and there should also be fair and impartial judicial proceedings to protect the rights of individuals. The Government's action to recover the right of ownership of private property will then be deemed as reasonable.

We feel extremely sorry that, despite controversies in the community, the Government is bigoted in its opinions and is listening to only one side; and it has forcibly lowered the threshold for compulsory sale. It wants to take away from individuals the right of ownership of private property, and it also wants to push small owners without any bargaining power into the mouths of the tigers (developers), paying no attention to the general principle of respect for the right of ownership of private property. Failing to consider overwhelming public interests, it calls its action by the fine-sounding name of assisting in the redevelopment of old buildings; eventually, it is skewed in favour of financially sound developers with vested interests, unreasonably taking away from small owners their due interests.

There has always been an organic connection between the cosy homes of small owners and the communities. These small places for daily life activities that have preserved personal history and various moments of the residents' lives will be mercilessly toppled under this policy very soon.

As we all know, after the passage of this Ordinance, developers bothered little about the concept of communities in the course of acquisition and redevelopment. They do not have plans for small communities or even big ones, and they are not subject to any restriction insofar as community planning is concerned. They just develop all the sites they have acquired into private buildings and toothpick-like luxury buildings, completely isolated from the

development of the communities. Redevelopment has not brought the communities benefits; on the contrary, it is a kind of destruction. What has been destroyed? The harmony between new and old buildings and the network between the original small owners and tenants have been destroyed. Does the Government want to achieve such an objective in revising this Ordinance? Why are the objectives, thoughts and actions of the Secretary about old district redevelopment poles apart from this course of action? How can the policies be the opposite of this Ordinance?

Deputy President, I have all along opposed lowering the threshold for compulsory sale. This does not help promote the renewal and redevelopment of old districts, and also destroys the organic connection in the communities, damaging the overall interests of the communities. A more important point is that this seriously contravenes the general principle of absolute respect for the right of ownership of private property in a free society.

Now that this Ordinance has been implemented, a lower threshold has victimized a lot of small owners, and we can definitely not turn a blind eye to the situation. Since the Government has now created such a situation and it seems that what is done cannot be undone, we think that we should make our best efforts to do whatever we can to make improvements and help small owners, with a view to balancing the evil consequence after the passage of this Ordinance.

Deputy President, if small owners disagree to the acquisition prices, developers should be responsible for the litigation expenses, as well as the expenses on engaging surveyors and lawyers. In case the defence is unsuccessful, the expensive costs should also be borne by developers with greater financial strength. The Administration should enhance the role of the Lands Tribunal, and the engagement of consultants to conduct independent property valuation should also be allowed. If an owner is dissatisfied with the acquisition price and he requests for adjudication by the court, the litigation expenses should be borne by the developer. Throughout the whole process, all the fundamental expenditure ..... since the argument is totally unfair and unequal, all small owners deserve to get fair decisions because they cannot afford the high costs and they lack financial capability. Hence, I support the amendments proposed by a few Honourable colleagues excluding Mr CHAN Kam-lam's amendment.

**MR ALBERT HO** (in Cantonese): Deputy President, the Secretary said right at the beginning that, in today's debate, we have repeated many of the arguments raised in April when the lowering of the threshold and the relevant Notice was discussed. Secretary, this is very natural because the purpose of this discussion is to request the authorities to review the Ordinance. However, after the threshold is lowered, no comprehensive review has been conducted. In other words, the authorities have not conducted any comprehensive review of the Ordinance since it came into effect in 1999. Over the past decade or so, a number of problems have been identified. The authorities, however, have yet to grasp the far-reaching implications of the problem in a formal and comprehensive manner. Neither have they made any effective remedies or appropriate legislative amendments.

That is why we debate on this issue today. Although the Secretary claimed that publicity and education efforts have been made to enable the residents to understand their interests and a mediation mechanism will be introduced, regrettably, these initiatives are in the wrong direction. Under an unfair mechanism, these initiatives have only made people aware of how limited their power or their right is. Given that there is no other alternatives, the mediation mechanism may sometimes serve as a communication channel for the residents to convince the acquisition party and get a higher acquisition price. However, whether the transaction is reasonable or whether owners genuinely wish to sell the flats on such terms is another matter.

Earlier on, the Secretary reiterated that the Court will serve as the gate-keeper under our judicial system. However, as we all know, the Court is only an enforcement agency. If the legislation itself is problematic and unreasonable, nothing can be done by the Court. We are aware that except for cases involving the contravention of the Basic Law or human rights legislation, it is not easy to challenge the Court, and we do not expect the public would do so, for challenging the Court might involve high litigation cost. The amount involved will not be in hundreds of thousands of dollars but millions of dollars. Who is going to do so? As a matter of fact, this topic has been debated for very long time since April. We all know where the problem of the mechanism lies. Firstly, is the revised threshold too low? Are the terms reasonable and sufficient when compulsory sale is approved by the Court? Do we have to assess the state of maintenance and the structure of the building, so that the Court can rule that a certain flat will be subject to compulsory sale only when it has reached a certain

state. Therefore, first of all, the greatest controversy lies in the threshold. Secondly, the Secretary is very clear that the whole process is guided and controlled by developers. From the method of calculation, the formulation of overall long-term development, the amount of profits to be gained, the relevant planning, the information to be disclosed, the valuation to be made by its own surveyors, to the final submission of application to the Court, developers and small owners are on a totally unequal footing throughout the whole judicial process, and consequently small owners would suffer great losses. The minority owners might even have to bear a high litigation cost. In that case, is this a fair litigation?

Mr Ronny TONG was very right in saying earlier that these procedures need to be improved. For instance, is it necessary to state more clearly that judges should consider employing independent surveyors, and that litigation cost should generally be borne by developers or applicants unless minority owners have a very unreasonable attitude. These are important considerations to be made and should be clearly provided in the Ordinance.

Last but the most important of all, which I have also mentioned in the last debate, is that the existing auction is bogus. There is no competition at all. The law stipulates that auction is the only alternative and no other selling method is allowed. I strongly believe that, after the introduction of competition and under the same mechanism, if property sales are guided by independent surveyors employed by the Court by means of tender or other open methods, properties will no longer be sold at reserve price as it is now. The situation will definitely be changed. Therefore, before implementation, careful review must be conducted. There have been a number of cases of compulsory sale after the Notice came into operation. To the minority owners, these cases probably mean their interests being prejudiced. We should not tolerate even one such case as this is downright unfair.

Today, we have said a lot about basic philosophical issues or issues of principle. Basically, the most controversial point is private property rights which Dr Margaret NG has highlighted. As a matter of fact, Members reckoned the need to review the 90% threshold after its introduction in view of the problems arose. While Members did not think that an outright opposition was necessary, a better arrangement should be put in place. And yet, the Government still maintains that the 80% threshold is fair, which has even become

the undivided shares of ownership. During our last debate, this issue had been discussed many times. It is not simple at all as it involves the unique ownership of flat owners. This is the characteristics of private property. We often request the Government to do something about the Deed of Mutual Covenant as 90% of minority owners hope that it can be revised. Many of its provisions are pretty unfair, which favour the majority owners and developers. However, the Government refused to revise it. Yesterday, I learnt that a majority owner, who has 20% of the titles, is only required to pay 5% of the management fee as management shares and undivided shares are different. Why did the Government refuse to revise the relevant deed? That is why people always have a feeling that the Government has adopted multiple standards. Why do people think that the Government inclines towards the developers? This is precisely the reason, which is also the purpose of yesterday's meeting.

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

**MR ALBERT HO** (in Cantonese): Do not use Singapore as an example anymore as this will only cause stronger resentment among us.

**MR KAM NAI-WAI** (in Cantonese): Deputy President, just now the Secretary said that many Members are repeating previous arguments during the discussion of this motion. However, we must also be aware of the fact that many things have happened after the endorsement of the Land (Compulsory Sale for Redevelopment) Ordinance (the legislation on compulsory sale) by the Legislative Council. We have a lot of statistics which might help explain the case.

I wish to highlight one point mentioned by Mr CHEUNG Kwok-che earlier on. The Secretary once said that she had to fight for the benefits of people. She had to fight for redevelopment for many owners of old buildings. This reminds me of the gold medalists gathering outside the Legislative Council Building today. The Government had also said that these gold medalists are eager to see Hong Kong bidding to host the 2023 Asian Games. The method adopted today is exactly the same as before. It attempted to use the idea that elite athletes wish to see Hong Kong bidding to host the Asian Games so as to



enjoy home field advantage, to cover the fact that Hong Kong Government has never attached importance to the long-term development of sports. Similarly, in respect of the legislation on compulsory sale, while the Government previously stressed that it would fight for the residents residing in old districts, there was no mention of private property rights; neither has the Government mention how to protect of rights of residents residing in old districts. Rather, the legislation was hastily endorsed.

(THE PRESIDENT resumed the Chair)

In response to Mr James TO earlier on, Ms Starry LEE mentioned that there were cases in her districts where people benefited from the 80% application threshold for compulsory sale. However, she also mentioned some of the dirty tricks employed in the past. While these tricks were rarely seen in the past, they became very common after the legislation on compulsory sale was revised and endorsed. Being a District Council member of the constituency of To Kwa Wan, she must be very familiar with this situation. Have we considered how the interests of minority owners should be protected when the legislation on lowering the application threshold for compulsory sale was endorsed? How come the dirty tricks mentioned by Ms Starry LEE which already existed in the past have become even more prevalent nowadays? Why would this happen? Why were the interests of minority owners not being considered when the abovementioned threshold was endorsed? How should we protect their interests?

Earlier on, the question of whether redevelopment only occurs in prime land lots has been raised. Just as I have said, figures tell the whole picture. According to the information in hand, during the seven-odd months after the enactment of the legislation, only 14 cases have been recorded: three in the Central and Western District; two in the Eastern District and six in the Yau Tsim Mong Districts. These are all prime land lots. A couple of cases were also recorded in To Kwa Wan, Ma Tau Kok and Kowloon City. Are these prime land lots? These should be relatively older districts. However, Ms Starry LEE just now said that after an extension of the MTR to To Kwa Wan, it may also become a prime land lot. Mr WONG Yuk-man pointed out that there were numerous cases of acquisition in Kowloon City, covering the whole street. These are prime land lots with very high development potentials. Can the original purpose of the legislation to promote redevelopment of dilapidated

buildings be achieved? Have the acquisition activities occurred in these prime land lots victimized the innocent? Is it a coincidence that the redevelopment of dilapidated buildings occurred in certain prime land lots where acquisition is underway? Or, is it actually an act to kill with a borrowed knife, using the knife of the 80% application threshold for compulsory sale to exploit the interests of flat owners under the collusion between the Government and the business sector?

President, insofar as this Ordinance is concerned, Mrs LAM just now said that great protection would also be provided to property owners. Follow-up actions must be taken and no cover-up would be allowed. The Minority Owners' Alliance Against Compulsory Sale has referred some cases to us, but I will only quote one which occurred in Ho Man Tin. After the Richfield Realty Limited has acquired 30% of titles of a certain building, red banners, slogans and so on are found posted all over the place. This has seriously disrupted the living environment of the residents and significantly undermined the attractiveness of the building, thereby affecting the leasing and selling of flats, and the overall value of the building has been depreciated. As a result, existing residents all moved out but no new residents move in. This has aggravated the deterioration of the building and indirectly affected its attractiveness to other potential buyers. Owners who have not accepted the acquisition offer would then lose the opportunity to enter into transaction with a third party, and are thus forced to accept the acquisition offer as they cannot make decisions under a fair environment. The buyers, on the other hand, would take advantage of this and suppress the acquisition price. Mrs LAM, can you tell us how those follow-up actions can safeguard the interests of the owners? Just now, you said that a lot of work has been done.

What makes me so disappointed is that earlier on, Mrs LAM said no statistical survey has been conducted and there is no information about acquisition aggravating the disrepair of buildings. I hope the Secretary will conduct a survey in this regard. Finally, what I wish to say is, the Secretary mentioned earlier that non-governmental organizations (NGOs) and social workers would be engaged to provide outreach services. I hope that this will not create too many departments. At present, the leading body is the Hong Kong Housing Society (HKHS). How will the NGOs mentioned by the Secretary be involved in the relevant work? This is a very important point because we worry very much that owners may have to approach separately the HKHS and the social workers' organizations. This is pretty inefficient. It is hoped that these two

bodies can work in conjunction to provide one-stop service. The most important of all is that legal consultation service will also be included. Otherwise, the HKHS would have to ask residents or owners to obtain independent legal advice. In that case, it will fail to achieve the purpose of providing one-stop service. This is extremely unfair to residents of old districts. Thank you, President.

**MR ALBERT CHAN** (in Cantonese): President, a legislation with no public mandate has been drafted by a government with no public mandate, and the legislation was submitted to the Provisional Legislative Council having no public mandate for endorsement. Relevant legislative amendments were also endorsed with the blessings of the functional constituencies with no public mandate as well. Amendments were made by the Government to lower the application threshold for compulsory sale to 80%. This is a law having no public support at all.

It has been the usual practice of the Government to enact a legislation without public support, and implement general public policies marked by collusion between business and the Government on the pretext of economic development. The legislation on compulsory sale is actually a forced acquisition of people's properties by the Government. It has not only ignored the undertaking made under the Basic Law that the capitalist system should remain unchanged for 50 years, but has even distorted the legal framework for the protection of private property rights. In so doing, it has enabled unscrupulous developers to apply for compulsory sale with no regards to public interests. The Government has not enacted any laws to ascertain the amount of compensation received by owners in procession of property titles, and has not formulated any public policies or subsidiary legislation to provide protection in this regard. It has merely stated that open auction will be held to determine prices considered reasonable by the market. In the past, some 80% to 90% of properties subject to compulsory sale pursuant to this legislation are sold by non-competitive auctions.

Over the past years after the legislation came into force, most cases of compulsory sale have run contrary to the original legislative intent in terms of its principle, spirit and essence. President, I must stress that the legislative intent has been violated. I had participated in the initial deliberation of this legislation because at that time, I was the spokesman of the Democratic Party on land

planning matters. I therefore had a very clear understanding of the initial ideas in drafting the legislation and its details. Of course, I had not participated in the enactment of the legislation by the Provisional Legislative Council at the very last stage.

The idea of formulating the relevant legislation came from the former British-Hong Kong Government. Secretary, let me tell you, when the legislation was initially drafted, it was specified that owners' rights would be protected by the competitive market forces. What was on our mind was that all land, regardless of the fact that LEE Ka-shing might have 80% or 90% of the land titles, should be put up for auction in the market. This is tantamount to the present open land auction. Secretary, this is the original idea, that is, through market force and open auction (which is the same as land auction), all parties would submit their tenders based on their valuation of the prices of the property and its value after redevelopment. The money would then be shared among the minority owners concerned on proportion to the price set per square foot. This is the underlying concept. However, later on, an ordinance was enacted by the Provisional Legislative Council having no public mandate and by our former Chief Executive TUNG Chee-hwa who left office due to his sore legs. Eventually, there are forced acquisition of private properties, collusion between the Government and business, transfer of benefits, and the top-down approach. And yet, this Government has still adhered to its wrong way.

Looking back at compulsory sale, Secretary, you can ask your staff to do some analysis for you. Just compare the price per square foot of the previous 19 or 20 cases of compulsory sale with the amount of compensation offered per square foot in relation to the nearby redevelopment projects undertaken by the Urban Renewal Authority (URA) in the same year, and then you will see the difference.

An example which I often quote is related to a building in Wan Chai with a sea view. I had negotiated with the developer concerned and flat owners of this building, feeling victimized, are still extremely dissatisfied. The developer concerned finally employed a professional surveyor and even submitted the case to the Court for valuation. However, the price per square foot is only some \$3,000 to \$4,000 — Kam Kwok Building is a building in Wan Chai with a sea view, but the price per square foot is only some \$3,000 to \$4,000. The price is determined by legal procedures and is considered reasonable. If the price is

considered reasonable, why not sell the flat by tender or open auction. Since the Government has so much faith in "small market, big government", it should leave it to the market to decide the reasonable price.

As evident from the above example, the consortia has manipulated the legislation to suppress the fundamental rights of minority owners and exploit their economic rights, it then brought the case to the Court, which made a ruling on the basis of an unreasonable legislation which has no public mandate, and consequently the interests of the general public were suppressed. In the end, the Court considered that the report provided by the professional surveyor was reasonable and thus decided that the price was reasonable. If this is the case, what is the point of mentioning market mechanism? What is the point of claiming to protect the interests of minority owners? What is the point of claiming that the Basic Law ensures that the capitalist system would remain unchanged for 50 years? All in all, the Government had enacted laws through the Provisional Legislative Council which totally disregarded the rights of minority owners. Although the original legislative intent of the legislation is to help owners of old buildings, it turned out that some people have apparently take advantage of the hegemonic power provided by the legislation to suppress minority owners. Secretary, these are hard facts.

If the Government is still sincere in protecting the interests of minority owners, it should, in introducing legislative amendments, formulating policies or conducting an auction, state clearly that the amount should not be less than the compensation paid by the URA. Only in this way can protection be provided. The issue of URA compensation has been discussed for many years and 70% of the property price is considered reasonable. So, the compulsory sale price should not be lower than that determined under the URA's established policy. The Government should have built a safety net for minority owners who are affected or suppressed by this legislation. Yet, nothing has been done so far.

What is more, once the amendment was endorsed, the present threshold has been lowered to 80%. However, nothing has been done to ensure the operation of the auction mechanism. Therefore, on the whole, the Government is actually helping those unscrupulous developers and majority owners to continue suppressing the people and seizing their properties. I must therefore reprimand Members who support the amendment of this Ordinance (*The buzzer sounded*)

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**PRESIDENT** (in Cantonese): Mr CHAN, your speaking time is up.

**MR ALBERT CHAN** (in Cantonese): ..... and I also reprimand the Government for favouring the consortia.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I have time and again told a story about selecting a spouse. A grandson asks his grandmother if he can get married after having a girlfriend. Grandmother says he can, he has the right to find a girlfriend provided that she likes the girl. As a matter of fact, the market is controlled by man. It can be said that the monopolization of Hong Kong's land and property market brings tears but not praise to everyone. In addition, the enactment of this legislation has further enabled the consortia to lower their costs and seize properties of minority owners more easily. When Mr WONG Yuk-man delivered his speech earlier on, he read out Volume V of the *Selected Works of MAO Zedong* concerning the construction of an airport. Chairman MAO had said that the Chinese Communist Party should "attack local tyrants and distribute land". These six words are very classical indeed. They are exactly what the Chinese Communist Party is doing now — attacking minority owners and distributing the properties. This policy agenda is terrific and has been put in place in Hong Kong. If Chairman MAO is really in the underworld now, he must agree that we are good students that are worth teaching.

In fact, the Government can acquire land according to Article 105 of the Basic Law. This provision can always be used provided that grand excuses are given. No wonder the Government invokes this provision from time to time. For instance, if the Government considers that Kam Kwok Building is an obstruction in Wan Chai and thus has to acquire the land where it locates, it can do so in pursuant to Article 105. The Government can certainly do so, so can the policy bureaux. In the past, this power was given to a public body called the Land Development Corporation, which is now called the Urban Renewal Authority (URA). The Government just sets up an organization under different names. In order to deal with the developers, the Government has implemented the Application List system, an idea conceived by a former Secretary. According to that Secretary, developers might, during a land auction, agree the price in private or refuse to bid in a joint action, he thus considered that the Application List System might help push up the land prices. However,

President, the developers did not bother to care about you, no, the target should be the Secretary, sorry, President, I am wrong, or perhaps the target should be the Chief Executive.

Nowadays, people have grossly neglected the law. The land which you bid successfully today will become mine tomorrow. The situation is as simple as that. If the Government has faith in market operation, all land should be put up for auction. Even I can bid for the land by borrowing money from other people, can I do so? I may also form an Alliance for Universal Protection of Minority Owners and participate in the bidding process by collecting \$10 from each member. Is it possible? It is good to have the prices being pushed up in each bid. Is it possible? Of course not. Minority owners are forced to sell their properties under the existing Ordinance. I have also received complaints from minority owners, saying that "Mr LEUNG, our building can hardly be redeveloped. It would be even more difficult if there are 'nailed households'". This situation certainly exists. But shall we leave the problem to the major consortia? Or let the URA resolve by business means? The URA, being criticized by us for failing to deal with the problem by business means, simply leaves the matter to major consortia and let them take whatever actions they like. As a result, the Government's objective can be achieved. Buddy, are you still not happy with this? After we had condemned the URA of being the lackey of major estate developers or private developers, the URA simply did nothing and let the estate developers take the charge. Richfield Realty Limited now takes the charge. Can Richfield be renamed as the URA? The Government should better form a URA Corporation. The problem is indeed crystal clear. The Government is competing with the private sector for profits.

As we all know, I am against capitalism. However, I do talk about morality in the capitalist market. This morality is invented by you, and that is, earning profits in a proper way. Since you advocate the omnipotence of the market, how come the market fails to exercise its power in this regard? The Government has failed to regulate the market, yet it still forced the Ordinance through the Legislative Council using a high-handed approach, thereby the Legislative Council fails to perform its functions. In the end, this has resulted in "three failures".

Honourable Members, why would this situation arise if you also respect the private property rights of capitalism? Is the Government not obliged to help

minority owners sell their flats or even the whole building, and provide them with a plan? Mrs Carrie LAM said that a building will be constructed to facilitate the flat-for-flat and shop-for-shop arrangements. While this approach is feasible, no shop-for-shop exchange has been made so far. A local resident complained to me that a street-level shop of some 1 000 to 2 000 sq ft was acquired by a consortia at only \$5-odd million. He really felt like crying but had no tears.

Can I acquire the properties of senior government officials given that Secretary Ambrose LEE has bought two flats for his children? Can the reverse be done? Secretary, I would like to challenge you. How many properties do you have? Can I bring your properties to compulsory sale? I have to bring your properties to compulsory sale for the interests of Hong Kong people. Are your properties in the United Kingdom? I may have to ask British Prime Minister David Cameron then as private property right is the issue of the greatest concern to the Conservative Party. Buddy, can I bring your property to compulsory sale? Will you object? Of course, you will. Minority owners could at least get back the value of their properties in the past, but not now, because the valuation is made by the developer. Is this acceptable? Of course not. If the reverse cannot be done, how can you do this to others? "What you do not wish for yourself, do not impose on others". Religious believers should follow the teaching of "not to be served, but to serve". The Government should serve us but not the estate developers. This is simple enough. Are you aware that such practice will seize other people's properties? You will go to hell for this. I like going to hell because I like smoking and drinking alcohol. And yet, it would be terrible if you have to go to hell. Let me tell you, you are going to hell and so is the whole governing team.

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

**DR RAYMOND HO** (in Cantonese): President, with effect from 1 April this year, in respect of the three classes of land lot specified in the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (the Notice), the application threshold for compulsory sale will be lowered from 90% to 80%. The three classes are namely old buildings aged 50 years or above, industrial buildings aged 30 years or above, and the last 10% of owners of old



buildings who refused to sell. A lowered threshold will undoubtedly help promote urban renewal. However, individual minority owners consider that in the process of sale price negotiation, they always find themselves in an unfavourable position relative to the financially powerful and influential developers, both in terms of the available market price information and the resources for negotiation. Also, there are elderly owner-occupiers who are reluctant to sell their flats. They are unwilling to move elsewhere either because they have strong sentiments about their properties and neighbours, or are dictated by other considerations, such as financial reasons. Members of the public are also gravely concerned if the interests of these people are sufficiently taken care of.

Earlier on, the compulsory sale of the Leung Fat Noodle has aroused widespread public concern, which was nonetheless found to be a false alarm in the end. The noodle shop owns 14% in the lot, but is located in a building aged over 30 years, which does not meet the requirement of buildings aged 50 years. What is more, each of the other units in the lot only accounts for 5% of the undivided shares and does not meet the requirement of compulsory sale. This incident reflects that many people do not have a clear understanding of the Notice, and the relevant provisions can easily lead to misunderstanding.

As a matter of fact, minority owners are always placed in an unfavourable position in the course of acquisition negotiation mainly because of a lack of the relevant information and negotiation resources. Therefore, the authorities concerned should provide the necessary assistance to protect their interests. One possible alternative is to develop a mediation or arbitration mechanism in addition to the Lands Tribunal. This would provide minority owners with a simple and legally binding channel for negotiation and appeal, thereby preventing them from being dragged into expensive and protracted lawsuits. This is similar to the pilot mediation scheme proposed by the Government. Hence, it should not encounter too many difficulties when the scheme is introduced.

On the other hand, in case there are malpractices or harassment of minority owners during the acquisition of old buildings, the authorities concerned must seriously deal with the problem, and take strict enforcement actions and institute prosecutions, with a view to safeguarding the interests of minority owners. In August this year, the Estate Agents Authority (EAA) issued a practice circular on

estate agents' practice in the acquisition of old buildings. It stipulates clearly the relevant legal requirements and code of conduct with which practitioners should comply. These practice circulars will undoubtedly enable estate agents to have a better knowledge of their practice in the acquisition of old buildings. In the event of contravention by estate agents, the EAA must seriously follow up the case. Equally important, the authorities concerned must make minority owners more aware of their rights and encourage them to report relevant malpractices through proper channels.

President, the main purpose of introducing the Notice to lower the application threshold of compulsory sale from 90% to 80% is to promote urban renewal, and expedite the improvement of the living environment of residents in old districts. As the Ordinance has only implemented for eight months, more time should be allowed to determine its effectiveness before a review is conducted. Meanwhile, the concerns expressed by the public should also be seriously considered by the authorities concerned so as to introduce corresponding measures, not only to address the concern of the public, but also to ensure that the acquisition of old buildings can proceed under a fair and open environment, so as to safeguard the interest of the affected people. President, I so submit. Thank you.

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

**MR PAUL TSE** (in Cantonese): President, after sitting here and listening for so long, there is something I must get off my chest. What I am going to say are my fragmented observations. I hope that Members will not take things out of context, and should not make unnecessary attacks by taking remarks out of context.

President, if an extraterrestrial comes to Hong Kong and listens to our debate tonight, he will probably feel perplexed about who is lying. Among those directly-elected Members, some said that members of the public are miserable as their flats cannot be acquired for redevelopment, thus they are forced to live under a very bad environment; and these residents have conveyed positive views to their local directly-elected Members when they attended the consultation sessions. On the other hand, however, some Members said that many owners suffered greatly from being expelled and cheated. These owners had therefore

actively participated in the consultation sessions to strongly object the Ordinance. Who is telling the truth and who is telling lies? Or, are they both referring to the same glass of water, just that their perspectives are different? Or, are they actually touching the different parts of an elephant, such that different people have different views to get what they want? I think Members should make a sensible decision.

President, the most commonly used phrase tonight concerns with private property — private property rights. Members kept stressing the need to protect private property rights and the safeguards provided in the Basic Law. What they said are all correct. However, President, what kind of private property rights are we referring to? President, who has the private property right of this bank note that I am holding? Many people may think that it belongs to me and so is the property right. I will certainly sue you if you take it away as it is protected under the Basic Law. And yet, President, we merely possess the face value of bank notes. The notes themselves belong to the bank. The bank has every right to take back this note, either because there is an error or a logo, without any liability. I can only get a return equal to the \$100 denomination value. Nonetheless, not many people understand this simple reasoning.

I studied law in Australia. At that time, I had studied laws about ownership, which mainly involves land and properties. Many local people own land. At least, at that time, very few people owned strata title, which is a form of ownership for multi-level apartment blocks. The point under discussion tonight is private property right. If the property right itself does not involve land or land rights as in the case of small houses and villas in Hong Kong, such property rights can still be regarded as a problem prevailing in Hong Kong. This is because land in Hong Kong is not freehold but leasehold. Neither is it ..... regarding the so-called absolute freehold title, as far as I understand, except for the land where St. John's Cathedral locates which is a piece of freehold land, all other lands belong to the so-called "Crown Land". We are only leasing the land for use.

So, back to the subject, since many Hong Kong buildings are strata title properties, we are actually buying three things when a building is purchased: the right to use the individual unit; co-ownership of common area for use, and some shares of the lot concerned. These make up what we called private property right. As both Hong Kong and Singapore are densely populated with scarce

land, strata title is commonly found and many buildings are facing similar problems. Hence, we should not arbitrarily argue and mention private property right time and again before clarifying its definition. If the private property right which we refer to belongs to the third type, that is, the co-ownership of shares of a lot, the property right owned by you is actually similar to company shares. They are subject to many restrictions, which probably include the M & A of a company.

As a member of the legal profession, the only thing which we have probably done wrong is the failure to perform our duties by explaining clearly to all potential buyers that the subject building only has strata title, that is, the three points which I have just mentioned. They are subject to many restrictions. In Australia, the details are clearly explained as strata title is not so common. Potential buyers know very clearly what they are going to buy, the relevant restrictions and what they are subject to. Everything will be clearly explained. Perhaps life has become too easy for members of the legal profession over the years, and many things are now taken for granted. Not enough efforts have been made to protect the rights of consumers and property owners. I am afraid this is what we are obliged to do. We must therefore ask ourselves and start from ourselves.

President, what surprises or hurts me most is that during the dispute, many colleagues have failed to clearly analyse where the problem lies, probably because of their selective thinking, personal inclination or political reason. They fail to stay cool and look from a legal perspective. Rather, they have delivered speeches in a way like chanting political slogans, which is indeed meaningless. For instance, some Members have used terms of the Communist Party, and they even mention forced acquisition of land, maybe in the hope of frightening other people. As a matter of fact, Singapore, being a country which fears the Communist Party most and being the most defensive, can serve as a good example. I believe Hong Kong had, at that time, actually modelled on the practice of Singapore with regard to the acquisition of buildings and redevelopment of old buildings. Therefore, I opine that we must ascertain what we say and not to be swayed by personal feelings. For example, in mentioning prime land lots, since most prime land lots are located in city centre — that is, the oldest area, such sites will very often become the prime choice for urban renewal; or should we start discussing the renewal of Tin Shui Wai so soon? Thus, in my opinion, sometimes we have to be cautious of our remarks.

For the little time left, I wish to say that we should take this opportunity to improve the relevant mechanism. I agree with the seven points proposed by Ms Starry LEE, and I think we can do better. By-laws should be allowed to be added to the Ordinance to set out the details of compulsory sale and considerations relating to the Court. I hope the Government can review on this matter. Thank you, President.

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

**MR PAUL CHAN** (in Cantonese): President, first of all, I wish to declare interest. My family members hold some properties in Tai Kok Tsui, which were purchased before 1997 for long-term investment. We have never carried out any acquisition or development, nor are we developers. Moreover, I am an independent non-executive director of The Wharf (Holdings) Limited.

After 10 hours of debate, the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (the Notice), which sought to lower the threshold for compulsory sale of a lot from 90% shares of the lot to 80%, was passed in this Council this March and came into effect on 1 April. In other words, the Notice has come into effect for only eight months.

President, I have raised two concerns in the debate on the Notice. First, it is about the establishment of a mediation mechanism; and the second is that in introducing the mediation mechanism, consideration should be given to the "flat-for-flat" arrangement or allowing owners' participation in redevelopment projects.

As far as the mediation mechanism is concerned, I know that Secretary for Development Mrs Carrie LAM has indicated after the delivery of the Policy Address this year that the Administration planned to set up a pilot mediation scheme for compulsory sale cases before the end of this year. I earnestly hope that the Administration will expeditiously roll out this scheme, so as to protect the rights and interests of minority owners.

Moreover, in reply to a Member's question last month, the Government indicated that minority owners and majority owners participating in mediation

arrangement could include "flat for flat" as a compensation option in their discussion. This is a credit to the Government for it has chosen a right path.

According to information provided by the authorities, as at the end of October after the enforcement of the Notice, the Hong Kong Housing Society has totally received 183 inquiries. The inquiries were mainly about the valuation criteria adopted by majority owner in acquiring the properties of minority owners; how minority owners could protect their own rights and interests; as well as the main points of the major judgments handed down by the Lands Tribunal. However, even if the majority owner applies for compulsory sale, minority owners can still, through this mediation mechanism provided by the authorities, discuss and negotiate with the majority owner. I hope that we need not resort to compulsory sale each time.

As mentioned by many Members just now, since the Notice took effect, individual minority owners have been subject to certain pressure, or even harassment in the acquisition of their units in old buildings. In fact, even when the threshold for compulsory sale was set at 90%, we often heard of similar complaints. But is there a rising trend now? I hope the Government can pay more attention to and collect information about this issue, and provide the information to Members so that we can have a better understanding of the situation. Moreover, if the Government finds any illegal harassment activities, it should urge law-enforcement agencies to take speedy actions; otherwise, it is the same as encouraging such activities to take place.

President, Mrs Regina IP has pointed out in the original motion that no one is interested in the dilapidated communities that are in great need of redevelopment, as far as I know, some developers and agents are interested in acquiring old buildings in old districts like Tai Kok Tsui. These developers and agents have focused on acquiring prime land lots. I think this is unavoidable in the beginning when this legislative amendment was enforced. After all, business is business. I personally tend to echo Dr Raymond HO's suggestion just now. Our ideas are along the same vein. Given that the legislative amendment has only been enforced for a few months, I do not think it is now the most appropriate time for conducting a new and comprehensive review. More time should be given for the Ordinance to operate, so that we will be able to see

more and know more. A review can be conducted when we have a better grasp of the situation and have got hold of more specific and detailed data.

President, there are several amendments proposed to this motion today, and I beg to differ with some of them. For instance, I cannot agree to Mr WONG Yuk-man's amendment which proposes to restore the threshold to 90%. As I said just now, I think the 80% threshold introduced by the Notice should be enforced for a longer period of time before conducting a comprehensive review. Moreover, I think some amendments may not be feasible. Thus, I cannot support them. For instance, Dr Margaret NG's amendment proposes to "enable affected flat owners to acquire other properties in the original districts". I fully support this spirit and agree that it is correct, but sometimes acquiring other properties in the original districts is not always feasible.

Similarly, Mr Ronny TONG's amendment proposes that "the developer should also submit a 'final development blueprint' to the Lands Tribunal before property acquisition". I think this is rather difficult because property development is related to changes in the market. Developers may be compelled to adjust their development projects when the market changes. I thus hold that when we consider these amendments, we must look into individual proposals contained therein. Despite the fact that these proposals are well-intended, I think we must consider their feasibility.

President, I so submit.

**MR ALAN LEONG** (in Cantonese): President, Secretary Carrie LAM pointed out in the early part of her speech just now that property titles in Hong Kong are in the form of undivided shares. Some Members in this Council have also echoed that the properties they purchased are, in fact, a certain number of undivided shares of a lot. Do they mean that what they have actually purchased is not a flat, but shares of a lot, just like shares of a company?

President, you certainly know that if we wish to purchase the shares of a company, we can refer to the prospectus issued by the company. This is regulated by the Companies Ordinance. If my memory does not fail me, I remember that if someone wishes to acquire a company and have secured 90% of the equity shares in that company, he shall have to acquire the remaining 10% at

the same price. This is the practice adopted for trading equity shares as commercial commodities. However, owners of undivided shares of a lot refer to those who are entitled to share the lot. The concept is that no matter how the person tries to dodge from this ownership, he is entitled to part of the lot.

President, I note that Secretary Carrie LAM has indicated at the beginning of her speech that she does not intend to persuade Members who do not support the lowering of the compulsory sale threshold to 80% to support her. Of course, I think the Secretary also understands that this controversial issue, as so referred to by her, is very much subject to the prevailing social values, and how to strike a balance between the ownership of private properties and the absolute principle of development or the vision conjured up by the Chief Executive's concept of "progressive development". Where should this point of balance be placed? Of course, one may say that this is very subjective. But this point of balance is very much exemplary in showing our social values.

Some Members have pointed out, as if very impartially, that there are many existing problems, and the lowering of the threshold from 90% to 80% has further aggravated these problems, but then the Government can rectify the situation by addressing a series of problems which Members have cited. However, President, if these problems cannot in any way be addressed, should they still use them as their justifications for supporting the lowered threshold? One of the problems that attracts much criticism is that in the absence of a fair auctioning mechanism, minority owners are unable to get in touch with buyers who will offer a price which truly reflects the real value of their lot.

In fact, in the Council debate on this topic, we have already asked the Secretary to provide information on whether there was any bidder who would compete with the developer who had already acquired 90% of the shares of the lot when the 90% threshold was enforced. President, basically there was none. Who would be so stupid as to compete with a person who has already acquired 90% of the shares of a lot in the auction? Why are there so many developers acquiring these units? Because their successful acquisitions mean that they are able to "nail" units in different place and these "nails" are valuable. In face of these large property developers, what choices do minority owners have? No, they have no choice at all. Even if the Secretary tries her best to achieve the seven major points which Members mentioned just now, she cannot solve the crux of the problem, nor can she address the contradictions and conflicts. After



the lowering of the threshold, minority owners are almost like "a piece of meat on the chopping board".

If all that we have purchased are some undivided shares of a lot, which does not mean that we have owned any land lots as our private property, can we unlimitedly expand this logic to mean that when the land is really in short supply, the threshold can be further lowered to 50% as long as there is a prime land lot which developers will scramble for? Because all that we have purchased are only some undivided shares of a lot, rather than our private property. You should be able to predict this. President, do we want such logic?

Hence, ultimately, the matter reflects the social values and attitudes adopted in Hong Kong. I deeply believe that Donald TSANG and the officials of the executive authorities are not qualified to set these values. But what is done is done. I hope that the Secretary can do something to reduce the shock and mitigate the unfair situation. I believe this is our last dash of hope in the present helpless situation.

I so submit.

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

**DR LAM TAI-FAI** (in Cantonese): President, in the past when I rose to speak in motion debates, I usually did not have enough time to finish. The President very often would say, "Dr LAM Tai-fai, you speaking time is up" and then I would have to sit down immediately. Today, I definitely will have enough time to speak and I believe I can finish in one minute. This is not because it is now past nine o'clock, but because I find today's motion very straightforward.

The relevant notice pertaining to this ordinance, which only came into effect on 1 April, has been enforced for less than one year. It is very subjective as to whether a review should be introduced at this time. Many of the proposals mentioned in the original motion and the amendments are justified, including examining the operational problems in old building acquisition, reviewing the compensation mechanism, how to speed up the redevelopment of old districts, how to step up law enforcement by government departments, eradicating the

unlawful nuisances caused by developers or agents, and so on. All these proposals are justified and there is nothing wrong with them, but the point is that the relevant notice pertaining to the ordinance has only come into effect in April. The market should be allowed more time to operate first. By then, more problems may surface for review and more aspects may need to be strengthened. I thus do not think that it is now the appropriate time to discuss this issue. Perhaps after a period of time, say one year or more, when we have collected more information, data and cases, we can then urge the Government to conduct a more comprehensive and effective review. This may be more beneficial. I do not even need seven minutes to deliver my speech. It only takes me one minute and 30 seconds to say what I have to say.

President, I so submit.

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

(No Member indicated a wish to speak)

**PRESIDENT** (in Cantonese): Mrs Regina IP, you may now speak on the seven amendments. The speaking time limit is five minutes.

**MRS REGINA IP** (in Cantonese): President, I find the Secretary's reply very disappointing. Since the threshold for compulsory sale has been lowered from 90% to 80%, as pointed out by many colleagues and me, enormous changes have taken place in society. The rich have become richer; some businessmen have reaped huge profits; some companies' stocks have soared; but the interests of the people have often been sabotaged. Under this situation, the Secretary, in face of many complaints, the harassment and perplexity which the people have been subject to, there are even activities bordering on criminal acts ..... I do not know if the Secretary has noticed a case of a Dr LUK .....

**PRESIDENT** (in Cantonese): Mrs Regina IP, you should now speak on the amendments. You will have time to respond to the Secretary later.

**MRS REGINA IP** (in Cantonese): President, I echo most of the amendments proposed by Members, but I beg to differ with Mr CHAN Kam-lam's amendment, in which he has deleted the wordings of "the Ordinance currently has various deficiencies". In fact, Mr CHAN and other Members of the same political party are aware that ..... even Dr Priscilla LEUNG has pointed out — although she does not belong to the Democratic Alliance for the Betterment and Progress of Hong Kong — that this Ordinance has many deficiencies and many people have been dealt a big blow. He thus has no reason to delete those words.

I think many other amendments are acceptable, but I wish to tell Mr WONG Yuk-man that restoring the threshold for compulsory sale to 90% is futile because the entire system has too many deficiencies. The Secretary said just now that she had made a visit to Singapore. In fact, the thresholds adopted in Singapore and Taiwan are even lower, and the Secretary did not mention that these places have far better administrative measures to regulate these sales activities and prevent small property owners suffering from various forms of pressure exerted by large property developers and professionals such as their lawyers. Thus, the entire system needs to be reviewed.

President, I so submit.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, thank very much for all Honourable Members who have spoken on the motion today. But I must make a clarification first. Earlier, Mr Alan LEONG quoted me as saying in the beginning of my first speech that I welcomed this debate because I could report to all Honourable Members the follow-up work that we had done since the commencement of the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice (the Notice). I have not said I did not intend to persuade those Members who had not previously supported the Notice or the principal legislation, because I have prepared a draft speech for today's motion — here it is — it is what I said then: "I welcome this motion debate not because I have any confidence of winning over those Members who had previously not supported the Notice .....".

Why do I need to clarify such a small thing first? Because no matter what the stands of Honourable Members and government officials are, we, being accountable officials, have the responsibility to keep on lobbying or giving

explanations to Members so as to win their support. However, if it is something that I have no confidence about, I will say so, because it is an issue that Honourable Members have already discussed in a number of debates. This little clarification has also prompted me to make some comments on Mr Paul TSE, and I am also totally convinced that every Honourable Member here in this Chamber is acting out of the interest of the public and the people. That is why even though I hear something that I may not agree, I will never say the Member is lying. Maybe just like the small incident I mentioned earlier, all of us have their own set views and sometimes, we have unconsciously imposed our views or donned our tinted glasses when interpreting the facts we see.

Actually, regarding this controversial issue, I have said at the onset that there are bound to be different views for there are always owners who are willing to sell and others who are not. This does not only happen in Hong Kong, other cities also share the same experience. But I must go on to say that we, being a responsible government, must not stop doing what we should simply because there are different voices in the community. Instead, we should find a balancing mechanism — a reasonable and practicable mechanism that can deal with different opinions in the community on a particular issue. However, some Honourable Members, such as Mr Frederick FUNG and Mr Albert CHAN, hold different views from the Government as regards the spirit of this legislation. That is exactly why I said I did not have any confidence to make these Members support the Government's stance through debate after debate.

Furthermore, many Honourable Members have invariably presented a simplified view on this issue, that is, something between big developers and small owners. But in fact, the legislation is concerned with owners of majority shares and owners of minority shares. Members may have noticed that recently, more advertisements have appeared in the property section of newspapers about the tendering of properties carried out "by order of the owners". In other words, as small owners get hold of more information about the process of compulsory sale through various channels or the empowering work as mentioned by Ms Starry LEE, they will know that as long as they can join together and get hold of a certain percentage of ownership shares, they can take an active and leadership role in handling the redevelopment of the land lot they jointly owned. Hence, these property tenders carried out "by order of the owners" are mostly initiated by small owners who jointly hold a considerable ownership shares. Through these tenders, they can seek the greatest gain for the land or assets they owned. But if

the relevant assets are acquired by an estate developer (the so-called "receiving the goods") through these tenders carried out "by order of the owners", it could easily develop into the scenario as depicted by some Members just now, because if an application for compulsory sale is to be made under the Land (Compulsory Sale for Redevelopment) Ordinance (the Ordinance), it would be a contest, as we usually see, between an estate developer and small owners with less than 20% ownership shares.

Many Honourable Members mentioned that in the implementation of the new legislation, there should be better safeguard for minority owners. In fact, this aspect was covered during our discussion in March this year and in the letter I issued to Honourable Members. Briefly, a number of relevant provisions of the Ordinance have provided minority owners with protection. For example, when an application for compulsory sale is made, a notice must be served to minority owners so that they are aware that such an application is in progress. Moreover, the information to be set out in the notice to minority owners has also been specified. Any minority owner shall have the right to file his dispute to the Lands Tribunal (the Tribunal). In filing the dispute, the minority owner can impress upon the Tribunal certain ideas about the determination of the application because as provided under the Ordinance, the Tribunal must satisfy itself on the two conditions I mentioned in my first speech before granting its approval.

Many Honourable Members have talked about the sale of land lots through auction and other means. Relevant requirements have also been stipulated in the provisions of the Ordinance. By requiring the sale of land lots by auction, it is intended to achieve the market value of the lots. Regarding Mr Alan LEONG's question about whether such auctions have indeed happened in the past, there are only 20 completed cases so far. In two of these cases, the remaining shares of ownership were sold at a price higher than the reserve price in auctions. In other words, people had competed for the title of the land lot and hence, the tender price was higher than the reserve price determined by the Tribunal. But nonetheless, the law has provided that the reserve price for auction as determined by the Tribunal must reflect the redevelopment value of the lot because it is the only way to ensure that minority owners can share in the development potential of the lot. If an order for compulsory sale is granted, both the fees of the trustees and the expenses of the auction will be paid by the majority owner.

Ms Cyd HO mentioned about taking care of the tenants. There are certain provisions in the Ordinance which deal with the compensation for tenants. But

notwithstanding the making of such provisions in law, the Government is duty-bound to ensure that these provisions in the Ordinance can achieve the desired objectives in actual operation. Therefore, regarding the "Leung Fat Incident" mentioned by Mr WONG Kwok-hing and his question about what lessons we have learnt from the incident, I would say we have learnt a lot. We notice that we must work seriously to step up publicity and education from different aspects. First, we must work to ensure wider knowledge so that all property owners in Hong Kong will understand the spirit of this Ordinance, the relevant statutory procedures and the safeguard for their rights. Second, we must work in the aspect of intermediaries so that they have certain understanding about the Ordinance. The intermediaries would include estate agents which I mentioned earlier, the social welfare agency we will engage shortly as well as all social welfare agencies and elderly centres which have routine contacts with elderly owners. But, of course, the most important aspect is the affected owners themselves. That is why we have also designed some support services for the affected owners so that they will not feel they have nowhere to turn to for assistance.

In order to provide them with assistance, we will implement two very special measures that are quite rare among the general support services provided by the Government. The first one relates to the engagement of a social welfare agency — we are in fact at the final stage of work with only the signing of the formal agreement outstanding — this social welfare agency will provide outreach services to elderly owners to conduct checking for their individual cases. The owners do not have to pay any fees and charges arising out of the checking as the Government will pay for the services provided by the social welfare agency to small owners under the contract. If mediation service is required by a minority owner who is an eligible elderly person, all the mediation fees will be borne by the Government. At present, we estimate that for every elderly owner who participates in mediation, about 15 hours of mediation services might have to be provided and the mediation fees (which amount to several tens of thousands of dollars) will be borne by the Government.

Ms Starry LEE raised a number of areas for supporting the owners. We generally agree with these suggestions which are broadly in line with what I have said just now. We will certainly take proactive actions to follow up on the matter.

Last but not least, I would like to talk about the function of this Ordinance from a macro perspective. In the past year or so, many problems relating to dilapidated old buildings have occurred in Hong Kong. All Honourable Members and I are gravely concerned about the impact of building dilapidation on public safety. As such, in the course of the Urban Renewal Strategy (URS) Review, we must also admit that the Government should "walk on two legs" if overall improvement to the problem is to be achieved. On the one hand, building rehabilitation works (including works of a preventive nature) must be carried out; and on the other, it is necessary to undertake urban renewal projects. Hence, in repositioning its role, the Urban Renewal Authority (URA) has adopted redevelopment and rehabilitation as its core business. The reason is very simple. Honourable Members can just go visit the old districts and talk to the many Members who have experience in district work and they will know there are many "five noes" building. These buildings have a long history of disrepair while the small owners cannot afford the maintenance expenses. For these owners, the best alternative is to have their properties acquired.

However, as pointed out in the URS Review, redevelopment cannot be undertaken by the URA alone. As we should adopt a holistic approach for the regeneration of old districts, private-led redevelopment projects are unavoidable. In fact, according to the statistics I have in hand, in the past five years, fewer new units were provided by the URA's redevelopment projects than private sector redevelopment projects. But, as I said earlier, for redevelopment projects undertaken by the private sector, they must proceed in accordance with the spirit of the law.

Some Honourable Members mentioned that as some good measures had been proposed by the URS, which include the "flat-for-flat" offer, bottom-up approach and rehousing arrangements, should these measures also apply to private-sector redevelopment projects? This is unjustified because private-sector redevelopment projects are no charity. I think we must consider the matter from a more realistic perspective because the developers would be mindful of the potential redevelopment value of the lot as well as the profits. Hence, if the URA are paying out compensation according to a notional seven-year-old replacement flat in the same general locality so as to undertake redevelopment projects which are loss-making, I cannot apply the same compensation principle (according to a notional seven-year-old replacement flat in the same general locality) onto private-led redevelopment projects because it is

doomed to fail as there will be no inducement for the developers to undertake these redevelopment projects.

As we have recently published .....

(Dr Margaret NG raised her hand in indication)

**PRESIDENT** (in Cantonese): Secretary, please stop for a while. Dr NG, what is your question?

**DR MARGARET NG** (in Cantonese): President, I wish to ask if the Secretary will clarify a point. She just mentioned charity. Does she mean that the "flat-for-flat" offer is a kind of charitable arrangement for flat owners who might opt for this offer? I wish she can clarify what she meant by the word "charity".

**PRESIDENT** (in Cantonese): Secretary, do you hear the question put by Member? You may make an elucidation if you so wish.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): I wish to elucidate. I am merely pointing out that in undertaking redevelopment projects, the URA will act according to public interest. If, after deliberation, Honourable Members consider that it is appropriate to pay compensation on the basis of a notional seven-year-old replacement flat in the same general locality for a particular redevelopment project, the URA will not stop undertaking the same because it must pay compensation according to a notional seven-year-old replacement flat in the same general locality. But private-sector redevelopment projects are neither doing charity work nor providing public services, one must consider the potential redevelopment value of the lot; and regarding the potential value of a redevelopment project, one must consider what kind of compensation package can provide certain financial incentive for the private sector to engage in urban renewal work. I hope I can answer Dr NG's question.

(Mr Albert CHAN stood up)



**PRESIDENT** (in Cantonese): Mr CHAN, what is your question?

**MR ALBERT CHAN** (in Cantonese): President, just now I also stand up at the same time with the intention to ask the Secretary to clarify the points she made just now about urban renewal and charity. Can what she said be taken to mean that the Urban Renewal Authority's principle of paying compensation on the basis of a comparable seven-year-old flat is a charitable arrangement? Can she clarify whether this is what she means?

**PRESIDENT** (in Cantonese): Would Members please observe the Rules of Procedure. Although Members are allowed under the Rules of Procedure to seek elucidation from the Secretary on matters raised in the course of her speech, if you use this as a means to express your different opinions or criticize the Secretary for the points she made, it will just prolong the debate. Would Member please do not abuse the arrangement of seeking elucidation under the Rules of Procedure and let the Secretary speak without interruptions.

Mr Albert CHAN, you have already raised the part which you wish the Secretary to elucidate. It is up to the Secretary to decide whether she will make an elucidation.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I believe I have already clarified the matter just now. With your permission, I would like to continue with my speech because I do not want to .....

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I would like to ask the Secretary clarify one point, just one point. She can answer right away.

**PRESIDENT** (in Cantonese): Please state your request quickly.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes. Does she know what she is talking about?

**PRESIDENT** (in Cantonese): Mr LEUNG, it is not a genuine question seeking elucidation. Please sit down.

(Some Members conversed in their seats)

**PRESIDENT** (in Cantonese): Would Members please observe the order in Council. Secretary, please continue with your speech.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, .....

**PRESIDENT** (in Cantonese): Secretary, sorry, please hold a while. I want to remind Members that while another Member or a government official is speaking, Members should remain silent and should not speak or laugh at the same time. Secretary, please continue with your speech.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, lastly, I want to say that of course I understand what a formidable task it is to deal with the old districts in Hong Kong. The Ordinance is not the cure to this problem and we have been working for a solution in a number of areas. In today's debate, little has been mentioned by Members about the new framework of urban renewal that comes with the revised URS. This includes the new role of the URA as a facilitator in addition to its original role of an implementer. When the URA acts as a facilitator, I am afraid it might have to invoke this Ordinance. But I truly believe that in future, when most of the owners want the URA play the role of a facilitator and the URA is acting according to our new direction, we should see some better measures and actions in the market, so that the work of urban renewal as a whole can proceed effectively as we envisage and help resolve the safety issues of the people's living environment caused by the increasing ageing of old districts in Hong Kong.

Lastly, I would like to assure Honourable Members that we will closely monitor the various measures I mentioned just now in my first speech. We will of course review the need for any further legislative amendments when the

Ordinance, the Notice as well as the administrative measures have been implemented for a period of time.

Thank you, President.

**PRESIDENT** (in Cantonese): Mr CHAN Kam-lam, you may now move your amendment.

**MR CHAN KAM-LAM** (in Cantonese): President, I move that Mrs Regina IP's motion be amended.

**Mr CHAN Kam-lam moved the following amendment: (Translation)**

"To add ", in order to speed up the pace of redeveloping old districts, " after "That"; to delete "although" after "80%"; to delete "," after "facilitate urban renewal" and substitute with "and is conducive to expediting the renewal development of old districts, improving the living environments therein and reducing the potential dangers posed to the community by old buildings in disrepair, but"; to delete "no one is interested in the dilapidated" after "while" and substitute with "such cases are comparatively rare in the"; to add "(b) to step up law enforcement by government departments: the relevant departments should step up law enforcement and prosecution to eradicate the unlawful nuisances caused by developers or agents in the course of property acquisition, so as to protect flat owners against any harassment;" after "life of individual flat owners"; to delete the original "(b)" and substitute with "(c)"; to delete the original "(c)" and substitute with "(d)"; to delete "given that compulsory sale involves deprivation of private property rights and the Ordinance currently has various deficiencies," after "Ordinance:" and substitute with "notwithstanding that compulsory sale is in line with the overall interest of society, at the same time it also undermines private property rights, and thus"; to add "continuously" after "is necessary to"; and to delete "enhance the protection of the rights of flat owners" immediately before the full stop and substitute with "ensure that on the premise of protecting the rights of flat owners, the redevelopment of old districts can be effectively facilitated"."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHAN Kam-lam to Mrs Regina IP'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)

Mr James TO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr James TO has claimed a division. The division bell will ring for three minutes.

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

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

Functional Constituencies:

Dr Raymond HO, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted for the amendment.

Dr Margaret NG, Mr CHEUNG Man-kwong, Mr LAU Wong-fat, Dr Joseph LEE, Dr LAM Tai-fai and Mr CHEUNG Kwok-che voted against the amendment.

Mrs Sophie LEUNG, Mr Jeffrey LAM and Mr Andrew LEUNG abstained.

Geographical Constituencies:

Mr CHAN Kam-lam, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin voted for the amendment.

Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man 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, 20 were present, 11 were in favour of the amendment, six against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, seven were in favour of the amendment and 16 against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negated.

(Ms Miriam LAU raised her hand in indication)

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

**MS MIRIAM LAU** (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Reviewing the operation of the Land (Compulsory Sale for Redevelopment) Ordinance" or any amendments 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 to speak)

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

(Members raised their hands)

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

(No hands raised)

**PRESIDENT** (in Cantonese): I think the question is agreed by a majority 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 on "Reviewing the operation of the Land (Compulsory Sale for Redevelopment) Ordinance" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

**PRESIDENT** (in Cantonese): Dr Priscilla LEUNG, you may move your amendment.

**DR PRISCILLA LEUNG** (in Cantonese): President, I move that Mrs Regina IP's motion be amended

**Dr Priscilla LEUNG moved the following amendment: (Translation)**

"To add ", amidst the concern of numerous owners of old buildings," after "That"; to delete "and" after "urban renewal;"; and to add "; and (d) to expeditiously conduct studies on establishing a mediation or arbitration mechanism for compulsory sale other than the Lands Tribunal, so that when flat owners are faced with developers or agents who resort to unreasonable prices or acts in the course of property acquisition, they can have a simple and legally binding channel for negotiations and appeal, thereby preventing them from being dragged into protracted lawsuits that may plunge them into bankruptcy and exert mental pressure on them" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Priscilla LEUNG to Mrs Regina IP'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)

Mr Ronny TONG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Ronny TONG 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 Raymond HO, Mr CHEUNG Man-kwong, Ms Miriam LAU, Mr Abraham SHEK, Dr Joseph LEE, Prof Patrick LAU, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Margaret NG, Mr LAU Wong-fat and Dr LAM Tai-fai voted against the amendment.

Mrs Sophie LEUNG, Ms LI Fung-ying, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Paul CHAN, Mr IP Kwok-him and Mr Paul TSE abstained.

Geographical Constituencies:

Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mrs Regina IP voted for the amendment.

Mr LAU Kong-wah, Ms Audrey EU, Mr Ronny TONG, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendment.



Mr CHAN Kam-lam, Mr TAM Yiu-chung, 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, 20 were present, 10 were in favour of the amendment, three against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 12 were in favour of the amendment, eight 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.

**PRESIDENT** (in Cantonese): Dr Margaret NG, you may move your amendment.

**DR MARGARET NG** (in Cantonese): President, I move that Mrs Regina IP's motion be amended.

**Dr Margaret NG moved the following amendment: (Translation)**

"To add ", compelling flat owners to sell their property titles without the involvement of the public interest factor; besides contravening the principle of respecting private property rights, this in effect often compels flat owners to leave their original communities" after "80%"; to delete "has failed to fully fulfil its objectives" after "the legislation" and substitute with "runs counter to the policy of encouraging old district redevelopment"; to delete "which causes anxiety and seriously affects" after "to be acquisition-related," and substitute with "apart from causing anxiety and seriously affecting"; to add ", it will also aggravate the dilapidation and disrepair of buildings, making such buildings even more dangerous and uninhabitable" after "life of individual flat owners"; and to add ", truly promote the redevelopment of old communities and enable affected flat owners to acquire other properties in the original districts" immediately before the full stop."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Dr Margaret NG to Mrs Regina IP'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 Margaret NG rose to claim a division.

**PRESIDENT** (in Cantonese): Dr Margaret NG 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, Dr Joseph LEE, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU and Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr James TO, 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, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, seven were in favour of the amendment, 11 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 18 were in favour of the amendment and six against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**PRESIDENT** (in Cantonese): Mr WONG Yuk-man, you may move your amendment.

**MR WONG YUK-MAN** (in Cantonese): President, I move that Mrs Regina IP's motion be amended.

**Mr WONG Yuk-man moved the following amendment: (Translation)**

"To delete "although the lowering of the threshold can help facilitate urban renewal," after "80%"; and to add "including restoring the application

threshold for compulsory sale to 90% of the undivided shares of a lot," after "(including the administrative arrangements therein)."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr WONG Yuk-man to Mrs Regina IP'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)

Mr IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him 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 and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Dr Joseph LEE, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG voted against the amendment.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, three were in favour of the amendment, 14 against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 16 were in favour of the amendment, six against it and two 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 negated.

**PRESIDENT** (in Cantonese): Mr Ronny TONG, you may move your amendment.

**MR RONNY TONG** (in Cantonese): President, I move that Mrs Regina IP's motion be amended.

**Mr Ronny TONG moved the following amendment: (Translation)**

"To add "(a) to conduct studies on improving the existing adjudication system and reinforce the gate-keeping role of the Lands Tribunal: it is proposed that the Lands Tribunal should recruit professionals to conduct independent property valuations; if a flat owner is not satisfied with the acquisition price and requests a court ruling, the developer concerned should bear all the litigation fees; and the developer should also submit a 'final development blueprint' to the Lands Tribunal before property acquisition and use it as the basis of valuation;" after "including:"; to delete the original "(a)" and substitute with "(b)"; to delete the original "(b)" and substitute with "(c)"; and to delete the original "(c)" and substitute with "(d)."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Ronny TONG to Mrs Regina IP'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)

Mr Ronny TONG rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Ronny TONG 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, Ms Miriam LAU, Dr Joseph LEE, Mr CHAN Kin-por and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai, Mr Paul CHAN, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG voted against the amendment.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, six were in favour of the amendment, 11 against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 16 were in favour of the amendment, six against it and two 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.

**PRESIDENT** (in Cantonese): Mr CHEUNG Kwok-che, you may move your amendment.

**MR CHEUNG KWOK-CHE** (in Cantonese): President, I move that Mrs Regina IP's motion be amended.

**Mr CHEUNG Kwok-che moved the following amendment: (Translation)**

"To delete "and" after "urban renewal;" and substitute with "(c) to review the mechanism for determining acquisition prices of old buildings: after the independent surveyors employed by flat owners have assessed the market values of the units, all professional valuation fees should be borne by the acquisition parties, and in assessing acquisition prices, the values of new buildings upon their completion should also be considered; and"; and to delete the original "(c)" and substitute with "(d)."

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr CHEUNG Kwok-che to Mrs Regina IP'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)

Mr IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him 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, Ms Miriam LAU, Dr Joseph LEE, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai and Mr Paul TSE voted against the amendment.

Ms LI Fung-ying, Mr Paul CHAN and Mr IP Kwok-him abstained.

Geographical Constituencies:

Mr James TO, 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, Mrs Regina IP, 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 TAM Yiu-chung, 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, 20 were present, eight were in favour of the amendment, nine against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 18 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.

**PRESIDENT** (in Cantonese): Mr James TO, you may move your amendment.

**MR JAMES TO** (in Cantonese): President, I move that Mrs Regina IP's motion be amended.

**Mr James TO moved the following amendment: (Translation)**

"To delete "and" after "urban renewal;" and to add "; (d) to explore the incorporation of various other elements, including the practice of mediation before application for compulsory sale, the actual timing of

compulsory sale and independent valuation by the Lands Tribunal, etc., and require the Lands Tribunal to hand down judgments from the perspectives of protecting residents and public safety, while at the same time taking account of the ages and states of maintenance of the buildings concerned; (e) to enhance the Government's assistance for residents of old buildings, including making arrangement for professionals to explain the legislation and the mechanism for compulsory sale application and its operation, providing legal or other kinds of advice on individual cases, and assisting in organizing flat owners to increase their bargaining power when dealing with acquisition companies or developers, so as to prevent residents from being easily misled and lured to sell their flats at low prices, or from suffering losses of rights and interests due to their unfamiliarity with the legislation; and (f) to step up the effort of monitoring the management and safety problems of old buildings susceptible to the impact of the Ordinance; if necessary, the Government should intervene in a timely manner, lest the reluctance of those owners holding the majority titles, after acquiring the majority of fragmented titles, to participate in building management and maintenance works, resulting in the deterioration of the safety and environmental hygiene of the buildings and making them unfit for human habitation, thereby protecting flat owners' rights and interests and ensure building safety" 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 Mrs Regina IP'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)

Mr IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him 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, Ms Miriam LAU, Ms LI Fung-ying, Dr Joseph LEE, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming, Dr PAN Pey-chyou and Mr Paul TSE voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU and Dr LAM Tai-fai voted against the amendment.

Mr Paul CHAN and Mr IP Kwok-him abstained.

Geographical Constituencies:

Mr James TO, 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, Mrs Regina IP, 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 TAM Yiu-chung, 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, 20 were present, 10 were in favour of the amendment, eight against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 18 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.

**PRESIDENT** (in Cantonese): Mrs Regina IP, you may now reply and you have five minutes 42 seconds.

**MRS REGINA IP** (in Cantonese): President, I repeat, I am very disappointed after listening to the Secretary's reply. The Secretary seems to turn a blind eye to the problems in society.

The measures mentioned by the Secretary just now are, in fact, only patchwork remedies. For instance, regarding the mediation mechanism, just as Dr Priscilla LEUNG has pointed out ..... I seldom quote from Dr Priscilla LEUNG (*Laughter*), but I have to quote her words this time ..... Even Dr Priscilla LEUNG is aware that if we do not enforce mandatory mediation, there will be no mediation. If I am a developer and I have already acquired sufficient shares of a lot, why do I still need to discuss with the owners? I will expeditiously finish the business. As in the Secretary's words, I am doing business, not practicing charity. Right?

Moreover, it is fine that the Social Welfare Department has set up an outreach team to offer service to elderly owners. In case these owners misunderstand that their old buildings will be compulsory sold like the case of Leung Fat Noodle, the outreach team can clarify their misunderstanding. There is nothing wrong with this. However, as many colleagues have pointed out,

these affected small property owners are in desperate need of assistance offered by professionals such as surveyors. A colleague also suggested that they should seek help from the Hong Kong Institute of Surveyors. This should be said by Prof Patrick LAU. But the Hong Kong Institute of Surveyors only offers free oral advice and they charge a fee for conducting an assessment. Does the Secretary think that the Institute is a charitable organization? The Secretary should know this very well, right? Moreover, just as some property owners have said, the services of these professionals have been monopolized. Who are the major clients of professional surveyors or the most prestigious structural engineers? Members should know the answer. And how many of these professionals can help these small property owners?

Besides, the Secretary has mentioned the case of Singapore. Although I do not have the opportunity to make a duty visit to Singapore, I have also conducted some research. Many colleagues have pointed out that the legislation on compulsory sale was passed during the tenure of the Secretary Bowen LEUNG. After his retirement, the former Secretary has made a fortune working at the New World Group.*(Laughter)* In Singapore, after a similar legislation was passed (if my information at hand is not accurate, will the Secretary please correct me), its Parliament introduced a new rule in 2007 in response to the complaints of many property owners that they were often forced to sign agreements for collective sale of property titles without proper understanding of the agreements. The rule requires that the committee representing a collective sale of property titles has to list in the preamble of the agreement how to obtain important information about the transaction, such as the default reserve price, the apportionment of proceeds and the method of apportionment, the fees charged by lawyers, agents and other related fees. They have laid down stringent requirements for collective sales of property titles.

In respect of urban renewal, the University of Hong Kong has prepared a report on this topic for us. The report pointed out that many places have laid down a threshold for redevelopment, such as Taipei and Seoul, and their thresholds are even lower than ours. However, these places have laid down stringent provisions, requiring the developer, construction company and property owners to form an organization to take forward the redevelopment project together. As to whether the proceeds can be apportioned fairly, Secretary, this depends on you, and how you act as the gate-keeper and what your standards are.

We all agree that business is business. We are not asking businessmen to practice charity. But if the Secretary can act more fairly and the Government is determined to defend the interests of the people, they can put in place a scheme or a certain standard by legislation to require developers to work with property owners.

A member of the public, who is a foreigner, wrote to the *South China Morning Post*, to request for the repeal of the Ordinance. I beg to differ. I am quite happy to see owners joining together to auction their properties. By joining together, they will be able to sell their properties at a billion-odd dollars and yield greater returns. Many people said to me that urban renewal should follow the case of Lai Sing Court or Belcher Garden. The approach adopted in these two redevelopment cases took longer time. The Secretary also said to me that this redevelopment approach may not be applicable every case, depending on the plot ratio of the building. She further said that developers may not support this approach as the profits yielded will be less. But, how does the Secretary know about that? Perhaps, they will agree to make less profit, subject to the determination of the Secretary and her boss, and the standards formulated by the authorities.

The authorities can even introduce some simple legislative amendments. Some members of the public asked us what is the meaning of "state of repair" stipulated under the Ordinance. There is no definition of the term. In evaluating the state of repair of a building, the Lands Tribunal, instead of surveying whether the building is dilapidated or has any potential risk of collapse, often only considers the redevelopment value of the building. Why do the authorities not clearly provide for the meaning of "state of repair"? If the authorities truly intend to protect the safety of the people and speed up the redevelopment of old districts, the Secretary can introduce these legislative amendments.

Hence, I beg to differ with the remark that it is too early to conduct a review because the Ordinance has only been in effect for eight months. We all know that even if the Government is willing to conduct a review, it will take a very long time to do so. I hope the Secretary can consider these humble requests and I hope that Members will support them.

Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by Mrs Regina IP 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.

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.

**PRESIDENT** (in Cantonese): Mr IP Kwok-him 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, Ms Miriam LAU, Ms LI Fung-ying, Dr Joseph LEE, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the motion.

Dr Raymond HO, Mr LAU Wong-fat, Mr Abraham SHEK, Prof Patrick LAU, Dr LAM Tai-fai and Mr Paul TSE voted against the motion.



Mrs Sophie LEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Paul CHAN and Mr IP Kwok-him abstained.

Geographical Constituencies:

Mr James TO, 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, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr LAU Kong-wah and Dr Priscilla LEUNG voted against the motion.

Mr CHAN Kam-lam, Mr TAM Yiu-chung, 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, 20 were present, nine were in favour of the motion, six against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 18 were in favour of the motion, 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 motion was negated.

## **NEXT MEETING**

**PRESIDENT** (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 8 December 2010.

*Adjourned accordingly at Ten o'clock.*

