

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 8 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 TAM YIU-CHUNG, G.B.S., J.P.

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN

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

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

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

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

THE HONOURABLE LEUNG KWOK-HUNG

PUBLIC OFFICERS ATTENDING:

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

PROF THE HONOURABLE K C CHAN, S.B.S., J.P.
THE FINANCIAL SECRETARY

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

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

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

DR KITTY POON KIT, J.P.
SECRETARY FOR THE ENVIRONMENT

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2010	158/2010
District Councils Ordinance (Amendment of Schedule 3) Order 2010 (Commencement) Notice.....	159/2010

Other Papers

No. 38 — Emergency Relief Fund
Annual Report by the Trustee for the year ending 31 March 2010

No. 39 — The Government Minute in response to the 22nd Annual Report of The Ombudsman 2010

Report No. 7/10-11 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Road Traffic (Amendment) Bill 2010

Report of the Legislative Council Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man

ADDRESSES

PRESIDENT (in Cantonese): Addresses. The Chief Secretary for Administration will address the Council on "The Government Minute in response to the 22nd Annual Report of The Ombudsman 2010".

The Government Minute in response to the 22nd Annual Report of The Ombudsman 2010

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, the 22nd Annual Report of The Ombudsman was tabled before the Council on 7 July this year. I will now table the Government Minute in response to the recommendations of the Report.

The Government and the relevant public bodies have in general accepted the recommendations of The Ombudsman on the various cases investigated, and are proactively taking various measures to implement the relevant recommendations. As for the few recommendations that have not been accepted, explanations or other proposals have been made by the relevant departments to The Ombudsman. The details are listed in the Government Minute.

The Ombudsman has all along been playing a key role in improving the quality of public service, and what it has achieved is obvious to all. We will continue to work together with The Ombudsman in realizing public expectation for the Government to further enhance the quality of public service and the transparency of its governance. Here, I would like to offer my gratitude for the invaluable views that The Ombudsman has given us all along. We will continue to make effort in raising the quality and efficiency of public administration.

Thank you, President.

PRESIDENT (in Cantonese): Ms LI Fung-ying will address the Council on the "Report of the Legislative Council Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man".

Report of the Legislative Council Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man

MS LI FUNG-YING (in Cantonese): President, in my capacity as Chairman of the Select Committee to Inquire into Matters Relating to the Post-service Work of

Mr LEUNG Chin-man (the Select Committee), I table the Report of the Select Committee.

On 1 August 2008, the New World China Land Limited (NWCL) announced the appointment of Mr LEUNG Chin-man, former Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing, as an Executive Director and Deputy Managing Director of the company and the matter had aroused widespread public concern. Although the business of the company would be conducted on the Mainland and it did not involve the Hong Kong real estate sector, the parent company of the NWCL is the New World Development Company Limited (NWDCL), the parent company of another subsidiary company, NWS Holdings Limited (NWS), which owns 50% of the shareholding in First Star Development Limited (FSDL). The FSDL is the developer of the Hunghom Peninsula Private Sector Participation Scheme (PSPS) development. In addition, while in government service, Mr LEUNG was criticized by the public for the sale of the Hunghom Peninsula to the developer. Therefore, the public questioned that there is conflict of interest in Mr LEUNG's employment with NWCL and questioned why the Secretary for the Civil Service had granted approval for Mr LEUNG to take up the appointment.

On 10 December 2008, the Council passed a resolution to appoint a select committee to inquire into the post-service work of Mr LEUNG with the NWCL and other real estate organizations, and whether there was any connection between such work and the major housing or land policies which Mr LEUNG had taken part in their formulation or execution and decisions which he had made pursuant to such policies while serving as Director of Buildings, Permanent Secretary for Housing, Planning and Lands (Housing) and Director of Housing, that had given rise to any potential or actual conflict of interest, and based on the results of the above inquiry, to make recommendations on the policies and arrangements governing post-service work of directorate civil servants and other related matters.

In the past two years, the Select Committee held a total of 90 meetings, 23 public hearings and took evidence from 24 witnesses. The Select Committee also studied and examined nearly 900 written statements and documents. The Select Committee was authorized, in the performance of its duties, to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and

Privileges) Ordinance (Cap. 382) to order the attendance of witnesses to give evidence and the production of papers, including internal or confidential information. The Select Committee performed its duties in accordance with its own practice and procedure in a fair and impartial manner.

The hearings of the Select Committee focused on two issues: Whether or not Mr LEUNG's taking up the employment with NWCL was inappropriate? If so, why did the approving authority grant the approval for his employment application? The findings and observations of the Select Committee as well as the recommendations are set out in detail in the report. I will wait until a motion on the report is moved on 15 December to give a detailed account. In the following, I will only comment briefly on several points.

The major conclusions of the Select Committee are: Mr LEUNG Chin-man was deeply and directly involved in the disposal of the Hunghom Peninsula flats, and assumed a steering and co-ordinating role in the matter. The Hunghom Peninsula development was developed by a company which is half-owned by a subsidiary of the parent company of the NWCL. The business interests of the subsidiaries are inseparable from those of the parent company. There is plainly a conflict of interest for Mr LEUNG to take up employment with the NWCL. Mr LEUNG's taking up the employment with the NWCL was therefore inappropriate. In his application to the Civil Service Bureau for approval to take up the employment with the NWCL, Mr LEUNG did not give all information relevant to his application in a frank and honest manner. Mr LEUNG's conduct was unbecoming of a former senior official, and was liable to bring the Civil Service into disrepute. The Select Committee found on investigating the vetting and approval process of Mr LEUNG's application to take up employment in the NWCL that a great majority of the officials involved in processing Mr LEUNG's application had adopted a blinkered view in considering the application. They had not fully considered the six assessment criteria set out in CSB Circular No. 10/2005. Their understanding of the assessment criteria differed among themselves. The practices they adopted in processing the application varied, the way they handled the process was careless and perfunctory, and they placed too much dependence on the honour system. The Select Committee considered that the ultimate responsibility rested with Miss Denise YUE as the approving authority for post-service work applications from directorate civil servants. The approval of Mr LEUNG's application reflected that Miss YUE had neither given

precedence to the protection of the public interest nor upheld the approval criteria of the Control Regime, resulting in the Government's credibility being damaged.

The Select Committee must point out that the post-service work of directorate civil servants involves the public interest. The Select Committee recognized the contribution that directorate civil servants could make to the community with their expertise by continuing to work after their civil service career and therefore, they should not be deprived of their right to take up post-service work. However, the Select Committee is of the view that safeguarding the public interest is the cornerstone of the Control Regime. Hence, while an appropriate balance has to be struck between the protection of the public interest and protection of the individual's right to work, the Select Committee is firmly of the view that the protection of the public interest must take precedence at all times. The investigation of the Select Committee also shows that there are inadequacies in the existing Control Regime. In the report, the Select Committee has made recommendations on various aspects, such as the restrictions on the taking up of post-service work, the criteria for assessing applications, the responsibilities of applicants, the method and attitude of the officials responsible for the vetting and approval when considering the applications, and the operation of the Advisory Committee on Post-service Employment of Civil Servants. The Select Committee urges the Government to consider the recommendations and hopes that the Government will respond to them positively.

Finally, on behalf of the Select Committee, I thank all the witnesses who attended the hearings and various parties that provided the information. I also wish to express my heartfelt thanks to the Legislative Council Secretariat for the assistance and support it gave to the Select Committee, thus enabling the Select Committee to finish its work smoothly.

Thank you, President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Expanding Scope of Employees' Compensation Ordinance to Cover Job-related Mental Illnesses

1. **DR PAN PEY-CHYOU** (in Cantonese): *President, under the existing Employees' Compensation Ordinance (the Ordinance), an employer is liable to pay compensation in respect of injuries sustained by his employees as a result of accidents arising out of and in the course of employment; or in respect of occupational diseases suffered by his employees, which are covered by the Ordinance, and have resulted in incapacity or death. However, the protection provided by the Ordinance does not cover mental illnesses directly caused by employment or mental impairment directly caused by an accident in the course of employment, making it difficult for the affected employees to obtain compensation. In this connection, will the Government inform this Council:*

- (a) *whether it knows, in the past three years, among the new psychiatric cases handled by the Hospital Authority (HA), the number of cases in which the patients' mental illnesses had been caused by the injuries of the patients sustained in the course of employment; whether the HA, the Labour Department (LD) or other government departments have offered assistance to such employees suffering from mental impairment (for example, providing continued care and rehabilitation services, and assisting them in seeking re-employment, and so on); if so, of the details, and the number of such cases handled by the authorities in the past three years;*
- (b) *in the past three years, among the employees' work injury cases assessed by the Occupational Medicine Unit of the LD, of the number of cases which did not involve any physical injuries but only mental impairment; of the results of assessment of work injuries for such cases; whether the authorities will clearly define "mental impairment" and issue guidelines in this respect, so as to state clearly that in case an employee suffers from a certain type or certain degree of mental impairment arising out of employment, the employer must report the case as work injury and offer compensation to the employee concerned; if the authorities will not do so, of the reasons for that; and*

- (c) *given that post-traumatic stress disorder has been included by the International Labour Organization (ILO) in its 2010 updated list of occupational diseases, whether the authorities will follow such standard set by the ILO and expeditiously amend the relevant provisions in the Ordinance by including in the list of occupational diseases mental impairment directly caused by an accident in the course of employment and mental impairment and illnesses directly arising out of employment, so that employees suffering from such illnesses can receive compensation; if so, of the timetable for introducing the relevant amendments; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, under the Employees' Compensation Ordinance (ECO), employers are required to provide compensation to their employees who sustain injuries in accidents arising out of and in the course of employment, provided that it can be substantiated that the sufferings, including mental impairment, are related to the work accidents and have caused temporary and/or permanent loss of earning capacity to the employees. If the employees have health problems caused by prolonged exposure to hazards and contract an occupational disease specified in the ECO, resulting in temporary and/or permanent loss of earning capacity, the employees would also receive compensation. Furthermore, irrespective of whether the employees have suffered from mental impairment owing to work injuries or mental illness related to their work, the HA, the Social Welfare Department (SWD) and the LD provide a full range of medical, welfare, rehabilitation and employment services to assist them to recover swiftly and to integrate into the community and resume working. My reply to the three parts of the question raised by Dr PAN is set out below:

- (a) The HA provides appropriate and adequate healthcare services to members of the public, including providing treatment to those who have sustained injuries arising from their employment. For patients suffering from mental illnesses, including those suffering from mental illnesses related to their work, the HA provides a range of services including assessments on their conditions (such as mental conditions and the ability to manage daily living and to work) and treatment and support (such as drug therapy, cognitive behavioural therapy, stress management skills and vocational rehabilitation) to

facilitate their early recovery. The HA has not compiled statistics on the causes of the mental problems among the cases handled by its psychiatry departments.

On welfare and rehabilitation, the SWD provides a series of services to support and assist those persons suffering from mental ordeal or emotional distress arising from their work in integrating into the society.

At present, the SWD and non-governmental organizations operate 61 Integrated Family Service Centres and two Integrated Services Centres throughout the territory to provide individuals and families in need, including persons suffering from mental ordeal or emotional distress arising from their work, with preventive, supportive and therapeutic welfare services.

The SWD also co-ordinates a series of day training and vocational rehabilitation services for persons with disabilities aged 15 or above to improve their social adjustment capabilities and enhance their social and vocational skills.

On community support services, the SWD has implemented the Integrated Community Centre for Mental Wellness (ICCMW) to provide one-stop community support and integrated rehabilitation services for local residents, the discharged mental patients, persons with suspected mental health problems and family members/carers. The services include out-reaching visits, therapeutic groups, training and activities centre services, visiting occupational therapy and public education. Through an integrated service mode, ICCMWs aim to enhance the resilience of service users, help them acquire social and vocational skills and raise public awareness of mental health. Generally speaking, a substantial number of persons with disabilities receiving rehabilitation services are suffering from multiple disabilities. Hence, the SWD is unable to provide details by categories of the injuries arising from employment sustained by persons with disabilities.

The Selective Placement Division (SPD) of the LD provides free employment service to persons with disabilities who are fit for open employment, including those with ex-mental illness, to find jobs in the labour market.

The LD has not kept any statistics concerning the mental impairment cases caused by work handled by the HA on which subsequent assistance on re-employment has been provided by the SPD.

- (b) According to the ECO, if employees sustain injuries in accidents arising out of and in the course of employment, employers are liable to pay compensation under the ECO. Subject to the circumstances of individual accident cases, injuries sustained by these employees could include injuries to limbs and body parts, functional impairment of organs and mental impairment, and so on. In the past three years, among the employees' compensation claims processed by the LD where employees' compensation assessments on mental impairment are required, the majority of them also involved injuries to limbs and body parts and/or functional impairment of organs to different extent. There were very few cases solely involving mental impairment, including five cases respectively in 2008 and 2009, and four cases in the first three quarters of 2010. Examples of these cases included employees witnessing body falling from height or serious traffic accident in the course of their work, resulting in mental impairment. Depending on the circumstances of these cases, the assessed period of absence from work ranged from zero day to 702 days and the permanent loss of earning capacity assessed ranged from zero % to 40 %. As illustrated by these cases, if it can be substantiated that the mental impairment suffered by the employees are related to the work accidents they encountered, and have caused them temporary and/or permanent loss of earning capacity, the ECO already requires employers to provide compensation.

On the notification of work injuries, employers are required to provide the Commissioner for Labour with information relating to the accidents in accordance with the ECO, including the course of the accidents, work being performed by the employees during the

accidents, nature of the injuries and body parts injured, and types of accident, and so on. In respect of the nature of injuries, in making notifications, employers could make reference to relevant information such as impairments listed in sick leave certificates or medical reports, including mental impairment. However, for cases involving mental impairment, especially those where symptoms only arise in a considerable period of time after the work accidents, employers may not be aware of the mental impairment caused to the employees at the time they submitted the notifications to the LD. In the course of sick leave clearance and arranging the employees to attend employees' compensation assessment, the LD would clarify whether the employees are receiving treatment for mental impairment caused by the work accidents and, where necessary, seek relevant medical reports.

- (c) Post-traumatic Stress Disorder (PTSD) is one of the many types of mental impairment that could be caused by work incidents, and is usually the mental impairment caused by the encounter of serious work accidents, together with other bodily injuries and/or functional impairment of organs at the same time. As mentioned earlier, the ECO has already provided mechanisms for handling injuries caused by work accidents to employees, including psychiatric impairment. Despite that PTSD is not prescribed as an occupational disease under the ECO, employees affected could in general claim compensation in accordance with the ECO if it could be substantiated that it is related to the work accidents concerned and results in temporary and/or permanent loss of earning capacity.

The ILO did list PTSD as an occupational disease earlier this year. Nonetheless, countries which have prescribed certain diseases as occupational diseases, such as the Mainland of China, the United Kingdom and Singapore, have not added the disease to their list of occupational diseases. The LD will continue to keep in view international development in this respect and take account of Hong Kong's actual circumstances in considering whether it would be necessary to amend the ECO to prescribe PTSD as an occupational disease.

DR PAN PEY-CHYOU (in Cantonese): *I think the reply given by the Secretary precisely reflects the problems caused by not classifying mental impairment as an injury arising from employment and an occupational disease. Since the Government did not request the relevant figures, the HA does not keep any statistics in this regard. It is also precisely because mental impairment and mental problems are not classified as injury arising from employment and an occupational disease that the number of employees' compensation assessments that the LD was requested to make was so small, amounting just to a single-digit figure for the past three years. In local communities, even a Member's office would receive a similar number of requests for assistance in a year, so it can be seen that the Government's figures only represent the tip of the iceberg. Since the Secretary also said that he would continue to keep in view the development in neighbouring areas to see if mental impairment will be classified as an injury arising from employment or occupational disease, can the Secretary tell us if the Government plans to collect such figures from now on, or request the HA to provide the relevant figures?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Dr PAN for his question. I wish to make two points in reply. First, just now, the Member cited the main reply as saying that there were only several cases each year but in fact, in the past three years and the first three quarters of this year, the total number of cases stood at 14, so is this number very small? If the Honourable Member has paid attention to my main reply, he would have noted there were 14 cases solely involving mental impairment but there were other cases that also involved injuries to limbs and body parts or other diseases, so the number of such cases was not small. There were 303 cases in 2008, 333 in 2009 and 241 from January to September this year. We have to look at the relevant figures in this way. Indeed, there was only a small number of cases that solely involved mental impairment, but we also have to take account of those cases caused by other injuries. Members must understand that we have to provide all-round protection to employees' rights, which is very important.

Second, just now, the Member asked us if we would begin to collect the figures in this regard. We take an open attitude towards this. Back in the office, we will examine this in earnest and discuss this with the HA to see if this can be done because the cases were referred to us mainly by the contact point, that is, the HA, so if the HA considers it feasible, we will encourage it to collect

the figures. In addition, since the ILO has made such a recommendation, we should keep in view international developments in this respect and see how the situation can be reviewed having regard to Hong Kong's actual circumstances.

MR IP WAI-MING (in Cantonese): *Dr PAN asked in part (b) of the main reply if the authorities would lay down clear definitions and guidelines concerning mental impairment. The Secretary also pointed out clearly in part (b) of the main reply that at present, employees' compensation assessments are conducted according to the Schedule of the ECO, but I gathered that the Schedule does not cover mental impairment. In addition, part (b) of the main reply also points out that at present, it is necessary to prove that a mental illness is caused by an accident in the course of employment and employees have to prove this themselves. This departs from the principle that the responsibility for injuries arising from employment be not be pursued. For this reason, Dr PAN asked if mental impairment would be included as a statutory occupational disease and if definitions and guidelines for mental impairment would be laid down. May I ask the Secretary if he would do so?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I thank Mr IP for his question. On 19 May this year, the Legislative Council conducted a motion debate and in it, the EOC was mentioned. On that day, we had a discussion for four hours and I gave a clear explanation at that time and now, let me recap the several points made by me on that day. These points have remained unchanged. First, it is true that mental impairment is not included in the Schedule to the ECO, but I have already made it clear that section 36(1) of the ECO points out clearly that even if the disease sustained by an employee is not included in the ECO, so long as the employee can prove that his physical injury was sustained as a result of an accident arising out of and in the course of employment, he is still eligible to claim compensation. Therefore, the ECO has stated very clearly that the rights of employees are fully protected. This is the first point.

Second, even though mental impairment is not included in the Schedule, at present, many psychiatrists also make reference to the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association in their field, and there are many guidelines therein for their reference. Therefore,

although the disease is not included in Schedule 2, it does not mean that doctors have nothing to make reference to. Dr PAN, in the motion debate on the last occasion, in fact, we already gave an account of this in detail.

MR WONG KWOK-HING (in Cantonese): *President, I thank Dr PAN for asking this supplementary question today. As a consultant psychiatrist of the HA, it is really very insightful and authoritative of him to have raised this question. Just now, the Secretary said at the end of part (c) of the main reply that such countries as the Mainland of China, the United Kingdom and Singapore had not included this kind of disease in their lists of occupational diseases. In that case, does Hong Kong have to wait until these three places or countries have added the disease to their lists before we will consider doing so? However, the Secretary then said, "The LD will continue to keep in view international development in this respect and take account of Hong Kong's actual circumstances in considering whether it would be necessary to amend the ECO to prescribe PTSD as an occupational disease." May I ask the Secretary through the President what factors the Bureau will consider and how long will such consideration take? When will an outcome of its consideration be available? I hope the Secretary can give a clear reply instead of prevaricating on this issue by giving an abstract answer.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): *President, thanks to Mr WONG for his question. Just now, I said that we would keep in view the latest development relating to this measure in the ILO, but Members have to understand that the aim of the ILO in listing PTSD as an occupational disease is to remind employers and the governments concerned that they have to do more in respect of occupational diseases, but compensation is a different matter. The ILO has nothing whatsoever to do with compensation because it only concerns itself with occupational diseases from the perspective of employees' health. However, the situation in Hong Kong is that the items included in the ECO are all related to compensation, so Members must understand this point clearly.*

Concerning new occupational diseases, in the past, we also made it clear that the causal relationship had to be very clear and there had to be a strong and clear relationship. This is also in line with the definition of the ILO. For example, we cannot list back pain as an occupational disease because we do not know the causes, as it can be caused by sitting posture or various other factors, so

we have to be very careful in many instances. However, we hold an open attitude towards this. In the main reply, I said that we would keep in view international development in this respect and take account of Hong Kong's actual circumstances in considering whether it would be necessary to amend the ECO. Therefore, I will hold an open attitude, so please give us some time to observe the situation in this regard.

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

MR WONG KWOK-HING (in Cantonese): *No. The Secretary did not reply as to until what time he has to consider this matter. For how long does he have to consider this matter? President, just now, I asked this point very clearly, but he did not reply.*

PRESIDENT (in Cantonese): Secretary, can you reply as to for how long you have to consider this matter?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, for the time being, I do not have a definite timetable. Just now, I said that the Mainland of China, Singapore and some countries, including the United Kingdom, had not added the disease to their list of occupational diseases. The ILO only made the recommendation for us to make reference to. We will keep in view international developments and make reference to the experience of other countries. We do not rule out doing so in the future. However, we must have strong justifications and our stringent requirements must be met, that is, the causal relationship must be very clear and definite, and it must be proven there is a strong relationship showing that the disease is really caused by occupational factors.

PRESIDENT (in Cantonese): We have spent 20 minutes on this question. Second question.

Enforcement of Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004

2. **DR JOSEPH LEE** (in Cantonese): *President, it has been learnt that the Landlord and Tenant (Consolidation) (Amendment) Ordinance 2004 (the Amendment Ordinance), which came into effect in 2004, has strengthened protection to landlords against "rogue tenants", thereby boosting landlords' confidence in the rental market. In this connection, will the Government inform this Council:*

- (a) *of the decrease in the number of complaints about "rogue tenants" received by the authorities in each of the past five years, compared with the number before the implementation of the Amendment Ordinance; whether the authorities have assessed if the implementation of the Amendment Ordinance can effectively alleviate the problem of "rogue tenants"; apart from the Amendment Ordinance, what other measures the authorities have taken to prevent the problem of "rogue tenants";*
- (b) *whether the authorities have received any complaint about eviction of tenants after the implementation of the Amendment Ordinance; if so, of the number of such complaints received so far and the reasons for the evictions; among such complaints, of the number of those involving unreasonable evictions; what other measures the authorities have taken to help those tenants facing eviction, and the number of tenants having received help, with a breakdown by type of help given; whether the authorities have assessed if the support at present provided for tenants facing eviction is adequate; if they have assessed, of the details; if not, whether they will consider conducting such an assessment; and*
- (c) *whether the authorities have assessed if the provisions in the Amendment Ordinance can adequately protect both landlords and tenants, and avoid tilting in favour of one side; if they have assessed, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the Government's policy regarding the private residential rental market is to maintain a stable environment and minimize unnecessary intervention, with a view to facilitating the free operation and steady development of the market.

Upon the enactment of the Amendment Ordinance by the Legislative Council, rent control and security of tenure were removed in 1998 and 2004 respectively. The Amendment Ordinance was passed after public consultation and in-depth examination of the details by the relevant Bills Committee of the Legislative Council.

The Amendment Ordinance minimized the level of intervention in the private contracts between landlords and tenants. Landlords and tenants may draw up the terms and conditions of the tenancy agreements as mutually agreed, and execute the tenancy arrangements in accordance with the spirit of the contracts. This serves to protect the interest of both the landlords and the tenants. Enhancing the protection to landlords against "rogue tenants" is not the objective of the Amendment Ordinance.

That said, there is a provision in the Landlord and Tenant (Consolidation) Ordinance (the Ordinance), which had been in existence before the Amendment Ordinance was enacted, on handling situations of tenants breaching or not observing the obligations or conditions of the tenancy agreements, such as not paying rents on the due date, by making such behaviour justifiable reasons for withdrawing tenancy. In this regard, landlords may apply to the Lands Tribunal for a repossession order to recover the premises concerned.

The Ordinance is administered by the Rating and Valuation Department (RVD). On the basis of the information provided by the RVD, my reply to the three parts of the question raised by Dr Joseph LEE is as follows:

- (a) The RVD does not have statistics on the number of cases involving "rogue tenants". However, it has statistics on the number of cases involving mediation on rent arrears. The number of cases involving mediation on rent arrears as handled by the RVD from July 2004 to June 2010 is as below. The figures show that the number of cases moved up and down during the past six years.

<i>Period</i>	<i>Cases involving mediation on rent arrears handled by the RVD</i>
July 2004-June 2005	50
July 2005-June 2006	80
July 2006-June 2007	123
July 2007-June 2008	99
July 2008-June 2009	83
July 2009-June 2010	65

I must emphasize that the aforementioned figures show the number of cases involving mediation on rent arrears, which should not be taken as if they are reflecting the number of cases involving "rogue tenants".

The RVD provides enquiry and mediatory services on tenancy matters to tenants and landlords free of charge. For cases involving complex legal issues, the RVD's staff will provide advice to the landlords or tenants concerned to facilitate them to decide on the need to seek professional legal advice.

Disputes between landlords and tenants often involve a lot of complicated factors. Whether the disputes can eventually be resolved is dependent on many factors.

- (b) The RVD does not have statistics on the number of complaints/requests for assistance on "forced eviction". In fact, "forced eviction" is difficult to define.

At present, under the Amendment Ordinance, landlords may lawfully repossess his/her property upon the expiry of the tenancy, pursuant to the terms and conditions of the tenancy agreement and the relevant legislation. That said, if there is evidence showing that the landlords are involved in any criminal act, such as criminal intimidation, criminal damage, serious or common assault, and so on, in the course of repossessing his/her property, the police will investigate and take enforcement action against criminal offences in accordance with established procedures.

Those with genuine and pressing housing needs but are incapable of meeting such needs on their own may seek assistance from the Integrated Family Service Centres of the Social Welfare Department or of non-governmental organizations (NGOs). The centres will provide assistance according to the needs of those people, taking into account their conditions, including provision of short-term financial assistance to meet rental and removal expenses, arrangement for admission to urban singleton hostels or temporary shelters operated by NGOs, or making recommendations to the Housing Department for admission to public rental housing (PRH) for cases eligible for "Compassionate Rehousing".

Low-income families and persons who cannot afford private rental accommodation may apply to the Hong Kong Housing Authority for public housing under the existing PRH Waiting List system.

- (c) The Amendment Ordinance removed the rent control and the security of tenure and minimized the level of intervention in the private contracts between landlords and tenants. Landlords and tenants may draw up the terms and conditions of the tenancy agreements as mutually agreed, and execute the tenancy arrangements in accordance with the spirit of the contracts, with a view to protecting the interest of both the landlords and the tenants.

As stated by me just now, the Amendment Ordinance was passed after public consultation and in-depth examination of the details by the relevant Bills Committee of the Legislative Council. It has struck a balance between the interest of landlords and tenants at different social strata.

We understand that landlords and tenants may face various tenancy problems. In this regard, we will continue to listen to views of the community on how to further balance the interest between landlords and tenants.

DR JOSEPH LEE (in Cantonese): *President, I am extremely disappointed because the Government has failed to give a reply in respect of the three parts of*

the main question. In response to the main question in which I asked very clearly whether there were any "rogue tenants", the Secretary said that there were no cases involving the so-called "rogue tenants". When I asked whether there were any forced evictions, the Secretary said that he had not received any complaints about forced evictions upon the expiry of tenancy agreements. Then I raised a very simple question about whether the present situation would be reviewed. In response, the Secretary spoke at length about consultation having been conducted in the course of enacting legislation. In my opinion, he has not given a reply in respect of the three parts of the main question. I do not know what else I can ask.

The Secretary has failed to give a reply simply because there were indeed some forced evictions. The definition of "forced eviction" should be defined as tenants being evicted by their landlords before the expiry of the tenancy agreements signed between the two parties on the ground that the properties have to be repossessed for self-occupation. The evictions were simply caused by the rising rents in the market. In order to charge higher rents, landlords may evict their tenants at all costs and lease their properties to someone else. Such situations actually exist. I wonder if it is because the concept is defined differently that the Government does not find any problems. I really do not know how to ask questions. But as the Secretary indicated in the last paragraph of the main question that he would listen to views of the community, may I ask, given that so many tenants are unprotected, whether the Government will consider requiring that tenants of rental units with a rateable value not exceeding \$60,000 can still be protected, as proposed by the Democratic Party when the Ordinance was amended in 2004? Will the Government reconsider this recommendation with a view to expeditiously reviewing the Ordinance, so that tenants facing evictions can be protected rather than being evicted unreasonably? I am not referring to forced evictions upon the expiry of tenancy agreements.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): As stated in my main reply just now, we will continue to listen to the views of members of the public on how a proper balance can be struck between the interest of landlords and that of tenants. We have no plans to conduct another review or amend the relevant Ordinance at the present stage.

MR JAMES TO (in Cantonese): *President, we are talking about forced evictions. Strangely, however, the Secretary replied that there are no such statistics. Pursuant to the Ordinance, if forced eviction is effected by way of suspension of water or electricity supply or other means of harassment, the police must certainly have kept the relevant statistics. President, I have begun to sympathize with the passing rate of the recent promotion examination for Police Inspectors, which is lower than 10%, because one of the examination questions is precisely related to forced eviction. If even the Secretary cannot answer questions concerning this, I believe police officers might not be willing to handle these forced eviction cases at all. President, my supplementary question is: Under the circumstances that statistics concerning this do exist, why could the Secretary quote the relevant information in reply to the questions raised by Members in the past but say that there are no forced eviction cases this time around? Can the Secretary provide the number of cases handled by the police involving suspension of water or electricity supply or criminal acts stipulated in the relevant Ordinance? Should "harassment" stipulated in the Ordinance not be taken as a means to effect forced eviction? Why do the authorities deny it?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): As pointed out by me just now, the definition of "forced eviction" can actually cover a wide range of acts. If there is evidence showing that the landlords are involved in any criminal act, such as criminal intimidation, criminal damage, serious or common assault, and so on, in the course of repossessing their properties, as I mentioned just now, the police will certainly take action. However, there are no statistics on tenancy disputes involving these criminal offences.

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

MR JAMES TO (in Cantonese): *I am talking about statistics on forced eviction involving the relevant specific provision in the Ordinance. I find it very strange that even the Secretary and his subordinates do not have such data. There is indeed such a provision in the Ordinance. Moreover, the numbers of specific*

cases involving this specific provision were provided in the annual briefing by the police to the Panel on Security.

PRESIDENT (in Cantonese): Mr TO, I believe the Secretary has already given you a reply. You raised objection because you were not satisfied with his reply.

MR JAMES TO (in Cantonese): *No, President. The Secretary was lying again if he said that the cases had not been categorized. I do not want to see the Secretary lie to us again.*

PRESIDENT (in Cantonese): You are commenting on the Secretary's reply.

MS CYD HO (in Cantonese): *President, the Secretary is being indifferent because many complaint cases filed by tenants during removals and demolitions effected as a result of urban renewal, as well as some cases of repossession of properties under the Railways Ordinance, have been forwarded to him. Wing Lee Street is one of the cases in point. During the repossession by the Urban Renewal Authority of the properties there, some residents made reports of harassment to the police, which meet the extremely narrow definition of "forced eviction" given in part (b) of the main reply, not to mention that there were many acts of forced eviction exceeding the scope of this definition. President, why did the Secretary choose to be indifferent and even mislead the Legislative Council and members of the public here by claiming that there were no statistics on this category of complaint cases?*

PRESIDENT (in Cantonese): Ms HO, I think this is not really a supplementary question. You are only expressing your views on the Secretary's previous reply, including the main reply. Please raise your supplementary question.

MS CYD HO (in Cantonese): *In that case, President, I can revise my question. In addition to criticizing the Secretary, may I ask how many complaints about*

forced eviction the Secretary has personally received? Is it the case that he has never received such complaints direct? Will the Secretary please give us an honest reply here?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I have indeed heard about such complaints, such as the complaints filed as a result of repossession of properties for the purpose of carrying out works or some urban renewal projects. However, I really do not have on hand the specific statistics of these complaints.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary said in the main reply that he would listen to the views of the community, and a Member also asked whether the authorities would conduct a review. However, the Secretary replied that there was no plan to conduct a review. My question is: As the Amendment Ordinance concerning rent control and the provision on security of tenure have been in force for 12 years and six years respectively, which is a very long period of time, may I ask the Secretary through the President if the Government still refuses to conduct a review — it is of course most desirable if the Government is willing to conduct a review — whether the Legislative Council Panel on Housing can propose an agenda item to listen to public views, with a view to giving effect to the Secretary's comment just now that he would listen to the views of the community? Will the Secretary put his words into actions?*

PRESIDENT (in Cantonese): Mr WONG, Legislative Council panels may decide on their own whether or not to listen to the views of the community. Let me see if the Secretary has any response.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we have actually listened to public views on whether it is necessary to review the Amendment Ordinance through different channels and by different means. We will continue to keep in view the conditions of the rental market and, having regard to the housing needs of the lower stratum, consolidate information from various quarters in order to determine the next move we should take.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary*

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

MR WONG KWOK-HING (in Cantonese): *The Secretary has not given a clear reply as to whether he will attend meetings of the Legislative Council Panel on Housing to listen to public views. Although the President indicated that arrangements could be made by the Panel on Housing, as Deputy Chairman of the Panel on Housing, I would like to tell the President that whenever such a request was made by us, whether by the Chairman or Deputy Chairman of the Panel, the Bureau would seek to defer our request by various means, so that it might not be possible for the relevant meetings to be held within this Session. Given the Secretary's indication that he will listen to public views, I request him in this Council meeting today to honour his pledge in concrete terms by attending the meetings of the Panel on Housing to listen to public views.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Actually, insofar as listening to the views of Members and members of the public on amending the Amendment Ordinance is concerned, we had attended the meetings of the Panel on Housing to listen to views in this regard. Of course, we can adopt different approaches to continue to communicate on different occasions.

MR ALAN LEONG (in Cantonese): *Let us see whether the Secretary will reply if we put the question in this way. President, we have looked up the records of meetings of the Legislative Council and found that the Executive Authorities made an undertaking during the passage of the Amendment Ordinance in 2004 that if tenants had grave problems with rental accommodation subsequent to the passage of the Amendment Ordinance, the authorities would provide them with a safety net, including the provision of interim housing, special public housing arrangements, compassionate arrangements, and so on. Given that the Secretary has basically not responded to part (c) of the main question raised by Dr Joseph LEE, may I ask whether he has evaluated and reviewed the*

effectiveness of the safety net in relation to the undertaking made to this Council in 2004?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Since the removal of the security of tenure in 2004, we have been keeping in view the conditions of the market, including whether the market is maintained in a relatively stable and healthy state and whether the housing needs of the lower stratum are properly taken care of. In fact, we have been undertaking relevant work from various aspects, including social welfare, housing and provision of temporary shelter to, among other things, convey messages to relevant tenants to let them know that they may seek housing assistance through different channels when necessary. We have been keeping various situations in view and consider that the present circumstances can meet the needs of society as a whole and strike a proper balance at the present stage. Therefore, we are satisfied with the current situation. Although we will from time to time hear some dissenting views, including complaints, we still think that, generally speaking, the present situation is acceptable.

MR ALAN LEONG (in Cantonese): *According to the Secretary's reply, such evaluations have been conducted*

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

MR ALAN LEONG (in Cantonese): *If evaluations have been conducted, I would like to request the Secretary to provide some information in writing.*

PRESIDENT (in Cantonese): Mr LEONG asked about the evaluation of the effectiveness of the safety net. Secretary, can you provide information in this regard?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): As I said just now, the safety net actually involves matters in various aspects, including the provision of Comprehensive Social Security Assistance, hostels provided by NGOs, supply of public housing, and so on. We believe all of these are adequate. Of course, we are also aware that there might be certain individual problems. This is why the Chief Executive has proposed in this year's Policy Address the establishment of a Community Care Fund (CCF). The objective of the CCF is to provide people with financial difficulties, especially those who have been left outside the safety net, an additional avenue of assistance. These measures enable the relevant persons to receive comprehensive care under the existing system. We also hope that this avenue can help resolve the problems.

MR ALAN LEONG (in Cantonese): *I still have a follow-up. My question is: Can the Secretary provide written information to this Council, for such information can also facilitate the Panel on Housing in taking follow-up actions?*

PRESIDENT (in Cantonese): Secretary, can you provide this Council with information on the evaluation of the effectiveness of the existing safety net?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): We can try to collect the relevant information from various parties and then pass it to Members. (Appendix I)

PRESIDENT (in Cantonese): We have spent more than 20 minutes on this question. Third question.

Broadcast of International Sports Events

3. **MR TAM YIU-CHUNG** (in Cantonese): *President, in recent years, the local broadcasting rights of a number of large-scale major international and regional sports competitions, such as the Guangzhou Asian Games, the South Africa World Cup and the London Olympic Games to be held in 2012, were*

awarded exclusively to a local pay television broadcaster, making it difficult for the general public to watch various sports events. Moreover, there were disputes between the pay television broadcaster which was awarded the exclusive broadcasting right of the South Africa World Cup and the two major free television broadcasters in Hong Kong over the broadcasting arrangements for four core matches (including the opening match, the matches between the final four and the final match) of the World Cup as laid down by the Federation Internationale de Football Association. In this connection, will the Government inform this Council:

- (a) whether it knows the existing differences in broadcasting coverage and number of viewers, and so on, between the two major free television broadcasters in Hong Kong and the aforesaid pay television broadcaster which was awarded the exclusive broadcasting rights of the World Cup, the Olympic Games and the Asian Games, and how many members of the public were/will be unable to watch the aforesaid international sports events as indicated by such differences;*
- (b) whether the Hong Kong SAR Government has examined the feasibility and the costs involved in bidding for the broadcasting rights of international sports events (such as the World Cup, the Olympic Games and the Asian Games, and so on) and distributing the television broadcasting rights of such events in a fair manner among the media organizations such as the free and pay television broadcasters, Internet service providers and radio stations, and so on, in Hong Kong; if so, of the details; if not, the reasons for that; and*
- (c) given that the Chief Executive had, in his response to a question raised by a Member of this Council at the Question and Answer Session in July this year, indicated that the SAR Government would consider how to enable all the people in Hong Kong to watch the final or semi-final matches of the World Cup free of charge in the future, of the outcome of its consideration and whether the SAR Government will bid for the broadcasting rights of the aforesaid international sports events; if it will not, what measures the SAR Government will take to ensure that the majority of the general*

public in Hong Kong will be able to watch international sports events such as the World Cup, the Olympic Games and the Asian Games, and so on?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, generally speaking, organizers of international and regional large-scale sports events would, in accordance with their policies and regulations, award the screening or broadcasting rights concerned via a bidding system to bidders offering the highest price, which are qualified media corporations or their affiliated companies. The deals would be confirmed by contracts signed between the two parties. The contracts are commercial agreements, the content of which could only be made public with mutual consent.

I will now address the three specific questions raised as follows:

- (a) There are two free television broadcasters in Hong Kong, namely, the Television Broadcasts Limited (TVB) and the Asia Television Limited (ATV). Their analogue television networks cover the whole territory and nearly all households in Hong Kong can watch their programmes. Following the introduction of digital terrestrial television (DTT) by the Government since end 2007, the DTT network coverage of TVB and ATV has reached 85%. Over 1.4 households, or 61% of all local households, have installed television sets, set-top boxes or computers capable of receiving DTT services. The exclusive broadcasting rights of the 2010 World Cup, 2010 Asian Games and 2012 Olympic Games were acquired by an affiliated company of the Hong Kong Cable Television Limited (Cable TV). Currently, Cable TV, a pay television broadcaster, has about 1 subscribers.

Apart from watching television at home, the public can watch various sports events through different means and in different places such as shopping malls, pubs and restaurants. It is difficult for us to assess how many members of the public have watched or have not been able to watch these events.

- (b) Whether to bid for the broadcasting rights of international sports events is a commercial decision. In general, governments would not directly participate in such activities or intervene, and Hong Kong is no exception. The price for securing broadcasting rights of sports events is determined by market forces, and the amount depends mainly on the popularity of the event, the nature of the event as well as the policy of the organizer. The broadcasting rights of large-scale sports events such as the World Cup or Olympic Games often involve fees well over hundreds of millions. If the Government were to bid for such rights, the propriety of such use of public funds would be called into question; there would be other adverse effects. As a free market economy, Hong Kong prides itself as one of the most liberal broadcasting markets in the region. Government involvement in bidding for the broadcasting rights of sports events will be regarded as market intervention. Not only will this affect normal market operation, but the Government will also be considered to be competing with the commercial sector. This would undermine Hong Kong's reputation and status as a broadcasting hub in the Asia Pacific Region.
- (c) Large-scale sports events are held around the world each year. The broadcasting arrangements of such events are made by the organizers having regard to the nature of the events and the organizers' operational needs. It is therefore difficult to tell which broadcaster will acquire the broadcasting rights of such events, whether the rights will be exclusive, and whether a fee will be charged. Since the bidding of broadcasting rights of these events involves commercial decisions, it is appropriate to allow room for the broadcasting arrangements to be decided through commercial negotiations. Companies bidding for the broadcasting rights will certainly put viewers and customers high on the agenda with a view to winning their support. In addition, market forces will drive commercial organizations to explore business opportunities, including arrangement for showing the events in shopping malls, pubs and restaurants through different channels. This will help create business opportunities and foster a more ardent sporting atmosphere.

When the organizers of large-scale sports events such as the World Cup and Olympic Games authorize broadcasting rights, they would normally require the successful bidders to ensure that the majority of local people will be able to watch the events. Past experience shows that when a Hong Kong pay television broadcaster was awarded the exclusive broadcasting right, it would reach a commercial agreement with the Hong Kong free television broadcasters before the event to enable the general public to watch the core matches on the free television platform. Where necessary, the Government will convey to the broadcasters concerned the wish of the general public so that they would negotiate an agreement which is in the best interest of the public and viewers by allowing them to watch the sports events concerned through a free platform.

MR TAM YIU-CHUNG (in Cantonese): *The Secretary said in reply to the oral question that it would not be a good thing for the Government to finance this and government involvement in bidding is market intervention and also considered to be competing with the commercial sector and this would lead to adverse effects. In addition, the Government will convey to the broadcasters concerned which have succeeded in bidding the wish of the general public. Such remarks are actually meaningless.*

I suggest that when such opportunities arise, the Government can consider the idea of finding some non-profit-making organizations like the Hong Kong Jockey Club with more resources to bid for the broadcasting rights and to let the TV stations broadcast the sports event concerned after that organization has won the bidding. Then everybody will have a chance to watch the sports event concerned. The case is like the fireworks display in which an organization sponsors the fireworks display and the same can be viewed on every TV station by the public. Would this idea work? Has this method been considered?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, as I have said in the introduction to the main reply, generally speaking, all organizers of such large-scale sports events would award the screening or broadcasting rights concerned to broadcasters. The main consideration is that these broadcasters or their affiliated companies have the

abilities to broadcast the event concerned after winning the screening rights. So there are requirements in eligibility. As for the suggestion made by Mr TAM, of course, we do not deny that the Jockey Club is an organization which engages in many sports promotion activities. It would certainly be a good idea if it can co-operate with some local broadcasters and bid for the screening rights in accordance with the prescribed procedures of the organizer concerned and thus enable more members of the public to watch such a major event on a free platform. We will remain open on that, and consideration can certainly be given to this.

DR SAMSON TAM (in Cantonese): *President, all along we are concerned about the situation whereby it is becoming increasingly difficult for local viewers to watch international sports events for free and the problem is worsening. Why do I say that the problem is worsening? This is because the pay TV broadcasters are immensely powerful and rich in financial resources. They monopolize the broadcasting rights and so other people will not be able to watch the sports events. My greatest concern is that even in the news reports, the viewers cannot watch extracts of the matches. In the past, we could watch extracts of the matches in the news reports of the free TV broadcasters, but under the present broadcasting rights arrangements, these extracts cannot be played in all other TV news reports. This problem is really worsening.*

May I ask the Secretary, as it is likely that there will be licences for free TV broadcasters in future, whether this situation will get more serious after these licences are granted, or there will be improvements?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): *President, if what Dr Samson TAM refers to are some new service providers which are making their applications now, I can say that these three applications are about programmes aired in the form of free TV. Of course, I cannot make any comments at this stage, because the Broadcasting Authority is vetting these three applications. If new service providers enter the market, they will certainly make competition keener.*

In any free and competitive market, I am sure service providers will make the growth in their audience and clients their most important concern. This is why their concern is also whether their programmes are diversified enough to meet the needs of the viewers. From the business perspective, they will certainly aim at meeting the needs of the public and the viewers. I am sure under this free market mechanism, the viewers and consumers will all stand to benefit. This is also our policy of encouraging free and fair competition.

MR IP KWOK-HIM (in Cantonese): *President, the Secretary mentioned in part (b) of the main reply that bidding for the broadcasting rights of international sports events is a commercial decision and so governments would not directly participate in such activities or intervene. As we can see, however, when the China Central Television (CCTV) has secured live telecast rights, it will benefit all the people of China and let them watch these international sports events. So when the World Cup was being held, many people on the Mainland could watch the games on the TV.*

With respect to this, I think this is not a form of direct intervention by a government. The CCTV is a broadcaster and we have Radio Television Hong Kong (RTHK) in Hong Kong. The operation of RTHK is not subject to direct government intervention. Then why does the Hong Kong Government not follow the practice of the CCTV so that the RTHK can take part in such bidding and then allocate the broadcasting rights to other broadcasters so that the people of Hong Kong can watch all these international sports events? Or put simply, RTHK can rebroadcast the international sports events aired on the CCTV. Has the Government ever considered this?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): *President, with respect to large-scale international sports events, the broadcasting or screening rights carry specific regional limitations. Regarding the question asked by Mr IP, the CCTV may have succeeded in bidding for such rights, but the contract will specify that the broadcast must be made on the Mainland. Likewise, owners of broadcasting rights in Hong Kong can only broadcast in Hong Kong and the programmes cannot be relayed to other places. For if not, this will constitute a breach of the contract on broadcasting rights.*

With respect to the suggestion made by Mr IP, RTHK is a public broadcaster and when it has its own TV channel — now RTHK does not have its own TV channel and its programmes are aired on TVB and ATV — as we know, our vision is to have a TV channel for RTHK. Can we consider how RTHK as a public broadcaster can bid for or obtain broadcasting rights? We can certainly look into this. But it is difficult to turn this idea into reality at this stage because of the regional limitations of broadcasting rights. This is a point I wish to make. So I cannot make any casual comment that a broadcaster which has obtained broadcasting rights can relay its programmes to a broadcaster elsewhere automatically or as a result of its negotiations with another party.

MR CHAN HAK-KAN (in Cantonese): *President, Mr IP Kwok-him has just asked whether it is possible to have RTHK rebroadcast some sports events. I recall my friends often watch sports matches on the sports programmes of CCTV-5. Although we cannot watch such matches on the TV, my friends often watch them online. But they could not do so during the World Cup Finals because the signal was intercepted.*

Actually, the aim of the Government in applying to host the Asian Games is to hope that the public can be exposed to more sports and do more exercise, and so on. May I ask the Government if it can allow CCTV-5, like some other channels, become part of Hong Kong's digitized TV channels?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, in the Asian Games just held, the broadcasting rights were obtained by Cable TV, but TVB and ATV had also bid a broadcasting right whereby they could air some extracts of the Asian Games in their news programmes. We could watch such extracts in Hong Kong. I am sure we were excited to watch them, especially when these broadcasters concentrated on airing extracts of events which saw participation by Hong Kong athletes in their news programmes. This enables the public to view such exciting episodes.

As to the question of though CCTV had obtained broadcasting rights, no signal could be provided online, like I have just said, this is a matter of the

contract on broadcasting rights, for otherwise it would lead to a lot of problems on breach of contract or on infringement of intellectual property rights.

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

MR CHAN HAK-KAN (in Cantonese): *My question is simple enough. Can CCTV be allowed to become part of our digitized TV channels and broadcast such programmes as in the case of the high definition channels or other TV channels?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, this is another question. How are we to work through a multi-channel platform so that viewers can access more international or Mainland channels? I would think that there are great opportunities in this aspect now, for there are many channels in our digitized TV platform. Recently, ATV has been discussing with the Mainland to air programmes produced by the Shenzhen Satellite TV in ATV's digitized TV channels to the viewers in Hong Kong. I hope more programme channels can be secured for the sake of diversification.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, this is your second supplementary question.

MR TAM YIU-CHUNG (in Cantonese): *Secretary, I have a suggestion which is simpler and easier. Can some large screens or TVs be installed in the community halls, venues run by the Leisure and Cultural Services Department, government schools and buildings, and so on, whenever there are such large-scale international sports events so that the public can view them. If it is said that the public can go to bars to watch such events, there may be people who do not like drinking and if they are asked to go to eating establishments to watch the same, they may have already eaten and do not want to spend more. May I*

ask if this suggestion is easy to put into practice or is it the most practicable solution in the short run?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, Mr TAM, this is an excellent idea. We used to have such arrangement in the past. In the last World Cup tournaments, we aired some matches for free in the community halls run by the Leisure and Cultural Services Department for viewing by the public. But we have to consider the factor of time difference. For example, if we were to air the World Cup matches to be held in Brazil later, we have to consider the time factor and whether the public would have to stay up late at night to watch such matches. Having said that, this arrangement can be made.

PRESIDENT (in Cantonese): Fourth question.

Development of Former Marine Police Headquarters Site

4. **MR ALBERT HO** (in Cantonese): *President, last month, there was a report that in awarding the tender on a heritage tourism development at the site of the former Marine Police Headquarters in Tsim Sha Tsui, the Government had forgone public money of more than \$1.5 billion because of the discrepancy in the calculation of the gross floor area (GFA) done at different time as well as the market value used in the calculation of the premium payable for the additional GFA. In this connection, will the Government inform this Council:*

- (a) *when it commissioned a consultant to conduct the "Study on the Development Opportunities of the Former Marine Police Headquarters Site in Tsim Sha Tsui", invited tenders, awarded the project to the successful tenderer, signed an agreement with it, carried out on-site measurement of GFA and amended the agreement; of the respective GFA of the buildings known to it at each of these stages; whether the authorities had, after knowing the exact GFA, amended the content of the agreement, including GFA and the project value; why they had not requested an on-site survey when commissioning the consultant to conduct the study, and*

whether it is a common practice for not doing so; whether any mistake was made during the entire process, what lessons the authorities had learnt and what price they had paid; and whether there was any dereliction of duty on the part of anyone;

- (b) *given that the GFA of the historic compound in the project was estimated at 4 300 and 5 610 respectively, of the impact of such discrepancy on the tender price or project value when the tenderers bid and the authorities approved the tender for the project, and why additional premium was not levied; whether there are any other example in this regard; if so, of the number of cases in the past five years involving technical amendments but additional premium was not levied, the respective discrepancies in GFA surveyed in each of these cases, and the number of tenders which only and roughly listed the GFA of the buildings concerned in their Planning Briefs that was subject to detailed survey; and the respective actual discrepancies in the GFA, and whether or not additional premium had been levied; and*
- (c) *given that the GFA of the project had increased from 7 213 to 7 413 , how the authorities calculated the market value of the additional 200 GFA, resulting in the Government being able to collect an additional premium of \$94,530,000 only?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, in order to answer Mr Albert HO's question comprehensively, I shall first explain the planning and development processes of the Former Marine Police Headquarters (FMPHQ) site. The lot on which the FMPHQ stands is located in a tourist area in Hong Kong and has a group of five buildings of high historical value. To preserve these historical buildings and to make good use of the lot's potential at the same time, the Government explored the development option for this piece of land as early as in the 1990s. In that connection, the Town Planning Board (TPB) embarked on rezoning the lot to "Comprehensive Development Area" use on the Outline Zoning Plan (OZP) in December 1993. Moreover, in accordance with the Antiquities and Monuments Ordinance and after consulting the Antiquities Advisory Board (AAB), the Government declared in 1994 the Tsim Sha Tsui FMPHQ buildings and its compound, including the four buildings of the Main Building, the Stable Block, the Signal Tower and the Accommodation

Block of the Former Fire Station, as monuments. The fifth building, namely, the Main Block of the Former Fire Station, was classified by the AAB as a Grade 3 historical building.

Subsequently, the Planning Department commissioned a consultant in 1999 to conduct the "Study on the Development Opportunities of the Former Marine Police Headquarters Site in Tsim Sha Tsui" with the aim to find a practicable option for this preservation and development project. The study was completed in June 2001 and made recommendations on the site's development requirements and parameters. Those recommendations were subsequently included in the Planning Brief of this CDA site. The Planning Brief was endorsed by the TPB in May 2002 to provide guidance for the preparation of the Master Layout Plan (MLP) of this site. In June of the same year, the Executive Council agreed that the Government should develop the Tsim Sha Tsui FMPHQ site into a heritage tourism facility by way of an open land tender. The Tourism Commission which was responsible for co-ordinating the tender exercise conducted the tendering in November 2002 after obtaining approval from the Central Tender Board.

Although the project was implemented by way of a land tender, it was different from the usual arrangement for Government land sale in a number of ways. Firstly, the successful tenderer has to preserve the existing buildings. Secondly, a two-envelope system was adopted for the tender assessment, that is, the tenderers' technical proposal and proposed premium to be paid to the Government were considered on the respective weightings of 75% and 25%. In other words, the tender scoring criteria placed more emphasis on the technical proposal, including whether the proposal could achieve the heritage preservation and restoration objectives, the conservation of the surrounding environment and layout of the historical buildings, whether the proposed development concept was creative, the feasibility of the proposal and its tourism and economic benefits, the tenderers' experience in heritage conservation and heritage tourism projects, and so on. Based on the various criteria mentioned above, the assessment panel gave every tender a score and an overall assessment in examining, analysing and selecting the tenders submitted. Therefore, reserve price was not adopted as a criterion for tender assessment. Thirdly, the tender document also indicated that the lot was zoned for "CDA" use and that the TPB had approved the Planning Brief. The successful tenderer, after having acquired the development right of that lot, still had to submit a MLP to the Planning Department (PD) for the TPB's

approval. Therefore, the tender document encouraged the tenderers to follow the Planning Brief as far as practicable.

The tenderers had to submit concept plans in their tender submissions. The concept plans naturally had to tally with the MLP approved by the TPB. In taking the project forward, if the successful tenderer would like to amend the concept plans accepted in its tender submission, it had to obtain the TPB's approval for amending the MLP and to apply afterwards to the Lands Department (LandsD) in accordance with the lease conditions.

In May 2003, the tender was awarded to Flying Snow Limited for \$352.8 million. The relevant land grant document was signed in June 2003.

As regards the project's GFA, which is the crux of Mr HO's question, the Planning Brief endorsed by the TPB mentioned that the GFA of the five existing historical buildings was estimated to be about 4 300 sq m and recommended the potential additional GFA to be 7 900 sq m. The subsequent tender document mentioned that the GFA of the historical buildings on the lot was approximately 4 300 sq m, which was believed to have come from the figure mentioned in the Planning Brief. After surveying the relevant site area and applying the established calculation formula, the LandsD determined that the potential additional GFA of the lot should not exceed 7 213 sq m.

Subsequently, as the GFA indicated on the building plan submitted by the developer to the Buildings Department (BD) did not tally with the GFA specified in the MLP endorsed by the TPB, the building plan was not approved. In June 2006, the developer requested the TPB to agree to its proposed technical amendment so as to confirm that the relevant GFA should be rectified as 6 172 sq m. To facilitate the TPB in assessing the application, the developer conducted a detailed on-site survey with the attendance of representatives of the BD and the LandsD. The GFA of the existing historical buildings was verified to be about 5 610 sq m. Subsequently, in December 2006, the TPB confirmed this verified figure as the GFA of the historical buildings. This was a technical amendment based on a detailed survey, and reflects the actual GFA of the historical buildings. There was no question of the developer having been given extra GFA in substance. Moreover, no additional premium could be levied on such a technical rectification.

Regarding the three parts of Mr HO's question, in addition to the above

background information, I would like to supplement my reply as follows:

- (a) The usable GFA of this preservation tourism project was partly from the historical buildings, that is, "the existing buildings". When the PD commissioned the consultant to conduct the planning study, it did not require the consultant to carry out a detailed on-site survey. No detailed on-site survey was conducted in relation to this group of historical buildings before the tender. The developer's development right included the right to revitalize these existing GFA.

The GFA of the existing buildings was included in the land tender. These existing buildings were subject to preservation constraints and that no addition or alteration works were to be carried out. During the open tender process, all tenderers could, in accordance with the actual condition of the existing buildings, assess and estimate the GFA of the existing buildings. Therefore, I do not consider that any mistake had been made in the tendering exercise. In future, in order to avoid misunderstanding, if the Government is to adopt this type of unique development mode again, that is preserving, restoring and revitalizing existing buildings of historical value, and it involves the participation of the private sector through tender in the preservation and development of historical buildings, it may not be appropriate for the Government to provide an estimated GFA figure of these buildings in the tender document. The reason is that the GFA of the existing building to be preserved will not change and the tenderers can survey or assess the space of the existing buildings themselves.

- (b) As I have already explained, the GFA of the historical buildings as mentioned in the tender document of the project was about 4 300 sq m. That figure was only a description of the historical buildings (that is, "the existing buildings") to be preserved.

A two-envelope system was adopted for the tender assessment. The weighting of premium was only 25%. Together with the fact that reserve price was not adopted as a criterion for tender assessment, we are unable to ascertain whether the above-mentioned

description of the GFA had affected the tenderers' proposed premium. However, what was important was that the TPB's verification of the GFA of the existing buildings as 5 610 sq m in December 2006 was only a technical amendment based on a detailed survey. There was no question of the developer having been given extra GFA in substance.

I have already explained that the development mode of this project is very unique. There is no similar land tender case involving a two-envelope tender for preserving and revitalizing historical buildings in the past five years.

- (c) I have already explained that in this tender exercise, the person who had successfully been awarded the tender should submit concept plans and other relevant documents in the tender submission. According to the land lease condition, the consent of the Director of Lands had to be obtained before these concept plans and documents could be changed. Apart from the technical rectification of the GFA of the historical buildings, the developer had made several amendments to the MLP after obtaining the TPB's approval. The developer had also correspondingly requested the LandsD to accept the amendments to the concept plans, which include increasing the additional new GFA from 7 213 sq m to 7 413 sq m, as well as other amendments in relation to the design. The LandsD had collected a premium of \$94.53 million from the developer to reflect the enhancement in value arising from the variations.

MR ALBERT HO (in Cantonese): *President, after this incident had been revealed by the media some time ago, the immediate response given by the Secretary was that this case was rare and that she had personally learnt a valuable lesson. But today, from the Secretary's reply, it seems that she does not see any major mistake but only some technical errors, and she thinks that although wrong figures were provided, they should be noticeable because there were "the existing buildings". It seems that in saying that she has learnt a valuable lesson, the Secretary appeared to be saying that she must not provide*

too much information in future, for doing less means making less mistakes.

I would like to ask the Secretary this: In saying that she has learnt a valuable lesson, has she actually learnt just this lesson? In the tender document the Government had provided wrong figures to the tenderers, which could be misleading, but the developer being successfully awarded the tender usually will not be misled, because they have learnt from history that the Government always commits mistakes and when that happens, the developers would stand to benefit. So, they are very clever in submitting their tenders in that they will first put down a figure which they can rectify and control in future.

I have these questions for the Government. Firstly, is this unfair to other tenderers who were misled by the Government? Secondly, the mistake made by the Government gave the developer a strong reason to propose amendments to the concept plan and the technical rules even after it had been awarded the tender, in a bid to increase the GFA of the buildings. Is this fair at all?

SECRETARY FOR DEVELOPMENT (in Cantonese): First of all, I must clarify that the tender document did not provide any misleading figure. As I have explained in detail earlier on, this land tender exercise was rare in that the land sold by us included a group of "existing buildings" and it was clearly stated that this group of "existing buildings" could not be pulled down or redeveloped and that no addition or alteration works were to be carried out, because they are a group of statutory monuments — of course, one of the buildings is a Grade 3 historical building. At that time, our view was that since the land sale included "existing buildings" and the consultancy study conducted before that as well as the Planning Brief had descriptions of some figures, we, therefore, incorporated these figures into the tender document. So, it is not true to say that misleading figures were provided as a result of a mistake made in calculation.

Moreover, there is no question of unfairness in this case because this is a fair and open land tender exercise, and all interested tenderers submitted their tenders based on the same tender document. They were allowed to conduct on-site surveys to assess the availability of space and development potentials of the existing buildings.

Lastly, I would like to say that when I gave an explanation on this case

some time ago, I used the word "rare" and today, I have explained in detail why it was rare. The reason is that insofar as land tender is concerned, this case was not quite the same as the general land tender exercises, as there were at least three major differences. My remark about having learnt a valuable lesson does not carry a derogatory sense, and it has no implication of anyone having made mistakes. This land tender exercise was rare in that "existing buildings" were put up for sale and no alterations were to be carried out at these "existing buildings" given their status as historical buildings. Coupled with the long history of these buildings, there was basically no building plans for reference by the Government. In view of this, to pre-empt the recurrence of similar cases, or as I said in my reply to Mr HO's question, having learnt a lesson from this incident, we perhaps should only sell the "existing buildings" without trying to estimate the GFA. I think Mr HO may have noticed that even though we found out at a later stage that the GFA of these historical buildings was in a higher figure, there were still different versions as it was over 6 000 sq m in the report submitted by the developer, while the BD and the LandsD found that it should be less than 6 000 sq m and the GFA should be about 5 600 sq m after conducting on-site surveys and examining the plans. The reason was that certain areas are disregarded under the Buildings Ordinance.

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

MR ALBERT HO (in Cantonese): *The Secretary did not respond to the part about allowing the developer to make amendments to the concept plan even after it had been awarded the tender, which is unfair because some of the figures provided by the Government were inaccurate.*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I am glad that Secretary Rita LAU is in the Chamber today, for this is also a heritage tourism project. Generally speaking, and I believe Mr HO and other Members are also aware of this, a few years ago we were not quite willing to grant land, and no lease modification was permitted, but as Members can see from this tender exercise, the quality aspect and technical assessment carried a weighting of 75% in our consideration. So, even if a concept plan is already submitted to us but if

the developer submitted at a later stage of the development process another concept plan which everyone considers to be greatly improved, and if the approval of the TPB is also obtained, we would be glad to agree to the approved amendments made to the land lease.

If Members require more detailed information on its merits from the angle of tourism, perhaps Secretary Rita LAU can provide some supplementary information. From the perspective of land lease control, however, we had very seriously assessed the previous concept plan and the amended concept plan and collected the additional premium of about \$94 million in accordance with the established procedures.

PRESIDENT (in Cantonese): Secretary for Commerce and Economic Development, do you have anything to add?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I wish to add one point and that is, the entire tender exercise was conducted through transparent and open procedures. Moreover, the assessment panel chaired by the then Commissioner for Tourism had assessed the six tenders received based on publicized criteria. The final outcome is this tourism project that all of us can see now. This tourism project, which is already completed, has been open to the public and visitors since April last year.

DR RAYMOND HO (in Cantonese): *President, I think the FMPHQ, being a heritage compound which required preservation and development, was a unique project, as the Secretary has said. With the detailed response and explanation given by the Secretary, I think she did go through very careful consideration in handling this project.*

In fact, our Institution has presented an award to this project in a competition for its creativity and attention to the environmental issues. May I ask the Secretary, after learning a lesson from this experience whether she will consider revising the arrangement under the two-envelop system in future? That is, revising the respective weightings of 75% and 25% to become, say, 90% and 10%, in order to make the premium factor less sensitive. On the other hand, this may encourage the developers to give more thoughts to creativity in future while at the same time putting more emphasis on social or economic benefits,

which can, in turn, enhance the value of the buildings.

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

SECRETARY FOR DEVELOPMENT (in Cantonese): In fact, President, it is already a rare practice to adopt a two-envelop system in a land tender exercise. This is why the bureau or department advocating a project has to give sufficient reasons to the Central Tender Board to justify the use of a two-envelop system for the purpose of its policy objectives and that is, allocating a certain weighting to the technical aspect in the scoring of a tender. For cases of a two-envelop system that I have come across, a weighting of 75% for non-premium factors in the assessment as adopted in this case is already very high. Certainly, if, in future, it is even more justifiable for the Government to consider a project from the non-premium angle, I believe the relevant bureau and department will seek the support and consent of the Central Tender Board.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. As the Secretary spent quite a long time on the main reply, I will allow one more Member to ask a supplementary question.

MISS TANYA CHAN (in Cantonese): *President, if we look at the first part of the Secretary's main reply, that is, when she gave an account of the background of this incident before she replied to the various parts of the main question, we can note from the second paragraph that the consultancy study was commissioned by the PD. Subsequently, the Planning Brief which was drawn up on the basis of the figures provided by the consultant was approved at various levels. First, the report was approved by the PD and incorporated into the Planning Brief, and this was handled by the PD. Then, it was submitted to the Executive Council and the Central Tender Board and ultimately put up for tender. This Planning Brief had passed through various hurdles but nobody had confirmed the area of the "existing buildings".*

However, in the main reply the Secretary responded by only making this

simple remark: "Therefore, I do not consider that any mistake had been made in the tendering exercise." In fact, as the Secretary has said, apart from the measurement taken by the developer, there was also the GFA verified by the authorities as well as that estimated by them. I have seen three different figures altogether. Why can the Secretary act so much like "trimming the toes to suit the shoes" in replying to part (a) of the main question by saying that no such figure would be provided anymore in future? May I ask the Secretary how she could think of such a cunning reply in suggesting not to provide such information anymore in future?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as I mentioned in my detailed explanation, while various authorities had examined this project, it was generally because this land tender exercise included a group of historical buildings which were "existing buildings" that they had perhaps taken this view. That is, since these were "existing buildings", it would be impossible to increase the GFA, and since these were heritage buildings, the developer eventually being granted the development right could not make alterations or additions to the "existing buildings" to increase the GFA. This was why we had used the description of 4 300 sq m.

In reply to Mr HO I explained what we would do if similar cases should arise in future. What we will do is not trimming the toes to suit the shoes. What we will do is practical. In the event of similar cases arising in future, that is, when we again face a case in which a land tender exercise is necessary and if on that site there is again a group of government-owned historical buildings, a number of problems will emerge. First, these government structures are not subject to the Buildings Ordinance and so, they may not have any plans and even if they do have plans, the calculation of their GFA or disregarded GFA may not be compliant with the Buildings Ordinance. Such being the case, I am afraid that it would be very difficult for us to ascertain through surveys or presumptions the accurate GFA in advance as a constraint on the land tender until the developer can gain access to the buildings and has submitted the plans.

MISS TANYA CHAN (in Cantonese): *President*

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

answered?

MISS TANYA CHAN (in Cantonese): *In fact, the Secretary was trying to say that she did not agree that she was trimming the toes to suit the shoes, but*

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

MISS TANYA CHAN (in Cantonese): *..... she was actually talking about what she would do in future, Can she confirm that such information will not be written in the tender document in future? Is it that not even a range, not even information in a certain context or within certain parameters will be written in it?*

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

SECRETARY FOR DEVELOPMENT (in Cantonese): I will add just one point. If, in future, there is another project with entirely the same circumstances, I may be inclined not to make an estimate. That is, I will not write down an estimated approximate figure in the land tender document. Because under the current circumstances in Hong Kong, the land issue is indeed very sensitive, and even if we make an assessment and come up with a figure in good faith, once the future assessment arrives at a different figure, this may lead to a lot of misunderstandings and unnecessary suspicions of the Government. So, after weighing the pros and cons, I would choose not to make an estimate anymore. But Miss CHAN can rest assured, because from the cases that I have come across so far, I do not find another case which requires a land tender exercise that is entirely the same as the one in this case.

PRESIDENT (in Cantonese): Fifth question.

Measures to Tackle Problems of Inflation and Inflow of Hot Money

5. **MR VINCENT FANG** (in Cantonese): *The quantitative easing monetary policy of the United States has led to a massive inflow of capital into Hong Kong's investment markets and intensifies the risk of an asset bubble, the Financial Secretary therefore introduced further measures to curb property speculation on 19 November 2010. There have been comments that these measures mainly target at the luxury property market, in which prices have recently surged more sharply. As for commercial and industrial properties, particularly shops, the measures are less severe and there is no corresponding measure for medium and small-sized residential flats at all. In addition, the continuous depreciation of the Hong Kong dollar under the linked exchange rate with the US dollar has resulted in an aggravating inflation trend, and capital will also shift to seek other avenues. In this connection, will the Government inform this Council:*

- (a) *of the performance of the property market since the introduction of the aforesaid measures to curb property speculation on 19 November this year; whether the Government's expected targets have been met; whether capital in the market has shifted from the luxury property market to the markets of commercial and industrial properties, shops and small-sized residential flats; how the Government is going to cope with the formation of asset bubbles in these markets;*
- (b) *given that the Financial Secretary has earlier adjusted upwards the annual inflation rate by only 0.2 percentage point to 1.7% while Asian countries (including those which are less vulnerable to the impact of prices in other countries) have all adjusted upwards their annual inflation rates to 4% or 5%, and the prices of major daily necessities and food in Hong Kong have experienced high double-digit increases in recent months, whether it has assessed if Hong Kong has underestimated the actual inflation and its impact; in view of the continuous weakening of the Hong Kong dollar, whether the current method of calculating inflation will be modified to reflect the actual situation; and*
- (c) *given that the Financial Secretary has expected that hot money will*

continue to flow into the Hong Kong market and that the interest rates in the United States will remain low, but he also anticipates an eventual bounce-back of interest rates, whether the Government has made any projections as to how Hong Kong's economic activities will be affected, how volatile the investment markets (including the banking sector) will become and how much loss these markets will incur when the interest rates go up and capital is withdrawn from Hong Kong?

FINANCIAL SECRETARY (in Cantonese): President, my reply to the three parts of the question raised by Mr Vincent FANG is set out below:

- (a) Mainly due to the global financial situation, the local property market has become increasingly exuberant of late. More worrying, the exuberance has started to spread from the luxury market to the mass market. Currently global liquidity is abundant, and interest rates remain extremely low. Following the United States Federal Reserve's second round of quantitative easing (QE2) measures, more funds are expected to flow into Asia, including Hong Kong, thereby further boosting the heated market sentiment.

In order to reduce the risks of a property market bubble, on 19 November the Government announced a new round of anti-speculation measures, including the introduction of a Special Stamp Duty (SSD) on short-term resale of residential properties (that is, resale within 24 months upon purchase on or after 20 November this year). The Hong Kong Monetary Authority (HKMA) also further lowered the maximum Loan-to-Value ratio for mortgage loans made by banks.

Exuberance in the residential property market cooled down visibly over the past few weeks, suggesting that the new measures have to a certain extent achieved the intended effects. While the latest figures of overall flat prices and transactions are not yet available, reportedly secondary transactions for the major residential developments have dropped noticeably following the announcement of the new measures. Quite a number of sellers have cut their

asking prices, and transacted prices for some major residential developments have also declined in general. Given that the SSD is applicable to all residential units regardless of the size or value, there should not be capital switching from the luxury market to the mass market.

As regards industrial/commercial property and retail space, these transactions are commercial activities. Compared with the residential property market, the considerations for transactions of industrial/commercial property and retail space are generally larger. Many investors in this market segment are more experienced with higher risk awareness. The HKMA's newly announced mortgage-tightening measures also include the lowering of the maximum Loan-to-Value ratio for mortgages of industrial/commercial property and retail space.

Be it the residential or non-residential markets, when faced with huge capital flows the Government's policy focus is to safeguard against systemic risks, with a view to maintaining macroeconomic and financial stability. The Government will ensure that the financial institutions remain prudent in extending loans, and forestall credit expansion and asset price inflation forming a vicious circle, thereby reducing the possible shocks in the event that capitals retreat. We will continue to monitor the market situation closely and introduce appropriate measures without hesitation when necessary.

- (b) In the first ten months of 2010, the year-on-year rate of underlying consumer price inflation averaged at 1.5%. With the sustained rise in food prices and housing rentals as well as further increase in import prices, underlying consumer price inflation is now forecast at 1.7% for the year as a whole, revised upwards from 1.5% in the August round. The forecast rate of headline consumer price inflation for 2010 as a whole is also revised upwards accordingly, from 2.3% to 2.5%.

According to the Composite Consumer Price Index (CPI), the year-on-year rate of change in prices of basic foodstuff had been higher than the headline inflation rate since April 2010. In October

2010, the year-on-year increase in prices of food (excluding meals bought away from home) in the Composite CPI was 5.7%, higher than the overall headline inflation rate of 2.6%. In particular, prices of fresh vegetables and fresh fruits rose considerably by 19.8% and 11.8% respectively. On the other hand, in the Composite CPI, year-on-year decreases were recorded in the prices of durable goods (-3.1%) as well as clothing and footwear (-0.4%).

The CPI is compiled based on a continuous Monthly Retail Price Survey conducted by the Census and Statistics Department, and the compilation methodology is in line with international statistical standards. Each month, the Department collects some 45 000 price quotations from around 4 000 retail outlets (for example, supermarkets, market stalls, department stores and fashion shops) and service providers (for example, cinemas, hospitals and beauty salons) throughout the territory. Thus we believe that the CPI can effectively reflect the latest trend in consumer price inflation.

It should be noted that the CPI reflects the collective experience of inflation for all households. As each household has its own expenditure pattern and prices increase or decrease at varying rates and timing across different consumer goods and services, hence inflation would not affect all households to the same extent.

The International Monetary Fund (IMF) released the inflation forecast for the year for various major economies in its publication *World Economic Outlook* in October 2010. The forecast inflation rates for Korea, Australia, Singapore, New Zealand and Taiwan are 3.1%, 3.0%, 2.8%, 2.5% and 1.5% respectively. Thus, compared with other economies at a similar stage of development in the Asia-Pacific Region, Hong Kong's headline inflation rate for this year stands in the middle of the pack.

The Government's inflation rate forecast for this year has fully taken into account the likely price movements in the remainder of the year. We have also noted that upside risk to inflation has increased of late, with the pickup in wages and rentals amid sustained expansion of the local economy, and with higher inflationary pressures due to a

weaker US dollar and elevated world commodity prices. The QE2 in the United States will also spur capital flows into Asia and further increase inflation risk in the region. The impact may become more notable next year. Pressure on Renminbi appreciation has also increased recently. This, coupled with the faster rise in food prices in the Mainland, will inevitably affect food prices in Hong Kong, given that the Mainland is our major supplier of foodstuffs.

The Government is monitoring the inflation situation closely, especially the impact on the low-income people.

- (c) The Government is very concerned that the QE2 in the United States may spur capital inflows into Hong Kong and increase volatilities in the local stock and property markets. As the external environment is fraught with uncertainties, it is difficult to predict the timing and impact of a reversal in capital flows.

On the policy front, the most important things are to ensure the sound fundamentals of the economy and the stability of the financial systems, to avoid over-consumption or over-borrowing at times of ample liquidity, and to forestall an overheating economy and the building up of systemic risks. By doing so, even a reversal in capital flows will not bring about significant impact on the overall economy or the financial systems.

Over the past year or so, the Government has introduced several rounds of stabilization measures to forestall housing market bubble risks, and on 19 November announced further measures to prevent the formation of an asset bubble. We have also reminded the regulators of the need to review various policy tools, aiming at reducing the systemic risks brought about by the ample liquidity. These include, among other things, watching closely the asset quality and trading activity of banks as well as monitoring and reducing the extents of leveraging in the markets when asset bubble risks are on the rise. We will continue to monitor the situation and respond as necessary to the changes in the environment.

While the Government will do its part thoroughly, it is equally

important for the community, including small investors, to adopt prudent risk management and avoid over-leveraging or speculation, so as to avoid losses in case of a sudden reversal of the markets in the future.

MR VINCENT FANG (in Cantonese): *President, I would like to ask a supplementary question on part (b) of the main reply. We understand that the Government uses the prevailing CPI(A) and CPI (B) as the basis in calculating the inflation rates, but the question is whether inflation rates calculated with this method can reflect the actual situation. I have in hand a report released last Friday. The cost of living survey results for 2010 published by the ECA International quoted in this report show that the cost of living in Hong Kong has risen to the 32nd position globally from the 52nd position a year ago. If the inflation rates and prices of Hong Kong have only increased by 1.7%, as the Government claimed, why has the ranking of Hong Kong in terms of the cost of living released by this international organization moved up by as many as 20 positions? Thus, may I ask the Government whether it has also analysed and studied the results of other international surveys to find out how samples were taken in these surveys? Or will the Government give consideration to conducting a survey on the changes of Hong Kong people's basic living standard?*

FINANCIAL SECRETARY (in Cantonese): *President, regarding the survey mentioned by Mr Vincent FANG, I wish to point out that prices reflected in survey findings may vary across different surveys because of the differences in their target subjects and the varying commodities covered, and each survey may be biased in some ways or tilted towards certain factors. The survey mentioned by Mr FANG just now may reflect the price levels of Hong Kong, or even such situations as our housing rentals, as compared with those of other places in certain situations. However, what I intend to talk about today is how to assess the impact of inflation on the overall spending of the public. The current figures were compiled in accordance with international standards. As I mentioned in the main reply just now, 40 000 price quotations involving different consumer products were collected. This calculation method is in line with the existing*

international standards.

MR CHAN KIN-POR (in Cantonese): *President, transfer of company shares is a common method of avoiding additional stamp duty. May I ask the Government what measures will be taken to monitor the number of such transfers and what specific means are available to plug this loophole?*

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

FINANCIAL SECRETARY (in Cantonese): Perhaps I will give an answer first, and then I will see if Secretary YAU Shing-mu has anything to add.

Regarding this question, the Financial Secretary already gave an answer when he announced the relevant measures. In view of the present circumstances, and insofar as the transfer of properties through transfer of company shares is concerned, we think it is not significantly serious because the relevant figures showed that there had not been many cases of such transfers. Besides, transferring properties through the transfer of company shares itself involves certain risks because one may not be able to know whether the relevant company has other assets or liabilities. Therefore, according to our assessment, it is not a factor which will affect our measures for the time being. At present, therefore, we will adopt the measures mentioned just now. Certainly, we will be mindful of such transfers and take follow-up actions as required.

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Just one simple point. Actually, we have already requested the Inland Revenue Department to pay special attention to the relevant figures and situations. If we

consider that a special situation has arisen, for example, the number of these cases has surged, we will definitely take corresponding measures.

MR TOMMY CHEUNG (in Cantonese): *President, I would also like to focus on part (b) of the main reply, and fortunately, Secretary Dr York CHOW is present and the guard against avian influenza has also lowered recently. Regarding imported food, although the value of Renminbi (RMB) is high, we may actually have a part to play in certain aspects. For example, regarding the bans on the importation of live chicken and the keeping of chickens at local farms, I think the Secretary should relax them now. However, President, I do not intend to discuss this issue in relation to part (b). Actually, I wish to enquire about the impact of inflation on the low-income group. I also wish to ask the authorities a question. In view of the rise in prices at present, just now Mr Vincent FANG queried the low inflation rate. I am now operating a catering business, and I will show the Financial Secretary the rate of price increase of such commodities as sugar and salt over the past three years. At present, the rise in food prices has rather significant impact on the low-income group. May I ask whether the Government will, during this critical period, and given that inflation is expected to continue, give consideration to offering food vouchers to people in need, such as, Comprehensive Social Security Assistance (CSSA) recipients, the low-income group, the working poor or some elderly people — they originally lived on interests generated from their savings, but now the interest rate has almost reached zero percent — to help them tide over this critical period? I hope that the Government, in considering this issue, will not refuse to take this initiative forward on the excuse that administrative costs will be exorbitant or counterfeit vouchers may exist. President, may I ask the Government whether it will give consideration to issuing food vouchers to people in need during this critical period?*

FINANCIAL SECRETARY (in Cantonese): *President, I certainly welcome Members' views on how to help people in need. In the past, I believe the overall when inflation occurred, we would introduce measures, such as linking the CSSA payment rate level to the inflation rate. In this regard, the number of adjustments made in the past has reflected the inflation situation. Besides, as I*

stated in the main reply, we will monitor the inflation situation closely, especially the impact on the low-income people, and we will consider introducing measures to help people in need.

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

MR TOMMY CHEUNG (in Cantonese): *He has not given an answer. The question I put to him was whether he would give consideration to offering consumer vouchers — it should be food vouchers — to the low-income group.*

FINANCIAL SECRETARY (in Cantonese): President, I think I have already given an answer. We welcome the Member's view and we will make a decision after considering different views.

MRS REGINA IP (in Cantonese): *President, from my recent conversations with many senior bankers, I found that they are all very concerned about the impact of the QE2 of the United States on Hong Kong, and even the Mainland has also launched its QE2 and engaged in massive printing of banknotes. Some senior bankers said Hong Kong should give consideration to imposing capital control, that is, control on capital flow, as a short-term urgent relief measure at certain times. May I ask the Financial Secretary about his views on it? Such control, if taken as a short-term measure, does not contravene the Basic Law.*

FINANCIAL SECRETARY (in Cantonese): President, I think capital control, that is, the so-called short-term capital control measures, is extremely not suitable for Hong Kong. Hong Kong is not only a major financial centre but also a free market which we take pride in, and it is also stated clearly in the Basic Law that the Government shall maintain the status of Hong Kong as an international financial centre. I believe any measure which imposes control on capital is not

suitable for Hong Kong, and neither is it the most feasible option to deal with the quantitative easing measures. I believe our existing measures, that is, monitoring market operation, enhancing market risk management and the measures introduced recently, are more feasible options to forestall any asset bubble.

MR LEE CHEUK-YAN (in Cantonese): *President, in his remarks just now, the Secretary seemed to be talking about some cold and lifeless figures without attaching much importance to the problem. Recently, Donald TSANG said finance officials should not only be mindful of the cold and lifeless figures but should also be mindful of people's livelihood and their genuine agony as well as the situation in which "inflation is fiercer than a tiger". Actually, the Government should not only claim that it will watch out for any problem. There is no need to watch out for it as it is already here, and there will already be a lag if we wait until the Government notices the problem. May I ask, more specifically, whether immediate measures are available? The Government should refrain from claiming that it will watch out for any problem, or that measures will be put in place in the future. We are already in trouble now. What immediate measures are there?*

FINANCIAL SECRETARY (in Cantonese): *President, I disagree to the Member's remark that we are cold and indifferent. We certainly have to analyse the figures. As Mr Vincent FANG asked about the figures, we had to explain where they came from. Besides, as I said, we are now conducting an analysis on the inflation situation of Hong Kong as compared with that of other markets in the region so that people may at least gain an understanding, through these figures, of how the inflation situation of Hong Kong compares with that of our neighbouring areas. Certainly, we agree, understand and noticed that the rise of the prices of some commodities, including food, will have impact on the low-income group. We will keep an eye on such impact and take measures in due course.*

MR LEE CHEUK-YAN (in Cantonese): *Does it mean it is not an appropriate*

time to do so now?

PRESIDENT (in Cantonese): Financial Secretary, the Member's question was on immediate measures. Do you have anything to add?

FINANCIAL SECRETARY (in Cantonese): I certainly welcome any suggestions from Members for our reference.

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

Rising Food Prices

6. **MR FREDERICK FUNG** (in Cantonese): *President, the Census and Statistics Department (C&SD) announced that the year-on-year increase in the Composite Consumer Price Index in October this year was 2.3%, which was the highest in 19 months. Such increase included a 5.7% rise in food prices, excluding prices for meals out. It has been reported that as food accounts for a relatively high proportion in the overall daily expenditure of the middle and lower classes, the increase in inflation has obviously exerted greater pressure on their livelihood. Moreover, with the devaluation of Hong Kong dollar along with the United States dollar and the continuous rise in prices on the Mainland, many basic foodstuffs have been hoarded for speculation. Even the prices of garlic, chili and ginger have surged. This has caused additional hardship to the middle and lower classes, who rely mainly on the cheap food imported from the Mainland to maintain their quality of living. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have conducted any study on the impact of the recent surge in food prices on the livelihood of the middle and lower classes; whether they have tried to find out the situation of speculation in basic foodstuffs on the Mainland, the corresponding*

actions taken by the authorities concerned, the impact of such speculation on the Mainland on the prices of food imported to Hong Kong, and whether such speculation has spread to Hong Kong and even resulted in hoarding to jack up prices; if they have, of the details;

- (b) *given that it was reported earlier that the retail prices of Chinese rice in supermarkets had not reduced correspondingly with import prices, the price difference between the two had widened to 16%, which is far bigger than that with Thai rice, whether it has tried to find out why the retail prices of Chinese rice have not dropped along with the reduction in import prices but have gone up instead; if it has, of the details; whether it has uncovered any wholesalers or retailers jacking up prices indiscriminately for profiteering; whether it has assessed if such situation is a reflection of inadequate competition in the Mainland rice market; what counter-measures the authorities have to make retailers correspondingly reduce prices of rice imported from the Mainland as quickly as possible so that the general public need not suffer from the impact of high rice prices amidst escalating inflation; and*
- (c) *of the changes in the difference between the wholesale/import prices and retail prices of fresh pork and chilled pork imported from the Mainland in the past 12 months; whether the difference in such prices is widening; whether it had uncovered situations in which market practitioners jacked up the prices; what measures the authorities have at present to prevent market practitioners from profiteering through jacking up prices, so as to enable the public to buy pork at a reasonable price that reflects the cost?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, the policy objective of the Government is to maintain a stable supply of various foodstuffs and to ensure food safety. We will continue to liaise with our imported food sources, in particular the relevant Mainland authorities, to ensure a stable supply of food in order to meet the demands of Hong Kong people. Food

price has always been determined by the free market. It is the Government's responsibility to improve market transparency and enhance market efficiency so as to help consumers make a considered choice. My reply to the three different parts of the question is as follows:

- (a) According to data from the C&SD, expenditure on food is an important part of total expenditure for middle- to lower-income households. Therefore we have been monitoring closely the impact of food price movements on the middle- to lower-income households. We note that in the Consumer Price Index (A) (CPI(A)), which can best reflect the impact of consumer price movements on the lower-income households, the year-on-year increase in prices of food excluding meals away from home was 5.6% in October. Including meals away from home, the overall food component within the CPI(A), which has a weighting of about 32%, recorded a year-on-year price increase of 3.6% in October. In other words, households in the lower expenditure ranges would have to increase their household budget by around 1.2% compared with a year ago if they were to maintain the same level and mix of food consumption.

The rise of food prices was mainly caused by a number of factors. On the one hand, the pricing power of restaurants and food retailers has increased amid the improving consumption markets. There was also a notable rebound in international food prices since last year. In addition, food prices in the Mainland have picked up recently. This, coupled with pressure on the Renminbi to appreciate, will inevitably impact on Hong Kong, given the fact that the Mainland is our major food supplier.

Managing inflation expectations and preventing escalating inflation is a major macroeconomic policy target for the Mainland. Since the beginning of this year, the Mainland has begun to tighten its monetary policy, including raising the required reserve ratio for banks on five occasions and increasing the interest rate in October.

On stabilizing food prices, the State Council announced a series of measures in August and again in November to support production, safeguard supply, curb illegal pricing practices, rationalize the relationship between prices, with a view to stabilizing market prices.

- (b) The second part of the question concerns the supply and prices of rice. The Administration has been monitoring closely the supply and prices of rice in Hong Kong. We are also aware of the press reports on rice prices referred to in the question. The import and retail prices of rice are affected by many factors including exchange rate fluctuations, market demand and supply, change of climate in rice supply countries, operating costs and marketing strategies of rice traders, and so on. On the other hand, as there is a time lag between rice import and its retail selling, the changes in import price generally cannot be reflected instantly and directly in the retail price. If we compare the figures of the first three quarters in this year, the import price of Chinese Long Grain rice (that is, See Mew) has risen by 1.4%, while the retail price has increased by 1.9%.

Hong Kong has liberalized the rice trade in 2003, which seeks to create an open market environment to attract new entrants, promote competition within the trade and enhance market efficiency, with a view to benefiting consumers and the community as a whole. Since the liberalization, the number of rice stockholders has increased from around 50 in 2003 to around 130 at present. This demonstrates a significant increase in competition.

The Trade and Industry Department has been liaising regularly with rice stockholders and monitoring rice imports, storage and sales situation closely through the Rice Control Scheme. We have not detected any unusual fluctuations in the import and retail prices of rice in Hong Kong recently.

- (c) The third part of the question concerns pork price. According to the data provided by the C&SD, the difference between the wholesale price/import price and the retail price of pork had

narrowed down in the past 12 months. Please refer to Tables 1 and 2 for details.

Table 1

Difference between the wholesale price
of live pigs and the retail price of fresh lean pork
from November 2009 to November 2010

<i>Year</i>	<i>Month</i>	<i>Average wholesale price of live pigs[#] (\$/catty)</i>	<i>Average retail price of fresh lean pork[#] (\$/catty)</i>	<i>Difference between average wholesale price and retail price (\$/catty)</i>	<i>Change in the difference between average wholesale price and retail price as compared with that in November 2009 (%)</i>
2009	11	9.6	32.9	23.3	-
	12	9.9	32.9	23.0	-1.3%
2010	1	10.5	33.0	22.5	-3.4%
	2	9.6	33.9	24.3	4.3%
	3	10.2	34.1	23.9	2.6%
	4	10.3	33.0	22.7	-2.6%
	5	10.4	33.0	22.6	-3.0%
	6	9.5	32.7	23.3	-0.2%
	7	10.2	32.7	22.5	-3.4%
	8	10.3	32.5	22.2	-4.7%
	9	10.8	32.4	21.6	-7.3%
	10	11.5	32.8	21.3	-8.6%
	11	12.3	33.9	21.6	-7.3%

Note:

The price information for the period from November 2009 to September 2010 is presented in the Hong Kong Monthly Digest of Statistics published by the C&SD. The average wholesale price of live pigs from October to November 2010 and the average retail price in November 2010 are preliminary figures provided by the C&SD.

Table 2

Differences between the import and retail prices of chilled pork
from October 2009 to October 2010

<i>Year</i>	<i>Month</i>	<i>Average import price of chilled pork[#] (\$/catty)</i>	<i>Average retail price of chilled lean pork[#] (\$/catty)</i>	<i>Difference between average import and retail prices (\$/catty)</i>	<i>Change in the difference between average import and retail prices as compared with that in October 2009 (%)</i>
2009	10	12.4	22.7	10.3	-
	11	12.2	22.3	10.1	-1.9%
	12	12.6	22.3	9.7	-5.8%
2010	1	12.8	22.0	9.2	-10.7%
	2	13.8	21.9	8.1	-21.4%
	3	13.3	22.1	8.8	-14.6%
	4	13.4	21.9	8.5	-17.5%
	5	13.4	20.6	7.2	-30.1%
	6	14.0	20.9	6.9	-33.0%
	7	13.6	21.3	7.7	-25.2%
	8	12.6	21.6	9.0	-12.6%
	9	12.5	21.9	9.4	-8.7%
	10	13.6	22.2	8.6	-16.5%

Note:

Price information provided by the C&SD. The information on the average import price in November 2010 is still being processed.

We have been communicating with the trade via different channels to understand their operational needs and to encourage and facilitate them to widen food sources and increase our food diversity so as to maintain a stable overall food supply. The announcement of importation arrangements of chilled beef from the Mainland when I was in Beijing two days ago was a case in point.

MR FREDERICK FUNG (in Cantonese): *President, I have two observations.*

First, with regard to the two tables concerning pork, the difference between the average import price and retail price has shown improvement when compared to the situation last year when I asked the same question, and I welcome this. Second, the Acting Financial Secretary mentioned earlier that the increase in prices of food excluding meals bought away from home was 5.7%, but the Secretary said that it was 5.6%, showing a discrepancy of 0.1%. I wonder why there is such discrepancy. But it does not matter. The important thing is he did not answer a question that I asked in the main question and that is, despite the fact that the import price of Chinese rice having come down, its retail price has nevertheless risen to the extent that it is even more expensive than Thai rice. He did not answer this question.

My supplementary question is related to part (a) of the main question. On this point, the Secretary said that the Mainland has taken a series of measures. For instance, in the last few lines of part (a) of the main reply, he said that on stabilizing food prices, the State Council announced a series of measures in August and again in November to rationalize supply in order to curb illegal pricing practices. As the Mainland has taken a series of measures, has the Hong Kong Government considered similar measures, and is it going to carry out preparatory work, and will it introduce measures to address the same problem?

PRESIDENT (in Cantonese): Which Secretary will give an answer? Secretary for Food and Health, please.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): As Secretary Prof K C CHAN already mentioned earlier on, Hong Kong has adopted a diversity of measures to address the inflation problem as a whole. In respect of food, the situation in Hong Kong is very different from that in the Mainland. The Mainland is a place of food production where there is agriculture and also a chain of processing industries. However, Hong Kong is mainly a place for consumption. This is why we cannot take any measure in respect of production, transportation or processing, just as what the Mainland is able to do. In our circumstances, it is most important to expand food sources, ensure competition and stabilize supply. With stable supply, and when the people can have different choices, it will not be easy for the businessmen to find a reason to

increase prices. Generally speaking, we have seen that the community or the districts are facing inflation to a certain extent. The Mainland is a major food supplier of Hong Kong, supplying about 60% of the food consumed by us. This is why we have closely liaised with the Mainland in this regard.

A couple of days ago, I had the opportunity to meet with the officials of the State Ministry of Commerce to find out more about their measures. As far as I know, the measures taken in the Mainland to combat inflation have basically achieved some results.

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

MR FREDERICK FUNG (in Cantonese): *We are aware of the measures taken in the Mainland. Does the Hong Kong Government plan to introduce similar measures to suppress the surging prices? This is my supplementary question.*

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

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have explained in detail the unique circumstances of Hong Kong. I have also pointed out that we have negotiated with the relevant authorities in the Mainland, which is the major food supplier of Hong Kong, and learnt that they face the same problem. Both sides are now making an effort to address the problem of surging food prices.

MR WONG YUNG-KAN (in Cantonese): *At present, even basic foodstuffs have become a great misery to the people. The surging prices have caused anxieties to the people, and not even the food banks can obtain food to sustain their operation. What should be done then? Over 90% of the food consumed in Hong Kong comes from places around the world or China, and China is our major food supplier. Given the rather substantial rise in food prices in the Mainland, the State has adopted a series of measures in a bid to arrest the drastic*

surge in prices. These measures include providing subsidies for the agricultural industry, supporting production, and so on.

These circumstances are worrying to the people. So, may I ask the Government what counter-measures it has in place to address the problem? Will it stock up with food or do something, so that the public can buy cheap food and hence their worries allayed? But the Government is saying that it will only discuss this with the Mainland immediately and ask the Mainland to supply food to us expeditiously. But if the Mainland is also faced with this problem, it will feel anxious, too, and I wonder what we can do. As a common saying goes, we should always "store up grain against famine". Will the Government consider doing something to "store up grain against famine"?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, perhaps let me follow this up. As I said earlier, our food, especially food consumed by many grassroots people, mainly comes from the Mainland. In this connection, the source and supply are very important. As I also said earlier, I had discussed this problem with officials of the Ministry of Commerce a few days ago, and they were particularly concerned about the supply of live poultry, for instance. They have already set a quota for the coming year to maintain the usual quantity of supply, in order to ensure that the supply of live stock and poultry to Hong Kong will not be reduced as a result of fluctuations. This can maintain the number of live chickens, live pigs and live cows supplied to Hong Kong. Together with the supply of chilled meat and other types of meat, we believe the needs of the public can be met. Besides, as far as we understand it, Guangdong Province has no plan to implement any measure to reduce the supply of other kinds of food to Hong Kong. We have always considered that in Hong Kong, it is most important to ensure diversity in food supply, and we also have to maintain transparency, so that the public will know the current price levels and they can hence make wiser choices as to where they should shop for food. I understand that some political parties and housewives' groups often conduct market surveys and then release information on prices and share it with the public. I hope that social organizations can provide assistance in this respect and join us in carrying out monitoring.

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

answered?

MR WONG YUNG-KAN (in Cantonese): *President, I put a question to the Government but the Government only answered very briefly that discussion had been held with the Mainland*

PRESIDENT (in Cantonese): What is your follow-up question?

MR WONG YUNG-KAN (in Cantonese): *..... I know, I know. To put it simply, if a snow disaster suddenly occurred in the Mainland, just as what happened last year or two years ago, and they would not have food even for themselves, what should we do then? So, will the Government consider doing more?*

PRESIDENT (in Cantonese): Mr WONG, you were not repeating the supplementary question that you asked earlier. You may not be happy with the Secretary's reply, but we cannot conduct a debate here.

MR CHEUNG KWOK-CHE (in Cantonese): *President, we certainly appreciate that inflation is caused by various factors, but it is still very important to combat or suppress speculation at source. At a time when inflation is worsening, we must know whether or not the Government will introduce measures to help the grassroots and the underprivileged to cope with inflation. For instance, will it provide additional subsidies to food banks? Yesterday, we noted that some food banks are in crisis and needed to raise funds. Moreover, will the Government provide a living allowance for Comprehensive Social Security Assistance (CSSA) households or low-income households to buy food?*

PRESIDENT (in Cantonese): Which Secretary will give an answer? Secretary for Food and Health, please.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I understand that

the Labour and Welfare Bureau is also very much concerned about how the grassroots, especially CSSA recipients, can face up to inflation. I believe the Labour and Welfare Bureau will address the several issues raised by Mr CHEUNG just now, and in the adjustment of CSSA rates conducted annually at the end of October, new CSSA rates are also determined according to the moving average of the Social Security Assistance Index of Prices. I believe the Labour and Welfare Bureau will respond appropriately in this regard to enable the grassroots to obtain appropriate subsidies.

MRS REGINA IP (in Cantonese): *President, Mr Frederick FUNG said earlier that the prices of garlic, chili and ginger had surged. Does the Secretary know that the price of corn flour in 25 kg packings has also risen from \$135 to \$300, according to what an owner of a bistro café told me? I wonder if the Secretary knows the reason for this. Is it because of the poor harvest of corn or speculation on futures or other reasons? Local bistro cafés will be forced to increase their prices, and this will affect the living of the grassroots. How can the Secretary provide assistance?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as far as I know, over the past two months, there have really been cases in the Mainland of people hoarding non-perishable food that can be stored for a longer time, thus causing the prices of some kinds of food to rise. I think corn flour, as mentioned by Mrs Regina IP just now, is one of those kinds of food. Yet, it is not the case that the prices of all the brands have increased according to the studies conducted by us. We have found that, for instance I do not have the figures on corn flour on hand, but if we take salt as an example, only the price of one of the four brands has gone up by 4%, and there is almost no price increase with the other three brands. In respect of sugar, the price of one of the five brands has even dropped, which means that prices have gone up for four brands only. I have to provide such information to the public, so that they can have a clearer picture in comparing prices in the market. We are keenly concerned about the overall situation of prices and we want to know in which categories prices have increased. We have found that the price of sugar has increased but there is not much increase in the price of salt, while the price of cooking oil has even dropped. I believe the public do need to know these situations. We hope to provide such information to the public as early as possible, so that they will know

in advance when and where they can buy food at most competitive prices.

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

MRS REGINA IP (in Cantonese): *President, my question was about corn flour but his response was all about salt, cooking oil and sugar. It is indeed irrelevant, right? Can the Secretary provide information on the price of corn flour in writing?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I cited these statistics to point out that hoarding is, in principle, a cause for the hike in the prices of some food. As I mentioned earlier, Mainland officials have made a lot of efforts to bring inflation under control in the Mainland.

PRESIDENT (in Cantonese): Secretary, can you provide information on the price of corn flour?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I will try my best to look for the relevant information and send it to Mrs IP. (Appendix II)

MRS REGINA IP (in Cantonese): *Is it really because of the hoarding of corn flour in the Mainland? Or is it because there is a problem with the Corn Belt in the United States? I would like the Secretary to provide information in this respect, too.*

PRESIDENT (in Cantonese): I think you have made your request very clearly. The Secretary is suggesting us to use more cooking oil but less corn flour. *(Laughter)*

MR FRED LI (in Cantonese): *President, in fact, the fifth and sixth items are*

related. From the statistics under the fifth item, we can see that the prices of food have increased by 5.6%, 5.7%, but those of fresh vegetables and fruits have risen by 19.8% and 11.8% respectively, showing a much greater rate of increase than other kinds of fresh food. Secretary, the Government has always educated the public to eat more fruits and vegetables and less meat, but the increase is particularly serious in the prices of fruits and vegetables. In this connection, may I ask the Secretary what the Government can do in view of these circumstances? Particularly for the low-income households, if they wish to consume more vegetables and fruits, will the Government be able to provide assistance to them?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we certainly wish that we can help every household buy what they wish to buy, but there are ups and downs in the operation of the market, and the prices of many products may rise or drop. Therefore, it is most important to generally keep abreast of price increases and trends and then disseminate information to the public for them to make a decision. With such information, the public will know which types of food are too expensive and then avoid buying them, while the retailers will not hastily jack up prices to too high a level as they still need to do business and they need to have sales turnover to sustain their business. This is why they will not jack up the prices excessively. Having said that, as I clearly pointed out earlier on, we should provide as much assistance as possible to the industries to help them identify food sources from all parts of the world, while enhancing competition and then stabilizing supply. That way, it will be less likely for prices to surge.

PRESIDENT (in Cantonese): We have spent over 21 minutes on this question. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Voluntary Health Protection Scheme

7. **DR LEUNG KA-LAU** (in Chinese): *President, in the Healthcare Reform Second Stage Consultation Document (the consultation document), the Food and Health Bureau proposes a voluntary Health Protection Scheme (HPS) for the*

supplementary financing of Hong Kong's healthcare system. According to the relevant actuarial data, the parties concerned have preliminarily calculated the indicative premiums for all age groups under the Standard Health Insurance Plans (Standard Plans) based on the charges for median-priced private hospital services, as well as the administrative expenses and profit margins comparable to market figures. Regarding the "pricing methodology" on page of the consultation document, will the Government inform this Council:

- (a) *of the data used by the Government in calculating the premiums in the Indicative Premium Schedule of Standard Plans on page the consultation document, and set out the information according to the table below; and*

<i>Age</i>	<i>Existing expected medical claim costs</i>	<i>Loading for pre-existing conditions</i>	<i>Administrative expenses</i>	<i>Profit margin</i>	<i>High-Risk Pool reinsurance rate</i>
<i>00-01</i>					
<i>02-04</i>					
<i>05-09</i>					
<i>10-14</i>					
<i>15-19</i>					
<i>20-24</i>					
<i>25-29</i>					
<i>30-34</i>					
<i>35-39</i>					
<i>40-44</i>					
<i>45-49</i>					
<i>50-54</i>					
<i>55-59</i>					
<i>60-64</i>					
<i>65-69</i>					
<i>70-74</i>					
<i>75-79</i>					
<i>80-84</i>					
<i>85+</i>					

- (b) *how the calculation of the indicative premiums under the "premium*

for higher deductible" on page reflected in the formula for calculating the premium rate as set out on page the consultation document?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Food and Health Bureau has commissioned an actuarial consultant to devise an illustrative Standard Plan based on the features and content of the proposed HPS and the operation of the current health insurance and healthcare markets, and to work out an indicative premium schedule of the Standard Plan for illustrative purpose using professional actuarial method. The actuarial consultant's report can be accessed at the Healthcare Reform Second Stage Consultation website <<http://www.myhealthmychoice.gov.hk/en/studyReport.html>>.

- (a) As the actuarial method adopted for estimating the premium levels shown in the indicative premium schedule of the Standard Plan under the HPS entails a host of variables and sophisticated calculation formulae, we cannot set out in a simplistic way the actual data used and the formulae involved in the process.

Generally speaking, in the premium estimation process, the actuarial consultant would make use of their professional judgment and actuarial models to analyse the relevant variables and categorize them into some major parameters for the purposes of making reasonable assumptions and calculations. These major parameters include: existing expected medical claim costs; additional medical claim costs due to coverage of pre-existing conditions of the currently insured people; administrative expenses; High-Risk Pool reinsurance rate; and profit margin of the insurance companies. A detailed description of these parameters and the calculation methods is set out in the report of the actuarial consultant, which is not repeated here in view of length limitation.

- (b) From the perspective of actuarial estimation, the inclusion of deductible is tantamount to adding another variable in the actuarial model. This would mainly affect the medical claim costs and administrative expenses among the aforesaid parameters. As far as the actuarial estimation of the premium levels of the Standard Plan is

concerned, the inclusion of deductible would lead to a reduction in the number of claims with small amounts (with claims amount being less than or on par with the level of deductible) and a lower average amount of claim payout per case (as the deductible will be deducted from the compensation amount) as well as a reduction in administrative expenses required for handling claims (due to a decrease in the number of claims). These would have the effect of lowering the insurance premium.

Population Policy and Employment of Low-income Workers

8. **MR CHAN KIN-POR** (in Chinese): *President, there have been comments that Hong Kong is now facing two major problems, namely structural transformation of the economy and unbalanced development of industries, as well as lack of proper complementary measures in respect of employment and livelihood in Hong Kong's population policy. It was reported that the Provisional Minimum Wage Commission had estimated in its report that around 45 000 people would be dismissed if the minimum wage was set at the level of \$28 per hour, 200 000 people would have a reduction in their working hours, and it was also predicted that in future, more low-skilled workers with low education attainment might face the risk of unemployment due to their weak bargaining power. In this connection, will the Government inform this Council:*

- (a) of the employment and unemployment situation of grass-roots workers in Hong Kong in the next three to five years as projected by the Government; whether the unemployment rate of grass-roots workers will rise further; if not, of the projection made by the Government; if it will, of the trades, positions and age groups that are expected to be hard hit by unemployment, and the counter-measures put in place by the Government;*
- (b) apart from the six priority industries, whether the Government will develop other industries so as to create more elementary posts; if it will, of the measures to be implemented; if not, the reasons for that;*
- (c) whether the Government will consider forging partnership with*

enterprises to develop labour-intensive industries (for example, logistic support services such as telephone services centres) in labour-intensive places such as Tin Shui Wai and Tung Chung, with a view to creating more job opportunities and on-the-job training for people in those districts; if it will, of the details; if not, the reasons for that; and

- (d) *whether the Government will, on the premise that family reunion will not be prejudiced, review and assess the implication of the existing population policy on Hong Kong's future employment situation, with a view to finding corresponding precautionary measures and solutions; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the Administration has always been concerned about the needs of the grassroots and the disadvantaged. The statutory minimum wage (SMW) was introduced to protect grass-roots workers. Our aim is to establish an appropriate SMW regime which provides a wage floor to forestall excessively low wages, but without unduly jeopardizing our labour market flexibility, economic growth and competitiveness or causing significant adverse impact on employment opportunities for vulnerable workers. To tie in with the implementation of SMW, the Labour Department (LD) will strengthen its employment services to assist, on all fronts, job seekers with special needs or who have difficulties in finding jobs.

My reply to the four parts of the question raised by Mr CHAN Kin-por is set out below:

- (a) The figures on layoffs of employees and reduction in working hours in the Report of the Provisional Minimum Wage Commission were only the results of stress tests conducted on the assumption, based on feedback collected by the Commission during the consultation period, that enterprises would absorb 30% of additional wage bills through downsizing. These tests were used to evaluate the risks of job loss and reduction in working hours, and the results were neither precise estimates nor forecasts. While the actual situation would differ from the assumed one, the precise impact would hinge on the

economic and employment situations in the next few years, as well as the dynamic effects of interaction between employers and employees after the implementation of SMW. As such, the exact impact of SMW can only be analysed through tracking studies conducted after its implementation, and thus it is difficult to make precise forecasts of unemployment rate at this stage. As for the employment situation of the grass-roots labour force, it depends largely on their supply and demand conditions, which are influenced by the economic situation, population and industrial structure, while SMW is only one of the factors at work.

The Labour and Welfare Bureau is conducting a new round of the Manpower Projection (MP) to assess Hong Kong's future manpower supply and demand at the macro level in the medium term. The MP is expected to be completed in 2011.

The LD has been adopting multi-pronged measures to promote labour market efficiency and disseminate vacancy information, with a view to assisting job seekers to enter or re-enter the labour market. In providing support to job seekers of different background who may encounter difficulties in their job search, the LD is vigorously implementing various employment programmes, including the Employment Programme for the Middle-Aged, the Work Trial Scheme and the Youth Pre-employment Training Programme and Youth Work Experience and Training Scheme, and so on, so as to enhance job seekers' employability and help them find suitable jobs.

- (b) The Administration is committed to promoting economic development, creating job opportunities, and enhancing the employability of the labour force in order to improve the livelihood of the disadvantaged and low-income workers. As such, we have been promoting economic growth through initiating infrastructure projects and encouraging investment. In the past few years, we have actively implemented 10 major infrastructure projects, the Kai Tak Cruise Terminal, the expansion of Disneyland, and so on, as well as promoted the local community economy and the development of social enterprises, creating many jobs for people

from different levels (especially the grassroots).

In addition, the Chief Executive has in his 2007-2008 Policy Address highlighted the strengthening of links with the Mainland to tie in with the National 12th Five-Year Plan (the Five-Year Plan). To ensure that Hong Kong can better leverage its advantages during the Five-Year Plan period, we will strive to enhance Hong Kong's status as an international centre for financial services, trade, shipping and logistics, and strengthen the four traditional pillar industries, that is, financial services, trading and logistics, tourism, and producer and professional services. We will also seize the development opportunities on the Mainland and develop the six industries where we have comparative advantages, that is, testing and certification, medical services, technology and innovation, cultural and creative industries, environmental industries and education services. We will actively develop new markets for Hong Kong's service industry and bring about new economic growth points for Hong Kong in the long run so as to provide more employment opportunities.

- (c) Since the residents of different districts have different needs, the relevant Policy Bureaux and departments have introduced different district-based measures and programmes to promote the economic development of the districts so as to create employment and on-the-job training opportunities, with a view to helping the disadvantaged.

For example, more than 80% (around 1 000) of the employees of the Housing Department's contractors for security and cleansing services in public housing estates in Tin Shui Wai are local residents. In addition, the Hong Kong Housing Society (HKHS) will develop an Integrated Elderly Community Project at Tin Shui Wai Area . As estimated by the HKHS, the project will create about 300 jobs during the construction phase and at least 1 200 jobs when the project has been completed. Apart from the creation of job opportunities, the ancillary facilities of the project, such as a hotel, care centre and recreation facilities, will attract more tourists to Tin Shui Wai, injecting commercial activities into the area and bringing a positive

impact on Tin Shui Wai's socio-economic development. As regards the two relevant short-term land use projects, the HKHS expects to create about 200 to 300 job opportunities, including jobs in the construction, elderly services, retail, venue management and exhibition sectors.

The LD will also set up a pioneer one-stop employment and training centre in Tin Shui Wai next year with a view to streamlining, integrating and enhancing the existing employment and training/retraining services provided by the LD, the Social Welfare Department and the Employees Retraining Board (ERB). Through its 95 training bodies distributed amongst districts (including Tin Shui Wai and Tung Chung), the ERB also provides placement-oriented retraining courses, as well as job placement services for trainees who have completed full-time placement-tied training courses.

- (d) The objective of Hong Kong's population policy is to optimize our demographic structure by securing and nurturing a quality population that supports and sustains Hong Kong's long-term development. We will continue to devote substantial resources to raise the quality of education. We will also spare no efforts in training and retraining the local workforce to ensure that our manpower resources can meet the changing demand of society.

Parking Spaces for Motor Tricycles and Motorcycles

9. **MR WONG KWOK-HING** (in Chinese): *President, it has been reported earlier that after a driver had parked his motor tricycle (tricycle) at an open private car parking space and paid the parking fee by Octopus Card, the police still required the driver to drive his tricycle away from the parking space on grounds that "tricycles are not allowed to be parked at private car parking spaces", and if the driver did not do so, the vehicle would be towed away. It has also been reported that while the police insisted that the driver had contravened the law, the Transport Department confirmed that tricycles were allowed to be parked at private car parking spaces, and this incident has reflected that government departments have not communicated with one another on*

standardizing the use of private car parking spaces by tricycles, resulting in law-enforcement blunders. In addition, some members of the public have relayed to me that the existing motorcycle parking spaces are insufficient. Regarding the parking spaces for tricycles/motorcycles, will the Government inform this Council:

- (a) at which types of open parking spaces tricycles/motorcycles may be parked legally; if they include private car parking spaces, why the law-enforcement officers of the police did not allow the aforesaid tricycle to be parked at the open private car parking space;*
- (b) whether it knows the current number of parking spaces for tricycles/motorcycles in Hong Kong, and among them, the respective numbers of public and private parking spaces, as well as the shortfall in the supply of such parking spaces, with a breakdown by District Council district (list in table form);*
- (c) whether the Government had, in the past five years, conducted any review on the shortage of parking spaces for tricycles/motorcycles; of the details of the outcome of the latest review and the improvement measures in this regard; and*
- (d) whether the Government will conduct a comprehensive review of the shortage of parking spaces for tricycles/motorcycles in the near future?*

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

- (a) It is stipulated in the Road Traffic Ordinance (Cap.) that a tricycle means a three-wheeled motor vehicle other than a motorcycle with a sidecar or a village vehicle. According to section the Road Traffic (Parking) Regulations (Cap. C), tricycles can, in general, use the parking spaces for vehicles other than medium and heavy goods vehicles, buses, motorcycles and pedal cycles, that is, the parking

spaces generally referred to as "private car parking spaces"⁽¹⁾. However, motorcycles should park at parking spaces designated for motorcycles. The police have been taking enforcement actions in accordance with the law, and from time to time issue enforcement guidelines and advice to front-line police officers to ensure their full understanding and proper enforcement of the relevant legislation. This year, the police provided their front-line police officers with advice on parking enforcement against tricycles and motorcycles in which particular emphasis was given on the structural differences between these two types of vehicles, with a view to helping the officers enforce the legislation properly.

(b), (c) and (d)

As at end-September this year, there were 39 licensed tricycles in the territory, and the number of publicly and privately owned general private car parking spaces available for use by tricycles totals 633 600. A breakdown of this figure by district is at Annex. Given the fact that general private car parking spaces outnumber tricycles and tricycles can park at such parking spaces, there is no shortage of tricycle parking spaces.

Separately, there were 37 784 licensed motorcycles in the territory, and the number of public and private designated motorcycle parking spaces totals 27 040. A breakdown of this figure by district is at Annex. The abovementioned figure does not include non-designated parking places that do not cause obstruction, such as those in private garages and residence area. As such, there is no serious shortage of motorcycle parking spaces. Nonetheless, the Transport Department has been closely monitoring and reviewing the supply and demand of motorcycle parking spaces, and has implemented suitable improvement measures where needed. They include, *inter alia*, providing additional on-street parking spaces for motorcycles in various districts; allowing motorcycles to park at

(1) Due to some special reasons, a small number of private car parking spaces are for use by private cars only. In other words, tricycles cannot park there. Such parking spaces are installed with the plate bearing the words "Private cars only" to facilitate identification by users. The parking spaces not designated for use by private cars only can be used by tricycles.

temporary car parks on short-term tenancy sites, with clear indication at the entrance of the vehicle types served and their parking fees; and requiring the provision of a certain number of motorcycle parking spaces inside private buildings to meet parking needs as far as possible.

Since 2008, the total number of motorcycle parking spaces in the territory has increased by over 2 500. We will continue to implement various measures to improve the supply and demand of motorcycle parking spaces, including providing as many additional motorcycle parking spaces as possible where road safety permits.

Annex

Breakdown of Number of Parking Spaces for
Tricycles and Motorcycles by District

<i>District</i>	<i>Motorcycle Parking Space</i>		<i>General Private Car Parking Space[#]</i>	
	<i>Public</i>	<i>Private</i>	<i>Public</i>	<i>Private</i>
Central and Western	850	330	10 900	26 900
Wan Chai	590	290	9 800	24 700
Eastern	1 070	1 160	14 900	32 800
Southern	510	1 060	8 000	28 500
Yau Tsim Mong	1 370	230	17 800	16 000
Sham Shui Po	730	960	10 600	15 900
Kowloon City	960	520	13 500	35 300
Wong Tai Sin	540	1 460	6 600	13 500
Kwun Tong	760	2 400	15 000	28 800
Tsuen Wan	520	510	11 900	21 600
Tuen Mun	520	660	10 000	27 800
Yuen Long	280	660	11 300	24 600
North District	330	300	8 100	13 300
Tai Po	220	460	6 700	18 500
Sai Kung	530	1 480	11 400	21 000
Sha Tin	520	1 680	19 100	49 700

<i>District</i>	<i>Motorcycle Parking Space</i>		<i>General Private Car Parking Space[#]</i>	
	<i>Public</i>	<i>Private</i>	<i>Public</i>	<i>Private</i>
Kwai Tsing	660	1 600	12 100	23 200
North Lantau and Islands	210	110	7 500	6 300
Sub-total	11 170	15 870	205 200	428 400
Total	27 040		633 600	

Note:

Due to some special reasons, a small number of private car parking spaces are for use by private cars only. In other words, tricycles cannot park there. Such parking spaces are installed with the plate bearing the words "Private cars only" to facilitate identification by users. The parking spaces not designated for use by private cars only can be used by tricycles.

Promotion of Cruise Tourism

10. **MR JEFFREY LAM** (in Chinese): *President, Hong Kong is developing cruise tourism. At present, apart from berthing at the Ocean Terminal when arriving in Hong Kong, cruise vessels may apply for berthing at alternative locations such as the China Merchants Wharf in Kennedy Town or the container terminals in Kwai Chung, or berthing mid-stream. With the new cruise terminal in the Kai Tak Development Area to commence operation in 2013, the number of cruise vessels arriving in Hong Kong is expected to rise. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of cruise vessels primarily on sightseeing itineraries which arrived in Hong Kong in 2009 and in 2010 (from January to the present), with a breakdown by the vessels' displacement tonnage (DT), as well as the number of times these cruise vessels had used alternative berthing arrangements;*
- (b) *of the anticipated number of cruise vessels primarily on sightseeing itineraries to arrive in Hong Kong in 2011, with a breakdown by the vessels' DT, and among these, the anticipated number of cruise vessels that will use alternative berthing arrangements;*
- (c) *whether the Government will cancel the existing alternative berthing*

arrangements for cruise vessels upon the commissioning of the new cruise terminal in the Kai Tak Development Area; if so, of the reasons for that; whether the Government will consider maintaining these alternative berthing arrangements and adding suitable ancillary facilities (for example, beautified environment and passenger connection and safety facilities, and so on) so as to increase the overall number of berths for cruise vessels in Hong Kong and to meet the needs of different cruise vessels; and

- (d) *how the Government will make use of the advantages of the new cruise terminal to further promote the development of cruise tourism in Hong Kong?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, my reply to the four-part question is set out below:

- (a) There were 94 calls on Hong Kong by cruise vessels primarily on sightseeing itineraries in 2009, of which 21 required alternative berthing arrangements. There were 104 such calls from January to October in 2010, of which 24 required alternative berthing arrangements. A breakdown of the above figures by the vessels' DT is as follows:

	2009		2010 (January to October)	
	50 000 displacement tonnes or below	50 000 displacement tonnes above	50 000 displacement tonnes or below	50 000 displacement tonnes above
Total number of calls	87	7	99	5
Number of calls that required alternative berthing arrangements	14	7	19	5

- (b) The anticipated number of calls by cruise vessels primarily on sightseeing itineraries to arrive in Hong Kong in 2011 is 85, of which 19 would require alternative berthing arrangements. A

breakdown by the vessels' DT is as follows:

	<i>2011</i>	
	<i>50 000 displacement tonnes or below</i>	<i>50 000 displacement tonnes above</i>
Total number of calls	76	9
Number of calls that required alternative berthing arrangements	10	9

- (c) The new terminal building and the first berth are expected to commence operation in mid-2013. The relevant works of the second berth are expected to be completed in 2015. Both berths can accommodate cruise vessels of largest DT in the world. Depending on the DT of cruise vessels arriving in Hong Kong, the two berths can be deployed flexibly to accommodate up to three vessels of different DT. This will significantly alleviate the existing shortage of berths in Hong Kong. Whether we still need to make alternative berthing arrangements will be subject to prevailing circumstances.
- (d) Leveraging on the completion of the new cruise terminal, we will continue to co-operate closely with the major cruise companies and the Hong Kong Tourism Board (HKTB) to attract deployment of more cruise vessels to Hong Kong. We will also work with the HKTB and the cruise industry through the Advisory Committee on Cruise Industry to formulate strategies in encouraging cruise companies to develop more cruise tourism products.

The HKTB has been collaborating with the tourism industry and cruise companies on promotion in the Mainland and overseas markets to attract tourists to Hong Kong to take cruise trips. This year, the HKTB has conducted promotion jointly with relevant cruise companies and tourism industry in a number of Mainland provinces and cities such as Guangdong, Shanghai, Hangzhou, Nanjing and Beijing, and so on, the HKTB will also participate in the Cruise Shipping Convention in Miami in March next year to promote Hong Kong's position as the regional cruise hub and

introduce the latest development of our new cruise terminal. We will also collaborate with the HKTB to explore opportunities to foster closer co-operation with other ports in the Asia-Pacific Region with a view to developing the potential of cruise tourism in the Region.

Management of Chinese Temples

11. **MISS TANYA CHAN** (in Chinese): *President, at present, temples under the Chinese Temples Committee (the Committee) are subject to the regulation of the Chinese Temples Ordinance (Cap.) (the Ordinance), which stipulates that after deducting the expenses on observance of the customary ceremonies and the maintenance of the temple buildings and temple properties, any surplus from the revenues of Chinese temples may be transferred to the General Chinese Charities Fund (GCC Fund). Nevertheless, it has been learned that quite a number of Chinese temples have recently gained huge revenues by building and selling columbarium niches, but they have not transferred their profits to the GCC Fund as required by the Ordinance. In this connection, will the Government inform this Council:*

- (a) *whether the Committee requires each Chinese temple to submit on a regular basis its financial statements or records in any format to the Committee so as to monitor the financial situations of each temple; if it has, of the details; if not, whether the Government and the Committee have formulated any policy for monitoring the financial management of each Chinese temple; if so, of the details; if not, the reasons for that;*
- (b) *in each of the past five years, of the total revenue as well as total expenditure on customary ceremonies, maintenance and other operating expenses of each Chinese temple, the surplus and the amount of money transferred to the GCC Fund by each Chinese temple;*
- (c) *as it has been learned that quite a number of Chinese temples have built columbarium niches for sale recently, and such activities are apparently unrelated to those activities specified to be practiced in Chinese temples (that is, the worship of gods or communication with*

spirits or fortune-telling) and allowed to be paid by the revenues of the temples as stipulated in the Ordinance, whether the Government has followed up and investigated the cases concerned according to the Ordinance so as to ensure that the temples are operated in accordance with the Ordinance; if it has, of the details; if not, the reasons for that; and

- (d) *whether the Government will consider reviewing and making suitable amendments to the Ordinance so as to ensure that the Ordinance will meet the needs of Hong Kong society today; if it will, of the work-plan and timetable; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) The Committee currently administers 25 temples directly. The accounts of these temples are prepared by the Secretariat of the Committee. In accordance with the Chinese Temples Fund Regulations (Cap. A), revenue from these 25 directly-administered temples shall be transferred to the Chinese Temples Fund (CT Fund). The overall accounts of the Fund are audited by the Commissioner of Audit every year. The Government of Hong Kong Special Administrative Region respects the self-autonomy of religious organizations. It is not the intention of the Committee to monitor the operations of other Chinese temples directly.
- (b) The revenue of the 25 directly-administered temples transferred to the CT Fund for the past five years is enclosed at Table . The expenditure of the CT Fund on customary ceremonies, maintenance of temples and other operating expenses, the surplus of the CT Fund as well as the amount of money transferred to the GCC Fund from the CT Fund for the past five years are enclosed at Table .
- (c) Some temples provide columbaria services. To monitor arrangements on the provision of columbaria services is not the right or obligation conferred to the Committee by the Ordinance. Any cases involving breaches of land use conditions or violation of other relevant legislations may be referred to the appropriate departments for investigation and follow-up.

- (d) In order to formulate policies and a regulatory mechanism on columbaria that meet the needs of society, the Administration has conducted a public consultation exercise. The Home Affairs Bureau will also review the Ordinance from time to time to ensure that it meets present-day needs of the community.

Table

Revenue of the Committee's 25 Directly-Administered
Temples transferred to the CT Fund

(Unit: Hong Kong Dollars)

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Che Kung Temple, Sha Tin	13,552,003	15,408,660	13,021,583	14,241,421	13,286,635
Hung Shing Temple, Ap Lei Chau	91,974	80,481	155,779	156,255	189,172
Hung Shing Temple, Cheung Chau	4,493	172,393	38,646	5,552	4,626
Hau Wong Temple, Junction Road	370,310	272,460	134,485	68,728	62,167
Hau Wong Temple, Tai O	41,903	34,356	40,116	36,245	38,148
Kwun Yum Temple, Ap Lei Chau	180,353	197,623	185,359	251,916	234,678
Kwun Yum Temple, Hung Hom	5,926,576	5,974,705	7,073,980	7,228,637	8,924,106
Lin Fa Kung, Tai Hang	2,398,777	2,307,046	2,758,549	2,934,619	3,036,592
Kwan Tai Temple, Sham Shui Po	26,325	19,996	27,559	36,491	274,744
Pak Tai Temple, Cheung Chau	165,831	1,444	184,661	232,305	248,934
Pak Tai Temple, Hok Un Kok	276,237	386,026	499,785	239,530	322,435
Pak Tai Temple, Wan Chai	146,915	312,549	154,140	107,385	303,209
Sam Tai Tze and Pak Tai Temples, Sham Shui Po	210,973	222,671	257,713	188,990	221,046

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Shing Wong Temple, Shau Kei Wan	369,577	474,247	600,501	596,476	804,334
Tin Hau Temple, Aberdeen	458,229	517,628	551,093	641,829	669,427
Tin Hau Temple, Cha Kwo Ling	209,386	215,245	277,987	297,875	300,984
Tin Hau Temple, To Kwa Wan	254,532	306,214	314,756	325,559	197,004
Tin Hau Temple, Pang Chau	32,644	29,959	48,730	31,777	35,023
Tin Hau Temple, Joss House Bay	669,537	519,733	667,131	624,644	496,841
Tin Hau Temple, Shau Kei Wan	410,215	535,636	710,879	846,822	857,350
Tin Hau Temple, Sham Shui Po	235,987	360,081	433,506	563,435	648,821
Tam Kung Temple, Shau Kei Wan	449,313	454,481	566,303	612,904	733,853
Tam Kung and Tin Hau Temples, Wong Nai Chung	34,705	145,607	162,853	176,226	182,894
Yuk Wong Kung Din, A Kung Ngam	10,067	9,355	4,755	5,819	20,733
Tai Wong Ye Temple, Tong Po Chau	0	0	0	0	0
Total	26,526,860	28,958,596	28,870,850	30,451,438	32,093,757

Table

(Unit: Hong Kong Dollars)

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Expenditure on customary ceremonies of CT Fund	739,104	384,000	2,835,870	2,264,199	244,000
Expenditure on Maintenance Works of Temples of CT Fund	15,503,503	8,190,266	3,634,414	11,083,973	10,112,246
Operating expenses of CT Fund	2,640,206	2,635,141	2,943,830	4,094,733	4,267,685
Surplus of CT Fund ⁽¹⁾	24,875,014	174,251,932	46,818,819	88,498,677	24,512,902

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Amount transferred from CT Fund to GCC Fund	5,043,581	4,343,494	5,477,935	6,268,778	5,690,070

Note:

- (1) Surplus of the CT Fund includes all types of income of the Fund, for example, investment income

Regulation of Credit Reference Agencies

12. **MR LEUNG KWOK-HUNG** (in Chinese): *President, a member of the public has complained to me that a credit reference company which specializes in providing banks and financial institutions with consumer credit data had given incorrect personal data about him to a bank, resulting in the rejection of his bank loan application. Meanwhile, some members of the public have also complained to me that the company has retained the credit records of some members of the public for more than seven years and/or provided banks and financial institutions with such records, thereby violating the requirements of the Code of Practice on Consumer Credit Data (the Code). In this connection, will the Government inform this Council:*

- (a) *apart from the Code promulgated by the Privacy Commissioner for Personal Data (Privacy Commissioner) to regulate consumer credit data, whether the Government has imposed regulation on credit reference agencies (CRAs) at present; if so, how they are regulated and of the scope of regulation; if not, the reasons for that;*
- (b) *whether at present the Hong Kong Monetary Authority (HKMA) has imposed regulation on how banks and financial institutions accept, rely on and use the consumer credit data provided by CRAs; if so, how they are regulated and of the scope of regulation; if not, the reasons for that; and*
- (c) *whether it knows if the Privacy Commissioner or HKMA had in the past three years regularly investigated whether CRAs had retained any credit or other records of members of the public for more than seven years or released such records; if regular investigation had been conducted, how often such investigations had been conducted;*

if regular investigation had not been conducted, of the reasons for that?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, the Administration's reply to the question is as follows:

(a) and (b)

Both authorized institutions (AIs) (including licensed banks, restricted licence banks and deposit-taking companies) and CRAs are required to comply with the Personal Data (Privacy) Ordinance (PDPO) and relevant codes and requirements issued by the Privacy Commissioner in collecting, holding, processing and using consumer credit data.

In view of the above and the importance of protecting personal data privacy, the HKMA issued a guideline on "The Sharing and Use of Consumer Credit Data through a Credit Reference Agency" (the Guideline) in January 2005, requiring AIs to establish clear and comprehensive policies and procedures to ensure that AIs and their employees comply with the relevant requirements on personal data privacy. The Guideline specifies that AIs should comply with the requirements of the PDPO and the Code in areas including confidentiality, accuracy, retention period, relevance and proper utilization of the relevant data.

On the engagement of a CRA, the Guideline requires AIs to enter into a formal contractual agreement with the CRA, which stipulates that the CRA should have effective monitoring systems in place to ensure compliance with the PDPO and the Code. The HKMA would monitor if AIs have established appropriate policies and procedures to safeguard personal data privacy of their customers, and would take follow-up action if any non-compliance with the Guideline is observed.

(c) The Code specifies the Privacy Commissioner's recommended good practice for a CRA to engage an independent compliance auditor as

approved by the Privacy Commissioner to conduct regular compliance audits. A compliance audit covers the way in which a CRA provides the consumer credit reference service and the adequacy and efficiency of the measures taken by it to comply with the requirements of the PDPO and the Code, including, amongst others, data retention periods for consumer credit data, which vary depending on the nature of the data and the circumstances. The audit report has to be submitted to the Privacy Commissioner for consideration and/or comments. The two CRAs in Hong Kong have regularly submitted privacy compliance audit reports to the Privacy Commissioner for his consideration and/or comments.

In 2010, the Privacy Commissioner exercised his power under section the PDPO to carry out an inspection of the personal data system of a CRA to examine and assess its compliance with the requirements of the Code. The Privacy Commissioner is currently compiling the inspection report and will release the inspection report to the public in due course.

Bulk Purchase of Hearing Aids Through Education Bureau

13. **MR IP WAI-MING** (in Chinese): *President, since 2005, the Education Bureau has outsourced the service of distributing hearing aids to hearing impaired (HI) students in need and repairing those hearing aids. In August this year, the Education Bureau allocated an additional funding of \$5 to purchase one more hearing aid for each of the approximately 1 500 HI students in Hong Kong. Yet, it has been reported earlier that since the Education Bureau has outsourced the aforesaid service, some students can only use specified models of hearing aids provided by the contractor of the outsourced service, and the parents of those students who have used such hearing aids complained that not only were the hearing aids ineffective in improving the various problems of hearing impairment of students, the inconsistency in quality (for example, some hearing aids need to be repaired several times a month because they have broken down) has also affected the learning progress of the students. In this connection, will the Government inform this Council:*

(a) *of the total number of students who had applied to the Education*

Bureau for the provision of hearing aids since 2005; the percentage of that number in the total number of HI students in Hong Kong at present; the increase in the number of students receiving such service each year; and of the distribution of classes attended by these students and the male-to-female ratio;

- (b) whether the Education Bureau has a set of standard for the invitation of tenders for the outsourced service concerned; if so, of the details; if not, the reasons for that; whether the authorities have selected the supplier concerned by way of single tender; whether the condition of "the lowest bidder wins" was the only or major selection criterion in the tendering process;*
- (c) whether the authorities had conducted detailed examination for individual students when accepting their applications for this support service so as to assist them in getting suitable hearing aids; if so, of the details; if not, the reasons for that;*
- (d) whether the authorities compulsorily require that students can only choose the specified models of hearing aids under the aforesaid programme; whether the authorities have conducted professional tests on the hearing aids supplied by the supplier of the outsourced service to ensure quality, whether the authorities will provide students with one more hearing aids for substitution when the hearing aids of the students are in need of repair, so that their learning progress will not be affected during the replacement of hearing aids; if not, why the authorities do not provide HI students with a backup hearing aid; and*
- (e) whether the authorities have considered providing parents of HI students with more choices in purchasing hearing aids through other means, for example, by ways of voucher or on accountable basis, when implementing this programme in the next few years?*

- (a) At present, there are 5 866 HI students with varying degrees of hearing loss in Hong Kong, of which 1 695 (about 30%) are assessed by audiologists to be in need of hearing aids. The remaining 4 171 HI students whose hearing loss is of mild degree do not need to wear hearing aids. The Education Bureau will arrange for all HI students (including those who do not need to wear hearing aids for the moment) to receive regular audiological reviews and provide audiological reports to schools to facilitate the provision of appropriate learning support for these students.

The number of new cases provided with hearing aids, by class levels and by gender for each of the 2005-2006 to 2009-2010 school years, is shown in the Annex.

- (b) The Education Bureau selects appropriate service providers for hearing aids provision through open tendering in accordance with the Government's guidelines on procurement procedures. Details of our requirements are stipulated in the tender document. For example, the hearing aids should include choices of In-the-ear, Behind-the-ear, Body-worn and Bone-conduction types; the hearing aids should be fully digital with appropriate powers catering for different degrees of hearing loss; the adjustment of hearing aids should follow the international standard procedures and objective methods such as real ear measurement (measuring the actual acoustic performance of the hearing aid in the ear) and measurement of aided thresholds for evaluating the hearing aid performance should be adopted. As for related services, the service providers are required to provide unlimited number of reassessment and consultation, free maintenance and repair services with labour and parts inclusive, on-loan hearing aid service during repair period, and to provide appropriate service centres and service hours, and so on. In addition, the audiologists should possess the qualification of a Master Degree in Audiology and have at least two years' relevant working experience. The service providers are required to procure necessary professional insurance and to accept the monitoring measures set by the Education Bureau. In the selection of tenderers, the Education Bureau will first ensure that the proposals have fully complied with all the requirements before considering the

prices.

- (c) Currently the Hospital Authority and the Department of Health provide hearing screening for newborn infants and primary one students. Children diagnosed with persistent hearing impairment are referred to the Education Bureau for further assessment and follow-up. Upon receipt of the referrals, the professional staff of the Education Bureau will interview the children and their parents, provide assessment and counseling on the children's hearing and related issues, including the severity and nature of the hearing impairment, communication strategies, suggestions on rehabilitation and related support, and so on. For those who are in need of hearing aids to improve their hearing, upon obtaining parent consent, we will refer them to the outsourced service providers for hearing aid fitting and follow-up services. The audiologists of the service providers should, in accordance with the service contract signed with the Education Bureau, explain to the parents the technical features of the hearing aids that would suit their children's hearing conditions, such as the models, power and functions, and so on, then fit the hearing aids for their children according to professional procedures, and provide consultation on the usage and effectiveness of the hearing aids.
- (d) We have specified in the tender document that the service providers should provide hearing aids with different models and power for students with different degrees of hearing loss. Apart from providing one Body-worn type hearing aids and one Behind-the-ear type hearing aids suitable for students with any degree of hearing loss, the service providers are also required to provide In-the-ear hearing aids for students with mild to moderately severe hearing loss as an alternative. For students with severe to profound hearing loss, high power hearing aids should be provided. The Education Bureau's audiologists would evaluate the different models of hearing aids provided by the service providers to ensure that the hearing aids meet the requirements specified in the tender documents, and that the type and the acoustic performance of the hearing aids meet the diverse auditory needs of the HI students. When fitting the hearing aids, the service providers should follow the Education Bureau

assigned fitting procedures, which include the requirements of real ear measurement and measurement of thresholds before and after hearing aid fitting to ensure that the target standard is achieved.

The service providers are required to submit to the Education Bureau reports for each and every student provided with hearing aid fitting to ensure the service provider has supplied suitable hearing aids and for our monitoring of the effectiveness and quality of the service. The Education Bureau also keeps in close contact and have regular meetings with the service providers as well as conducts on-site inspections to monitor and evaluate the progress and quality of the services. In addition, parents are invited to complete and return service questionnaires to the Education Bureau so that we can understand and monitor the quality of the service provided from the users' point of view. Since 2005, we have collected about 830 service questionnaires. About 90% of the parents were "satisfied" or "very satisfied" with the service while 9.7% have rated "average". For the very few who indicated "unsatisfied", the reasons were mainly related to the attitude of the service providers and their not being able to provide clear information to parents, and so on. We have already taken follow up actions with the service providers and made improvements.

When arranging HI students to receive outsourced services, we will advise parents that if they find the hearing aids not functioning effectively, they should bring their children back to the service providers for follow-up services. The service providers will re-assess the students' hearing and re-fit the hearing aids, and provide repair and maintenance of the hearing aids with labour and parts inclusive. Furthermore, the service providers are required to provide a hearing aid on-loan to the student concerned if the repair period takes more than one day.

- (e) The Education Bureau has communicated with parent representatives on various occasions regarding the modes of provision of hearing aids and related services, including the issue of cash coupon to parents. From the professional perspective, we consider the current measure (that is, procurement through bulk purchase by the Government for providing suitable hearing aids for HI students who

have such a need) in the best interest of the HI students. Such practice saves parents' trouble in shopping around for hearing aids as well as enabling the Education Bureau to monitor the quality of the hearing aids and its related services more effectively. In fact, the Education Bureau has been reviewing and enhancing from time to time the specifications of the hearing aids and the quality of its related services according to the needs of HI students and the development of hearing aid technology. Moreover, parents generally do not have the professional knowledge to judge which hearing aids most suit the needs of their children. They may easily be subject to the influence of other parents and service providers, and buy expensive hearing aids unnecessarily.

The Education Bureau will continue to keep in view the development and the supply of hearing aids in the market and consider further enhancing the specifications and choices of hearing aids. We will also continue to listen to the views of parents with an open mind.

Annex

2005-2006 to 2009-2010 School Years
Number of new cases receiving hearing aids from the Education Bureau
(By school year, class level and gender)

		<i>School Year</i>														
		<i>2005-2006</i>			<i>2006-2007</i>			<i>2007-2008</i>			<i>2008-2009</i>			<i>2009-2010</i>		
<i>Gender</i>	<i>Class</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>
	Preschool	28	37	65	21	20	41	23	43	66	36	46	82	15	30	45
	P.1	4	2	6	6	13	19	5	3	8	2	6	8	1	2	3
	P.2	1	1	2	4	8	12	4	7	11	6	4	10	3	3	6
	P.3	0	3	3	6	10	16	3	3	6	3	3	6	0	2	2
	P.4	0	3	3	6	5	11	4	1	5	1	2	3	2	3	5
	P.5	2	0	2	4	6	10	7	1	8	1	5	6	2	3	5
	P.6	4	1	5	2	3	5	3	6	9	1	2	3	3	2	5
	S.1	3	5	8	7	6	13	3	1	4	0	6	6	1	4	5
	S.2	2	3	5	5	4	9	2	0	2	2	1	3	3	2	5
	S.3	2	1	3	1	4	5	3	2	5	2	0	2	4	3	7

		School Year														
		2005-2006			2006-2007			2007-2008			2008-2009			2009-2010		
Gender Class		Female	Male	Total	Female	Male	Total	Female	Male	Total	Female	Male	Total	Female	Male	Total
		S.4	2	1	3	3	2	5	1	2	3	5	1	6	2	1
	S.5	2	0	2	4	6	10	1	1	2	0	2	2	1	3	4
	S.6	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0
	S.7	0	0	0	2	0	2	0	2	2	0	0	0	0	0	0
	Total	50	57	107	72	87	159	59	72	131	59	78	137	37	58	95

Note:

The drop in the number of new cases in the 2009-2010 school year is not due to a decrease in the actual number of HI students in need of the services. The reason was that the Government decided towards the end of the 2009-2010 school year to enhance the provision of hearing aids with effect from the 2010-2011 school year, and hence those new cases were handled in the following school year.

Government's Shareholdings in MTR Corporation Limited

14. **MR PAUL CHAN** (in Chinese): *President, when the Bill to list the shares of the former Mass Transit Railway Corporation (MTRC) (now known as the MTR Corporation Limited (MTRCL)) was passed by the Legislative Council in 2000, the Government advised that "it will remain as the majority shareholder of the MTRCL for at least 20 years" and its shareholding and voting right in the Corporation would be no less than 50%. It also indicated that should the Government intend to reduce its shareholding in the Corporation to below 50%, "it must be confident that the Corporation, in setting the MTR fares, will certainly take into full consideration passengers' acceptability of the fares and public interest". Upon the implementation of the rail merger, the authorities also stated clearly that the MTRCL would maintain its listing status. Currently, the Government has a shareholding of around 77% in the MTRCL. Yet, looking at the blue chips companies listed in Hong Kong, their majority shareholders can gain control of the companies by holding merely some 30% to 40% of the shares. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed if the current level of the Government's shareholding in the MTRCL is appropriate; if the assessment result is in the affirmative, of the justifications; if not, the reasons for that and what actions will be taken to rectify the situation;*
- (b) *whether the authorities have assessed the extent to which the level of*

the Government's shareholding in the MTRCL and the fares of the MTRCL are affecting each other; if they have, of the details; if not, the reasons for that; whether they have assessed if the fare adjustment mechanism (FAM) currently applicable to the MTRCL can fulfil the authorities' pledge that "it must be confident that the Corporation, in setting the MTR fares, will certainly take into full consideration passengers' acceptability of the fares and public interest"; whether the conditions are ripe for the Government to reduce its shareholding in the MTRCL; if not, what adjustments the authorities will make to the FAM so that it can fully take passengers' acceptability of the fares and public interest into consideration; and

- (c) *given that the MTRCL has already been listed for 10 years, which is half of the 20 years as indicated by the authorities to be the minimum period of time during which the Government will remain the majority shareholder of the MTRCL, whether the authorities have commenced any study on plans to reduce the Government's shareholding in the MTRCL in an orderly manner; if they have, of the details; if not, the reasons for that?*

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

- (a) and (c)

When privatizing the MTRC (currently named as the MTRCL) in 2000, the Government committed that it would remain for at least 20 years from the date of privatization the largest shareholder of the MTRC, and would hold not less than 50% of the shares and voting rights of the company. This has reflected the Government's commitment to the continuous development of the railway system and has shown local and overseas investors as well as credit rating agencies that the Government is determined to support the MTRCL in its continuous provision of quality railway services and expansion of transport infrastructure in Hong Kong. The Government considers its existing shareholding in the MTRCL at 76.8% appropriate. The Government will continue to keep a close watch

on the market conditions and take into account the commitment made when the MTRCL was privatized in reviewing the Government's shareholding in the MTRCL.

- (b) According to the Transport and Housing Bureau, the MTRCL's fare adjustments will be made in accordance with a formula linked to changes in the Composite Price Index (CCPI), Nominal Wage Index (Transportation Section) (wage index) and a productivity factor. This objective and transparent FAM was formulated after extensive discussion at the Legislative Council during the rail merger and came into effect after rail merger from 2 December 2007. The adoption of a more objective and transparent FAM was one of the five parameters set down by the Government for the Rail Merger. After detailed discussions with the Government, the MTRCL before the merger agreed to give up its fare autonomy and to adopt a direct-drive formula FAM instead. Under this FAM, changes in the CCPI and wage index are published by the Census and Statistics Department. The productivity factor is predetermined by both parties. The CCPI used in the FAM reflects the macroeconomic environment and public affordability to a certain extent.

With regard to the Government's shareholding in the MTRCL, as indicated in part (a) above, the current shareholding is in line with the commitment made at the time of the privatization of the MTRCL.

Review of Income Limits for Support Programmes Before Implementation of Statutory Minimum Wage

15. **MS STARRY LEE** (in Chinese): *President, the Provisional Minimum Wage Commission has recommended setting the initial statutory minimum wage (SMW) rate in Hong Kong at \$28 per hour, which will be implemented by the Government on 1 May next year. Based on this hourly wage rate, if all members of a two-person household receive minimum wages, they may not be able to apply for public rental housing (PRH) because their gross income exceeds the Waiting List income limit of \$11,660 for PRH. In addition, the gross income of a grass-roots family with children may also exceed the income limit for receiving full grant of the School Textbook Assistance after the minimum wage rate takes*

effect. In this connection, will the Government inform this Council whether a comprehensive review of the relevant policies will be conducted in time before the SMW rate takes effect, so as to ensure that grass-roots families will not be deprived of opportunities to apply for various support programmes due to the implementation of the minimum wage rate; if such a review will be conducted, which policies will be involved, as well as of the details and timetable of the review; if not, the reasons for that?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the Administration introduced a SMW to protect grass-roots workers. The aim is to establish an appropriate SMW regime which provides a wage floor to forestall excessively low wages, but without unduly jeopardizing our labour market flexibility, economic growth and competitiveness or causing significant adverse impact on employment opportunities for vulnerable workers.

SMW is the minimum remuneration that employees receive from employers for their work done. On the other hand, some government welfare programmes which are subject to income tests are assistance provided to specified persons in need and are usually funded by public money. The two have their own distinct purposes and natures, and thus should not be mixed with one another.

With regard to the Waiting List for PRH, the income limits are derived using a "household expenditure" approach. Each year, the Hong Kong Housing Authority reviews the relevant limits according to the established mechanism, adopting the most up-to-date statistics to reflect the latest socio-economic changes. As for the "School Textbook Assistance Scheme", the eligibility and level of assistance of an applicant are assessed on the basis of the "Adjusted Family Income" mechanism, which takes into account the applicant's gross annual household income and household size. The income ceilings for different assistance levels are adjusted annually in accordance with the movement of the Consumer Price Index (A) compiled by the Census and Statistics Department. The Administration will continue to monitor the operation of the Scheme in order to provide appropriate support to needy students.

The specific impact of SMW can only be assessed after it has been

implemented for a period of time. The Administration will take full account of the impact of the implementation of SMW when considering whether corresponding adjustments are necessary.

Review of Implementation of Section 39E of Inland Revenue Ordinance

16. **DR LAM TAI-FAI** (in Chinese): *President, regarding the reply given by the Secretary for Financial Services and the Treasury to my oral question on 24 this year, will the Government inform this Council:*

- (a) *whether it will fully publicize the report submitted by the Joint Liaison Committee on Taxation (JLCT) on the review of the implementation of section of the Inland Revenue Ordinance (IRO) (Cap.) (section), as well as the relevant correspondences and documents exchanged between the authorities and JLCT; if it will, when they will be published; if not, of the reasons for that;*
- (b) *given that the Secretary for Financial Services and the Treasury stated that "according to our understanding, in the course of upgrading and restructuring the processing trade in the Mainland, considerable Hong Kong enterprises have opted to transfer the title of their machinery and plant to the newly established Mainland enterprises as capital injection", whether the Government has data showing the number of the aforesaid "considerable Hong Kong enterprises"; if so, of the details; if not, on what objective facts the Secretary for Financial Services and the Treasury has based in arriving at such understanding;*
- (c) *given that the Secretary for Financial Services and the Treasury stated that "for some Hong Kong enterprises which have provided machinery and plant to the newly established Mainland enterprises at a rent, they have to pay business tax and income tax in the Mainland as their rental income is taxable profits in the Mainland", yet there is in fact no question of the Hong Kong enterprises receiving rent when they provide machinery and plant to processing enterprises to produce goods to be sold by themselves, why the authorities could interpret that such machinery and plant are provided "at a rent";*

- (d) *given that the Secretary for Financial Services and the Treasury stated that "for machinery and plant provided for use by the Mainland enterprises rent-free (under 'import processing'), we are worried that if we accede to the request of some enterprises and provide depreciation allowances in Hong Kong for such machinery and plant, we may be perceived as encouraging transfer pricing", yet the Organization for Economic Co-operation and Development and the Inland Revenue Department in Hong Kong have both issued specific guidelines on the handling of the issue of transfer pricing, of the Secretary for Financial Services and the Treasury's justifications for the aforesaid worry;*
- (e) *given that according to the Inland Revenue Board of Review Case Numbers /01 and D60/06, the Board has ruled that the tax liability of a taxpayer should be determined by local legislation, and no consideration should be given to whether the foreign tax authorities have suffered tax loss, why the Secretary for Financial Services and the Treasury raised the issue of taxing rights of other tax jurisdictions (including the Mainland);*
- (f) *given that according to section 16 of the IRO, all outgoings and expenses shall be deducted to the extent to which they are incurred in the production of chargeable profits, whether it has assessed if it is a violation of the basic principles of "tax symmetry" and deduction of expenses under section 16 of the IRO when depreciation allowances for machinery and plant used in the production of chargeable profits may not be granted merely because such machinery and plant are used outside Hong Kong; if not, of the reasons for that;*
- (g) *whether it has assessed the impact of the authorities' refusal to improve section 39E on the commerce and industry sector, employment in our society and economic development; and whether it has assessed if the loss in tax revenue suffered by the Government as a result of reduced profits consequent upon decreased productivity and competitiveness in the wake of Hong Kong enterprises reducing their investment in machinery and plant will*

outweigh the reduction in tax revenue brought about by "relaxing section 39E" as referred by the Secretary for Financial Services and the Treasury; if it has, of the details; if not, the reasons for that;

- (h) given that members of the trade have requested the authorities to resume compliance with the legislative intent of section 39E, which is only intended to strike down the acts of tax avoidance through sale and leaseback and leveraged leasing arrangements, why the authorities have interpreted such a request as "relaxing" section 39E;*
- (i) whether the authorities will further consult the commerce and industry sector, accountancy sector and tax experts, and so on, on the contents of the reply to the question on 24 November this year; if they will, of the details; if not, the reasons for that; and*
- (j) whether it will consider convening a joint conference of sectors and inviting representatives from the four major chambers of commerce of Hong Kong, the chambers of commerce of small and medium enterprises, accounting and audit firms as well as tax experts, and so on, to discuss the ways in handling the enforcement of section 39E; if it will, of the details; if not, the reasons for that?*

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

- (a) We are grateful to the JLCT for its study in relation to section 39E and its recommendations. With the consent of the JLCT, we have provided the report of the JLCT and the corresponding reply of the Administration to the Legislative Council Panel on Financial Affairs for information.
- (b) We have learnt from the relevant authorities of Guangdong Province that considerable Hong Kong enterprises have, in the course of upgrading and restructuring the processing trade in the Mainland, opted to transfer the title of their machinery and plant to the newly established Mainland enterprises as capital injection. However, the

relevant authorities in Guangdong Province do not have the relevant data.

(c) to (f)

According to section other related provisions of the IRO, a prerequisite for a taxpayer to deduct the specified expenses is that such expenses must be incurred for generating chargeable profits. This is in line with the "tax symmetry" principle. As we have pointed out to the Legislative Council on a number of occasions, the Hong Kong enterprises maintain the buyer/seller relationship with their Mainland counterparts under "import processing". The taxable profits of these Hong Kong enterprises in Hong Kong are derived from their trading transactions. Since the profits derived from the production activities in the Mainland are not attributed to the Hong Kong enterprises, according to the "territorial source principle", the Inland Revenue Department of Hong Kong would not charge profits tax on the Hong Kong enterprises for the Mainland production activities. Also, according to the "tax symmetry" principle, the Hong Kong enterprises would not be granted depreciation allowance for the machinery and plant solely used in the production activities in the Mainland.

In our reply to the oral question raised by Dr LAM Tai-fai on 24 this year, we have clearly pointed out the concern of the international community about the transfer pricing issue involved in cross-border trading activities between associated enterprises, and the stance taken by the tax authorities around the world on this issue. Given that the Hong Kong enterprises and the Mainland enterprises are associated parties in many cases, we have to be extremely careful in considering the request for relaxing section so as to avoid any perception that we are acting in violation of the "arm's length principle", and that we are in a way encouraging transfer pricing arrangements disapproved by the tax authorities around the world.

Cases /01 and D60/06 handled by the Board of Review are both related to source of taxable income under salaries tax. They are not

related to section .

(g) to (j)

In our reply to the written question raised by Dr LAM Tai-fai on 25 last year, we explained in detail the evolution of section 39E from its enactment in 1986 to its amendment in 1992. The scope of application of the current section has gone beyond "sale and leaseback" and "leveraged leasing" arrangements and covered all kinds of leasing arrangements. Hence, excluding machinery and plant which are provided for use by the Mainland enterprises rent-free from the scope of application of section would involve relaxation of the restriction in that provision. This would affect the completeness of the anti-avoidance provisions.

We have examined whether there is room for relaxing section , but we have to make assessment carefully in view of the complicated issues involved. During the course of deliberations, we have already taken into consideration the views of the industrial and commercial sector, the accounting sector and tax experts. As indicated in our reply to the oral question raised by Dr LAM Tai-fai on 24 this year, we have to take into account the overall interests of Hong Kong and all the taxpayers in making each and every policy decision. Our review has come to a conclusion that there are no justifiable grounds to relax the existing restriction in section .

Sponsorship of Travel Agencies' Advertisement and Promotion Expenses Provided by Hong Kong Tourism Board

17. **MR PAUL TSE** (in Chinese): *President, the Hong Kong Tourism Board (HKTB) launches a number of large-scale marketing campaigns every year with a view to attracting visitors to Hong Kong. Regarding the HKTB's provision of sponsorship to local travel agencies when launching such campaigns, will the Government inform this Council if it knows:*

- (a) *whether the HKTB has sponsored the advertisement and promotion expenses of any local travel agency (including placing and broadcasting publicity advertisements locally and overseas); if so,*

which promotional events of the HKTB in the past three years had involved similar sponsorships; the public funding spent on sponsoring advertisement expenses of travel agencies in Hong Kong each year, the names of all travel agencies with advertisement expenses sponsored and the amount of sponsorship;

- (b) as it was reported that a staff member of the HKTB had pointed out that when the Summer Pop — Live in Hong Kong was first launched in 2009, the HKTB had sponsored only one travel agency half of the expenses of its advertisement placed overseas, while other travel agencies did not even have the chance to apply for the sponsorship, and such arrangement was alleged to have violated the principle of fairness, openness and justice, whether the authorities have investigated thoroughly and followed up the case; if so, of the details, if not, the reasons for that;*
- (c) the reasons for the HKTB to sponsor the advertisement expenses of travel agencies;*
- (d) whether the HKTB has any established procedure for processing applications and vetting and approving the aforesaid sponsorships; if so, of the details; whether the HKTB has any criteria to ensure that funding will be granted in a fair, just and reasonable manner;*
- (e) whether it has regularly made public, through open and appropriate channels, the expenditure on the aforesaid sponsorships; if so, of the details; if not, the reasons for that; and*
- (f) whether it has announced the procedure and criteria in part (d), so that all travel agencies in Hong Kong are aware of the circumstances under which they can apply for sponsorships and the procedures they need to follow in applying for sponsorship; if so, of the details, if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, my reply to the six parts of the question is as follows:

- (a) The HKTB partners with the local travel trade on the promotion of major marketing campaigns and mega events, such as the Hong Kong Food and Wine Year and the Festive Hong Kong Year, with a view to attracting participation by more tourists. The mode of partnership includes sharing advertising costs, joint production of publicity materials, and so on.

The expenditure incurred by the HKTB on partnership with local travel trade on promotions in the past three years is as follows:

<i>Year</i>	<i>2007-2008</i>	<i>2008-2009</i>	<i>2009-2010</i>
Amount	\$45,800	\$68,000	\$325,000*

Note:

- * In 2009-2010, HKTB organized the first ever "Hong Kong Food and Wine Year" mega event, and needed to step up co-operative promotions with various local trade partners to maximize publicity among consumers and tourists. There was therefore an increase in expenditure as compared with the previous two years.

During the period, the HKTB conducted co-operative promotions with seven local travel agencies. Formal agreements were signed with these agencies. The confidentiality clause in these agreement did not allow disclosure of any information relating to the partnership without the consent of both parties. The HKTB had consulted all seven travel agencies, but none agreed to disclose its name and other information in the agreement.

- (b) The HKTB always welcomes proposals for co-operative promotion on the HKTB's activities from all travel trade partners. For the "Summer Pop — Live in Hong Kong" concert in 2009, the HKTB explained that it had only received one local travel agency's proposal. The HKTB stressed that it had conducted an investigation on the above partnership arrangement and found no irregularity. The approval procedures were in compliance with the established financial policies and procedures of the HKTB.
- (c) Leveraging on the promotion and sales networks of travel trade partners, the HKTB hopes to disseminate information on its activities to more visitors directly in order to attract them to Hong

Kong.

- (d) The HKTB stages the Hong Kong Tourism Overview session each year, during which the HKTB introduces its work plan for the coming year to all local travel trade partners, organizations and companies and invite their collaboration on promotions. Upon receiving a proposal for co-operative promotion, the HKTB will consider whether the proposal is in line with its promotion strategies and objectives, and whether the proposal will help enhance the effectiveness of its promotions of Hong Kong as a travel destination and encouraging visitors to purchase tour products of Hong Kong. If the travel trade's proposal fulfils the above criteria, it will be processed in accordance with the HKTB's existing financial policies and procedures which specify the different levels of approving authority. The HKTB management at the appropriate level would then approve the contractual sums and enter into a contractual agreement with the trade partner concerned to confirm the co-operation.
- (e) Since 2008, the HKTB has, on an annual basis, submitted its work plan and proposed marketing budget for the coming year to the Economic Development Panel of the Legislative Council. The marketing budget sets out the proposed expenditure for different strategic focuses, including that for "further fostering strong partnership with the trade" which already comprises co-operative promotions with the local travel trade. Currently, the breakdown of expenditure on co-operative promotions with the local travel trade is not listed in the financial statements of the HKTB Annual Report. The HKTB will consider how such information may be released in the future.
- (f) In addition to the annual Hong Kong Tourism Overview, the HKTB plans to make use of its new PartnerNet website to be launched early next year for further enhancing the existing mechanism for partnership with the local travel trade. Through this website, the HKTB will invite the travel trade to submit co-operation proposals taking into account the different marketing initiatives of the HKTB throughout the year. The HKTB will tidy up the relevant application procedures and approval criteria, and disseminate the

information to all local trade partners through email circulars and uploading onto the PartnerNet website. The PartnerNet is a free online platform provided by the HKTB to the tourism industry partners in Hong Kong and other visitor source markets. The website includes details of the HKTB's promotions and events, travel-related products and latest information about Hong Kong to facilitate the travel trade to market Hong Kong.

Joint Office Responsible for Resolving Water Seepage Problems in Buildings

18. **MR KAM NAI-WAI** (in Chinese): *President, regarding the work of the Joint Offices (JOs) set up by the Buildings Department and the Food and Environmental Hygiene Department, dedicated to handling complaints and enquiries about water seepage in buildings, will the Government inform this Council:*

- (a) *in each year since JOs' establishment, of the total numbers of complaints and enquiries received by JOs, with a breakdown by District Council (DC) district;*
- (b) *in each year since JOs' establishment, of the numbers of complaints and enquiries which JOs finished handling; among such complaint cases, of the respective numbers of cases in which the sources of water seepage had been successfully identified, cases in which repair works had been carried out but the problem of water seepage had not yet been solved, and cases in which repair works had been done and water seepage stopped, with a breakdown by DC district; among the cases already completed, of the longest time and the shortest time taken and the average time required for completing each case;*
- (c) *in each year since JOs' establishment, of the total numbers of accumulated outstanding complaints and enquiries, of the nature of these cases, the number of cases requiring investigation into the sources of water seepage, the average waiting time for each case that required investigation into the source of water seepage, and the longest waiting time for such cases, with a breakdown by DC*

district;

- (d) *among the accumulated cases in each district in part (c), of the number of cases which had been handled but the problems recurred;*
- (e) *of the number of staff members involved in handling the complaints and enquiries since JOs' establishment; and*
- (f) *whether JOs have reviewed the difficulties or bottleneck situations which occurred in the course of handling water seepage complaints; whether JOs have studied the ways for handling water seepage problems in buildings more effectively and efficiently so that water seepage problem can be resolved as soon as possible?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, as pointed out in the "Direct Investigation Report on Handling of Water Seepage Complaints" released by The Ombudsman in 2008, water seepage in private premises is basically a matter of building management and maintenance for which property owners are responsible. However, if the problem of water seepage causes public health nuisance, risks of building structural safety or wastage of water, the Government will consider intervention by exercising the relevant statutory powers. Based on the above principle, the Food and Environmental Hygiene Department and the Buildings Department established a JO in 2006 to handle cases of water seepage involving the aforesaid problems.

Regarding the various parts of the question, the replies are as follows:

- (a) The JO does not have statistics on the number of enquiries received. The number of complaints received by the JO each year since its establishment up to the end of July 2010 is as follows (the JO does not keep statistical breakdown by DC district):

	<i>Since JO's establishment up to end of 2006⁽¹⁾</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010 (up to end of July)</i>
--	-----------------------------------------------------------------	-------------	-------------	-------------	---------------------------------

	<i>Since JO's establishment up to end of 2006⁽¹⁾</i>	2007	2008	2009	2010 <i>(up to end of July)</i>
Total Number in Hong Kong	14 041	17 405	21 717	21 769	16 338

Note:

(1) As the regional offices of the JO were established at different times, the figures in relation to the cases received or handled by them up to end of 2006 as set out in this reply may cover periods longer or shorter than one year.

- (b) Currently, the JO has prescribed standards and requirements for the investigation into the sources of water seepage. Past experience shows that some water seepage complaints do not involve public health nuisance, risks of building structural safety or wastage of water, and hence do not fall within the scope of follow-up action under the statutory authority of the JO. There are also cases where the complaints are falsified, the seepage has stopped, or the complainants have withdrawn their complaints, and so on. Such cases will be screened out by the JO, and investigation into the sources of water seepage will not be conducted for such cases.

The JO does not have statistics on the number of enquiries processed. The number for each year, since its establishment up to the end of July 2010, of cases with processing completed by the JO, cases ascertained to have satisfied the aforesaid criteria and for which the need for JO's investigation is confirmed, and cases in which the causes of water seepage were found are tabulated below. As the JO does not keep statistical breakdown by DC district, the numbers below are totals in Hong Kong:

	<i>Since JO's establishment up to end of 2006</i>	2007	2008	2009	2010 <i>(up to end of July)</i>
Cases with processing completed ⁽²⁾	8 410	13 375	16 708	18 237	12 124

	<i>Since JO's establishment up to end of 2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010 (up to end of July)</i>
Cases for which the need for investigation is confirmed	4 050	7 025	9 564	10 122	6 010
Cases in which the causes of water seepage were found	2 272	3 246	4 476	4 813	2 453

Note:

- (2) As there is a lapse of time between receipt of a complaint and completion of processing of a case, the number of complaints processed in a year does not necessarily correspond to the number of complaints received in that year.

The JO does not have information on the above cases' repair works and particular conditions afterwards. In general, if a water seepage problem involves public health nuisance, risks of building structural safety or wastage of water, the JO and relevant government departments will require owners to carry out repair works under the Public Health and Municipal Services Ordinance (Cap.), Buildings Ordinance (Cap.) or Waterworks Ordinance (Cap.) respectively. If the water seepage problem persists, the JO will take appropriate follow-up actions, such as taking enforcement actions.

Co-operation of the concerned owners/occupiers is crucial for the staff of the JO to enter into private premises to conduct multiple tests to identify the source of water seepage. Since the circumstances of each case are different, the time required for investigation also differs. With the full co-operation of parties concerned, an investigation can normally be concluded within around 130 days (90 working days). However, in many cases, repeated arrangements have to be made with complainants on timing for site inspections and consent of respondents has to be sought in allowing multiple inspections inside the premises. It therefore takes about 168 days on average from receiving a complaint to successfully identifying the source of water seepage. The JO will continue to step up publicity

to appeal for the co-operation of more owners/occupiers so that the JO can conclude the investigations promptly.

- (c) Up to 31 2010, the JO was still processing 22 416 complaint cases. As mentioned in part (b) of the reply, the JO has prescribed standards and requirements for the investigation into the sources of water seepage. Therefore, the JO has to complete the processing of the 22 416 cases in hand before it can ascertain the nature of the cases and whether they require investigations into the sources of water seepage. The JO does not maintain separate statistics on the waiting time for such kind of cases.
- (d) As the JO was still handling the cases mentioned in part (c), there is no information available on cases with recurrence of water seepage problem. However, generally speaking, there are a small number of past cases with recurrence of water seepage problem. The reasons for recurrence include water seepage occurring in various locations of a building and change in circumstances, such as drainage pipe works carried out by new owners of the upper flats.
- (e) In view of the continuous increase in public demand for the service of the JO, we have conducted several rounds of recruitment exercises for the JO last year and this year. Additional manpower will further enhance the efficiency of the JO. There are currently about 240 staff members in the JO. Apart from such staffing resources, contract consultants have also been engaged by the JO to facilitate investigations.
- (f) The demand for the service of the JO by the public has been increasing since its establishment. In the past three years, on average, over 20 000 cases have been received every year, and the number is still on the rise. While we will continue to implement the recommendations of The Ombudsman made in the 2008 investigation report and explore means to enhance the *modus operandi* and efficiency of the JO, we are reviewing the Government's long-term objectives and utilization of resources for handling water seepage problem. We will explore the feasibility of encouraging building owners to resolve their water seepage-related disputes through mediation. We will also study whether legislation

could be an effective means to resolve water seepage-related disputes between building owners in Hong Kong. Reference will also be made to overseas regulatory experience in handling water seepage cases. In the course of the review, we will encourage public discussion to explore the feasibility of various options, and fully consider the views of the stakeholders.

Use of Nanotechnology in Food

19. **MR FRED LI** (in Chinese): *President, the Centre for Food Safety (CFS) of the Government points out in its Risk in Brief published in September this year that "A major focus of application of nanotechnology in food processing involves the development of nanostructured food ingredients and additives. This category of nanofood was being developed with claims that they offer improved taste, texture and consistency, enhanced bioavailability and allow mixing of 'incompatible' ingredients in food matrix. Examples of nanostructured foodstuffs include spreads, ice cream, yoghurt, and so on". Moreover, "Other indirect applications of nanotechnology in food area include the development of nanosized agrochemicals and veterinary medicines". The CFS also points out that "safety issues surrounding the use of nanotechnology in food have raised public concern". Nevertheless, the CFS only advises the trade to "ensure the products on sale are safe for human consumption", and "not to sell nanomaterials that have not undergone safety assessment". In this connection, will the Government inform this Council:*

- (a) given that the safety issues surrounding the application of nanotechnology in food have raised concern, whether the CFS will conduct studies on this particular topic and carry out safety tests;*
- (b) how the CFS will assist food manufacturers "not to sell nanomaterials that have not undergone safety assessment", and of the details; if no assistance will be provided, of the reasons for that; and*
- (c) how the Government will regulate the sale of nanofood?*

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

released in September 2010 a study report examining the basic principles, applications and the potential health implications associated with the use of nanotechnology in the food sector, with focus on those food and food contact materials incorporated with nanomaterials. A summary on the risk assessment approaches adopted by some major countries on this subject was also provided in the report.

While there is currently no internationally agreed definition for nanotechnology, it generally refers to the process of controlling the size and shape of materials at the atomic and molecular scale. The World Health Organization (WHO) commented that the potential health and environmental risks of nanoscale materials need to be assessed before they are introduced into food as for all new materials used in food and food processing. However, due to the lack of sufficient data and resources on the international front to allow a comprehensive understanding of the potential hazards of nanomaterials, there is currently no detailed and precise guidance for the risk assessment of nanomaterials in food.

The research data currently available could confirm neither the superiority of nanofood materials in general nor the impact of nanotechnology on the safety of food and food contact materials. Traders have the responsibility to obtain relevant information on and guarantee for the safety and useful value of food products from manufacturers. Consumers should also be careful in making choices when it comes to potentially exaggerated marketing claims.

My reply to the three-part question raised by the Mr Fred LI is as follows:

- (a) Given the great differences in the properties between nanomaterials and their conventional counterparts, there is to date an absence of viable methods for precise detection and quantification of nanomaterials in food in the international arena. Guidance or standards for testing the safety of nanofood have yet to be developed. New data and measurement approaches are needed for the proper assessment of the safety of food and food contact materials derived from nanotechnology. A number of national regulatory authorities and the WHO have recognized the need to develop suitable testing methods for laboratory analysis of nanomaterials. We will keep in view the development of the

relevant technologies for follow-up actions.

(b) and (c)

It is stipulated in the Public Health and Municipal Services Ordinance (Cap.) that all food intended for sale in Hong Kong shall be fit for human consumption. This provision applies to all kinds of food, including food containing nanomaterials. Any person who is guilty of an offence under this provision shall be liable on conviction to a fine of HK\$50,000 and imprisonment for six months. The food trade has the responsibility to ensure the safety of engineered nanomaterials in their food products if they are to supply these products. In this connection, the CFS has, through various channels, including the Trade Consultation Forum on 10 2010, explained to the trade its stance and recommended measures to be taken by the trade.

While some major countries and regions including the United States, Canada, the European Union, Australia, New Zealand and Mainland China have not yet formulated any specific legislation on the regulation of nanofood, nanofood is in general subject to the same public health and food safety laws that apply to other kinds of food. We will closely monitor the international development in regulations over nanofood.

Regulation of Charges by Telecommunications Service Providers

20. **MR ALBERT CHAN** (in Chinese): *President, in reply to my question on 11 2009 on the issue of excessive service fee-charging by telecommunications service providers, the Government said that when there was evidence to indicate that a service provider might breach the Telecommunications Ordinance (TO) (Cap.) or the licensing conditions, the Office of the Telecommunications Authority (OFTA) would commence investigation and penalize the service provider in substantiated cases. Yet, I have still received complaints recently from a number of members of the public that they were charged by telecommunications service providers for services they did not apply for. In addition, some members of the public pointed out that the service charges of the*

telecommunications service providers were much higher than those they should actually pay, thus causing them to suffer huge losses. In this connection, will the Government inform this Council:

- (a) whether it knows the number of complaints, received last year by the OFTA and the Consumer Council (CC) respectively, which involved excessive fee-charging by telecommunications service providers, and the names of the service providers concerned, broken down by the type of telecommunications services (for example, fixed-line telephones, mobile phones, external telecommunications and broadband Internet access, and so on) and the nature of complaints;*
- (b) whether it knows, among the cases in part (a), the number of those in which the complainants sought compensation successfully, as well as the names of the telecommunications service providers which were prosecuted and the number of prosecutions instituted against them; and*
- (c) apart from continuing to implement the existing measures to regulate telecommunications service providers, whether the authorities will adopt new regulatory measures, so as to better protect consumers' interests; if so, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the telecommunications services in Hong Kong are pervasive and competitive. Every year, the OFTA and the CC receive a substantial number of complaints in respect of the billing⁽¹⁾ of telecommunications services. The majority of these complaints are related to contractual disputes. Upon receiving the complaints, the OFTA and the CC will refer them to the concerned service operators for follow-up direct. However, when there is evidence to indicate that an operator may breach the TO or the licensing conditions, the

(1) While some complaints on billing involve excessive charging, some involve other disputes on billing such as customers not being clear about the details of the charge plan. As such, the figures in part (a) of the reply are not restricted to complaints on excessive charging. Both the OFTA and the CC have not further categorized such complaints related to billing.

OFTA will commence investigation and penalize the operator in substantiated cases.

My reply to the question is as follows:

- (a) In the past year, the number of complaints on billing disputes received by the OFTA, broken down by the type of services, is set out below:

	<i>November 2009 to October 2010</i>
Fixed services	118
Mobile services	1 374
Internet access services	125
Others (for example, external communications services)	53
Total	1 670

In the past year, the number of complaints on billing disputes received by the CC, broken down by the type of services, is set out below:

	<i>November 2009 to October 2010</i>
Fixed services	454
Mobile services	1 644
Internet access services	939
Others (for example, external communications services)	1 999
Total	5 036

As not all complaints are substantiated and some of these complaints may only be service enquiries, and different operators with different customer bases will also affect complaint figures, therefore, in line with the established practice of handling consumer complaints, the OFTA and the CC will not publicize the names of the telecommunications service operators involved in the complaints.

- (b) For cases set out in part (a), the OFTA and the CC do not have

figures on the number of complainants successfully recovering compensation or receiving refunds from the telecommunications service operators. As most of the complaints in respect of billing disputes are contractual issues between individual consumers and operators, the OFTA does not have the right to intervene in these cases. The OFTA has also found no breaches of the TO or the licensing conditions in respect of those complaints on billing which requires imposition of penalty. As regards the CC, its main role is to help consumers resolve contractual disputes through mediation.

- (c) At present, the licences issued by the OFTA to the telecommunications service operators have included conditions for protecting consumers. For instance, the licensee has to ensure that the metering equipment and the billing system related to the provision of service are accurate and reliable. As aforementioned, if there is evidence to indicate that an operator is in breach of the TO or the licensing conditions, the OFTA will commence investigation and penalize the operator in substantiated cases.

In addition, the OFTA conducted a pilot programme of the Customer Complaint Settlement Scheme (CCSS), which ran for 18 months from September 2008 to February 2010, to test the practicality and the efficacy of an alternative dispute resolution mechanism to resolve disputes between operators and customers in the telecommunications sector outside the judicial system. After the completion of the pilot scheme, in June this year, we issued a consultation paper to seek the views of the public and the industry on the possible long-term implementation of CCSS in Hong Kong. Meanwhile, we also reported to the Panel on Information Technology and Broadcasting of the Legislative Council (Panel) on the outcome of the pilot programme and consulted Members' views. The OFTA will decide on the way forward after the consultation period ends on 8 .

To enhance consumer protection further, the OFTA issued a new voluntary Code of Practice (the Code) on 2 2010 to provide the industry with guidelines on drawing up fair, balanced and reasonable service contracts with consumers. The industry association — Communications Association of Hong Kong is actively discussing the details of compliance with the Code with its members, and will

formulate an industry code for self-regulation drawing reference to the Code of the OFTA.

According to the OFTA's analysis on the complaints received relating to mobile data services, billing disputes accounted for 90% of these complaints. They are mainly caused by unintentional or inadvertent use of mobile data services, giving rise to unexpectedly high mobile bill charges.

In June this year, the OFTA requested mobile network operators to implement a range of measures to address the problem, which include allowing customers to opt out of certain services; setting a charge ceiling; setting a usage cap for usage-based mobile services; alerting customers through short messages as their predetermined usage threshold is reached; and providing short message alert on data roaming, and so on. Mobile network operators have already implemented the above measures to differing degrees. Details are published on the relevant webpage launched by the OFTA in August this year. Meanwhile, with a view to enhancing consumer awareness and knowledge of different aspects of the mobile services, the OFTA has carried out public education activities including making television announcements and publishing consumer alerts/advice on newspapers and magazines.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bill: First Reading.

STAMP DUTY (AMENDMENT) (NO. 2) BILL 2010

CLERK (in Cantonese): Stamp Duty (Amendment) (No.2) Bill 2010.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bill: Second Reading.

STAMP DUTY (AMENDMENT) (NO. 2) BILL 2010

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I move the Second Reading of the Stamp Duty (Amendment) (No. 2) Bill 2010 to implement the stamp duty related measures as approved by the Chief Executive in Council on 19 November 2010 and announced by the Financial Secretary on the same day.

The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) for the implementation of the following two measures.

First, on top of the current *ad valorem* property transaction stamp duty, a Special Stamp Duty (SSD) is introduced on residential properties at the point of resale. The SSD is to be applicable to residential property transactions of all values if the property concerned is resold at or within 24 months after the transfer of its equitable or legal ownership on or after 20 November this year, including confirmor transactions. Both the buyer and the seller, be it an individual or a company (listed or unlisted, and wherever incorporated), will be held jointly and severally liable for the SSD.

The SSD payable will be calculated based on the stated consideration for the transaction or the market value of the property as assessed by the Commissioner of Inland Revenue, whichever is the higher, at the regressive rates for different holding periods:

- (i) 15% if the property has been held for six months or less;
- (ii) 10% if the property has been held for more than six months but for 12 months or less; and
- (iii) 5% if the property has been held for more than 12 months but for 24 months or less.

Second, deferred payment of the *ad valorem* property transaction stamp

duty for all residential property transactions valued at \$20 million or below is not allowed. We have already disallowed deferred payment of stamp duty for residential property transactions valued more than \$20 million with effect from 1 April 2010. In other words, all residential property transactions, regardless of values, will have to pay stamp duty within 30 days after the signing of the Agreement for Sale and Purchase.

The Government has been monitoring the development of the private residential property market closely and remains vigilant on the risks of a property bubble. In February, April, August and October this year, the Government introduced various measures to ensure the healthy and stable development of the property market. Measures previously introduced are taking effect, but owing to extraordinary external factors, the private residential property market is still very exuberant.

More worryingly, the exuberant state of the property market has spread from the luxury market to the mass market, and strong speculative elements are present in the exuberant property market. Speculative activities have shifted to a shorter horizon. As a result of the second round of quantitative easing measures announced by the United States Federal Reserve, we expect that there will be more capital flowing into Asia, including Hong Kong, thereby making the property market more exuberant. Therefore, we deem it necessary to introduce exceptional measures in this exceptional time in order to reduce the risk of a property bubble.

The objectives of the proposed new measures are to curb short-term speculative activities by substantially increasing the costs to speculators, reduce the risk of the development of an asset bubble and ensure the healthy and stable operation of the property market. At the same time, genuine home buyers and long-term investors should not be affected by these measures, which are exceptionally introduced under exceptional circumstances in response to the needs of the times targeting the exuberance in the current property market.

Before the new law comes into effect, the Inland Revenue Department (IRD) will record the residential property transactions between 20 November 2010 and the date of coming into effect of the new law to identify the cases liable for SSD. Demand notes on SSD will then be issued after the new legislation is enacted. And during this period of time, the IRD will continue to allow and

approve applications for deferring stamp duty payment on agreements made in accordance with the prevailing legislation, until the new law comes into effect.

I now introduce the Bill into the Legislative Council for scrutiny. I look forward to the early passage of the Bill by the Council to give legal effect to these stamp duty related proposals.

I so submit. Thank you, President.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Stamp Duty (Amendment) (No. 2) Bill 2010 be read the Second time.

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

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Council will now continue with the debate on the Second Reading of the Road Traffic (Amendment) Bill 2010.

ROAD TRAFFIC (AMENDMENT) BILL 2010

Resumption of debate on Second Reading which was moved on 12 May 2010

PRESIDENT (in Cantonese): Ms Miriam LAU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MS MIRIAM LAU (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Road Traffic (Amendment) Bill 2010 (the Bills Committee), I now address the Council on the major issues deliberated by the Bills Committee.

The Road Traffic (Amendment) Bill 2010 (the Bill) seeks to amend the

Road Traffic Ordinance (RTO) and introduce the following measures to further deter drink driving and other inappropriate driving behaviour.

The Bills Committee has held six meetings with the Administration and received views from stakeholders, including the transport trade. The Bills Committee generally supports the legislative intent of the Bill to introduce heavier penalties for drink driving and other inappropriate driving behaviour.

In the course of deliberation, the Bills Committee had discussions on the sliding three-tier penalty system based on a driver's alcohol concentration. A member held that heavier penalties should be introduced into Hong Kong in view of the serious drink driving problem and the small and densely populated territory of Hong Kong. This member suggested that the proposed minimum driving disqualification period on second/subsequent conviction for tier 3 should be set at life disqualification instead of a disqualification period of five years, to enhance deterrence and public safety. The Administration has advised that the disqualification period of five years is only a minimum standard and the Court is at liberty to rule a much higher disqualification period. Moreover, the Administration proposed that the offences in tier 3 be classified as offences with a circumstance of aggravation and that the maximum penalties in terms of fine and imprisonment and the minimum disqualification period for the offence concerned be each increased by 50%. The Administration also proposed to introduce a provision to require the Courts to order that the disqualification period should commence at the conclusion of the imprisonment sentence, unless the Court sees fit that both imprisonment and disqualification terms should be implemented concurrently, in the circumstance that the driver is convicted of a subsequent serious driving offence.

The Bills Committee is of the view that the slogan "if you drink, don't drive" is ineffective in combating drink driving. Hence, it has urged the Administration to adopt a new approach in publicity and education to facilitate the public's understanding of the three-tier penalty system. A member suggested that the Administration should impose a sliding scale for imprisonment and fines. The Administration advised that the threshold for penalty has not been lowered. On the contrary, minimum disqualification periods have been raised. There is still room for the Courts to impose heavier penalties in terms of fines and

imprisonment, as the Courts see fit.

As for the introduction of the offence of dangerous driving causing grievous bodily harm, a member had relayed the concern of the transport trade, that the Administration was trying to introduce the offence on the pretext of combating drink driving. Some members of the trade were of the view that the offences of drink driving and dangerous driving should be dealt with separately, as dangerous driving can be caused by many factors other than drinking and some are beyond the driver's control and therefore suggested that the Administration to confine the application of the offence only to drink driving and drug driving.

In response, the Administration has advised that the existing legislation does not provide for a sentence which reflects fully the seriousness of physical injuries sustained by victims in traffic accidents. Hence, the Administration proposed to add the offence to provide heavier penalties on a person who drives dangerously and causes grievous bodily harm to another person. The aim is to reflect the more serious nature of the offence and to achieve a stronger deterrent effect, as well as to allow the Court additional sentencing options. The penalties of the proposed new offence are set between dangerous driving and dangerous driving causing death. The Administration has also explained that dangerous driving behaviour includes all inappropriate driving behaviour, such as driving in an opposite direction of the traffic, red light jumping, speeding and road racing, which may result in serious traffic accidents and casualties. The disparity in sentence will continue to exist for all other driving misbehaviour if the application of the offence is to be confined only to drink driving and drug driving.

The Bills Committee also noted that under the common law, "grievous bodily harm" means "really serious bodily harm". It does not necessarily mean permanent or life-threatening injury, but includes non-physical or psychiatric injury. A member suggested that an objective indicator, such as the level of permanent incapacity or the percentage of loss of earning capacity of the victim, should be adopted as the yardstick for determining what would constitute the offence. The Administration has advised that if the level of permanent incapacity is adopted as a yardstick, it would be inconsistent with the definition of grievous bodily harm adopted in wounding cases. It should best be left to the Courts to decide whether grievous bodily harm has been sustained by the injured in traffic accident cases. The Administration will address this issue in the speech to be delivered by the Secretary for Transport and Housing during the

resumption of Second Reading debate on the Bill.

Regarding Clause 18 of the Bill, which provides for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences, the Administration explained that disqualification only starts to run until the expiration of all terms of imprisonment or detention, unless the Court for special reasons decides not to make such a direction. The Bills Committee has expressed concern that a prisoner might be released on parole to attend a wedding or examinations and might be able to drive during the release period. For the avoidance of doubt, the Administration will propose Committee Stage amendments (CSAs) to the Bill to the effect that a person who is released from prison or detention before the expiration of his or her term of imprisonment or detention must be taken to be disqualified when he is on the street and able to drive; and the days when such persons are out on the street should be deducted from the period of disqualification to be served by the person. As a person may be charged and convicted of other offences together with a traffic offence, the Administration will move CSAs to set out precisely that disqualification will only start to run after the person has served all imprisonment terms.

The Bills Committee is very concerned about the recent traffic accidents caused by driving under the influence of drugs, particularly drugs of abuse. Some members have called on the Administration to introduce measures to combat drug driving and consider moving CSAs to include such measures in the Bill. However, some other members opined that the Administration should act swiftly to legislate for drink driving without further delay, and should avoid enacting laws on drug driving hastily before conducting a comprehensive study on the effect of each type of drug on driving behaviour. The Administration has advised that in view of the rising trend of drug driving cases, the Administration has set up a dedicated inter-departmental Working Group early this year to examine the control framework required. It has drawn up initial proposals to combat drug driving and recently completed public consultations on this subject. A report has been made to the Panel on Transport. The Administration plans to introduce a relevant Bill into the Legislative Council in this Legislative Session.

In response to the suggestion of some members, the Administration will

also propose CSAs to include a list of six illicit drugs, under the "zero tolerance" control, which would constitute a circumstance of aggravation in all dangerous driving offences if the driver concerned is found to have taken such drugs.

The Bills Committee supports and thanks the Administration for the amendments proposed in response to its members' concerns.

President, next, I will express the views of the Liberal Party and the transport trade.

President, since the Road Traffic Legislation (Amendment) Ordinance 2008 came into operation on 9 February last year, the police are empowered to conduct random breath tests and in the past 20 months, the police conducted 110 000 breath tests on drivers in random breath test operations and arrested 564 persons after they were found to have an alcohol concentration level above the prescribed limit or for refusal to take the tests. This shows that the deterrent effect of the existing penalties is inadequate, so drink driving can still not be eradicated.

As the traffic accidents caused by drink driving are often very serious and often lead to vehicle crashes and fatalities, not only are the drivers concerned affected, even innocent members of the public are also prone to be injured or killed, sustain lifelong disabilities or lose their loved ones due to these irresponsible drivers, it is understandable that the general public all demand that the Government impose heavy punishments on the offence of drink driving, which is a flagrant disregard for other people's lives.

To further respond to the social demand on eradicating the ignominious behaviour of drink driving, the Administration introduced an Amendment Bill again to propose that heavier penalties on drink driving commensurate with the severity of the consequences of traffic accidents resulting from drink driving be imposed; the minimum period of driving disqualification of dangerous driving offences be increased, and imprisonment and driving disqualification be implemented consecutively. Moreover, the Court is at liberty to rule a higher disqualification period for offenders on conviction of serious traffic offences to enhance deterrence. I support these proposals. The Bill proposes that a penalty system with a three-tier sliding scale based on a driver's alcohol concentration level founded on the principle of "more drunk, heavier punishment"

be introduced. In theory, this proposal is fairer and on the last occasion of amending the drink driving legislation, I already put forward this proposal to the Government, so I am pleased that this proposal has won the support of the Government and is adopted in this Bill. However, in order not to give the public the wrong impression that taking just a little alcoholic drink will only attract light penalties and that it does not matter to drink a little alcoholic beverage, the Administration should step up publicity on the definition of the three-tier penalty system to remind drivers that no matter how much they have drunk, they must not drive if they have drunk alcoholic beverages.

Drink driving is a scourge to the driver as well as to others. Not only will accidents ruin one's life, they may even involve innocent members of the public. The transport trade also fully supports imposing heavier penalties on drink driving to stamp out the black sheep that break the law knowingly by drink driving. Not only are law-abiding drivers complying with the regulations dragged into trouble by these reckless drink-driving drivers, vehicle owners will also face civil claims through no fault of their own. Therefore, when vehicle owners hire drivers, they are already being more stringent and have imposed higher requirements. Some transport companies have even procured breath analysing instruments and demand that drivers undergo tests before starting work. However, nothing is fool-proof and often, vehicle owners would be embroiled in civil claims due to a small group of delinquent and irresponsible drivers. As a result, they cannot sleep or eat with peace of mind and experience great anxiety every day. Some employers or vehicle owners even have to sell their vehicles, properties and spend all their assets to cope with the civil claims. Although some vehicle owners already remind drivers from time to time not to drive after drinking, some drivers still knowingly break the law and behave recklessly, thinking that they can be lucky. How can such instances be eradicated? Since gentle persuasion does not work, I hope the authorities can impose heavier penalties to achieve a deterrent effect. At least, this is the strong view of some members of the transport trade.

When the Administration adjusted the level of the penalties for drink driving, to ensure fairness and consistency in penalties, the level of the penalties for dangerous driving should also be adjusted accordingly since the Administration believes that drink driving often results in dangerous driving. Some members of the trade believe that the penalties for drink driving and those for dangerous driving should be dealt with separately because dangerous driving

can be caused by factors beyond a driver's control. Although clear definitions of "dangerous driving" and "careless driving" have been laid down in the existing legislation, they are concerned that the police may be prone to charge drivers with the more serious offence of "dangerous driving" and that even though drivers may have only committed the offence of "careless driving" in some cases, they will be charged with the offence of "dangerous driving". Therefore, I hope very much that before instituting prosecution, the police will carefully consider various circumstantial factors and make their decisions of prosecution reasonably and justly.

As regards the inclusion of the offence of "dangerous driving causing grievous bodily harm", I believe this is acceptable because it cannot be ruled out that dangerous driving can cause grievous bodily harm. Moreover, under the existing legislation, only two options are available, that is, "dangerous driving" and "dangerous driving causing death". In the event that serious bodily harm is caused to other people in drink driving accidents, it is only possible to make a choice between these two options because if no one was killed, it is not possible to lay the charge of "dangerous driving causing death". Even though the victims have sustained serious injuries, there is no alternative but to press the simple charge of "dangerous driving". However, the penalties for "dangerous driving" are lighter and the maximum term of imprisonment is only three years, so the serious nature of the offence cannot be reflected and the deterrent effect is arguably inadequate. Therefore, it is justified and reasonable to introduce the offence of "dangerous driving causing grievous bodily harm" and this has also responded to the demands of the public for the imposition of heavier penalties on drivers who drives dangerously and causes grievous bodily harm to other people, so as to enhance the deterrent effect. Moreover, I believe that by setting the penalties between "dangerous driving" and "dangerous driving causing death", the present inadequacy in penalties can be addressed.

Since "dangerous driving causing grievous bodily harm" is a serious offence and "grievous bodily harm" does not necessarily mean permanent or life-threatening injury but includes psychiatric injury, it may not be possible for some medical reports to reflect the seriousness of some injuries accurately. For example, it is difficult to observe whiplash injury with the naked eye and even doctors cannot confirm them positively. For this reason, when the police institute the relevant prosecutions, they must deal with them very cautiously and comply with certain codes of prosecution, including taking into consideration the

behaviour of the driver concerned, for example, whether or not he had drunk alcoholic drinks or taken drugs, other circumstantial factors, as well as the causes that eventuated in the accident. Moreover, the advice of the Department of Justice has to be sought before instituting prosecution. Otherwise, instances of wrongly accusing the innocent may arise.

As regards drug driving, although it is beyond the scope of the amendments to the RTO, in the first 10 months of this year, there were already 67 cases of driving after drug abuse, a significant increase compared with the four cases and 11 cases for 2008 and 2009 respectively. Therefore, in the Bills Committee, a member requested the Bureau to address issues like drug driving together in the amendments to the RTO. I wish to reiterate that the transport trade and I are both very concerned about the problem of driving after drug abuse and we also strongly support the Government in clamping down heavily on drug driving.

In fact, in June this year, I organized a forum on combating drink driving and drug driving. Subsequently, when the Administration put forward initial proposals and carried out a consultation on the legislation against drug driving and driving after drug abuse in July, I also held meetings with the trade again. Later on, I also summarized the views of the trade and reflected them in a letter to the Secretary for Transport and Housing. The transport trade also strongly supports the inclusion of illicit drugs under the "zero tolerance" control. However, since medicine is general drug rather than drugs of abuse, the scope involved is rather complicated and if we specify in an across-the-board approach that taking a certain drug constitutes an offence, I am afraid many people in Hong Kong will not be able to drive. Many people will be worried that they cannot drive after taking medicines for flu. This is very important to all motorists in Hong Kong, so we have to study the relevant issues carefully. Therefore, the trade believes that the Administration should deal with the issues of general drug driving and driving after drug abuse separately by legislating against driving after drug abuse first. Drivers who take illicit drugs should be severely punished and the penalties should even be heavier than drink driving to reflect the serious nature of the offence of driving after drug abuse. In fact, drinking alcoholic drinks is not an offence but taking drugs of abuse definitely is. Therefore, to drive after violating the law, thus endangering other people's lives and properties is an aggravating factor. As regards the introduction of preliminary drug tests, that is, impairment test or rapid oral fluid test, the trade does not oppose them so

long as these tests are not abused. Unfortunately, since the authorities claim that the legislation is very complicated, it can be introduced into the Legislative Council only in the second quarter of next year at the earliest.

Although in response to the request of the Bills Committee, the Bureau has already included six kinds of drugs of abuse, namely heroin, "ice", ketamine, cannabis, cocaine and "ecstasy" in the amendments on this occasion and in the event that drivers are found to have taken these drugs of abuse and drive dangerously, the maximum penalties in terms of fine, term of imprisonment and the minimum period of disqualification may all be increased by 50% and the trade has expressed its strong support. Since there is great urgency in combating driving after drug abuse, we believe that this amendment is inadequate and hope that the Government can formally enact legislation to regulate driving after drug abuse as soon as possible to empower the police to carry out rapid impairment test on drivers, so as to combat the crime of driving after drug abuse effectively.

President, I so submit.

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

MR WONG SING-CHI (in Cantonese): President, the Democratic Party thinks that there is a need to immediately deal with the Bill under discussion today.

As Christmas and New Year are drawing in, people will go out having fun during the holidays, and it is understandable that some people who cannot control themselves might take a few more alcoholic drinks. However, as pointed out by many doctors, drinking is hazardous to health. In addition, drink driving will jeopardize the health of other people and even be fatal.

Members should understand the question under discussion today. Although some people think that drinking is an act of pursuing happiness, we should not harm others for the sake of our own happiness.

The Government reminds members of the public in its API that "If you drink, you can't drive". The Road Traffic (Amendment) Bill 2010 under discussion today seeks mainly to impose heavier penalties to punish drink driving

offenders.

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

In fact, alcohol will, to a certain extent, affect the responses and normal judgment of motorists. Moreover, it can create illusions. Many drink-driving drivers often think that accidents will happen only to others. They believe even if they have consumed alcohol, they will still be able to control their vehicles, only that other people are incapable of doing so. In fact, we have seen numerous examples in which many drunken people considered that they could maintain self control in driving, and yet they could not do so in the end.

Information on drivers prosecuted as a result of committing drink driving is as follows: During the past three years, people aged 30 to 39 accounted for 30%, and the trend had continued to rise, from 33% in 2007-2008 to 37% in 2009. The trend for people aged 40 to 49 was also rising, from 23% in 2007 to 27% in 2009.

Despite the decrease in the overall number of drivers prosecuted for drink driving, we should make some effort as we have seen a rising trend in different age groups. This problem is precisely people in these age groups will go out for drinks during major festivals. Not only will alcohol affect their vigilance, it will even cause them to drive deliberately, thereby causing the deaths of other people or inflicting injuries to themselves. Under such circumstances, we think that it is even more imperative to increase the penalties for drink driving offenders.

The Government has put forward several proposals in the Bill and its CSAs. They include: first, providing for minimum driving disqualification periods on conviction according to three tiers of driver's alcohol concentration; second, introducing a new offence of "dangerous driving causing grievous bodily harm" (DDCGBH); third, bringing in drink driving and driving a motor vehicle under the influence of the six specified drugs as circumstances of aggravation in all dangerous driving offences; fourth, providing for the consecutive enforcement of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences; fifth, increasing the minimum period of

driving disqualification of certain offences; and sixth, adding six illicit drugs, namely heroin, ketamine, methylamphetamine, cannabis, cocaine and 3,4-methylenedioxymethamphetamine, to the Bill. The Democratic Party thinks that the Government must put these proposals into implementation.

I will state the views of the Democratic Party on the above proposals *seriatim*. But concerning the CSAs proposed by the Member, I will elaborate the position of the Democratic Party in detail later. Under the existing legislation, the same penalties are imposed regardless of the alcohol concentration in blood. In other words, the amount of alcohol consumed by an individual may not make too big a difference to himself. However, it may mean a grave difference to certain people. This is why the Democratic Party supports a tiered system. A person who drinks more alcohol should know whether he should drive. The stance of the Democratic Party is that people having consumed even one drop of alcohol should not drive because alcohol affects the judgment of motorists. Of course, the amount of alcohol consumed will have different degrees of effect. However, there is a greater need for people having consumed more alcohol to remind themselves not to drive. It is reasonable for the Government to adopt a tiered system to deal with this issue should these people insist on driving.

The second point I would like to raise relates to DDCGBH. I will explain this point jointly with the extension of the minimum disqualification periods for certain offences. According to the Government, DDCGBH, a new offence, can address the public concern about the disparity in penalties for the "dangerous driving causing death" offence and the "dangerous driving" offence. The existing legislation does not provide for corresponding penalties which can fully reflect the degree of bodily harm suffered by victims of traffic accidents. Moreover, in addition to drink driving and drug driving, DDCGBH also applies to other driving offences, such as driving in the wrong direction, red light jumping, speeding and unlawful car racing. We think that the new offence is appropriate.

While the Government has not explained "grievous harm" explicitly in the legislation, it has interpreted the expression in accordance with the common law definition in order to minimize the possibility of acquittals based on sheer technicalities. According to the previous interpretation of "bodily harm" by the Court, "grievous bodily harm" should be interpreted, in the normal sense, as "really serious bodily harm". It will be undesirable to attempt to further define

this expression. Moreover, there are two additional views on this impression, namely "grievous bodily harm does not necessarily mean permanent injury or danger" and "bodily harm covers psychiatric injury". In this regard, the Deputy President has given a clear explanation in her speech earlier.

We can note from the above information about the Court that "grievous harm" covers both physical injury and psychiatric injury, and it is not determined in terms of the period during which the injury persists. In other words, it does not necessarily mean permanent injury. What matters is the degree of injury. This can make drink driving or drug driving drivers understand and become aware that DDCGBH is not confined to certain degrees of injury, such as broken limbs, sustained in car accidents. Even if the harm inflicted on the victims can be rectified or the victims can recover, drink driving or drug driving drivers might still have to pay a heavy price if the victims suffer from mental injury or constant fears, such as reluctance to cross the roads, fear of alcoholics or other psychological injuries. I hope the discussion today can make drink-driving drivers better understand the responsibility they should bear.

I believe the Government's proposal of extending the minimum disqualification periods for dangerous driving causing death and dangerous driving can produce a deterrent effect on drink driving drivers, but is it adequate? I will discuss this in detail during the debate on the amendments later on. All in all, we consider that these penalties should be increased correspondingly. We also support the Government, in addition to increasing the penalties for dangerous driving, dangerous driving causing death or injury, increasing the penalties by 50% for driving after drug abuse and drink driving. This will achieve a warning or deterrent effect on drink driving or drug driving drivers.

It is worth mentioning that the Government has added six types of illicit drugs to the Bill, made driving offences committed after the taking of any of these drugs a circumstance of aggravation, and proposed increasing the penalties for circumstances of aggravation by 50%, in order to combat drug driving and drink driving more effectively. Unfortunately, this piece of legislation is far from comprehensive, for it can only achieve a deterrent effect. There are still loopholes in the existing legislation in terms of actual enforcement, examination of motorists to determine whether they have taken any of these six types of drugs or the submission of evidence to prove drug abuse.

The Democratic Party supports this amendment and calls on the

Government to expeditiously introduce legislative amendments to enforce the law against drug driving or include the testing of drug driving in the legislation to be enacted in future for in-depth discussions, as well as enacting enforceable legislation to prohibit drug driving. I know that the Government has already tabled a Bill to this effect. I hope Members and the Government can expeditiously deal with this Bill in order to bring drug driving drivers and people jeopardizing the safety of others to justice and achieve a deterrent effect.

Deputy President, the Democratic Party supports in principle the general direction of the Bill. We will continue to discuss in detail the penalties and disqualification periods in the debate on the amendments to be held later on. Thank you, Deputy President.

MR JEFFREY LAM (in Cantonese): Deputy President, the amendments to this Bill can be said to have been triggered by a fatal tragedy which occurred in Lok Ma Chau on the 28th day of the lunar month in January 2009, in which six people were killed. Let me quote from the mitigation letter written by the driver, LAW Siu-kuen, who was convicted of drink driving, to the Judge: "The grave mistake made by me has hurt the deceased and their family members. I dare not imagine what will become of them who have lost their breadwinners. I am prepared to take up full responsibility for the occurrence and consequences of this incident. I hope motorists can learn a lesson from it, that drink driving may have lasting consequences for yourself and others." (End of quote)

Deputy President, even one traffic accident is too many, not to mention that drink driving can be avoided. The quote by me precisely reflects the irremediable tragedy caused by drink driving, which has shattered several happy families.

This Bill introduces a three-tier system for the penalties for drink driving, whereby the higher the alcohol concentration, the longer the minimum disqualification period. Meanwhile, the imprisonment and disqualification terms shall not be enforced concurrently for drivers on a second or subsequent conviction of serious traffic offences, with their disqualification periods commencing at the conclusion of their imprisonment. It is hoped that this can prohibit them from driving on the roads for a long time, thereby achieving a

greater deterrent effect.

Drink driving is like planting a time bomb on the road. According to the figures provided by the police, 1 036 persons were arrested for drink driving during the first 11 months this year, more than the 1 024 persons arrested for the whole of last year. It also means that an average of three persons were arrested daily for drink driving. Therefore, I support in principle increasing the penalties for drink driving. However, I also note with concern the thinking of some motorists that consuming a small amount of alcohol is acceptable and their mentality of "taking chances". I therefore hope that the authorities can convey a clear message to the public, that drink driving makes no distinction in terms of gravity. The consumption of alcohol, whether in large or small amounts, might lead to traffic accidents, cause death and injury and have lasting consequences for oneself and others. Therefore, one should not take any chances.

Meanwhile, I hope that the authorities can adopt a newer and more direct and easily comprehensive approach to strike home the message that one should not drive after drinking. The amounts of alcohol absorbed by people of different ages, genders, weights or physiques after drinking a mug of beer or half a cup of liquor may vary. The speed of alcohol being absorbed by the body and its effect on the brain will also vary from one person to another. There are no criterion whereby we can calculate when the alcohol will begin to take effect, how long it will take for the effect to withdraw and how far it will affect the judgment of motorists. A lot of wrong information can also be found on the Internet. It includes telling people to drink strong tea or coffee to speed up the discharge of alcohol from the body. It is therefore imperative for the authorities to clarify such incorrect information to prevent people from believing and following it.

I believe the introduction of the DDCGBH provision can provide the Court with one more sentencing option between dangerous driving and dangerous driving causing death, so that the physical and psychological traumas suffered by the victims of accidents and their family members can also be taken into account.

Nevertheless, some drivers have reflected their concern to me, about them being easily caught by the law for they have no idea how the relevant standards are determined. For instance, will drivers be considered to have committed the DDCGBH offence should a passenger twist and injure his back or suffer from a

joint dislocation during a traffic accident? I recall during the scrutiny of the Bill, the authorities explained that according to common law, "grievous bodily harm" should be interpreted as "really serious bodily harm", though not necessarily permanent or life-threatening injury. I believe this concept is relatively abstract to many drivers. I hope the Secretary can give a clearer response today to dispel their misgivings.

The Bill has also introduced amendments in relation to drug driving. If drivers involved in dangerous driving offences are found to have taken any of the six specified types of drugs, even a very small amount, they will come under "zero tolerance" control. The penalties for the relevant offences will also be increased.

Deputy President, the road can be very dangerous. We must not tolerate "drunken drivers". Moreover, we must clamp down on "drivers under the influence of hallucinogenic drugs". According to the information provided by the police, the numbers of arrest made in 2008 and 2009 for drug driving were six and 11 respectively. However, the number of such arrests made during the first 10 months of this year has already surged to 67. The situation has indeed shocked people in various sectors of the community. We can read in the newspapers every month news reports with headlines reading "a driver having snorted ketamine operates his vehicle like performing a dragon dance" or "a driver under the influence of hallucinogenic drug swinging on the road". Hence, it is a matter of great urgency for "zero tolerance" legislation to be enacted to curb drug driving. I believe this is indisputable.

However, what worries the public most is that a lot of over-the-counter medicines, which are sold in supermarkets or without doctors' prescriptions, specify that the medicines will cause "drowsiness" and people taking them are unfit for operating machinery or driving. As a result, many motorists are worried that they cannot drive after taking one or two cold tablets or drinking some cough syrup, or they might break the law. This is even more worrying to professional drivers as they will feel unwell if they do not take any medicine, but if they do, they might not be able to go to work. Going to consult a doctor will also cost them a considerable amount of money. They are terribly afraid of being thrown out of work.

As the slogan goes, "Zero Accidents on the Road, Hong Kong's Goal". I

hope motorists can give due regard to the safety of road users and refrain from driving after taking medicine which will affect their ability to drive, because "only those who give due regard to themselves and others are upper-class people". There is also a need for healthcare personnel and pharmaceutical manufacturers to clearly label the possible side-effects of medicines.

I would also like to emphasize that introducing this amendment is only the first step towards drug driving legislation. The authorities should continue to proceed with the remaining steps and honour their pledge to Members by tabling a comprehensive drug driving Bill to the Legislative Council during the second half of this Legislative Session and ensuring that accurate testing equipment will be made available by then for testing the six types of illicit drugs and police officers are adequately trained to conduct drug impairment test on drivers suspected of drug driving with a view to combating this aggravating crime in a comprehensive manner.

Mr Andrew CHENG has proposed in his CSAs that the minimum driving disqualification period on conviction of dangerous driving causing death as well as on second/subsequent conviction for tier 3 should be set at life disqualification.

I understand that Mr Andrew CHENG intends to use "life disqualification" as an ultimate penalty to punish drink driving drivers in the hope of achieving the maximum deterrence. Drink driving drivers are indeed dangerous people. Like planting a time bomb on the road, drink driving will also lead to deaths and injuries, as well as broken families. Undoubtedly, repeat offenders are at even greater fault because they have obviously not learnt from past lessons. However, the existing Road Traffic Ordinance has indeed not provided for life disqualification as the minimum driving disqualification period. Past precedents also show that the Court rarely handed down life disqualification. Is there a need for imposing life disqualification as if sentencing drivers to death penalty? I believe various sectors of the community need to discuss this further. Therefore, I have reservations about the relevant CSAs.

Deputy President, I so submit.

MR CHEUNG HOK-MING (in Cantonese): Deputy President, after case after

case of serious and fatal traffic accident caused by drink driving, the public is immensely repulsive to acts of drink driving. Unfortunately, there are still some irresponsible drivers who have not learnt the lesson and this gives people an impression that tolerating drink driving is tantamount to neglect of public safety. Therefore, the Administration must impose heavier punishment and lay down penalties with deterrent effect. It must also work through extensive educational and publicity efforts before drivers can get rid of their mentality of hoping to get away with drink driving by sheer luck.

In January 2009 the Administration introduced a number of measures into the Road Traffic Ordinance to combat drink driving. Drivers on first conviction of drink driving will be disqualified from driving for not less than three months and they are required to attend a driving improvement course on a mandatory basis. Subsequent conviction will lead to a disqualification period of at least two years. Ever since the introduction of these measures, traffic accidents involving drink driving dropped 67% in 2009 as compared to 2008. When we look up the number of drivers prosecuted for drink-driving offences in recent years, we can notice a drop from 1 218 cases in 2008 to 804 cases in 2009. And the number has dropped to 293 cases during the period from January to May this year. It can be seen clearly that ever since the penalty of disqualifying convicted drivers from driving was introduced in 2009, the measure has helped lower the number of cases involving drink driving. However, for this small number of drivers who are callous to the law and will not abide by it, the authorities must enhance the penalties before greater deterrent effect can be achieved.

In the amendments introduced by the Administration on this occasion, proposals are made in respect of a number of areas. First, the Administration has suggested in the draft provisions setting up a three-tier progressive penalty system in relation to the proportion of alcohol in the breath, blood and urine of the driver. The higher the alcohol concentration level is, the longer the disqualification period will be. This is consistent with the stand of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) in calling for a law which specifies a system whereby the higher the prescribed limit of alcohol is exceeded, the heavier the penalty will be. And this progressive system of penalties in tiers shows the gravity of drink-driving offences and the unequivocal responsibilities involved.

Second, in the existing laws on dangerous driving invoked to prosecute acts

of serious drink driving, only two offences are provided, namely, "dangerous driving" and "dangerous driving causing death". In order that society is more conscious of dangerous driving and the responsibilities that offenders must assume, the DAB has suggested that the offence of "dangerous driving causing grievous bodily harm" be introduced. This proposal is embodied in the amendments proposed on this occasion. We welcome this move made by the Government.

In addition, the prison term of the convicted person is currently enforced concurrently with his disqualification period. This means that the offender concerned does not need and cannot drive while he is in prison. And if these are enforced concurrently, this means that the offender, once out of jail, can resume his driving qualification at once. This has caused strong opposition from society. It is generally thought that the disqualification period is too short. In the new proposals, it is provided clearly that the prison term and the disqualification period of the convicted driver are to be enforced separately. This will render in the offender unable to resume his driving licence immediately upon release from the prison and he cannot drive at once. This amendment has to a great extent responded to the views expressed by the public.

Deputy President, in order to combat drink driving effectively, merely increasing the penalties alone will undoubtedly achieve some deterrent effect right away, but it is still difficult to eliminate the mindset of a small number of irresponsible drivers trying to test their luck. Hence the DAB thinks the group of drivers most likely to commit drink-driving offences must be targeted. As evident in the statistics of the past few years, drivers prosecuted for drink driving aged between 30 and 49 account for about 60% of the total number. Drivers aged between 20 and 29 take up some 20%. We can see easily that those belonging to these age groups and are in employment are most likely to commit drink-driving offences.

The authorities should therefore study in depth the lifestyle and driving behaviour of these groups of drivers and introduce measures to address the problem. Educational and publicity efforts should be stepped up and all public transport and transport trades should be urged to prescribe requirements prohibiting the intake of alcohol by professional drivers while at work; and bars, restaurants and wine merchants should be encouraged to assist in the promotional

efforts to inculcate this idea of self-discipline in drivers.

Deputy President, Hong Kong can borrow the practices of the transport trades in other places and install an alcohol testing device on motor vehicles, such that drivers can start the vehicles only if they can pass the alcohol test. The Government may undertake an in-depth study in this regard and consider the feasibility of introducing an alcohol testing device in the public transport and transport trades in Hong Kong.

With these remarks, Deputy President, I support the Bill and the amendments introduced by the Administration. Thank you, Deputy President.

MR IP WAI-MING (in Cantonese): Deputy President, the Road Traffic (Amendment) Bill 2010 seeks mainly to introduce relevant penalties for drink driving, drug driving and dangerous driving. An offence of "dangerous driving causing grievous bodily harm" (DDCGBH) is brought in under dangerous driving offences.

During the scrutiny of the Bill, the Bills Committee has heard the views of the trades concerned, and as a matter of fact, many people from the transport trade are still greatly worried by the amendments proposed by the Government. In view of that, I hope to discuss the aspects of combating drink driving, DDCGBH and enforcement standards.

With respect to the penalties for drink driving, the Government has since 2009 been enforcing a new law to combat drink driving, raising the relevant penalties and requiring the drivers concerned to attend driving improvement courses on a mandatory basis. The result is that drink-driving related traffic accidents dropped substantially from 701 cases in 2008 to 287 in 2009. In the first four months of this year, there were 72 cases of drink-driving related traffic accidents. This figure shows that the existing law has enhanced the deterrent effect concerned.

Of course, we think it is only right that heavier penalties should be imposed on drivers who are in blatant defiance of the law and public safety and who are irresponsible. This is also the common aspiration of the people. We agree that

heavier penalties should be imposed on unlawful elements and irresponsible road users. But for drivers who do not drink drive and drug drive, why should they be subject to such heavy penalties? Some of the people from the trades concerned have doubts, especially with respect to dangerous driving. The Government proposes to bring in an offence called DDCGBH between the offences of "dangerous driving" and "dangerous driving causing death". The trades concerned have great worries about this amendment. So in the meetings of Bills Committee, I have asked the Government to draw up a fuller definition for the term "grievous bodily harm".

Actually, with respect to the proposal made by the Government, the meaning of "grievous bodily harm" does not necessarily mean permanent injury or injury that is life threatening. It includes non-physical injury or psychiatric injury. Some people from the trades concerned tell us that they think the definition of psychiatric injury is still not clear. Therefore, many drivers are worried that it would be very easy for them to break the law inadvertently. Furthermore, during the deliberations of the Bills Committee, although the Government in its papers gave explanations to past cases in this aspect to delineate the definition of "grievous bodily harm", the trades concerned remain of the view that they do not have a clear understanding of the meaning of this offence. When we hear such comments from the trade unions concerned, we really doubt if the authorities have communicated adequately with the trades before seeking to amend the relevant laws. We even doubt if these proposals by the Government have been clearly explained to the trades concerned. Why do the trades concerned still hold different opinions about them? We hope that the Government can respond later to the question of what work has been done to communicate with the trades concerned. At the same time, we hope that after the law is passed, the authorities should step up communication with the trades and dispel their worries about the so-called "grievous bodily harm".

According to the letter from the Motor Transport Workers General Union handed to us this morning at the entrance of the Legislative Council Building, their experience is that when law-enforcement officers instigate prosecution, they would prosecute the drivers for some heavier offences. The General Union points out that currently, even in a traffic accident in which no death is caused, the police will as a general rule prosecute drivers for the offence of dangerous driving. In 2009, the trades were worried about the prosecution policy as practised by the authorities. Once this law was passed, prosecutions would be

made under the offence of dangerous driving. And prosecutions may even be made often under the offence of DDCGBH.

The General Union cited an example that happened at the beginning of 2009 in which an elderly passenger fell while riding on a bus and subsequently sustained injuries and died. The police did not make any investigation and prosecuted the driver for the offence of dangerous driving causing death. It was only after much efforts by the General Union in negotiating and rendering assistance to the driver concerned that the Government rectified the mistake. But the bus captain had been wrongly accused for a long time and he suffered much mental distress.

There are many professional drivers driving on the roads. They include drivers of buses, taxis and minibuses. When they drive on the roads, they know that the lives of many people are in their hands and so they will drive very carefully. This is in itself enormous stress at work. As the definition of this new offence is still unclear, they think that it will add more to such stress and cause a grave impact on their mental and physical health. Our General Union is very concerned about this and we hope that the Government can dispel the apprehensions of the trades concerned.

Moreover, there are many kinds of variables on the roads that these professional drivers have to face every day, such as road design, the design of traffic signals, the behaviour of other road users, the elements, and so on. These can lead to all kinds of traffic accidents. But why in terms of prosecution do the drivers have this impression that they are always prosecuted for more serious offences? So they hope that there can be a review of the existing prosecution policy so that they can be accorded fairer treatment.

Deputy President, according to the monthly traffic accident statistics released by the police in the various police districts, the total number of traffic accidents fell from 15 315 in 2007 to 14 316 in 2009. This shows that traffic accident cases are constantly on the decline and it can also be seen that in amending the Road Traffic Ordinance the Government has introduced effective measures to combat unlawful drivers. Of course, we think that even one traffic accident is too many. But regarding the new penalties for dangerous driving, we hold that no large-scale consultation exercise was held by the Government prior

to this amendment exercise. When consultation is so inadequate, some people from the trades concerned therefore disagree with the amendments proposed by the Government. The amendments will also add to the pressure at work experienced by law-abiding professional drivers. But has the Government offered any effective improvement measures? Therefore, the Hong Kong Federation of Trade Unions will abstain from voting on the amendments introduced by the Government. Also, with respect to the amendments proposed by Mr Andrew CHENG, as the trades concerned were not consulted, we will also abstain from voting on these amendments.

Deputy President, I so submit.

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

MR RONNY TONG (in Cantonese): Deputy President, both drink driving and drug driving are irresponsible acts, and the most important point about them is that under certain circumstances, these acts are most likely to jeopardize the safety of other road users and victimize the innocent.

During the past two years, we could see the frequent occurrence of some very unfortunate and serious traffic accidents, and many of them were related to drink driving. Therefore, there are strong voices in society pointing out that our laws are inadequate in prosecuting drink driving and drug driving offenders. The amendments introduced by the Government today are some sort of a response to such calls. There are demands that penalties should be made stiffer or that the Ordinance concerned should impose more stringent regulation. But to what extent should this be strengthened? This will have to depend on the political judgement of the Government and Members. It is because often times we cannot get an answer by using some excessively scientific methods of investigation. At the end of the day, we have to make a political judgement which is consistent with our conscience in determining what the proper extent is. Of course, should there be changes in the views of society in future, we can revise the amendments passed today.

Deputy President, the current amendments to the Ordinance are actually

proposing four major changes in law. The first change is to introduce a three-tier system for the drink-driving offences. The main function of this three-tier system is to impose heavier penalties. While penalties are made heavier, there is a gradual increase in the severity of the penalties depending on differences in the results of alcohol tests. In my opinion, while increasing the penalties of drink driving, the adoption of this three-tier system to deal with different degrees of drink driving cases would be an appropriate approach to take. We agree to that. The adoption of a three-tier system in the Amendment Bill and increasing the penalties for drink driving are an appropriate course of action.

Deputy President, the second major change is the introduction of the offence of "dangerous driving causing grievous bodily harm" (DDCGBH). Deputy President, the effect of this amendment is to plug a loophole in law. For all along, many people think that there is an obvious loophole in the Road Traffic Ordinance, namely the offence of dangerous driving carries no consideration of the aggravating factor of the harm done to other road users. Deputy President, an issue aroused some controversy during the deliberations of the Bill, and that is, the definition of "grievous bodily harm". In our opinion, if we were to use a flawless and comprehensive statement to define what is meant by "grievous bodily harm", it would be to a certain extent a futile endeavour. Also, we should respect the different views on the extent of harm done. And with respect to this divergence of views, the Courts may make a slight adjustment from time to time. As to the expression of "grievous bodily harm", there are quite a number of precedents and principles to deal with it in other laws, especially in those related to criminal liability. And it is because we also use the same expression in these laws that we have these principles and precedents. So we can invoke these principles, laws and precedents to determine under what circumstances we can prove that some grievous bodily harm has been inflicted on someone.

Although at first I had some reservations about making this more explicit, I was persuaded at last to agree that it would be an appropriate approach to take under the present circumstances and this would also be acceptable. Of course, we do not want to see that because of this dispute over some minor details that we will miss this opportunity of plugging a loophole in law.

Deputy President, the third major amendment is to introduce the

mechanism whereby the prison term and disqualification period will be enforced separately. An issue which had caused a dispute during our deliberations was how these two different forms of punishment could be articulated. One is imprisonment and the other is disqualification from driving. At last, we adopted a very practical approach and, that is, the day the defendant is released, be it in the morning or at night, will be taken as the starting point of his disqualification period. I consider this approach consistent with the realistic situation. But we have to note that when the Judge is to make a judgement, he will consider the length of the disqualification period as a whole. It is because when someone is jailed, it is certain that he is unable to drive. And if he is disqualified from driving after he is released from prison, then the disqualification period should include the time he is in prison. In other words, the period of time in which he is disqualified from driving would have to be made longer to a certain extent. And for such a serious traffic offence, we would think that it is appropriate to increase the disqualification period by resorting to such means. We believe this would be acceptable to society as well.

We therefore agree to the amendment proposed by the Government in this regard. I would also like to point out that a large number of proposals had been considered by the Government in this regard and various opinions had also been heard before this amendment came along as a result. I commend on the work done.

Deputy President, some points of contention may appear when the amendments are put to the vote today. Generally speaking, as we have said, the effect of the Bill is to raise uniformly the penalties for offences related to drink driving and drug driving and the rate of increase in the penalties is not a minor adjustment but a heavy rate. This could be due to the belief that draconian laws should be used at times of disorder. Given the present circumstances, I think that this is appropriate.

During our scrutiny of the Bill, however, some Honourable colleagues thought that the Government had not been thorough in the amendments proposed. Also because of a couple of serious traffic accidents that happened at that time, there was a shift in public opinion. I think that the enactment of any law should not be geared towards catering for the present or the past circumstances, but the enactment of laws should be geared for a long period of time. This is because laws should not be changed easily. Hence if in any given time when certain special circumstances arise and prompt us to make the law more stringent, this

would not be a sensible approach to take. We have a saying called "hard case makes bad law" which is found in the judgements under the common law system. When we come across some facts of a case which can be called tragic, the natural reaction of people would be to sympathize with the victims. This is especially the case when the Judge deals with the case with a mentality of helping the weak. The Judge may then be inclined towards the victims. And a principle in law may be set and this principle may be found to be not so desirable in future. This is a reminder for everyone working in the field of law. Even so, we have to strike a proper balance. I think that the amendment proposed by Mr Andrew CHENG is not completely way overboard or not reasonable at all. I believe we should be concerned about public sentiments in our society now. Then we have to give regard to whether or not this amendment would lead to any injustice or anything illogical.

Let us look again at the amendment proposed by Mr Andrew CHENG. As I have said, he has increased the severity of the punishment meted out for all offences by 50% to 100%. In his amendment, there is a point which we think is rather difficult to accept and, that is, with respect to the minimum penalty under the three-tier system, as in the third tier, Mr Andrew CHENG proposes that a disqualification period of at least three years should be imposed on those first-time offenders and disqualification for life upon subsequent conviction. Leaving aside the point about disqualification from driving for life is too severe or not, even without this point, if we look at the minimum penalty for those who refuse to take a breathlyser test, we would have the impression that it is a bit not logical. And it may even lead to some undesirable conditions too. This is because what Mr Andrew CHENG suggests is that on first conviction, if the minimum disqualification period is three years for those who refuse to perform a breathlyser test, and if the alcohol concentration exceeds the prescribed limit for the third tier, that would mean that the penalty a person would receive if he refuses to perform a breathlyser test would be less severe than the penalty he would get if he agrees to take the breathlyser test. That I think is illogical. Why? We think that the penalty for those who refuse to perform a breathlyser test should at least be equal to the penalty he will get ultimately if he is convicted or may even be more severe. Only then would deterrent effect be achieved to make people agree to take such breathalyser tests. For if not, if a person suspects that the penalty he gets if he takes a breathlyser test is far more severe than the penalty he will otherwise get if he refuses, that would encourage him indirectly to refuse to take such a test. That will not be fair to both the person

concerned and the criminal code as a whole.

Next, let us look at the subsequent offences. Mr Andrew CHENG's amendment suggests subsequent offenders who refuse to take breathlyser tests shall be subject to a minimum disqualification period of at least 10 years. But like what I have said, if the alcohol concentration reaches the prescribed limit for the third tier, the minimum penalty for subsequent offenders actually, we should not be talking about minimum penalties, the penalty for subsequent offenders is disqualification from driving for life. We cannot say that this is the minimum penalty. For unless the Court can ban you from driving for the next life, the only penalty possible is to ban you from driving in this life. Deputy President, with respect to this, we have been talking about minimum penalties, but at common law, minimum penalties actually circumscribe the Judge in arriving at a judgement as appropriate while considering the seriousness of a case. As a worker in common law, I always believe that a Judge will hand down a judgement according to his understanding of the case before him. And that would be a reasonable and more acceptable thing. Hence I am a little bit hesitant about raising the minimum penalties substantially.

Deputy President, if we accept the suggestions made by Mr Andrew CHENG in his amendment on the three-tier system while not accepting his suggestions about refusing to take the breathlyser test, then what would be the result? The result is that things may get even worse, because in the amendment introduced by the Government, a first-time offender is only disqualified for two years, and five years on subsequent conviction. So if we accept Mr Andrew CHENG's amendment to the three-tier system while not accepting his amendment to the breathlyser test, the situation will be even worse than what I have just said. Therefore, the only option left for us is to not accept Mr Andrew CHENG's amendment to the three-tier system of penalties while accepting his amendment to the refusal to take breathlyser tests. This is because the latter amendment will mete out a severer penalty than those whose alcohol concentration exceeds the prescribed limit. In this way, the unjust and illogical situation described by me will be out of the question.

Deputy President, as for the case of inflicting grievous bodily harm or causing death, I would think that it is proper to impose a severer punishment and it meets the expectations of society in this regard. Hence with respect to this,

the Civic Party will lend it its support. Thank you, Deputy President.

MR ALBERT CHAN (in Cantonese): Deputy President, with respect to the general direction of the Government in amending the Ordinance and increasing the penalties, the League of Social Democrats (LSD) agrees and thinks that this should be done and done quickly. But the penalties considered by the Government for drink driving and reckless driving causing death are still different from the suggestions we made some years ago. We regret that this should have happened and we are unhappy about it. Deputy President, at the time when the Government conducted a consultation exercise, the LSD had pointed out clearly that reckless driving and drink driving causing death are no different from manslaughter in effect and in terms the original intent of the law concerned.

At that time, I cited an example and that was, a drunken man wielding a gun or a knife and his reckless behaviour led to the death of some people. That person should be charged with manslaughter. The situation is tantamount to someone driving a car recklessly when he is drunk. As a matter of fact, someone who drives a car recklessly would have a greater chance of harming and killing people than someone who wields a knife. But unfortunately the Government completely neglected this fact after the consultation exercise.

Deputy President, the only comfort I could find was that although at the time when we held our discussions, Mainland China had not enacted any laws on this issue, the way it dealt with the problem of drink driving causing death later was surprisingly the same as the suggestions made by the LSD. In the Mainland now, the penalty for drink driving causing death is treated in the same way as manslaughter. It is really surprising to note that the approach taken by the Communist Party of China can be the same as the proposal made by the LSD. But the Hong Kong Government gave no heed after hearing our view. It insisted on the practice as it is doing now. I think the Government should review this offence, for as long as this offence is not treated as manslaughter, the rich people can resort to using the legal proceedings and they can even use money to settle the case or rectify their wrongs. Manslaughter is not unique to any social class. If the Government does not regard reckless or drink driving causing death as manslaughter, I am sure there would still be bias. I wish to put

on record the discontent of the LSD in this regard.

Deputy President, another point is the amendments proposed by Mr Andrew CHENG. Of course, I agree and understand the issues raised by Mr Andrew CHENG regarding drink driving or dangerous driving causing death. With respect to the general direction and line of thinking, the LSD also agrees with Mr Andrew CHENG's amendments. But if we look at the results in practice, we would have some worries, for often the relevant offences are punishable by disqualification from driving.

Deputy President, I would like to explain clearly that there can be many ways of meting out punishment. For example, as we pointed out in the Bills Committee, the punishment for drink driving in the United States is often immediate imprisonment. As a matter of fact, immediate imprisonment is the fairest for all social classes, for irrespective of your wealth and social status, provided you are caught drink driving, you will be put in jail for seven days immediately in some states if the case is serious.

So irrespective of whether you are a billionaire and the car you drive is a Lamborghini or whatever, provided that you have drink driven, you will be put in jail for seven days immediately. There is no fine to be paid and money cannot be paid in lieu of imprisonment. But if disqualification from driving is handed down as a penalty, a disqualification period of six months will be applied to the rich as well as the professional drivers. This appears to be fair enough — for they are all sentenced to a disqualification period of six months. But the rich people can hire a driver and the sentence will not affect their living. For professional drivers, if they get this sentence, their family income will be affected.

Of course, Mr Andrew CHENG can say that professional drivers have a greater responsibility and they should not break the law if they do not want their living and job affected. However, if the very nature of the punishment is related to their job, social status and income, then the deterrent effect for the rich people will be smaller. This is a kind of bias in social class and discrimination. This is unacceptable to the LSD. So I hope Mr Andrew CHENG will understand that we agree with his general direction and the intention to increase punishment. But with respect to the method of punishment, as I have said in my analysis just

now, there is some bias in social class. We cannot accept this. Therefore, when the amendments are put to the vote later on, it would be difficult for us to support his amendments.

This Bill will certainly be passed today. I hope very much that after the passage of this Bill, the Government will undertake a thorough review some time later. The review should cover the two issues pointed out by me just now. One is the offences of reckless driving and drink driving causing death. I cannot see what justification the Government has got to evade and not agree that these offences are the same as manslaughter because all these offences result in loss of life. There is no reason why someone who kills a person with a knife after drinking and someone who drinks, drives and hits someone and kills him will not be treated in the same way. This is totally incomprehensible and inexplicable in logic and thinking. Certainly, there are historical factors. At the time when cars were first invented, they were the playthings of the bourgeoisie and the rich. They were the privileged class and as a tradition, laws would protect and be kind to this class. But today, there is no reason why this privileged class should be protected. Furthermore, this social class is getting more and more common. So this kind of thinking must be shattered as a matter of principle, both in theory and in practice.

The second issue is penalties. As I have said, the penalties proposed by the Government will in turn lead to class discrimination. This applies especially to the fact that the impact on professional drivers and rich drivers are entirely different. This will lead to class discrimination in the penalties prescribed by the law. Certainly, this mindset of colluding with the business, transfer of interests, tilting towards the giant consortia, and so on, is found in the Government. It is also found in taxation, economic policies and even provisions regarding penalties for traffic offences. We can see this prevailing mindset, and this bias in favour of the rich and powerful are so obvious. When policies, laws and provisions on penalties seem to mete out the same penalties to all people, but the practical effects on people of different occupations and backgrounds are different, this will result in class discrimination and bias. This is the hypocrisy of the Government that I wish to point out.

MR PAUL CHAN (in Cantonese): Deputy President, let me make a declaration

first. I used to be a member of the Transport Advisory Committee. I have a driving licence and I do drive, and I drink, too.

Deputy President, this Council has, in a short period of three years, twice amended the provisions on dangerous driving and drink driving in the Road Traffic Ordinance. This has, to a certain extent, reflected the seriousness of dangerous driving and drink driving, and the urgency for the Government to introduce legislative amendments to enhance road safety.

On this past Sunday, an accident occurred in Sai Kung involving a minibus driver suspected of drink driving and injuring seven people including the driver and passengers. Fortunately, none of them suffered life-threatening injuries. The driver took the alcohol test and was found to have an alcohol concentration level exceeding the limit by 100%, which means that this was another instance of drink driving offence.

Deputy President, in citing this traffic accident as an example, I wish to point out that cases of drink driving do occur from time to time, and I all the more wish to point out that the police revealed on that day that 1 036 drivers had been arrested for suspected drink driving in the first 11 months of this year, representing an increase of 12% over the 926 arrests in the corresponding period of last year.

What is reflected by these figures? Deputy President, as I said at the beginning of my speech, the Legislative Council passed the amendments to the Road Traffic Ordinance in 2008 to raise the penalties for dangerous driving and drink driving offences. Despite that the number of drivers prosecuted for drink driving in 2009 was one third less than that in 2008 according to a paper submitted by the Government to the Legislative Council, there were still 804 drivers being prosecuted. This year, 293 drivers were prosecuted for drink driving in the first five months and on this basis, we can infer that there may be over 700 drivers being prosecuted for drink driving in the whole year of 2010.

Deputy President, we are debating the Road Traffic (Amendment) Bill 2010 (the Bill) today, and many colleagues mentioned earlier the serious traffic accident involving six deaths caused by a drink driver in Lok Ma Chau just before the Chinese New Year last year, the traffic accident in which a good teacher was killed after being knocked down by a drink driver in Sau Mau Ping on Christmas

eve last year, and the traffic accident in which an intoxicated Australian student seized a taxi and committed drink driving, resulting in the death of the taxi-driver in the middle of last year. The drivers involved in these accidents were sentenced to imprisonment from four to six years. I noticed that the family of the deceased and also many public opinions considered the penalty too lenient and expressed disappointment at that time.

Deputy President, on the other hand, I also noticed that the Judge, in considering the sentence, had cited a case heard by the Court of Appeal in the United Kingdom and said (I quote), "We wish to stress that human life cannot be restored, nor can its loss be measured by the length of a prison sentence. We recognize that no term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish." (End of quote)

In spite of this, a human life is a human life. Nobody has the right to take away the life of another person. What is more, if a driver committed dangerous driving or drink driving purely for his own pleasure to the neglect of the consequences, resulting in other road users being injured or even killed innocently, these unfortunate incidents will inflict harm not only on these other road users but also their beloved families, friends and relatives, and the accident will take away not only the life of just one person, but also the living and lives of people around the victim.

Deputy President, please allow me to cite the words of an elderly, Mr FUNG, the father of one of the persons killed in the Lok Ma Chau accident, when he was interviewed by the press. He said, "Six lives are worth just six years of imprisonment. This is much too lenient indeed." According to the elder sister of the youngest victim in this accident, their mother was hit the hardest and she was so grief-stricken that she lost weight, with her health conditions deteriorating as she suffered from more ailments. From this we can see that drink driving can cause endless pain to the surviving relatives and friends. Therefore, although the remarks made the Judge have a point, I support the legislative amendments proposed by the Government to raise penalties in order to deter drink driving and other inappropriate driving behaviour.

Having said that, Deputy President, some of the amendments proposed by

the Government are too conservative. I am a driver myself. I attach great importance to road safety and consider it very serious when other drivers neglect road safety or even commit drink driving. Let me cite as an example the amendment proposed by the Government to the disqualification period for drink driving. The Government proposed that the disqualification period should remain unchanged at a minimum of six months on first conviction, while that for a second and subsequent conviction will be increased from 18 months to two years. I consider the proposed penalty too light, and the rate of increase is not resolute enough and cannot reflect the seriousness of traffic offences involving dangerous driving.

For cases of dangerous driving causing grievous bodily harm and even death, I think it is only more justifiable to impose a heavy penalty on the offenders. The Government said that the proposed legislative amendments are already draconian, citing the example that a driver who committed dangerous driving causing death is liable to a disqualification period of as long as 22 years. However, the preconditions for meting out this level of penalty are that the driver is a repeat offender with the proportion of alcohol in his body reaching tier 3 at the time of committing the offence.

Deputy President, although the Government argued that the public has not been consulted on Mr Andrew CHENG's proposal on raising the penalties, I would like to ask this: Even if consultation has been conducted, does it mean that there will be an opinion entirely agreeable to all? I think even if comprehensive consultation has been conducted, it is still inevitable that there will be different opinions, especially from industries with vested interest in this. While the Government has cited the example that the disqualification period can be as long as 22 years, the Government may as well act more boldly and resolutely. Therefore, when considering the amendments proposed by the Government and those by Mr Andrew CHENG, as I said earlier, I agree that draconian laws and harsh penalties be imposed to deter drink driving and other inappropriate driving behaviour, and offenders causing grievous bodily harm and even death should absolutely be punished heavily. For these reasons, I support Mr Andrew CHENG's amendment on extending the disqualification period for drink driving, in order to reflect the severity of these traffic offences.

Another amendment of Mr CHENG proposed that the disqualification

period for repeat offenders of drink driving with an alcohol concentration at tier 3 should be substantially increased from a minimum of five years to life disqualification. I cannot support this amendment. The reason is that as I said earlier, for cases of drink drivers committing dangerous driving and eventually causing grievous bodily harm or death, I support the amendment proposed by Mr CHENG to the effect that life disqualification will be imposed on the offenders, and I believe this can produce adequate deterrence. However, with regard to the penalty proposed by Mr CHENG in this amendment which targets repeat offenders of drink driving with an alcohol concentration at tier 3, I think it is too heavy. Likewise, as for the amendments which seek to put the three drink driving offences on a par with an offence at tier 3, I also consider the penalty too heavy. Coupled with the comments made by Mr Ronny TONG in his speech earlier about the contradiction between this amendment proposed by Mr CHENG and the amendment that he mentioned earlier relating to drink driving at tier 3 as well as the consequences that may arise, I cannot support the relevant amendments of Mr CHENG.

Lastly, I hope that after the passage of this Bill in this Council, the police can step up public publicity and education and enforcement to substantially reduce the occurrence of traffic accidents, especially as it is the peak of drink driving and dangerous driving offences when Christmas and the New Year are just around the corner.

Deputy President, I so submit.

MR ANDREW CHENG (in Cantonese): Deputy President, with regard to this Bill, I will explain my views in greater detail when I propose my amendments later on. In these 15 minutes of my speaking time, I would like to express my views on some basic issues relating to the Bill introduced by the Government.

Deputy President, I think we have spent quite a lot of time and effort on drug driving. I also put forward many ideas to call on the Government to address the problem of dangerous driving by drivers who abuse drugs or psychotropic substances, and I did hope that more detailed amendments could be made today. Unfortunately, the Government considered that if impairment tests were to be conducted, it would be necessary to conduct consultation in more detail and provide training to police officers. Even though I wanted to introduce amendments, the stipulations under Article 74 of the Basic Law precluded me

from making any further amendment given the charging effect.

Anyway, insofar as drug driving is concerned, the Government has quickened its pace of work more or less because of pressure from us in the Bills Committee and from various political parties and grouping in this Council. We must make this clear in order to be fair to the Government. Although its pace of work has been quickened, the Government is still lagging behind our demands. In this amendment exercise, the Government has only set out six illicit drugs, and a driver who is tested positive for any one of these six illicit drugs will have his penalty increased by 50%. The question is: How can the Government seek the consent of these drivers to take the test? On completion of this amendment exercise, the Government will be able to obtain specimens of urine or blood from these drivers under three circumstances only. First, when an accident has occurred; second, when there is a breach of traffic rules, such as speeding, even though no accident has occurred and so long as the act of speeding is detected by the speed camera; and third, a driver takes the test voluntarily.

Deputy President, I think you and I both appreciate that actually it will produce no deterrence effect on drivers if their urine and blood specimens can be obtained only under these three circumstances. If they take drugs before they drive but are not involved in a traffic accident and if they drive without breaching the law and do not volunteer to take the test, there is simply no way for the Government to achieve any deterrence on drug drivers who abuse these six dangerous drugs. Feeling helpless, I only hope that the Secretary can put it on record when she speaks during the resumed debate on the Second Reading of the Bill that in the latter half of this legislative year — the latter half of the year may be a long time from now as it means that the Bill will be introduced in June and a Bills Committee can be formed only in July, while the Second Reading debate of the Bill will be resumed in October or even a few more months later at the end of this year or even in the year after next, that is, in 2012. It is 2010 now, and this means that we have to wait two more years. Earlier on colleagues have referred to a lot of figures I think it is still too much to lose one human life per day as a result of traffic offences and safety hazards on roads caused by drug driving. Therefore, I can only hope that the Government will speed up its work, even by just one day or one month.

Deputy President, the second amendment concerns consecutive

enforcement. This is a very good proposal. In the past, an offender could drive immediately after serving his imprisonment because the disqualification ran concurrently with his term of imprisonment. Members have discussed this for a very long time. We absolutely agree with the amendment proposed by the Government.

Next, the amendment concerning dangerous driving causing grievous bodily harm. Deputy President, it is also a very good amendment. Indeed, a person to which grievous bodily harm is caused by a reckless driver may lapse into a vegetative state and if that happens, the victim is actually no different from a deceased person, but a greater trauma may lie in store for his relatives and friends, for they will be put under heavy pressure in taking care of a person who is in a vegetative state or seriously injured for life. We, therefore, strongly support the Government in raising the penalties in this respect.

Deputy President, let me explain the rationale behind the amendments proposed by me. Mr Ronny TONG mentioned earlier the two amendments relating to life disqualification proposed by me. First, I think there should be no controversy on the penalty for repeat offenders of dangerous driving causing death. Many colleagues, including my former party members, that is, colleagues from the Democratic Party, have also expressed their support. I feel very much relieved because I was worried that I might be the only person who supports this amendment, which would be rather sad. Fortunately, I have so far learnt that the Democratic Party, LEE Cheuk-yan and even Mr Paul CHAN from functional constituencies are supportive of this amendment, and I am really glad about this.

As we share the same view here, I think I do not have to explain this in great length, because if a person who committed dangerous driving causing death and if he did it again after committing the offence once, it would mean that at least two persons or worse still, maybe more than two persons had been killed. People who committed these offences are actually a time bomb, a time bomb on roads. Even if these people are issued a driving licence again, they may not necessarily wish to drive anymore. Think about this, and as people who drive will understand, it is already sad when a traffic accident occurred and it is most unfortunate to knock down a person to his death, and if he has again knocked down another person to his death, I think he will be hesitant even if he is issued a driving licence again. Therefore, I think this amendment is not going too far at all.

The Federation of Trade Unions (FTU) and Mr Albert CHAN expressed

earlier their views against my amendment, and I wish to give a brief response. They made their comments more or less on account of the difference in social class, arguing that the penalty will put tremendous pressure on professional drivers. Let me say this particularly to colleagues from the FTU: If a professional driver has over and over again committed dangerous driving causing death, I believe the public do not consider it appropriate for, nor should they allow, this driver to continue to be a professional driver, for this will pose great dangers to other professional drivers or road users. Of course, if he has been a professional driver for many years, how can he switch to another trade? But if his behaviour is really so reckless, I think he himself must really be vigilant. Therefore, I believe this absolutely has nothing to do with social class, and I do not specifically target professional drivers in proposing this amendment. Any driver who over and over again committed dangerous driving causing death should ultimately be subject to life disqualification.

A more controversial proposal that I have made is about imposing life disqualification on drivers whose alcohol concentration is at tier 3 under the three-tier system and who have repeatedly committed the offence in the gravest circumstances. Tier 3 refers to the presence of alcohol exceeding the limit by 200% in a specimen provided by a driver. For instance, in the accident occurred on Castle Peak Road, Lok Ma Chau, on 23 January 2009, three days before the Chinese New Year, which claimed the lives of one driver and five passengers, the sample provided by the medium truck driver who committed dangerous driving showed an alcohol concentration nearly six times higher than the limit. In other words, an alcohol concentration exceeding tier 3 by two times or more can already be very dangerous. While Mr Paul CHAN opined that life disqualification may seem to be too heavy a penalty, I would like to urge Members to think about this: An alcoholic who committed the offence again or repeatedly must be a person who likes drinking very much and who is still confident after drinking, thinking that he will not get into any trouble after drinking and that he will not get into any trouble even if he drives after drinking, similar to what we can see in the Government's API in which the wife told the husband not to drive but the husband said that he would be fine and the husband, who was under the influence of alcohol, eventually had a traffic accident.

The point is that if a person who has been convicted of drink driving wants to drive after drinking again, a thought may all of a sudden flash past his mind telling him that he can be disqualified for life if he is convicted again, and he

may, therefore, consider not driving in the end. But this is not the case now, as the driver may think that he will not be caught and even if he is caught, he will only be imprisoned for a short time or disqualified for a few years and after that, he may still be able to drive again. But if he will drive again, he may knock down people to their death, taking away the lives of several people. He will not be prosecuted for dangerous driving, but dangerous driving causing death. But in spite of this, human lives would have been lost, and nothing could be changed whatever charges were laid against the driver. This is why I proposed this amendment in the hope that it can create a severe deterrence effect psychologically, telling people who are alcoholics or particularly fond of the glass to have second thoughts before they drive after drinking. Some colleagues queried that what I have done is impromptu and that I have suddenly come to this view only because of the recent cases. Sorry, I must tell them that I put forward these proposals because the figures of drink driving cases have increased rather than decreased over the past few years and because I feel very sad after many years of work in following up and handling traffic issues. This is not impromptu at all.

With regard to refusing to take the breath test and provide specimens for tests, if I proposed life disqualification for failure to provide specimens, I believe many members of the public and Members will point out that even if an intoxicated person does not provide specimens, it is possible that his alcohol concentration is at tier only. I did consider whether the penalty should be on a par with that for an offence at tier 3, which is life disqualification, but it is, after all, a requirement in common law that there must be clear and actual evidence and besides, life disqualification is an extremely harsh penalty. Furthermore, after some consideration, a person who refused to provide specimens may think that even if he provides specimens for conducting the test, his alcohol concentration may only be at tier 2 and so, he may eventually change his mind since the penalty proposed in my amendment for a repeated offence at tier 2 is only disqualification for five years. In fact, I have already provided some leeway for offenders of drinking driving in future. Of course, if the driver is dead drunk and knows that he is over the limit, he may really refuse to provide specimens. As regards failure to provide specimens, my amendment proposed a penalty of disqualification for a minimum of 10 years. This is still a raise of the penalty compared with the Government's proposal of disqualification for a minimum of five years or disqualification for a minimum of five years for an offence at tier 2. I do not see any major contradiction here. Certainly, some colleagues may think

that this is not desirable as some people who have drunk a lot of alcohol may choose not to provide specimens. I do not refute such possibility, but I think at least the driver has to face a penalty of disqualification for 10 years. I do not propose life disqualification for failure to provide specimens. If I do, many people, especially professional drivers, would accuse me of being too harsh in proposing life disqualification for not providing specimens.

Deputy President, with regard to the amendments that I am going to propose later on, I wish to appeal for the support of every colleague who has not yet considered this clearly, especially colleagues from the democratic camp, as I did not have many opportunities to discuss this issue with them. I hope that they will reconsider this. I would be very glad if they can support my amendments relating to dangerous driving. But regarding the so-called inconsistency between the penalty for taking the alcohol test and that for refusing to take the breath test, I hope that they can think about my intention. I absolutely have no intention to propose a disproportionate scale of penalty. Life disqualification is, after all, a very harsh proposal.

Deputy President, I so submit.

MR WONG YUK-MAN (in Cantonese): Deputy President, drink driving is a matter of life and death. Cases of drink driving resulting in deaths and injuries have occurred continuously. These cases have certainly inflicted serious harm on the victims and their families, and are strongly detested and denounced by members of the community, and there have been deafening calls for raising the penalties for this offence. Some people said that "draconian measures should be taken to restore order to a chaotic society". But nowadays, in this free and open society with popular education and economic prosperity, "taking draconian measures to restore order to a chaotic society" may not necessarily be a sacred theory or a principle of absolute value. Of course, the amendments proposed by Mr Andrew CHENG are bound to arouse controversies, and we will understand the reason if we take an overview of what has happened around the world.

Before I make my comments, I must say that I have come to a view after listening to his proposals. More often than not, when we make political statements or comments on public policies, we tend to be influenced by the

"magic of theories" in a way that after listening to these statements or comments, we would find them to be sensible, wouldn't we? But in fact, these statements or comments often cannot stand the test of logic. So, we would describe them as biased, quoting ideas out of context, advancing a straw argument, or confusing the logic. I certainly do not wish to use these descriptions on any part of Andrew CHENG's amendments, but he has lumped several situations together and this, I think, is a bit confusing, right? As Albert CHAN particularly mentioned earlier on, it is impossible for us to support his amendments, especially the proposal to impose life disqualification for failing the breath test twice. Frankly speaking, it is difficult for us to accept this proposal, even though many people think that we are not politically correct in so doing.

Our position is clear, because drink driving can cause death, which is actually no different from killing people, right? In that case, go and charge the drink driver manslaughter! From the angle of punishment, the authorities can then impose a heavy penalty to show that drink driving is equivalent to killing people and that there is no difference between the two. Heavy penalty should be imposed particularly on repeat offenders, as they did not commit drink driving causing death out of negligence for the first time; nor were they so unfortunate as to bump into a tree and kill themselves in the course of drink driving but instead, they had unfortunately killed other people. If they committed the offence again, they certainly have to be sued for manslaughter, buddy. Drink driving is no different from killing. Neither a demerit point system nor driving disqualification can create any effective deterrence. Nothing can be done when human lives are lost and the injured badly suffering in torment.

Trusting to luck, some people think that their ability of driving will remain unaffected if they just drink a little alcohol. Raising the penalty can perhaps deter these people. In the community as a whole, people can have a stronger awareness of the severe punishments for drink driving, and when drivers attempt to drive after drinking, their friends or relatives can advise them against it and deter them from doing so.

Some of my party members also like to hang around at bars at night. If they drive, I will definitely warn them expressly not to drive after drinking. I remember that when I was the Chairman, I had repeatedly and unequivocally explained to my party members that if they have friends who are public figures,

or even if their friends are the unknowns, they should never let their friends drink if they drive. Even if they must drink, they should watch out for their alcohol concentration, such as drinking just one glass of beer or half a glass of beer. They should clearly count their intake or they should, after drinking, rest for some time before they drive.

I understand that in many places, especially places of entertainment, there are people who drive for their customers. Customers can drive in a sober state of mind to nightclubs or karaoke establishments for entertainment, and when they leave after much drinking with friends in high spirits, arrangements will be made by the entertainment establishments for their staff to drive for the customers to take them home and then park the cars. So, we cannot say that the community lacks such awareness. In fact, we may not necessarily have to raise the penalty. To me, "draconian measures" really should not be taken "to restore order to a chaotic society".

According to the Legislative Council Brief, since the implementation of a number of measures on 9 February 2009, which include raising penalties on drink driving offences by disqualifying the offenders from driving for not less than three months on first conviction and requiring them to attend a driving improvement course on a mandatory basis, and empowering the police to conduct random breath tests, there has been a significant drop of 67% in the number of traffic accidents involving drink driving. However, the law of diminishing marginal utility in economics also applies to the progressive increase in penalty, which means that while an initial raise of penalty will produce very significant deterrence effect, a further raise of penalty will not beef up the deterrence as significantly as before and in the end, an increase in penalty will not result in any enhancement of deterrence at all. So, to what extent should the penalty be raised in order to be appropriate? This is a question which warrants our rational thinking.

Moreover, police statistics have pointed to an increase in the number of people arrested for drink driving, as 1 036 people were arrested for suspected drink driving in the first 11 months of this year, representing an increase of 12% over the 926 arrests made in the same period of last year, and an increase of 12 persons over the total number for the whole of last year. Is it because the deterrence effect of a heavier penalty has been absorbed, or the police has launched more enforcement operations against drink driving? It seems that no

conclusion can be drawn simply from these two sets of apparently contradictory figures. I hope the Bureau can explain the situation.

It may not be harsh law and penalty that a sensible person fears most, but the safety of his life being threatened. Drink driving leads to harsh punishment and sanctions; worse still, it endangers the safety of other people's lives while posing threats to the driver's own life. Drink drivers are obviously incapable of making a wise decision as they do not even care about their own safety. For people who are incapable of making a wise decision, apart from punishing them by putting them behind bars, I think not even any harsher law can produce much deterrence to them. In the United States, drink drivers will be imprisoned for seven days right after arrest. Think about this: Could it be that the driver is not afraid of this at all? If he committed the offence again, he would be sent to jail again, and if he caused death to other people, he would be prosecuted for manslaughter. This can actually address the situation mentioned by Andrew CHENG earlier on, that is, a driver committing dangerous driving causing death for the first time and committing for a second time the same offence of dangerous driving causing death. He kept on stressing "causing death". Buddy, we are discussing the alcohol test now. We cannot lump them together.

It is extremely controversial to enact legislation to stipulate a level of penalty as severe as life disqualification for repeat offenders of drink driving. Let us take a look at other places. In Taiwan, for instance, there is also a similar law but life disqualification is imposed only on drink driving causing grievous bodily harm or death. It is harsher than the amendments proposed by the Government but more lenient than Andrew CHENG's amendments, isn't it? So, this has been taken into consideration in another place, and it has been repeatedly debated in their Legislative Yuan with everyone arguing over it heatedly and vehemently. As a saying goes, "learn from the good examples of other places to overcome our shortcomings". The authorities can make reference to the practices adopted in other places. Their examples are worthy reference for us.

In the United States, drink driving is most serious in the state of Wisconsin where the maximum driving disqualification period is five years. Other countries and regions, such as China and Canada, do not have life disqualification and the maximum disqualification period ranges from six months to five years.

Other places have also adopted some practices which are worthy of our reference. One of such practices is the "drink driving court". The relevant authorities in the United States hold that if there is only penalty but no treatment, it cannot produce effective deterrence on repeat offenders of drink driving, in which case the repeat offenders will continue to be dependent on alcohol and hence posing threats to society. So, "DWI (driving while intoxicated) Courts" are set up in the United States and have become an effective means to address the problem of drink driving.

The objective of "DWI Courts" is to protect public safety and provide services to repeat offenders who committed drink driving as a result of dependency on alcohol or drugs through carefully designed treatment programmes to change their behaviour. As repeat offenders of drink driving are often alcoholics, the treatment programmes put emphasis on the treatment of alcoholism while making repeat offenders take responsibility for their behaviour, in order to counteract the scourge of drink driving. Drivers participating in the treatment programmes of DWI Courts are visited by enforcement officers regularly. They are required to take part in community services and provide specimens of urine and blood on a regular basis for monitoring the progress of their withdrawal.

In other words, for people with records of drink driving, the Government should not only punish them but also provide treatment to them. Therefore, treatment is very important, in order to stop these murderers from driving on roads, right? These measures can strike a balance among the different voices in the community about how drink driving should be judged or punished. This approach of setting up drink driving courts is a more proactive measure. Through the provision of treatment, the authorities can reduce drink driving by alcoholics and even help them quit the glass.

DWI Courts have seen very rapid development in the United States. In 2004, there were only 90 DWI Courts and 86 drug courts in the United States. In 2007, the National Centre for DWI Courts was set up in the United States with the objective of expanding the DWI Courts and improving their operation. In 2009, there were 172 DWI Courts and 354 drug courts concurrently providing treatment service for repeat offenders of drink driving in the United States. This shows that DWI Courts have become a major trend and fashion for addressing the drink driving problem in the United States.

Moreover, there is another measure called the "ignition interlock" which, I think, some people have heard of and is also a measure adopted in the United States.

A community organization called "Mothers Against Drunk Driving" in the United States is committed to campaigning for the enactment of legislation to mandatorily require the installation of an ignition interlock. The ignition interlock will lock the car engine, and it will be released only when the driver's specimen of breath has an alcohol concentration that meets the prescribed limit. A trial scheme on the ignition interlock was implemented in the United States with participation by offenders of drink driving laws on a voluntary basis. Results of the trial scheme have proved that while the ignition interlock can effectively deter offenders from committing the offence again, the offenders tend to relapse after the removal of the ignition interlock. The introduction of legislation on mandatory installation of an ignition interlock by drink drivers is a direction worthy of studies by the SAR Government.

Drink driving is an issue of great concern to the community. It is understandable for victims and their families as well as the general public to call for heavier penalties, and this is also why the Government has proposed these amendments. However, the key point is how the problem can be solved effectively, and this is most important. It is equally important to reduce the number of drink drivers. Therefore, a capable government should not adopt stop-gap measures to address only the symptoms of the problem, still less should it make a decision rashly in fear of public opinions or boiling public sentiments.

We who engage in political opposition campaigns often remind ourselves that we must be ready to boldly challenge the rich and powerful but at the same time, we must also have the courage to say "No" to the public. The Government should, therefore, comprehensively review the problem and propose a holistic policy, including making amendments to legislation, and also make reference to measures which have been implemented effectively in overseas countries, such as the DWI Courts, ignition interlock, and so on. This way, not only the symptoms but also the root of the problem can be tackled, thus enabling the public to evolve from emotional expression to rational debate. This is what Donald TSANG said two years ago with reference to the Old Age Allowance. He said at the time that rational discussions were eclipsed by emotional expression, as he was irritated by the proposal to abolish the means test.

Nowadays, the proposal to impose stringent laws and harsh penalty for drink driving will be applauded by many people. After giving the matter careful thoughts, however, I would say that anyone who dares say "No" to these applauding supporters is really formidable.

Thank you, Deputy President.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, just now Mr WONG Yuk-man said he opposes "taking draconian measures to restore order to a chaotic society", and so do I. However, I agree to taking draconian measures against drink driving because, unlike other chaotic situations and crimes, drink driving will, most importantly, put human lives at stake.

(THE PRESIDENT resumed the Chair)

When it comes to putting human lives at stake, a particular incident has left a very deep impression on me. President, the incident involved a drink driving case, and that was the traffic accident at Lok Ma Chau. When a driver, who was most probably heavily drunk, drove to Hong Kong, the lorry he was driving collided with a taxi which was taking a group of five construction workers to work — actually, these workers were some of the participants in the strike staged by steel bar benders — resulting in six deaths. I can still recall that when their families, other steel bar benders and Donald TSANG arrived at that scene, the steel bar benders begged on their knees for heavy penalties on the driver. Actually, that drink driving case caused six deaths. As drink driving puts human lives at stake, how could we not take draconian measures against it?

President, one of the proposals put forth by Mr Andrew CHENG just now concerning the second conviction of driving with an excessive alcohol concentration has given rise to a lot of disputes. The main point does not simply lie in the fact that the alcohol concentration is in excess of the prescribed limit but that such level is at tier , which is the most serious case of excessive alcohol concentration. How much alcohol consumption corresponds to an alcohol concentration at tier ? A person will have an alcohol concentration of approximately tier after drinking more than 12 cans of beer. Come to think

about it. Should a person still drive after drinking 12 cans of beer? So, I called up the Federation of Hong Kong Transport Worker Organizations at once to seek their views on it, and they also agreed to taking draconian measures against drink drivers. Then I sought their views on imposing life disqualification on second conviction of driving with an excessive alcohol level. They said in response that a person who still insists on driving when his alcohol concentration is at tier should consider himself lucky if he does not knock down and kill anyone. A person whose alcohol concentration is at tier is simply unable to drive. If he insists on driving, it is almost certain that he will knock down and killing someone; and he should consider himself lucky if he does not. Does it mean that we have to trust ourselves to luck? Should one trust oneself to luck for not knocking down and killing anyone? If we do not want to leave ourselves to luck, I think there is actually not any difference between imposing life disqualification on second conviction of drink driving causing death and imposing life disqualification on second conviction of driving with an alcohol concentration at tier because the drivers concerned in the latter case should equally be subject to penalties, as it is only out of sheer luck that they have not caused any death in both cases. We should not leave human lives to luck. If we do so, it is irresponsibility on our part. Therefore, I have consulted the Federation of Hong Kong Transport Worker Organizations of the Hong Kong Confederation of Trade Unions (CTU), and they expressed support for all the amendments of Mr Andrew CHENG, even the most controversial one.

Members kept mentioning the so-called incommensurate penalties, saying that imposing life disqualification on second conviction for tier contradicts with imposing disqualification for 10 years for refusal to take the breath test. Some people said that a driver may only be subject to disqualification for 10 years simply by refusing to take the breath test. Frankly, President, if the driver can still say that he refuses to take the breath test and would rather receive a disqualification for 10 years when he is so drunk, I would say that he is indeed remarkable as he is still able to say so with such calmness despite his drunkenness. It is both unlikely and undesirable that the driver will be so calm in that situation. What we want to see most is that a driver realizes that he should definitely refrain from driving when he is so drunk.

Actually, what the amendments to this legislation seek to achieve most is that all drivers must realize they should not drive after drinking, especially when they know that they are in a state which is not suitable for driving. Actually, the driver should know this very well, and there is no one in this world who does not

know whether he/she is in a state suitable for driving, but the question is whether he/she has to bear any responsibility. I think this amendment can achieve a deterrent effect.

Certainly, I do not oppose offering treatment, as mentioned by Mr WONG Yuk-man. Treatment is certainly important, but deterrence is equally important. I believe if the legislation has a deterrent effect, a driver who has received penalties for first conviction of drink driving will definitely think very clearly before committing the offence for a second time. I believe he will not stake his own licence, and I believe he will refrain from drinking because he has to drive, and so a deterrent effect can be achieved. If the legislation is not stringent enough, no deterrent effect can be achieved. Therefore, President, the CTU to which I belong very much approves of all the amendments proposed by Mr Andrew CHENG.

President, I think drink driving will put human lives at stake and thus should never be tolerated. While claiming that we must not tolerate evils, we should all the more stop tolerating drink driving. If every driver drives after drinking, the lives of all pedestrians and passengers in Hong Kong will be in great peril. We do not wish to see this happen. Therefore, we agree to imposing draconian laws and penalties and oppose tolerating drink driving.

Thank you, President.

MS CYD HO (in Cantonese): President, the enactment of a new law or introduction of legislative amendments very often reflects some phenomena which prevail in society at a particular point of time. When something new occurs in society or when changes in people's daily habits take place, but some people fail to exercise self-discipline and give regard to the safety or respect the rights of other people in the new social situation, new laws will probably emerge. Certainly, I very much agree with Mr Ronny TONG that whenever tragedies happen, the Government will take the opportunity to introduce stringent laws and penalties. We have seen this happening in the past. For example, when certain press reports were found to be sensational or have intruded into someone's privacy, the Government would seize the opportunity to impose control on the media, or the Hong Kong Press Council might come forward to seek exemption. Actually, President, in contemplating whether legislative amendments should be

made, each Member of this Council and members of the community must consider very carefully and prudently whether they will fall into a trap to avoid supporting whatever stringent laws and penalties proposed because some unforeseen tragedies have happened. However, insofar as this legislative amendment exercise is concerned, President, after careful consideration, I will support the amendments of Mr Andrew CHENG on drink driving and drug driving, including the proposal of imposing life disqualification on repeat offenders of driving with a blood alcohol concentration (BAC) level at tier . I support this proposal.

Unlike many foreign cities, Hong Kong is indeed a very congested city. As many people may know, it is very easy to obtain a driving licence in foreign countries, and one may even practise driving without engaging a driving instructor as long as one can arrange for a person who knows how to drive to sit beside him during practice. After passing the written test, one may obtain a driving licence with some 10 hours or so of driving practice on the road, while those who are smart may even only need to practise for seven to eight hours. However, the situation in Hong Kong is different. In Hong Kong, some people fail to obtain a driving licence even after three to four attempts at the driving test. Why? Because Hong Kong is indeed a very small place with narrow roads and lots of people, and thus pedestrians often compete with vehicles for road space. In particular, the roads on Hong Kong Island are winding, steep and narrow, while the vehicles are not small. As a matter of course, therefore, the requirements on drivers are more stringent in Hong Kong than in foreign countries. I believe many people who hold a driving licence issued by a foreign country may not dare to drive on the roads in Hong Kong without getting more driving practice or taking the driving test anew. This shows that the traffic situation of Hong Kong is indeed a greater challenge for drivers, and it is precisely because our city is so unique and the traffic is so congested that any accident may easily cause heavy casualties. In foreign countries, traffic accidents are very often "one car accidents", with a vehicle hitting the roadside barriers, resulting in the injury of the driver alone and the damage of his own vehicle and probably not causing any impact on other people. But the situation is different in Hong Kong. A traffic accident which takes place in the urban area may more often than not injure the innocent, unless it involves the falling off of a vehicle from an elevated expressway. Therefore, it is unforgivable and a failure on the part of the driver to respect his own profession if he drinks some 10 cans of beer, knowing full well that he has to drive, and then drive immediately afterwards.

Mr Andrew CHENG put forward three amendments which set out the circumstances under which the person concerned should be disqualified from holding a driving licence. Regarding two of these amendments, I believe and hope most Members do not hold opposing views. Should this be the case, the penalty of disqualification can be implemented. The general idea of these two amendments is that any driver who has caused the death of any pedestrian or another person in a previous accident, be it a drink driving or a drug driving case, shall be subject to life disqualification on subsequent conviction. President, if the driver is not heartless, he will actually suffer very serious emotional trauma and learn a bitter lesson after hitting someone while driving, not to mention causing any death. It is thus unforgivable for a driver who was convicted of drink driving or drug driving causing death to commit the offence again. Therefore, I fully support these two amendments.

Regarding the third amendment of Mr Andrew CHENG, just now a number of Members have expressed many divergent views on it. Members considered that imposing a disqualification on a driver who was once confirmed to have a BAC level of tier and is convicted of a tier offence again could have serious impact on professional drivers. Members also queried whether this would affect their right to work. President, I think it is necessary to quote here Article 6 of the International Covenant on Economic, Social and Cultural Rights: The States Parties recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The right to work is important, but after choosing their profession, people should receive basic training and comply with the basic code of practice. Insofar as professional drivers are concerned, they must attain the qualifications and standards required in the driving test. Unfortunately, however, no driving test can check every day whether the driver has consumed alcohol. Therefore, we can only rely on the roadside random breath test to achieve this purpose. What I mean is the breath test is actually one of the means to test whether the driver can meet the requirements of a professional driver, and the only difference is that it is conducted at the roadside after the driver has been issued a driving licence. I believe no one would think that a driving licence holder who drives drunkenly even after drinking more than 10 cans of beer can still meet the requirements of a practising professional driver. I believe no Member will hold such a view. If there is any Member who really does, I would indeed encourage him to express his view later for the record.

Therefore, President, I would put the roadside breath test in the following perspective: this test seeks to re-evaluate whether the driver can still meet the requirements for practice. If a driver failed to meet the requirements previously and is found to be so for a second time, I think it is appropriate to disqualify him from holding a licence. Actually, the professional bodies of other professions have also put in place the requirement that if a member of the profession commits professional misconduct or ethical transgression, the relevant professional body may handle the case in the light of the circumstances and impose on the relevant professional worker such penalties as the withdrawal or revocation of professional licence. President, we should follow the same line of logic in dealing with this issue. Mr LEE Cheuk-yan just mentioned that a driver should consider himself lucky if he does not knock down and kill anyone while driving after drinking some 10-odd cans of beer. Actually, it is not the driver but all the pedestrians as well as passengers and drivers of other vehicles who are lucky because what we are talking about are not only car accidents causing the death of the drivers themselves. We still have to give regard to the drivers' families who need their protection and care as well as the innocent people, who may suffer permanent disability or even die as a result of such tragedies, and their families. All these people need the protection of society. Therefore, President, after careful consideration, I will support all the amendments proposed by Mr Andrew CHENG.

Finally, I wish to respond to the views expressed by Mr WONG Yuk-man just now. He mentioned the Mothers Against Drunk Driving (MADD). The MADD was actually initiated by a mother who had lost her 13-year-old child. In 1985, her story was broadcast on television and thus she received the support of the families or mothers of victims of similar disasters, and they founded this organization in 1990. Actually, the breath alcohol ignition interlock device was one of the means proposed by them to prevent drink driving, but it aroused some criticisms. Some people criticized that it contravenes the principle of presumption of innocence under the rule of law because every driver who gets into a car has to undergo an alcohol screening test before he can start the engine. Does it mean that a driver will only be allowed to start the car after proving that he has not consumed any alcohol before driving? This is one of the reasons why this approach has aroused criticisms.

However, President, I agree with Mr WONG Yuk-man that alcoholism requires treatment, and prohibiting alcoholics from driving is only one of the

means to protect the drivers and their families as well as other innocent people who may be victimized. However, I must point out that imposing heavier penalties can indeed achieve deterrence. Therefore, President, I think we have to adopt a two-thronged approach, as many other societies do. To achieve overall deterrence, we have to not only introduce legislation but also provide counselling and education. Thank you, President.

MR JAMES TO (in Cantonese): President, I speak in support of the Second Reading of the Bill, and I would like to make a few points. First, while we are now discussing the legislative amendments, I still wish to talk about whether there are other complementary measures to reduce the relevant crimes. One of these measures is the use of an "e-nose". A few months ago, some companies sent us some information, stating that they had something known as an "e-nose" which could detect the presence of alcohol. They said if the families of a certain person do not want that person to drive after drinking, they can ask him to buy a vehicle with a built-in "e-nose". Whenever the "e-nose" detects any alcohol while the person concerned is trying to start the car, the engine will stop and thus the person concerned will not be able to drive because the car cannot be started at all. Certainly, this is a radical means because whenever the person sitting in the driver's seat or even a passenger smells the odour of alcohol, the car cannot be started. Anyway, this is an electronic means to eliminate the problem and prevent the relevant crimes once and for all.

I think the Government should pay more attention to the relevant technologies and actively consider introducing them into the market. Certainly, I also understand that if the relevant technological products are purely commercial in nature, the issue involved may be the voluntary purchase of such products by the people concerned. As Ms Cyd HO said, some people may ask whether drivers should be required to prove, right after getting on their vehicles, that they have not consumed any alcohol. My view is that it would be the case if the installation of an "e-nose" is made mandatory for all vehicles. It is tantamount to a self-administered compulsory test as the car will not start when the odour of alcohol is detected, with the only difference being the driver has to undergo this test every time before he starts the engine, or else the car will not start. This is probably a more radical solution. However, we should also bear in mind that this technology is after all just at an infancy stage. Having said that, a number of countries have, as far as I know, already put this technology to

tests. Therefore, I hope the Government will make more effort to find out the role it can play in this respect.

Second, stepping up publicity. I have raised this issue in the past, and as a matter of fact, the Government has stepped up publicity and adopted the direction proposed by me in most publicity programmes, with the theme "If you do not want to victimize the families of other people, do not drive after drinking". This is a good theme because at least it can appeal to people's emotions. Now, there is another theme for publicity concerning a child losing his father who was knocked down and killed by a drunk driver. However, I think we should also step up publicity from another perspective, by reminding people that if they do not want to lose their friends, they should not allow their friends to drive after drinking or they should remind each other during social functions not to drive after drinking. This is vitally important. Certainly, it would be very difficult to prevent a person who has been drinking alone and all by himself from drink driving. Sometimes, it is very difficult to prevent people who have been drinking heavily at home from taking a pleasure ride afterwards. However, except for situations in which people drink all by themselves, at least people can remind each other not to drink before driving or even stop each other from doing so at various places of entertainment or bars or even during meals. This is vitally important. I hope the Government will, in the next round of publicity drive, remind people that if they do not want to lose their friends, they should not allow their friends to drink before driving or drive after drinking.

Third, actually I have raised this point before, and I now wish to remind the Government of this again. I hope the Government will consider whether it is reasonable to introduce this system. I am talking about Japan, which is a rather strange country because the relevant requirement is not enforced in any other places. Japan has enacted a law and even introduced amendments to it recently to make it more stringent than before. Under this law, when a person is convicted of drink driving, the passenger sitting next to him will also be subject to the same penalties. When I discussed it with my colleague during the meal time just now, he said, "What is the rationale for it? This is indeed collective incrimination. Why should I also be penalized when I was only sitting next to the driver rather than driving the car?"

When I first learnt about this law in Japan, I was also very puzzled. Therefore, I consulted the members of the Japanese legislature. They said the reason is that the person sitting next to the driver is very often the person who is in the best position to stop the driver from drink driving. In their society, this is regarded as reasonable. They even cited an example: A man may intend to drive his girlfriend home after having consumed some alcohol over a meal. If his girlfriend, that is, the person sitting next to him, insists on not getting on the car or waiting until the influence of alcohol on the man subsides, the man will naturally not drive unless he drives away without taking his girlfriend home at all. In that case, he has no intention of seeing his girlfriend home. Therefore, if his girlfriend does not get on the car, there will not be any case of drink driving, and he can wait until the influence of alcohol wears off. I understand that this law is very stringent. Some Honourable colleagues even wondered what other societies similar to Hong Kong would think about it as it seems to impose a duty to stop drink driving on the other people. They also queried how the person concerned, though being a friend of the driver, could be given such a duty under this law. However, I wish to point out that the person concerned may leave without getting on the car. Certainly, one may ask whether it is a crime to ride in a car driven by a drunk driver. If you put this question to me, I can tell you that people in Japan indeed think that it is reasonable because the companion may well refuse to get on the car. If the companion does not want to or cannot stop the driver, he will be able to, by not getting on the car himself, compel the driver not to get on the car. This way, even if the driver insists on getting on the car to the point of impasse, thereby causing his own death or the death of another person, the companion is still innocent because he has not got on the car. Certainly, some people may say that they got on the car in order to well, although they were scared, they decided to get on the car at the risk of their lives because in the event that any accident happens, they could still stop the driver or even give him a hand by controlling the steering wheel, as a driving instructor sitting next to the learner would, so that the driver would not suffer so serious consequences.

Anyhow, this law is actually in place in Japan and has recently been amended to become more stringent. How? What I mean is that vendors of alcoholic drinks, operators of bars, liquor shops and restaurants will also be held responsible. Anyone who provides alcoholic drinks to a person knowing that the person will drive after consuming such alcoholic drinks commits an offence and is liable to prosecution. Certainly, the prosecution must prove that the defendant knew that the person concerned would drive after drinking. Besides,

if anyone who sells alcoholic drinks to a customer knowing that the customer will have to continue to drive after drinking, he has to stop the customer from getting on the car or else he will also get into trouble when the customer is arrested after getting on the car. While this requirement is very stringent, shall we examine its underlying logic to find out whether we can make more effort in this direction? For example, we may remind vendors of alcoholic drinks of their duty. It would not be a problem if we only remind them of this. We may say: "Please be careful. If such incidents happen to your customers, you may not have a clear conscience." Can we adopt this approach and remind those people who are prone to facilitating other people in committing drink driving to be on the alert?

President, Mr WONG Sing-chi of the Democratic Party will speak on the amendments of Mr Andrew CHENG and the Government and make a comparison between them later, while I wish to raise these few points to let the Government know that instead of only giving consideration to introducing legislation and imposing disqualification, it should consider the issue from a broader perspective to identify alternative approaches, in particular, the use of an "e-nose" mentioned by me just now. I think consideration can be given to this approach if the relevant technology is mature. Even if it would only conduct preliminary testing or promotion on it, I think it is worthwhile. This proposal will not give rise to significant problems because the decision will after all rest with the owner of the car, who may discuss with his families whether or not to purchase such products. As far as I know, the "e-nose", apart from being built-in in the vehicle, may also be installed in the key. With technological advancement nowadays and the installation of this electronic device in the key, the engine of the car will stop once the odour of alcohol is detected and the car cannot start at all. This way, the problem that a drunk driver may still start the engine will be thoroughly resolved.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, first of all, I wish to extend my sincere thanks to Ms Miriam LAU, Chairman of the Bills Committee on Road Traffic (Amendment) Bill 2010 (the Bill), and other members of the Bills Committee for their effort in scrutinizing the Bill, in particular, their views which will help further refine the Bill. We have drafted amendments with reference to these views, and I will move the relevant amendments at the Committee stage.

The Government has all along been committed to promoting road safety to prevent accidents as far as possible. Apart from daily traffic management, law enforcement, education and publicity, legislation is also a strong and powerful means to achieve deterrence through punishment, thereby making drivers pay more attention to road safety.

Drink driving has all along been a matter of public concern as it can cause grave consequences. We introduced the drink driving legislation in 1995 and have been reviewing the effectiveness of the legislation on a regular basis in order to keep abreast of the times. Specific amendments were introduced in 1999 and 2008 respectively to tighten the prescribed limit of blood alcohol concentration (BAC) and to raise the penalties and empower the police to conduct random breath tests. Thanks to the timely legislative amendments and vigorous enforcement actions taken by the police, the number of traffic accidents involving drink driving has dropped substantially by almost 70% compared with the time before the introduction of random breath tests. Nevertheless, we should not slacken off because the Killed and Serious Injuries rate for drink driving accidents has been higher than the corresponding rate of all traffic accidents.

Just now, Members mentioned some figures on arrests relating to driving, but these figures may not necessarily involve any traffic accidents. These figures show that such arrests seemed to have increased this year, and we reckon it was probably the result of enhanced enforcement actions taken by the police. The police have conducted 510 random breath tests so far this year, which is almost double the number of 269 in 2009.

The object of the present Bill is to make the necessary statutory provisions for introducing measures to further combat drink driving and other inappropriate driving behaviour in order to enhance road safety. These measures mainly include the following:

First, we propose to introduce a three-tier penalty system with a sliding scale whereby the higher the alcohol concentration in excess of the prescribed limit, the longer the disqualification period, and substantially increase the minimum — I stress, minimum — disqualification period from the existing three months to six months to two years on first conviction and from the existing two years to two to five years on a second or subsequent conviction. It should be noted that this is the minimum disqualification period requirement, and actually the Court still has considerable room to impose heavier penalties in the light of individual circumstances. There is neither any maximum penalty nor any single penalty which applies to all cases across the board, thereby allowing fair treatment for all cases. Besides, studies show that drivers who have consumed alcohol before driving bear a much higher risk of involvement in accidents than those who have not done so, and the risk increases rapidly with increasing BAC levels. Therefore, a penalty system with a sliding scale can better reflect the risk involved.

Furthermore, we also propose to set the penalties for various offences at tier to ensure the integrity and effectiveness of the drink driving laws. These offences include driving a motor vehicle under the influence of alcohol or drugs, refusing to undertake a screening breath test or failure to provide specimens for analysis. To prevent drivers from evading their criminal liability by delaying the provision of samples, we also propose to remove the option for a driver whose breath analysis result is no more than 37 mcg of alcohol per 100 ml of breath to replace his breath specimen by a specimen of blood or urine. This option was provided in 1995 when the drink driving legislation was first introduced to alleviate concern about the accuracy of the breath testing equipment. Nowadays, the breath testing equipment has proved to be reliable and able to provide accurate results.

Second, we propose to extend the minimum disqualification periods for a second or subsequent conviction of the "dangerous driving" offence and the "causing death by dangerous driving" offence from the existing 18 months and three years to two years and five years respectively — I stress, these are also minimum disqualification periods. Besides, we also propose that an alcohol concentration which greatly exceeds the prescribed limit, that is, a BAC level of tier , be made a circumstance of aggravation in all dangerous driving offences, and the maximum penalties in terms of fine and imprisonment and the minimum

disqualification period for the offence concerned each be increased by 50%. For example, a person who commits the offence of causing death by dangerous driving is subject to the existing maximum imprisonment term of 10 years upon conviction. If the person's BAC level is at tier at the time of committing the offence, the maximum imprisonment term applicable will be increased to 15 years. If the person concerned is a repeat offender, the minimum disqualification period will be substantially increased from the existing three years to 7.5 years as a result of this proposal.

Third, to enhance the deterrent effect, we propose to introduce a provision to require the Court to order that the disqualification period should commence upon the expiration of the imprisonment sentence and the release of the driver concerned in the circumstance that the driver is convicted of a second or subsequent serious driving offence, unless the Court sees fit that both disqualification and imprisonment terms should be enforced concurrently. Using the same example cited just now, if the driver concerned is given a sentence of 15 years of imprisonment and a disqualification period of 7.5 years, his disqualification period should only commence at the conclusion of his imprisonment sentence. In other words, the person concerned may not be driving on the road within 22.5 years upon sentencing.

Fourth, we propose to provide for the new offence of "dangerous driving causing grievous bodily harm" (DDCGBH) to impose heavier penalties on drivers who drive dangerously on the road and cause grievous bodily harm to another person, so that the Court can reflect more effectively the gravity of the accident and the responsibility of the driver involved on sentencing.

Actually, under the existing legislation, the prosecution authority may lay a manslaughter charge against a reckless driver under certain circumstances if his driving manner and undesirable behaviour has caused the death of another person. In January 2009, the authority did lay a manslaughter charge against the offender in the serious traffic accident which occurred in Lok Ma Chau.

A number of Members also mentioned that representatives of transportation organizations were concerned that the introduction of the offence of DDCGBH might render some professional drivers vulnerable to prosecution. I wish to take this opportunity to explain that in a dangerous driving charge, the

prosecution must prove beyond reasonable doubt that the defendant is guilty, which is a very high threshold. Before contemplating a charge for dangerous driving, the police have to establish that the driver concerned did drive dangerously. Under section 37 of the Road Traffic Ordinance, a person is regarded as driving dangerously if the way he drives falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous. As in handling all serious cases, the police will conduct thorough investigations into dangerous driving offences and collect evidence from various sources, including drivers and other witnesses as well as forensic, motor vehicle and medical expert evidence. All evidence will be carefully examined and considered by a supervisory officer before prosecution is instigated.

Some Members also raised concern about the yardsticks to be adopted by the prosecution in determining whether the facts of a case constitute the offence of DDCGBH.

In fact, grievous bodily harm is an established concept in wounding cases. Under the common law, "grievous bodily harm" means "really serious bodily harm". It does not necessarily mean permanent or life-threatening injury, but includes non-physical or psychiatric injury. Therefore, in determining the criminal liability, the most important factors to consider will be the driver's driving manner, the traffic condition and the consequences of the accident. The police will adopt a common sense approach, seek advice from the Department of Justice and be guided by the existing criminal case law in respect of grievous bodily harm.

Regarding whiplash injury possibly caused by traffic accidents, it depends on the circumstances of individual cases. While some cases of whiplash injury may only involve mild sprains and strains, other cases may involve injury to the cervical vertebrae affecting limb movements. Therefore, there is no hard and fast rule on whether whiplash injury will constitute "grievous bodily harm". The prosecution will make the relevant decision in the light of evidence from various sources, including the medical report of the injured.

In the course of the consultation on the Bill, we made bids to explain to transportation organizations the need to introduce the offence of DDCGBH and

that the police will carefully examine and consider the relevant evidence before instigating prosecution. We are most willing to maintain communication with the trades.

President, we have put forth a host of proposals to substantially raise the penalties for drink driving offences and other serious road traffic offences. We have also consulted the Legislative Council Panel on Transport and conducted an extensive consultation exercise on them. Members of the community are very supportive of these proposals, and the existing proposals under the Bill have struck an appropriate balance among the different views of various sectors in society and taken full account of public concerns about road safety.

Some Members have expressed concern that the introduction of a three-tier penalty system with a sliding scale may create the misconception that it is acceptable to drink a little before driving. Here, I have to make it clear that in parallel with proposing the introduction of a three-tier penalty system with a sliding scale, we also propose to substantially extend the minimum disqualification periods for offences involving a high BAC level, that is, a BAC level of tier and 3. The message is very clear, which is that the higher the alcohol concentration in excess of the prescribed limit, the heavier the penalty. We have not lowered the threshold for drink driving offences at all, and the proposed penalties are very heavy compared with those imposed in other jurisdictions. We will step up publicity in collaboration with the Road Safety Council, as suggested by Members, to reinforce the message of "if you drink, don't drive" to drivers and enhance their understanding of the three-tier penalty system, as well as send out such messages as people who commit drink driving offences even without causing any traffic accidents will face heavy penalties.

A number of Members also mentioned that they hoped the Government would expeditiously introduce measures on drug driving. We are very concerned about the recent upward trend of arrests involving drug driving and are determined to introduce measures as soon as possible to vigorously combat driving under the influence of drug, particularly illicit drugs. We have drawn up initial proposals to combat drug driving and completed public consultations on them. After giving due regard to the views received during the consultation, we reported the matter and put forth a host of legislative proposals to the Legislative Council Panel on Transport on the 26th of last month. The relevant proposals have received the support of the Bills Committee, and we are actively taking

forward the drafting work of the relevant Bill, with a view to introducing the Bill as soon as possible in the second quarter of next year.

In the light of Members' suggestion, we also propose to include a provision in this legislative amendment exercise to the effect that a driver is regarded as committing an offence in circumstance of aggravation if any amount of a specified illicit drug, that is, any of the six drugs, is present in the driver at the time of committing dangerous driving. We will move the relevant motion later on.

I am very glad that the Bills Committee is supportive of the Bill. I implore Members to support the passage of the Bill, which is comprehensive and has achieved an appropriate balance between enabling the early implementation of the relevant measures and further curbing such dangerous behaviour as drink driving. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Road Traffic (Amendment) Bill 2010 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Road Traffic (Amendment) Bill 2010.

Council went into Committee.

Committee Stage

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

ROAD TRAFFIC (AMENDMENT) BILL 2010

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Road Traffic (Amendment) Bill 2010.

CLERK (in Cantonese): Clauses 1, 2, 3, 5, 13, 15, 16, 17 and 19 to 23.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 3, 5, 13, 15, 16, 17 and 19 to 23 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4 and 18.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
Chairman, I move the amendments to clauses 4 and 18.

Clause 4 mainly seeks to introduce a new provision for the new offence of "causing grievous bodily harm by dangerous driving" and "circumstances of aggravation" in all dangerous driving offences into the Ordinance so that the relevant offence can also be applied to village vehicles. The amendment is purely technical and consequential in nature.

The amendment to clause 18 is related to the newly proposed consecutive enforcement of imprisonment and disqualification terms. Under the existing Road Traffic (Amendment) Ordinance, if the Court or the Magistrate rules that a person is convicted of a driving offence, the person is liable to disqualification for a period of time. This disqualification period shall be enforced concurrently with any imprisonment term. But if the disqualification period runs concurrently with the imprisonment term, or if the disqualification period is shorter than the prison term, the deterrent effect will in effect be greatly reduced.

The Bill proposes to introduce a provision to require the Court to order that the disqualification period should commence at the conclusion of the imprisonment sentence and after the person is released, unless the Court sees fit that both imprisonment and disqualification terms should be enforced concurrently, in the circumstance that the driver is convicted of a second or subsequent 10 Driving-offence Points offence, regardless of whether that conviction is for the same or for a different offence.

For persons ordered by the Court that their disqualification period should start to run after the imprisonment term is complete, they may be granted leave to go out. These persons may take part in some rehabilitation activities or Pre-Release Employment Scheme organized by the Correctional Services Department. And these persons may be employed in certain approved places under the supervision of the Correctional Services Department, live in their own residence or stay in a designated halfway house. During this period of time, their imprisonment term is not over and they are not released, but they enjoy a certain amount of freedom of movement. To prevent these persons from driving when they take part in rehabilitation activities or Pre-Release Employment Scheme, and to make the requirements concerned clearer, we propose that certain technical amendments be made to the Bill. The main purpose is to clarify that

under the circumstances specified, any person under imprisonment or detention who is released during the period of imprisonment or detention shall consider the period as a disqualification period and he is not allowed to drive. Such circumstances include taking part in any rehabilitation activities or Pre-Release Employment Scheme, as well as concerning persons who have been convicted of a driving offence, admitted to bail pending sentence or appeal. We will list such circumstances in the Bill and specify that a person is disqualified from the day the person is released from custody and any such day must be deducted from the period of disqualification to be served by the person.

Proposed amendments

Clause 4 (See Annex I)

Clause 18 (See Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 4 and 18 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 4 and 18 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 6.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has given notice to move amendments to clause 6 to add subclauses (1A), (2A) and (3A) and to amend subclauses (2), (3) and (4). Besides, the Secretary for Transport and Housing has also given notice to move an amendment to clause 6(5).

Irrespective of whether Mr Andrew CHENG's amendments are passed, the Secretary for Transport and Housing may move his amendment to the clause.

If the Secretary for Transport and Housing's amendments to clauses 6, 7 and 8 are negatived, he may not move the amendments to clause 14 nor may he move the addition of new clause 21A to the Bill, as those amendments are inconsistent with the decision taken by the Committee.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and the amendments of Mr Andrew CHENG and the

Secretary for Transport and Housing. I will call upon Mr Andrew CHENG to speak first and move the amendments.

MR ANDREW CHENG (in Cantonese): Chairman, I move that clause 6 be amended. Clause 6 is about the provision on dangerous driving causing death. I believe in the Second Reading debate, we have discussed it in detail. I wish to respond to the speeches made by some Honourable colleagues and I would also like to lobby other Members who have not yet decided to support my amendment to lend me their support.

With respect to dangerous driving causing death, under the existing law, a person can be disqualified from driving for at least two years upon first conviction and a subsequent conviction will lead to disqualification of at least three years. Now the amendment proposed by the Government maintains the penalty for first-time offenders at two years while raising the penalty for subsequent conviction to a disqualification period of at least five years.

The amendment I propose is a disqualification period of at least five years for first-time offenders and a subsequent conviction will lead to disqualification for life. Chairman, I wish to respond to a point, about some Honourable colleagues who think that disqualification for life It seems that the microphone I am wearing does not pick up any sound. But that does not matter, I will clip it properly. Sorry about it. Is disqualification from driving for life not appropriate? Is it too harsh? I would like to make an analysis here and discuss with Members.

It was mentioned earlier a question of whether the current social conditions can be called chaotic and hence draconian penalties should be imposed. I consider that disqualification for life does not mean life imprisonment. This disqualification for life is only aimed at those who drive dangerously and who have broken the law on dangerous driving time and again. The penalty is aimed at making them impossible to drive motor vehicles anymore. This is my intention in proposing this amendment.

Some Honourable colleagues think that drivers who hit someone and kill the person should be arrested and put in jail immediately and they should be charged with manslaughter. However, they think that my amendment on

disqualification for life is not logical and too harsh. Then I fail to understand the logic and justifications behind such an argument. If this kind of drivers are arrested and put in jail, but they are not barred from driving for life, then they can drive again once they are released from prison. When they commit the same offence again, they will be put in jail, and when they are released, they can drive again. But if they are sentenced to disqualification for life as proposed in my amendment, and after they are jailed once, then when they are put in jail the second time because of the offence of dangerous driving causing death, they will never have the chance to drive again after they are released from prison.

I consider that this penalty may impose deterrence on the drivers. They can reflect on their driving behaviour, their responsibility for other road users, passengers and pedestrians, and what they should do as drivers. I recall that after the occurrence of a number of serious traffic accidents, when many Honourable colleagues spoke in public or during interviews they discussed the question of whether dangerous driving causing death should be equated with manslaughter, the maximum penalty for which is imprisonment for life.

Some Honourable colleagues think that the penalty can be raised to imprisonment for life, but I cannot make an amendment to this punishment at this Committee stage of the Bill today. This is because the drafting of the provisions concerned does not leave too much leeway and so there is considerable restriction on amendment. So I can only amend the relevant penalties and the disqualification period. I hope Members can understand that my purpose is to make drivers think carefully before they start the engine. If these drivers have previous convictions and they have killed people because of dangerous driving, then they must remind themselves constantly when they drive that if they break the law again, the consequence will not just be a disqualification period of five years as suggested by the Government. But this amendment by the Government will enable them to drive again after being disqualified for five years or five years after they are released from prison. Of course, some people will say that these drivers should be given a chance to reform and when they are put in jail again or disqualified again, it is enough to make them ponder over the things they have done. As Hong Kong is a small place with a huge population, I am sure it is a trend for Hong Kong and the world that penalties for offences like careless driving and dangerous driving will only become severer.

This morning some media workers told me a case that I have never heard of before. It is said that in a case in the United States, a driver has been convicted of drink driving nine times. What this person has done can be called dangerous driving and he may be charged with dangerous driving, too. With respect to this case, the Judge has sentenced him to imprisonment for life. It can therefore be seen that the global trend is to impose heavier penalties and efforts are being made to single out people who drive dangerously so that they will not become time bombs on the roads.

I now appeal to Honourable colleagues again, especially those from the Hong Kong Federation of Trade Union (FTU). Now Mr IP Wai-ming and Mr Albert CHAN are in attendance. I wish to make an appeal again that I have no intention of creating any class distinction and I do not mean to treat professional drivers differently. This is because professional drivers and drivers of private motor vehicles are all road users and they should be subject to the same kind of penalties. As Mr LEE Cheuk-yan said, I hope other road users and other professional drivers can drive in a reasonable manner, instead of driving dangerously time and again and causing deaths.

Prescribing the penalty of disqualification from driving for life is done out of the hope that all drivers will be on the alert. This will of course include professional drivers, too. I trust that most professional drivers will drive cautiously as most of them have to work hard to make a living and so they will be careful about the way they drive. However, there are bound to be black sheep among any large group of people. Suppose every worker in every trade and every driver of private motor vehicles have formed some dangerous driving habit, that will put every road user and pedestrian at great risk.

I therefore hope that Honourable colleagues from the FTU can support my amendment if they really care about professional drivers and their safety. This is because the amendment is entirely aimed at enhancing road safety and enabling members of the FTU to enjoy greater safety on the roads, so that they will not be killed or injured by any irresponsible driver who drives dangerously. Chairman, this is the main consideration I have in proposing the amendment. I will listen carefully to the comments made by other Honourable colleagues. I will speak again when necessary. Thank you, Chairman.

*Proposed amendment***Clause 6 (See Annex I)**

CHAIRMAN (in Cantonese): I now call upon the Secretary for Transport and Housing to speak but he cannot move any amendments at this stage.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, Mr Andrew CHENG proposes to increase the disqualification period for those who have committed the offence of dangerous driving causing death by raising the disqualification period from two years to five years on first conviction and from three years to life on subsequent conviction.

In our opinion, it would be inappropriate to accept Mr Andrew CHENG's proposal. First, the penalties we propose already have a great deterrent effect. We propose that drivers convicted of dangerous driving causing death upon subsequent conviction shall have their disqualification period increased from the existing three years to five years, the rate of increase being almost 70%. As a matter of fact, the penalties proposed in the Road Traffic (Amendment) Bill 2010 are not lenient at all when compared with those found in overseas places. The Government's proposal has balanced the views of members of the public and most of the people consulted. Mr CHENG proposes that the disqualification period for subsequent offenders should be increased from the existing three years to life, that is to say, a person will be deprived of his right to drive in the rest of his life. The impact is immense, as Mr Andrew CHENG has said. Life disqualification is a very serious matter, but the proposal has not undergone adequate public consultation.

Second, what the Bill proposes is a minimum disqualification period. If the Court considers that the facts of the case warrant an aggravation of the penalties, it may hand down a longer disqualification period. According to the penalties meted out in cases of dangerous driving causing death from 2007 to 2009, of the four repeated offence cases, the disqualification period handed down by the Court is three years in one case and five years in the rest of the cases. This is longer than the existing minimum disqualification period of three years.

So it can be seen that the Court will raise the penalties according to the gravity of each case.

Third, to drivers convicted of dangerous driving causing death, apart from a disqualification term, the Court will generally also hand down an imprisonment term. In mid-2008, the maximum imprisonment term for the offence was already doubled from five years to 10 years, resulting in significantly increased deterrent effect.

Fourth, the overall effect of the relevant proposals made in the Bill, including the introduction of circumstances of aggravation and the consecutive enforcement of imprisonment and disqualification terms, is to remove dangerous drivers with bad driving attitudes from our roads for a longer period. For instance, if a person is convicted of the offence of dangerous driving causing death, the maximum imprisonment term at present is 10 years, but if that person has a body alcohol concentration at tier 3 or any one of the six specified drugs in any amount at the time of the commission of the offence, then the maximum imprisonment term applicable to the person will be increased to 15 years. If the person is a repeat offender, the minimum disqualification period will be increased substantially to 7.5 years as a result of our proposal, instead of from three years to five years. If the driver is sentenced to 15 years in prison and disqualified for 7.5 years, and as the disqualification period will only start to run after the imprisonment term has expired, in other words, the person will not be allowed to drive for a period of 22.5 years upon conviction. We think that the proposal should be implemented first and have its effect assessed, together with sufficient consultation of the stakeholders and other road users before consideration is given to adopting more rigorous moves.

Owing to these reasons, we do not agree with the proposal made by Mr Andrew CHENG. I implore Members to negative this amendment. Thank you, Chairman.

MR WONG SING-CHI (in Cantonese): Chairman, the amendment proposed by Mr Andrew CHENG is meant to impose more severe punishments on those repeated offenders of dangerous driving. It also aims at sending a clear message of deterrence to the public and warns members of the public not to drive recklessly or dangerously.

With respect to this amendment proposed by Mr Andrew CHENG, actually, I think Members should not be scared off by it. Many Members of the Bills Committee say that this amendment will easily lead to many people being disqualified from driving for life. In my opinion, people who are sentenced to disqualification for life because of Mr Andrew CHENG's amendment really deserve it. Why? Now people who commit the offence of dangerous driving can be divided into three types, though there might be four or five types, too. It comes readily to my mind that there can be three types of people. The first type is those who do so because of inadvertence or they may really have some kind of special reasons so that they do not have any control over their driving behaviour and so dangerous driving is caused. The second type is those with pathological reasons, that is, what we mean by drink driving. There are chronic alcoholics who get drunk often and they drive, hence there are acts of dangerous driving. These people should receive medical treatment. Even if they are disqualified from driving for life, the problem remains unsolved. The third type is those who drive dangerously with intent or habitually. They do it not because of any pathological reasons, but there is something in them that compels them to drive dangerously.

If we are talking about the first type of people, those who have only driven dangerously for once and there are also some special reasons that account for their dangerous driving, I would think that sentencing them to a disqualification period of five years can achieve a great deterrent effect. The chances of their committing the same offence again are very small. Do these people have any chance of being disqualified for life? I would think that the chance for that is slim. This is especially true about professional drivers. After they have committed the offence of dangerous driving for the first time, I would urge them to really improve their driving manner and stop saying that they are being discriminated against. They should improve their driving habit and that is all they should do.

For those with a pathological background, apart from sentencing them to a five-year disqualification period, they have to serve a prison term. The two periods of time combined would really mean a long time. In our opinion, the driving problems of these pathological drivers should not be simply treated with punitive measures. They should be given some assistance to deal with their problem of alcoholism. So I think that apart from enacting laws, the Government should offer some treatment to those who are involved in dangerous

driving due to alcohol abuse or other chronic pathological condition. With respect to these two types of people, unless they are affected by incurable diseases, we should not blame them because they are under some sort of pathological influence. It is not our intention to draw up or amend the penalties to land them in disqualification for life. As a matter of fact, the chances of these people being sentenced to disqualification for life or committing the same offence again are small.

As for those who intentionally drive dangerously, that is, those who break the law again and again, why should we issue a licence to them? So first of all, I think that even if this penalty of disqualification for life is introduced, not all of these drivers will be given such a sentence. Also, as a matter of the system, it is not that easy for a person to be sentenced for a disqualification from driving for life. This is because under Mr Andrew CHENG's amendment, first-time offenders will be disqualified for five years and during this five-year period, they cannot drive at all. The law also provides that for purposes of serious offences in driving, repeated offence means the time between committing the offence for the first time and the second time must be less than five years. In other words, anyone who has been sentenced to disqualification from driving for five years will have no chance to drive at all because during the disqualification period, he is not allowed to drive. Hence it is not possible for him to commit the offence of dangerous driving again within this period of five years.

Some people may say that this type of people may drive in secret without the authorities' knowledge. When they drive in secret without the authorities' knowledge, then why should they be given a licence? When they drive during the disqualification period of five years when they are not supposed to, should they not be sentenced to disqualification for life? Some people would object and say that the Judge may exercise discretion and sentence the person to a penalty of a minimum disqualification period of five years. A Judge may indeed exercise his discretion as it is permitted in law. The result may be the driver concerned is disqualified for three years. So in this way a Judge may exercise discretion and kindly hand down a sentence of three-year disqualification. But after three years, if the person concerned acts wilfully and again breaks the law on dangerous driving, why can he not be disqualified for life? Members may have an impression during their discussion on the Bill that disqualification for life is a very harsh punishment. Actually, in Mr Andrew CHENG's amendment, those

people who end up being disqualified from driving for life are those who really deserve it.

If some desirable deterrent effect is to be achieved so that people will not dare to drive dangerously and drink drive, we should support this amendment by Mr Andrew CHENG because the deterrent effect so desired can really be achieved. There are Members who worry that this provision will bar professional drivers from driving to earn a living. But if a professional driver really ends up being sentenced to disqualification for life by a Judge, he should not be driving at all. This is because the conditions which I have just mentioned will not arise so easily, unless the drivers concerned really have got some problems of their own which make a Judge hand down this sentence of disqualification for life.

Therefore, the Democratic Party will support the amendment by Mr Andrew CHENG. Thank you, Chairman.

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

MR ALBERT CHAN (in Cantonese): Chairman, on behalf of the League of Social Democrats (LSD) I wish to respond to the amendment proposed by Mr Andrew CHENG, for he named our party in his speech earlier.

In my speech given during the Second Reading debate, I pointed out that we from the LSD were the first ones who called the most strongly for heavy punishment of the offenders of drink driving and the relevant penalties must be made stiffer. This applies especially to drink driving causing injuries and deaths. The LSD was the first to propose that drink driving causing death should be treated as manslaughter. This is the most stringent standard for the offence. The maximum punishment for manslaughter is imprisonment for life, and it is more severe than disqualification from driving for life. Why do we suggest imposing a harsher punishment instead of agreeing to qualification for life as proposed by Mr Andrew CHENG? I have pointed out clearly in my speech during the Second Reading debate that irrespective of what kind of punishment imposed, it must be ensured that the penalty meted out will produce

the same kind of deterrent effect on people from all social classes, with different backgrounds and possessing different amounts of wealth. If the penalty concerned will produce a different punitive and deterrent effect on people with different social background, then such a law will create injustice and the penalty itself will constitute class discrimination and have bias and prejudice against a particular kind of people.

I am profoundly impressed by case which my office received a number of years ago, which came from a professional driver. The driver was deducted 15 driving offence points and disqualified from driving for three months. This disqualification for a period of three months meant a loss of income for a professional driver. Not only was his job affected, but the financial situation of his family of four was also affected greatly because he could not work during the disqualification. His two children were innocent victims. They were studying in primary school. And when the income of the family was affected, his family suffered a severe blow in finance during this three-month period. The whole family had to get by with loans. This is the effect of the penalty. Of course, we can say boldly and rightly that if he did not want to face such a penalty, if he did not want to land his family in such a predicament, and if he did not want to suffer such financial problems, then he should not have broken the law in the first place. We can certainly make this accusation. But when the effect of the punishment brought about by the law will create a different effect on people with different class backgrounds, then as lawmakers and law-enforcers, we should face the problem squarely and see whether there can be a fairer way of imposing sanctions.

Therefore, among the many laws we have, especially those concerning corruption and bribery, the punishment is often not the imposition of a fine, but a prison sentence. This is because a prison sentence will not have any class discrimination and irrespective of rich people, the richest persons in Hong Kong or the world, or the ordinary men in the street, they will get the same punishment once they are put into jail. Of course, if you happen to be a tycoon, you may get better treatment in jail, as we all know. The cell you are put in may be better. But the effect of the loss of personal freedom applies to all who are jailed. The prison term can be said to be more or less the same. Take the example of drink driving causing injury or death, if it is treated as manslaughter, the offender may be jailed for five years or 10 years. The prison term is the same.

But if the punishment is in the form of disqualification from driving, and irrespective of the disqualification period being five years or 10 years, the effect of the punishment on a professional driver will not be the same. What I am talking about is the effect. It appears to be fair, for all people who have committed the same offence of drink driving will be disqualified. But the same penalty will create different effects. A tycoon who hires a chauffeur can have another person to drive for him. But for another driver who has killed someone or seriously wounded another person will have to bear another effect. Many of these professional drivers are middle-aged people in their forties and fifties. We may say that since they are in their forties and fifties, they deserve the punishment if they drink drive and kill someone. And they should be disqualified from driving for life. But why does a tycoon who drives a Bentley fast and kills someone may experience such a minor impact when he is jailed for two years or disqualified from driving for life?

Therefore, we suggest that the offence should be treated as manslaughter. Anyone, irrespective of how rich he is and irrespective of what luxurious car he drives, provided that he hits someone and kills him, then he should be charged with manslaughter. Regardless of whether he is a first-time offender or a repeat offender, the LSD suggests that the offence of manslaughter should be laid even on those who commit the offence even for the first time, for this is like the wanton killing of a person by a drunkard wielding a knife. Both acts are the same. I wish to make that point clear, like I said during the Second Reading, that drink driving causing death and killing someone with a knife are no different. Why do we have to be particularly lenient to those who drive a car and kill someone? This is not justified in logic and in law. So I hope Mr Andrew CHENG will understand the argument put forward by the LSD. If he proposes in his amendment that any act of drink driving will land the offender instantly in jail, then we will certainly support it. As I have said earlier, some states in the United States practise this law and that is, irrespective of the social class of the offender concerned, once the person is found drink drive and his alcohol concentration exceeds a certain limit, then he will be jailed instantly. He is not allowed to be released on bail. The same practice is enforced on the Mainland. I read from the newspapers some time ago that in Sichuan Province, some motorists who drove and killed someone were sentenced to life imprisonment. If this penalty is applied to everyone, irrespective of the person being an ordinary driver or the director of a certain bureau or not, or how rich he is, everyone will

be treated the same under the law. But disqualifying a person will create different effects on different people. And hence the deterrent effect and results of the penalty will be different.

Therefore, Chairman, I appeal to Members to pressurize the Government. As long as the Government refuses to treat drink driving causing death the same way as manslaughter, various parties and groupings in the Legislative Council must exert pressure on the Government to make the relevant amendments. It remains, of course, that we do not have any right to propose an amendment to that today, but in the long run and in the course of dealing with the issue, we must make the Government realize it. We must point out the problem to it seriously with this mindset and direction. In our opinion, the mentality of the Government is wrong. And we must not allow this wrong to continue. If the Government and this Council continue with this wrong and if people who drink drive or drug drive and cause death are not charged with manslaughter, and if this kind of unreasonable act is still condoned, such loss of life will continue and the problem will worsen when people do not care about life.

I hope we can continue to work hard on the issue. It is only when people get killed that the Government can wake up and see the gravity of the problem. This problem of drink driving has been discussed for many years. But it is only when people get killed in large numbers that the Government will wake up to the urgent need to amend the law. When major incidents have occurred, Members of this Council will all make their attack and the laws will be amended in a very strict manner. But I wish to stress that no matter how strict the law may become, we should know that the problem of class discrimination brought about by the effect of the punitive provisions of the law must never be dismissed. Thank you, Chairman.

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

MS MIRIAM LAU (in Cantonese): Like Mr Andrew CHENG, both the transport trade which I represent and I myself are very much against drink driving and drug driving.

When Mr Andrew CHENG spoke earlier, he mentioned a case in the United States. This morning some people from the media also mentioned that case and I happen to know about it as well. So when the media brought this case up again this morning, I surfed on the web for more information. The case happened this August in the State of Texas. The defendant concerned was convicted of drink driving for the ninth time and on that occasion the Court sentenced him to life imprisonment. He was not disqualified from driving but given a life sentence.

The case has been widely discussed on the Internet. Many people from the legal profession and some related bodies all discussed it enthusiastically. There is an article from a drink driving concern group and someone from it wrote an article. I would like to extract a couple of paragraphs from it and share them with Members. The article is in English but I do not have the time to translate it into Chinese. I now quote, "Nobody disputes that driving under the influence of alcohol is dangerous. In fact, it is one of the most deadly crimes. You won't get any serious arguments from anybody that people should be allowed to drive while impaired. Nobody would dispute that you are far more likely to die at the hands of a DUI", that is Driving Under Influence, "driver than at the hands of a serial killer or by gang violence. The dispute is not any the problem of impaired driving, but rather about what to do about it. Every year, many states increase the jail time, fines and other penalties for DUI offenders. There is little evidence that increased punishment deters impaired driving. In fact, there is no conclusive evidence that suggests that the average would-be drunk driver even considers the penalties before turning on the ignition and hitting the road. Most state lawmakers increase the penalties because it is politically popular to do so, and it's the only thing they can think of doing

"The judge in this case opted for long-term jail. In fact, he handed Mr Stovall", that is the name of the defendant in this case, a "life sentence. Now, before you react in favour of the judge's decision or against it, understand that Mr Stovall is highly unlikely to spend the rest of his life in prison for this sentence. In fact, he will be eligible for parole in as few as five years. In a worst case scenario, he will be eligible in 15 years. So in many ways, this sentence is more sensationalistic than it is truly out of line with penalties that have been issued in other cases for chronic repeat offenders." End of quote.

This case in fact has made me re-examine the situation once again. With respect to this amendment exercise, are the disqualification period, prison terms or other details too lenient when compared with our neighbours or the world, or are they totally incapable of catching up with them? As far as I know, when compared with places like Singapore, the United Kingdom, New South Wales in Australia, and so on, we are not lagging behind at all. With respect to certain penalties, we are even stiffer than they. As a matter of fact, these penalties are quite stiff. Then are they appropriate? There are a number of principles that we should consider when dealing with levels of penalty in any piece of law.

On the sentencing standards used by the Courts, the penalties should meet the standard of proportionality and should not have any retribution effect on the offenders concerned. Instead, they should be given a chance of rehabilitation. This is the essence of correction. Of course, with respect to this, shall we use a correctional approach or a punitive approach? I think we can give some thoughts to this. This is why the Correctional Services Department in Hong Kong is so named. It does not stress punishment. So the idea is not punishment and nothing but punishment, but punishment and correction at the same time.

The amendment proposed by Mr Andrew CHENG is to impose much heavier penalties on top of a system of substantially increased penalties (be it prison terms or disqualification periods), even to the extent of disqualification for life. Mr Andrew CHENG's proposal is actually, the increase in penalties in the original proposal is quite considerable. The Government has made penalties much stiffer than those found in the existing law. The increase is about 50% or even 100%. But he wants to make a further increase by 50% to 100%. The increase is extremely large. In my opinion, there is no need to do it. We agree that heavy penalties should be imposed in unruly times. But are we living in unruly times? No, not at all. We are only talking about drink driving and that is all. Drink driving does not make the times unruly. When we are to enact any laws, we have to consider the relevant situation. About this problem of drink driving, as I have said, both my trade and I do not support it. We hate it and despise it. We want to punish acts of drink driving. Later on, I will explain the reasons. Actually, I talked about them when I spoke during the Second Reading debate that both drivers and vehicle owners all thought that drink driving was most unfair to other people. They are disturbed by such kind of behaviour and they are never in favour of it. But considering the situation in

Hong Kong, is it necessary to impose heavier penalties on top of the penalties already made stiffer by the Government? Or has anything appeared that prompts us to increase the penalties?

Of course, Mr Andrew CHENG and many Honourable colleagues may think, and I also think so, that once this kind of accident has happened, we would be greatly touched. Every time when I see this kind of bloody scenes, my heart would break. In the incident that took place last February in Lok Ma Chau, who were lying in a bloodbath? Six people — one taxi driver and six passengers. The taxi trade was involved. A few years ago, there was an accident in Wylie Road about a private car hitting a taxi. The transport trade was also involved. The driver also lay in a bloodbath. Such horrifying scenes left a lasting impression on us. So the transport trade just hates — I can only describe its hatred of drink driving and drug driving as hating them to the guts. But we still have to ask this question: Do we need to impose such heavy penalties? We should look at the objective environment and the figures — we have to refer to figures even though we may not like to do so.

Some Honourable colleague mentioned earlier that the number of drivers arrested was about 94 on average monthly from this January to November. The number has risen when compared to the monthly average of 85 last year. But we must not forget that in 2009, the random breathalyzer test was introduced and so the number of drivers intercepted has certainly gone up. We have to be reasonable. Compared to the figures for 2008, what is the situation? In 2008, there were 124 cases every month. If you use this figure to look at the problem of drink driving as a whole, things seem to have improved when compared to 2008. That is to say, the number of drivers who were stopped and arrested, that is, found to have broken the law after failing the breathalyzer test this year is less than that in 2008. If we look at the number of people convicted of drink driving, it is 1 071, 1 085 and 856 for the years 2007, 2008 and 2009 respectively. The number of 856 as compared to 1 071 and 1 085 is less. Then what is the number of drivers convicted from January to April this year; it is 142 people. If it is lucky, we can multiply this number by four, sorry, it should be three and we can get the number for the whole year. The number could be much less than that of last year. Is this a very bad situation so that we have to further increase the penalties even though they have already been increased? Do the penalties have to double or increase by 50%? I am sure considerations about this would touch

on principles like proportionality and rationality. But it seems that there is no need to increase the penalties. However, I agree completely that with respect to very serious offences, like the incident in Lok Ma Chau which some Honourable colleagues have mentioned, if any Member says that the offender should be charged with manslaughter, I would support the idea. I am completely for charging offenders who have committed serious acts of drink driving causing death of manslaughter. This is right and should be done, and it is fair.

Let us look at the amendment by Mr Andrew CHENG. Of the many amendments he wants to make, such as raising the penalty from three years to five years; and increasing the period from five years to 10 years, we find that he is of the view that a 10-year term will have a greater deterrent effect. However, as pointed out in the article I have just read out, increasing the penalties will not necessarily produce a deterrent effect. If after the penalties are increased to 10 years there are still drink driving cases, are we going to increase the penalty to 20 years? If after the penalty is increased to 20 years there are still drink driving cases, are we going to increase the penalty to imprisonment for life? Are all offenders of drink driving punishable by imprisonment for life or disqualification from driving for life? Will the problem of drink driving be eliminated in this way? We can discuss whether or not this will work. I am not saying that I do not have any conclusion, but definitely, I do not think we can say that a deterrent effect is created merely by increasing the penalties. This seems to be the view shared by many scholars on this issue.

What disturbs me most is that Mr Andrew CHENG proposes that repeat offenders of the crime of dangerous driving causing death should be disqualified from driving for life. I have really been disturbed by his proposal for a long time. I have consulted the trade on that and the view put forward by the trade — there are 92 transport groups and trade bodies in land transport — I have sent questionnaires to them. I received 19 responses in all, or 20% of the total number. Actually, there is one questionnaire from two bodies. So I can say that 20 bodies and associations out of the 92 in my trade have responded to my questionnaire. And these organizations account for 22% of the organizations in my sector. Interesting enough, half of them agree with the proposal made by Mr Andrew CHENG. They use words like heavier penalties should be imposed on those who break the law knowingly and offenders should not be allowed to get away lightly because the consequences are so serious. These are what they have said. Some of them say that the problem of drink driving should be addressed

squarely, and so on. They also agree with the proposal made by Mr Andrew CHENG. The other 10 organizations do not agree. They say that they are worried that there may be cases of injustice, and they think that the existing penalties are too heavy. That really makes me feel baffled. It is because the views from the trade are divided and divergent. What should I do? Should I support the amendment by Mr Andrew CHENG or not? If you ask me what I think, when someone has already died because of dangerous driving by a driver, and on the second occasion when another person drove dangerously and killed another person, I would have a feeling that I want very, very, very much to support his idea. I think that is not right at all. It defies justice. And I should support Mr Andrew CHENG. But as I think more carefully, especially when we are talking about drink driving now, that someone has consumed alcohol and drives, killing some people. We are talking about drink driving and this problem must be eradicated. However, as I re-examine this amendment by Mr Andrew CHENG, he is actually talking about dangerous driving causing death, about an offender being disqualified from driving for life on the second conviction. This is a totally different thing from drink driving. Drink driving is drink driving. Whether or not the dangerous driving he refers to is drink driving seems out of the scope of consideration in the context of his amendment. Then I think I have to raise some questions. The trade is not in support of drink driving and it is very much against it. That is why it agrees even to disqualification for life. But the amendment by Mr Andrew CHENG is not related to drink driving. So I would think that even if this amendment is not passed today, the Government can consider linking drink driving with dangerous driving and increasing the relevant penalties. I am sure more people will give this idea their support.

I also wish to raise the point I made earlier, and that is about whether a person found guilty of dangerous driving causing death should be punished by disqualification from driving for life on second conviction. In terms of morals, I think it is right. But as the focus of our attention this time is on drink driving, and there has never been any consultation or discussion on that before, I would think that the Government should bring up for discussion the issue of whether heavier penalties should be imposed on dangerous driving causing death for repeat offenders, not counting acts of drink driving and drug driving? I think we should discuss this issue. I am sure the community hopes that we can discuss it, make rational analyses of it and come up with a decision, instead of linking everything up with drink driving as we are doing today. Therefore, it seems to

be too early to talk about supporting proposals of this sort now. Thank you, Chairman.

MR CHEUNG HOK-MING (in Cantonese): Chairman, with respect to the amendment proposed by the Government, while we cannot say that it is the most effective method, we can only see its effect after a long period of observation after the law has come into force. On the amendment by Mr Andrew CHENG, including the proposal to increase the penalty to disqualification from driving for life for drivers found guilty of committing again the offence of drink driving at tier 3 or dangerous driving causing death, both the DAB and I think that the progressive three-tier disqualification period as proposed by the Administration is only a minimum disqualification period and not the maximum. The Court can consider the gravity of the merits of the case and sentence the driver in question to a longer period of disqualification. The Court is fully justified to do so.

With respect to the existing law, a person convicted for the first time and the second time is sentenced to a disqualification period of three months and two years respectively. In 2009, 51 drivers found to have committed drink driving repeatedly, and of these no less than six drivers were sentenced to a minimum disqualification period of more than two years. Therefore, I believe that when this new progressive three-tier penalty system is in force as proposed, the problem of drink driving would be curbed. And the Court will mete out a sentence fair to the offenders considering the gravity of the case concerned and the impact on society as a whole. The Court will uphold an approach to sentencing that is fair, efficient and impartial. In addition, the new proposal from the Government states that the disqualification period will start to run only after the prison sentence is served. It follows that offenders will not be able to drive for a considerable period of time.

If an across-the-board approach is adopted to sentence all repeat offenders of tier 3 drink driving or dangerous driving causing death to disqualification from driving for life, flexibility in sentencing by the Courts will be compromised. Many Honourable colleagues have pointed out that in the new proposal made by the Government, it is stated that those who refuse to undergo a breathalyzer test will only be liable to a disqualification period of 10 years. So if drivers wishing to avoid disqualification can refuse to undergo a breathalyzer test, they will only

be sentenced to a disqualification period of 10 years, instead of being disqualified for life. This is the greatest loophole.

If this penalty of disqualification for life were implemented, it would be like handing down a death sentence to the career of a professional driver. This is an extremely heavy punishment. I believe the spirit of the law is to give a chance to people to reform themselves and to correct the wrong acts and values of the offenders, instead of dispensing a retributive justice of an eye for an eye and a tooth for a tooth, or in handing down a death sentence, so to speak. Chairman, I pointed out in my previous speech that education is better than punishment. The authorities should enhance their efforts in fostering a respect for the life of every road user in the drivers and build up the right values in them. As for drivers who have committed drink driving in the most serious degree, some barrier should be set up for them to help them achieve certain standards in their mindset and manner of driving before they are allowed to drive again. This would be the best method to tackle the problem at root.

Chairman, both the DAB and I will not rule out the possibility of demanding the Government to further amend the Ordinance in the light of the realistic situation in future and increase the penalties. At this stage, however, the proposal of disqualification for life made by Mr Andrew CHENG in his amendment will produce some lasting and far-reaching impact on the offenders. This will deprive them of their right to drive for the rest of their life and it is therefore a very important matter indeed. Hence there must be extensive consultation, detailed discussion among the public and careful consideration by the executive and legislative authorities. Therefore, the DAB and I cannot support the amendment by Mr Andrew CHENG before any discussion is held. We will object to it.

MR IP WAI-MING (in Cantonese): Chairman, I wish to make use of the Committee stage now to explain the speech I made earlier. In my earlier speech I said that the FTU would abstain from voting on this Bill. But I hope the Administration and Honourable colleagues will understand that the FTU shares the same stand as other Members in combating drink driving and drug driving. We think that society should be determined and do what should be done. A trade union affiliated with the FTU, the Motor Transport Workers General Union also thinks that we should combat drink driving and drug driving. So with

respect to the amendments proposed by the Government in the Committee stage on drink driving and drug driving, we actually think that these are what should be done.

Unfortunately Chairman, on this occasion when the Government seeks to amend the Road Traffic Ordinance, apart from combating drink driving and drug driving, as I said earlier, it also makes some other amendments. Under the existing offences, that is, dangerous driving and dangerous driving causing death, it proposes to introduce a new offence of "dangerous driving causing grievous bodily harm" (DDCGBH). This new offence will not only affect drivers who drink drive and drug drive, but also those law-abiding drivers. We have asked the Government whether or not this can be dealt with separately. But the answer is no. So we think that insofar as the introduction of this new offence of DDCGBH is concerned, the Government should take the normal course by conducting extensive consultation and fostering discussion in society. We think this is the proper approach to take. Now the Government just bundles up drug driving, drink driving and this new offence together. We will therefore abstain from voting on the Bill at Third Reading.

However, we wish to state that the FTU agrees with all the measures to address the problems of drink driving and drug driving proposed by the Government in the Committee stage, including the introduction of the six items in the schedule, that is, the scheduled drugs. However, due to the bundled approach taken by the Government, we hold that since the new offence is introduced without any prior consultation conducted by the authorities, we will abstain from voting at Third Reading. Thank you, Chairman.

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

MR PAUL TSE (in Cantonese): Chairman, with respect to the amendments to clause 6 presently under discussion, I have the following observations to make. First, I understand that ever since the new law has come into force, including the introduction of the random breath testing arrangement, the crime rate for drink-driving related traffic accidents has dropped 67%. But that does not seem to have been caused by the law but only a change in the method of enforcement.

Actually, this method is very popular in overseas countries, only that Hong Kong is late in following it. There will be some marked change when this is done well.

Second, many Honourable colleagues have referred to the existing systems in other countries. They think that the proposed new system in Hong Kong has heavier if not comparable penalties.

Third, as many Honourable colleagues have said and I wish to focus on the main points involved, I agree particularly with the question of discretion exercised by the Court as mentioned by Mr Ronny TONG. This is because we are talking about the minimum punishment, not the maximum punishment. With respect to this, if we are to tie the hands of the Court, so to speak, this would be bad to the whole system instead of good to it. On the other hand, if the Court is allowed to consider more factors in relation to the circumstances of the case, the circumstances regarding the defendant and the course of the accident when handing down a sentence, this would be a more proper approach to take from the judicial perspective.

Some Honourable colleagues stressed repeatedly that these cases should be treated as manslaughter. As a matter of fact, manslaughter is an option, a possibility, and it has been invoked previously. So please do not mislead the public that offenders of such cases cannot be charged with manslaughter. It can indeed be done, and it has been done. The main concern is the merits of each case concerned. I think we have to make that point clear.

Chairman, some Honourable colleagues have advanced the argument that heavy penalties should be imposed in unruly times and so such kind of cases should be punished heavily. But the paradox is that even if the capital punishment is imposed — of course, this should not be done — I do not think such cases can be eliminated. There is no punishment, including the death sentence, that can eliminate all crimes or this kind of offences. So we have to take a rational and proper approach in order to strike a good balance. We should not think that only by imposing heavy penalties can the desired effect be achieved.

Besides, an Honourable colleague kept emphasizing class struggle. With respect to this, I wish to stress that while a driving disqualification will certainly have a more serious impact on professional drivers, we should not forget that

apart from meting out punishment, we have also a responsibility to protect the society. For some of these professional drivers, if they are allowed to continue with their drink driving, the harm done to society will be far greater than those weekend drivers belonging to the rich, according to what this Honourable colleague says. These weekend drivers do not usually drive and they would only drive once in a while, or they would drive when they go out for drinks at night as their chauffeur is off duty. For these people, a disqualification would mean less impact to them. The harm they do to society is less than those professional drivers who drive about everywhere. This can be said to be a kind of offsetting or balancing effect, and it cannot be said that there is anything unfair to professional drivers or non-professional drivers as such. I think that this point must be clarified.

Chairman, as to the mention of some places which practise immediate imprisonment, as far as I know, such cases often happen when accidents take place rather late in the night and the police have to put the offenders behind bars at once so that they can sober up. This is certainly because they should be prevented from driving anymore and hurting more people. And it is also done for the sake of protecting them and in their best interest. This kind of sobering up system varies from place to place and there are huge differences between them. As foreign countries are large places, if this is not done, it will be impossible for these people to go home. So after they are arrested, they will usually be detained in the police station overnight. This is for the sake of protecting all the parties concerned. But this method does not seem to work in Hong Kong because Hong Kong is such a small place and the persons concerned can certainly be brought home safely by some public means of transport within 24 hours. So I do not think it is appropriate to cite this example.

As for the point about life imprisonment of offenders on the Mainland, as far as I know, this is not yet practised on the Mainland. The case in question may not be prosecuted under the offence of drink driving, but manslaughter. It is only in this way that an offender can be sentenced for life. This is because, as far as I know, the present practice for offenders of drink driving is at most detention for 15 days.

Chairman, all in all, although I agree with the arguments presented by many Honourable colleagues, the fact is, no life should be wasted for no good reason. And even if the most stringent means are used, such things are bound to

happen at any rate. This is like no matter how hard we work to prevent industrial accidents or food safety incidents, such things will happen no matter what. Lives may be wasted even if there is no such intention, or when the original intention is otherwise.

In such circumstances, I would say that in recent years Hong Kong has caught up and the penalties imposed are made much heavier. But should we go to the extreme all of a sudden and adopt some harsh penalties which have never been used elsewhere in the world, such that people may easily be disqualified from driving for life? If there are plenty of such serious cases happening in our society in future, or if there is really a need for it, I believe the authorities will do the same as they are doing on this occasion. As a matter of fact, ever since 2008, the Government has further amended the law and imposed heavier penalties, so I am sure a swift response will also be made again. But before that happens and for the time being, I could not support the amendments made by Mr Andrew CHENG to double the penalties proposed in the Administration's amendments or even suggest a disqualification for life.

Thank you, Chairman.

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

MR RONNY TONG (in Cantonese): Chairman, I wish to make a small clarification. Some Honourable colleagues compared the offence with manslaughter. As a matter of fact, manslaughter is an offence which requires a higher standard of proof. But in the law related to manslaughter, there is no minimum penalty as such except a maximum penalty. Previously, there were cases in which offenders of manslaughter were sentenced to imprisonment of less than five years. That depends entirely on the decision of the Court taking account of the facts of the case concerned.

Another thing which I wish to clarify is that there are media reports which say that I oppose the amendment proposed by Mr Andrew CHENG in this respect. This is not the case. What I wish to oppose is only the amendment with respect to the three-tier system. I think that some law should be enacted on

this to achieve sufficient deterrent effect. So I think this amendment can be accepted.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, do you wish to speak again?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, the amendment we propose to clause 6 is related to drug driving. Recently, there has been a sharp rise in drug driving cases. In order to enhance the deterrence on drug driving, we propose that if a driver commits the offence of dangerous driving and if any of the specified drugs, that is, heroin, ketamine, methylamphetamine, cannabis, cocaine and 3, 4-methylenedioxymethamphetamine (MDMA), is found in the body at any amount, then it is regarded as a circumstance of aggravation. The maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%.

When deliberating on the Bill, some Members suggested incorporating legislative proposals to combat drug driving into the Bill so that these proposals could be implemented soon and the deterrent effect enhanced. After considering this view, we accepted the suggestion made by the Bills Committee and introduced the above CSA.

I urge Members to support the passage of the relevant amendment. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

MR ANDREW CHENG (in Cantonese): Chairman, I would like to respond to some of the specific views expressed by a number of colleagues one by one.

Firstly, I think Mr Albert CHAN was quite agitated when he spoke earlier on. He asked why we always have to make the penalties He seemed to have said "class discrimination". I really do not quite understand his rationale. Any person, however rich or poor he is, or whether he is a boss or a "wage earner", who committed dangerous driving causing death is subject to disqualification for a minimum of two years on first conviction and a minimum of five years on subsequent conviction under the current proposal of the Government, whereas I have proposed a minimum disqualification period of five years for first-time offenders and life disqualification for repeat offenders. Well, he said that this is unfair because a boss can hire a driver. But the "wage earners" can also have their drivers, just that their drivers are bus drivers or MTR train drivers. This is the only difference. Our intention is to take away the driving licence of those people who have twice committed dangerous driving causing death, so as to stop them from driving anymore. But the bosses and "wage earners" can continue with their living, and they can continue to travel on public transport. Of course, the bosses have their own cars and they can hire drivers to drive for them, whereas the "wage earners" travel by bus, tram, minibus, or MTR. So, what is the problem?

Then, he cited a miserable case of a professional driver who lived from hand to mouth to feed his family of four, saying that the driver's children had suffered innocently. I certainly understand this, and I do not wish to make any repetition here. But if this professional driver has committed reckless or dangerous driving causing death over and over again, he should not work as a professional driver anymore. If he does not work as a professional driver, he can still take up a lot of other jobs. Then, Mr Albert CHAN said that it would be better to put him behind bars. But he cannot work once he is jailed and in that case, his children would really be made to suffer innocently. The father or mother who is jailed is all the more impossible to take up work. But if he is disqualified from driving, he is barred from driving only and he can still take up a lot of other jobs. Therefore, I really do not quite understand how he has come to such a view. In citing this four-member family as an example, Mr Albert CHAN said that this family would be plunged into dire straits, that the innocent children would suffer, and that the driver would be unable to feed his family. But if he is put behind bars, would he not be even more unable to feed his family?

Chairman, he kept on stressing the actual situation or the actual effect, adding that the effect is unfair to this group of people. It really beats me. Friends from the LSD kept on saying that the Legislative Council must not do anything wrong again. I think this may not necessarily involve a question of right and wrong. As regards sentencing — perhaps let us not talk about sentencing because we are not the Court — As regards the penalties stipulated in law, I think the 60 Members of us here, including the Chairman, have our own subjective views, but this is not a question of right and wrong. We may conduct heated debates to explore ways to bring greater benefit to society. So, I do not wish to say who is right and who is wrong, because I believe none of the Members here in this Chamber will not feel sorry seeing the bloody scenes resulted from dangerous driving causing death. Each and every Member will feel sad. So, we absolutely should refrain from saying that other people's opinions must be wrong and that their logic must be problematic. I do not wish to debate all this and frankly, I think such a debate is not quite up to standard. Our views can be different from one another, and this is actually fine. But these different opinions absolutely should not be considered as problematic from the legal point of view, or in terms of logic.

Ms Miriam LAU quoted some statistics earlier on. Certainly, Members will put forward various statistics, and what I have obtained are some prosecution figures relating to dangerous driving causing death. According to the police, the figures for the past three years are as follows: 39 cases in 2007, 50 cases in 2008, and 45 cases in 2009, but in the first half of this year, there were already 74 cases of fatal traffic accidents with the drivers being arrested, and 43 of these 74 drivers were involved in the offence of dangerous driving causing death. I can see that these figures have kept on increasing rather than dropping. This has reinforced my view that the incidence of the offence of dangerous driving is very serious.

Ms LAU said that she very, very, very much wished to support my amendments. I had particularly paid attention to her when she said "very" thrice. She said that the results of consultation in her industry were "fifty-fifty" but she very, very, very much wished to support my amendment. Of course, I very, very, very, very, very, very, very, very much wish to have the support of colleagues from functional constituencies, but I understand that the chances of my amendments being passed are slim. But in any case, this debate today will be put on record. I think all Members who have spoken today have expressed some

very special views which will be constructive to our discussion on these types of offence in future.

Having said that, I do not quite agree with the view that it is premature to impose life disqualification on repeat offenders of dangerous driving causing death. This is also a subjective judgment, and I think this measure is long overdue. Certainly, some colleagues argued that as other countries have not taken this step, is there really a need for Hong Kong to do it so quickly? I always think that we do not necessarily have to be led by the nose by other countries.

Chairman, Hong Kong is a unique place. Our roads are narrow with many vehicles and besides, some people do not care about other people's lives by taking part in illegal road racing and committing dangerous driving causing death. In fact, on every weekend, we can find lots of illegal racing activities on some busy road sections, such as the Princess Margaret Road and the Island Eastern Corridor. While the situation in Hong Kong may not be as serious as that in other countries, we have to be pragmatic and we must consider the current situation in Hong Kong.

Ms Miriam LAU, you were not in the Chamber just now. I heard you say earlier that you very, very, very much wished to support my amendment. I hope you can consider again, again and again, as there are still a few minutes before we vote. I have this speaking time of 15 minutes, and I wish to make use of this period of time as much as possible to ask you to reconsider this. Actually I am glad to hear that you have had a struggle because at least you have not rejected my proposals instantly. Even though I have not succeeded this time around, you may support me next time.

Well, I must say that as I am an independent Member who belongs to the democratic camp, the amendments proposed by me will often For example, regarding the platform screen doors that I always talked about before, I kept on striving for the retrofitting of platform screen doors outside this Council but when the legislation on a merger of the two railway corporations was discussed in this Council and when I proposed amendments with binding effect, the pro-government camp refused to give their support because I am not a member of the ruling alliance. When the Government says "No", Members in the ruling alliance will definitely come up with a host of reasons not to give their support.

Mr CHEUNG Hok-ming said the life disqualification is like imposing a death penalty on the offenders. He said that they should be given an opportunity to turn a new leaf, rather than being sentenced to death. Chairman, how could this be a death penalty? A driver or even a professional driver who have twice committed dangerous driving causing death will only lose his driving licence, and this may actually help him remove his spectre. As I said earlier, if these people are allowed to continue to hold a driving licence, they would not know whether they should or should not drive. But if they are not allowed to hold a driving licence, they can simply forget about driving by not driving ever again in the rest of their life, and hence putting a full stop to their sense of guilt. Mr CHEUNG went on to say that we should not take the attitude of "a tooth for a tooth, an eye for an eye". Mr CHEUNG, I am not asking the Government to knock him down to death. I am just proposing to disqualify him from driving. How could this be "a tooth for a tooth, an eye for an eye"? I really do not quite understand this logic. Any person who has acted against the law must be subject to punishment anyway. You can say that the penalty is too harsh, but you cannot say that I am taking an attitude of "a tooth for a tooth, an eye for an eye".

Mr IP Wai-ming said earlier that insofar as this offence is concerned, it seems that the Government has not properly consulted the trades. I beg to differ. The trades had attended meetings of the Bills Committee and put forward their views and so, they should be fully aware of it. I always speak highly of Ms Miriam LAU who is a very hardworking functional constituency Member. Of course, Mr IP Wai-ming is a Member of the labour sector, and I believe the labour sector had also put forward their views in the Bills Committee. We are now talking about dangerous driving causing death, and the views of the trades should certainly be respected but public interest and road safety should all the more be respected and given due weight. We often stress the need to consult the trades, and Mr Paul CHAN has made a very good point earlier. If, after consultation, there are different opinions, will it mean that we should not proceed to do anything? There are 60 Members in this Council and despite that not all Hong Kong people are voters, we do represent over 3 voters, and I believe we all have a good understanding the sentiments of the vast majority of Hong Kong people.

I very much respect the remarks made by Mr Paul TSE, but I take exception to a number of points made by him. I understand that imposing penalty for an offence can never stamp out all illegal behaviour. It is impossible

for one single piece of legislation or order to be able to stamp out all offences. This is why I have been saying that I only wish to create a stronger deterrence effect, so that drivers can think before he starts the engine about whether he is a sensible driver. For cases of drink driving causing death, the Government has mostly charged the driver for dangerous driving causing death or even perhaps, as Mr TSE has said, the driver may be charged for manslaughter. There have been such cases before. If the driver is a repeat offender and has caused death before, or if he has a criminal record of drink driving, he will have second thoughts about whether he should drive after drinking. In that case, perhaps a few more lives can be saved, rather than the driver knocking down somebody to death and then being disqualified from driving for a few years. In the latter case, the person or several persons have died. The damage and trauma caused are irrevocable.

I admit that my amendment is indeed my very subjective judgment. Everybody will make subjective judgments. In view of various saddening, bloody traffic accidents that occurred over the past few years, we will have different judgments, and we will suggest different cures for the problem.

I very much hope that Members who are still struggling at this point in time today as to whether or not they will support my amendment can reconsider it again especially colleagues from the DAB or FTU. Today, I actually wish to hear what Mr WONG Kwok-hing would say, because whenever a traffic accident involving fatalities had taken place, I would pay great attention to what he said when he was interviewed by the reporters. He would say that the Government should have introduced harsh penalties to tackle the problem, but it had never taken any action. Now that the Government is doing something which I think is not quite adequate, and this is why I have proposed my amendment, but they have backed off instead. They have not spoken and what is more, they even said that they would oppose my amendment. This is heartrending to me. We, being Members of this Council, should be consistent in our words and deeds. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for three minutes.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE, Mr CHIM Pui-chung, Mr Paul CHAN, Mr CHAN Kin-por and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr IP Wai-ming and Dr PAN Pey-chyou 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 LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan and Dr Priscilla LEUNG voted against the amendments.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 25 were present, seven were in favour of the amendment, 12 against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, 16 were in favour of the amendment, six against it and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the other provisions of the Road Traffic (Amendment) Bill 2010 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is agreed by a majority 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 other provisions of the Road Traffic (Amendment) Bill 2010 or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, you may now move your amendment.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendment to clause 6.

Proposed amendment

Clause 6 (See Annex I)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 6 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 6 as amended stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 7.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has given notice to move amendments to clause 7 to amend sections 36A(3)(a) and (b), 36A(4)(a) and (b) as well as 36A(5)(a) and (b) as proposed in the Bill. Besides, the Secretary for Transport and Housing has also given notice to move an amendment to clause 7 to amend section 36A(7) as proposed in the Bill.

Irrespective of whether Mr Andrew CHENG's amendment is passed, the Secretary for Transport and Housing may move his amendment to the clause.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and the amendments of Mr Andrew CHENG and the Secretary for Transport and Housing. I will call upon Mr Andrew CHENG to speak first and move the amendment.

MR ANDREW CHENG (in Cantonese): Chairman, I move that clause 7 be amended.

Chairman, this clause seeks to add a new section entitled "Causing grievous bodily harm by dangerous driving". The existing ordinance does not have this section. My amendment mainly relates to the disqualification period. Under the Government's proposal, a first-time offender shall be disqualified for a period of not less than two years, and a repeat offender shall be disqualified for a period of not less than five years. My amendment proposes that a first-time offender be disqualified for a period of not less than three years, and a repeat offender be disqualified for a period of not less than 10 years.

Chairman, the most basic reason for me to amend this clause is that when I read the Government's proposal to disqualify a repeat offender from driving for not less than five years, I think its deterrence effect definitely would not be strong. The penalty of disqualifying a first-time offender for not less than two years and a repeat offender for not less than five years is actually more or less the same as the penalty for the refusal to take the breath test. Members must understand that as I already mentioned in my first speech during the resumed Second Reading debate, dangerous driving is a serious offence, and the damage caused by dangerous driving causing grievous bodily harm may be no less miserable than that caused by dangerous driving causing death.

From our discussions in the Bills Committee and in common law, "grievous harm" may refer to a person losing an arm or a leg or even lapsing into a vegetative state. If a family member suffered grievous bodily harm caused by dangerous driving, to the family taking care of him, it may mean far greater pain than actually losing a family member. Why? Because they would have become exhausted mentally and physically in taking care of a family member who has suffered serious injuries. Of course, a family which loses a beloved family member will have to go through a very long grieving period. But seeing a beloved family member become paralyzed for life and lapse into a vegetative state as a result of a driver committing dangerous driving and as these memories are evoked day after day and over and over again, the family will be tormented by great pain. Therefore, the proposed penalty of disqualifying a first-time offender for not less than two years and a repeat offender for not less than five years is disproportionate.

Chairman, I am not going to spend too much time here elaborating this point, because since the resumption of the Second Reading debate today, we have already repeated a lot of points. I think the offence of "causing grievous bodily harm by dangerous driving" should be subject to driving disqualification for at least 10 years. I hope colleagues will understand that this is precisely because the consequences of "grievous bodily harm" are very serious, and they are also very distressing to families in Hong Kong with family members suffering harm for this reason. Therefore, the disqualification period should be not less than 10 years.

Chairman, I beg to move, and I hope to respond to the views of colleagues later.

Thank you, Chairman.

Proposed amendment

Clause 7 (see Annex I)

CHAIRMAN (in Cantonese): I now call upon the Secretary for Transport and Housing to speak, but no amendment is to be moved at this stage.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, we propose to set the penalty for a driver convicted of dangerous driving causing death at a minimum disqualification period of two years and five years for repeated offence. Mr Andrew CHENG proposes to further increase the minimum disqualification period for the offence. He proposes to set the minimum disqualification on first conviction to three years and 10 years for subsequent conviction. The proposal has not undergone any adequate public consultation.

Our proposed penalties are brought in between the offences of dangerous driving and dangerous driving causing death and these proposed penalties have made reference to those for related offences as practised in overseas countries. Besides, the Bills Committee on the Road Traffic (Amendment) Bill 2010 has discussed the penalties for this new offence in detail and our proposed penalties have gained the support of the Bills Committee.

On the other hand and as I have pointed out earlier, our proposal is the minimum disqualification period. If the Court takes into account the facts of the case concerned and increases the penalty, it can hand down a longer disqualification term. Apart from disqualification, we have introduced other relevant proposals in the Road Traffic (Amendment) Bill 2010, including circumstances of aggravation and the consecutive enforcement of imprisonment and disqualification terms. The effect of putting these proposals into practice is that dangerous drivers with a bad driving attitude will be taken off from the roads for a long time.

Owing to the above reasons and the speech I made earlier related to the amendment to clause 6, I do not agree that Mr Andrew CHENG's proposal should be accepted. I implore Members to negative the amendment.

Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, as I said very clearly when I spoke earlier on, we support all the amendments proposed by Mr Andrew CHENG in principle, except those relating to the three-tier penalty system, and in the vote taken in respect of clause 6 earlier, we also voted in support of his amendment.

However, Mr Andrew CHENG's amendment was negated earlier and for this reason, if we vote for Mr Andrew CHENG's amendment to section 36A, it would lead to an outcome which does not quite make sense, in that the minimum penalty for "causing grievous bodily harm by dangerous driving" would be higher than that for "causing death by dangerous driving". The same scenario would be resulted for both first-time offenders and repeat offenders.

The reason is that a first-time offender is proposed to be disqualified for not less than three years, but under section 36 that we have just passed, a first-time offender will be disqualified for not less than two years. In respect of repeat offenders, the amendment proposed by Mr Andrew CHENG now stipulates a disqualification period of not less than 10 years, but under section 36 that we have just passed, the minimum penalty is disqualification for not less than five years. This is neither a sensible nor logical outcome.

Although we support Mr Andrew CHENG's amendment in spirit, we are afraid that we cannot vote in support of his amendment to this clause.

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

MR ALBERT CHAN (in Cantonese): Chairman, with regard to the descriptions made by Mr Andrew CHENG when he proposed his amendments earlier, especially the descriptions of the traumas experienced by those people who suffered physical disabilities as a result of accidents, I must say that I totally agree with him. However, there is quite large a gap between the stringency of the amendments proposed by Mr Andrew CHENG and the descriptions made by him. If the situation depicted by him is so serious and tragic, the amendments to the provisions on penalty should not only revise the disqualification period from two to three years (for first-time offenders) and from five to 10 years (for repeat offenders). Rather, it should be revised to a penalty of imprisonment. That is, it should be equivalent to the penalty for the offence of assault, which is imprisonment.

Certainly, as stated by Mr Andrew CHENG during the resumed Second Reading debate, I appreciate the constraints for proposing amendments to the Ordinance, which precluded him from proposing harsher amendments than those put forward by him now. This is exactly why the LSD cannot support Mr

Andrew CHENG's amendments. Our demand in respect of the penalty is far higher than the arrangement for disqualification currently made by the Government. It is also far higher than the amendments proposed by Mr Andrew CHENG pertaining to disqualification because it is out of focus to address the problem by disqualification. If his intention is to impose harsh penalty on all Hong Kong people, regardless of their social class, background and occupation, so as to clearly tell all Hong Kong people through the making of harsh amendments to the Ordinance that the Legislative Council and the Hong Kong Government will not accept any person committing drink driving causing death or bodily harm, we must introduce amendments to the Ordinance to provide for even harsher stipulations.

However, the amendments now proposed by the Government are intended as merely a gesture, a show. I can tell the Government that these amendments will only produce insignificant results and will never be able to get to the core of the problem. Cases of rich people committing speeding and knocking down people to death when engaging in illegal road racing will still happen continuously. They will think that since the maximum penalty is only imprisonment for five years, they will have a clean start after they release. Besides, if their behaviour is good during these five years, their term of imprisonment may even be "discounted" and they can be released after serving a term of some three years only. Even if they did kill someone, they would be imprisoned for only a few years.

Therefore, with regard to the amendments to this clause today, including the Government's amendments and those of Mr Andrew CHENG, even if Mr Andrew CHENG's amendment was passed, it is only because his amendment is a gesture of a slightly higher profile. To the tycoons and the rich, and to people whose living is not affected by their disqualification from driving, this amendment will not produce any actual effect. I wish to point out that disqualification is just trivial to many people, because at the most, they only will not be driving by themselves anymore but having to hire drivers to drive for them.

So, I wish to point out once again that it is not the case that we do not support harsh penalties. The LSD fully supports the imposition of harsh penalties. But neither the amendments proposed by the Government nor those by Mr Andrew CHENG have provided for harsh penalties, and their tone is disproportionate to the actual contents of the provisions. I, therefore, make an

appeal to all Members here: If they truly support the incorporation of harsh penalties, they should put pressure on the Government and call for an overhaul of the punitive provisions in the existing Road Traffic Ordinance. A driver knocking down a person to death in the course of driving should be handled as a case of manslaughter. In other circumstances, it should be treated as equivalent to the offence of assault in terms of the extent and severity of the offence. These offences must not be said as serious only orally and dealt with by mild measures. Otherwise, it would be impossible to reflect the impact on society and people who innocently suffered injuries or died in traffic accidents would ultimately bear the brunt.

If traffic accidents resulting in fatalities happened in future, that would be due to the failure of these legislative amendments today to impose sufficiently harsh punishment, thus effecting no deterrence on drivers and causing road users to suffer physical disabilities continuously. The Government should, therefore, be held responsible for this, and the Legislative Council should also be held responsible for failing to effectively monitor the Government and setting standards not stringent enough for the Government.

MR WONG SING-CHI (in Cantonese): Chairman, Mr Albert CHAN has spoken so vociferously as if he wanted to kill drivers who committed dangerous driving.

The three Members from the LSD are not members of the Bills Committee on Road Traffic (Amendment) Bill 2010 (the Bills Committee). Without expressing their opinions on the relevant amendments in the course of the deliberations on the Road Traffic (Amendment) Bill 2010 (the Bill), they have nevertheless criticized that there are problems with what we have done. In fact, the Bills Committee has made great efforts in examining the Bill, conducting studies on many different scenarios and putting forward a lot of views. Mr Andrew CHENG has worked with great dedication and proposed the relevant amendments. I think members of the community should clearly think about whether it is easier to give a speech here in this Chamber or to really work together in the Bills Committee to refine the Bill.

I very much admire Mr Andrew CHENG who has contributed a lot of efforts and input in scrutinizing this Bill. His objective is to deter offenders of

dangerous driving from committing the offence again. Chairman, sometimes, I do not know where I should start. I sometimes find it strange as to why those people who strain every nerve to chide other people in the Legislative Council have never done anything themselves. This is all the more disappointing. I hope that the three Members from the LSD will participate more in Bills Committees in future, so that they can nail those people who should be brought to justice. Had they contributed their efforts during the scrutiny of the Bill, we would have considered their words and deeds consistent. Otherwise, if they hurl depressing criticisms at Mr Andrew CHENG here but if it transpires that they had not done anything even though they got a chance to, it really beats me as to what is going on. Are they trying to support and help the Government by making it impossible for Mr Andrew CHENG's amendments to be passed? I really cannot figure out if this is their intention. I hope this is not true.

Chairman, the Democratic Party actually sees the problem, too. The first set of amendments (that is, the amendment to clause 6) proposed by Mr Andrew CHENG was negatived, and with regard to the provision on "causing grievous bodily harm by dangerous driving", we also consider that Mr Andrew CHENG's amendment seems to be not quite proportional because if Mr CHENG's amendment relating to "causing grievous bodily harm by dangerous driving" is passed, the penalty for this offence will be higher than that for "causing death by dangerous driving". Having said that, as the Democratic Party has considered Mr Andrew CHENG's amendments as an integral whole in this amendment exercise, we will, therefore, continue to support his amendment.

We consider that "causing grievous bodily harm by dangerous driving" may actually be more serious than "causing death by dangerous driving" and may cause even more sequels. Apart from the deceased and the injured, their families may bear even more serious consequences. Under Mr Andrew CHENG's amendment, a person will be disqualified from driving for 10 years only if he has twice committed the offence of "causing grievous bodily harm by dangerous driving". A first-time offender will be disqualified for three years, and this has actually increased the penalty of disqualification by one year only. I think this is reasonable, because in the entire Bill, a person will be subject to the disqualification periods for repeat offenders only if he committed an offence again within five years of the last conviction. So, why can we not impose punishment on drivers who again committed dangerous driving causing grievous

bodily harm within two years? Therefore, Chairman, the Democratic Party will continue to support Mr Andrew CHENG's amendment.

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

MR PAUL TSE (in Cantonese): Chairman, I only wish to make one brief point.

Some colleagues mentioned earlier that the amendment under our discussion now seems to be about disqualification only and that there is no other penalty. I hope Members have not overlooked it or refrained from talking about it even though they know its existence. Chairman, what is of greater importance is not the penalty of disqualification, but imprisonment for a maximum of seven years.

We, being practitioners of law, often know that to the plaintiffs and the defendants, there are actually different levels of penalty. The mildest is, of course, community service or probation. The second mildest is a fine and the painfulness so caused may vary depending on the person's financial status and affordability. The most intimidating is generally the penalty of imprisonment.

In fact, the possibility of imprisonment can actually produce a far stronger deterrence than disqualification. If the possibility of imprisonment is ruled out and if the penalty will only be a fine or disqualification, it is true to say that professional drivers may prefer paying a fine than being disqualified from driving because they have to make ends meet. But when the penalty of imprisonment is involved, the entire matrix or framework would be different. Imprisonment is a very heavy penalty.

So, in this connection, let me directly respond to what Mr Andrew CHENG has said earlier. I am not saying that I do not see the need to impose a cautionary type of punishment, but disqualification compares less favourably than imprisonment for a maximum of seven years in terms of the explicitness, significance and cautionary effect of the penalty. Therefore, we must not neglect this point and lay stress only on the arrangements for disqualification. In fact, if the Government's proposals are logically correct, I would agree with Ronny TONG's view. He has explained in detail earlier that with the passage of

clause 6, if we do not support these proposals of the Government but accept Mr Andrew CHENG's amendment, it may give rise to an asymmetry in terms of logic or reasoning.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, you may speak again.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, our proposed amendment is related to drug driving.

Recently, the number of cases involving drug driving has surged rapidly. To enhance the deterrence against drug driving, we propose that a driver be regarded as committing an offence in circumstance of aggravation if any amount of a specified illicit drug, that is, the six drugs I mentioned just now, is present in the driver at the time of committing dangerous driving, and the maximum penalties in terms of fine and imprisonment and the minimum disqualification period for the offence concerned will each be increased by 50%.

During the scrutiny of the Road Traffic (Amendment) Bill 2010 (the Bill), some Members suggested that legislative proposals to combat drug driving should be included in the Bill as far as possible to enable the early implementation of the relevant measures, thereby enhancing the deterrence against drug driving. After considering these views, we have taken on board the proposal of the Bills Committee on Road Traffic (Amendment) Bill 2010 and I now propose this CSA.

I implore Members to support the passage of this amendment. Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, you may speak again.

MR ANDREW CHENG (in Cantonese): Chairman, I would like to respond to the remarks made by a number of colleagues. But before I do so, I urge Mr Albert CHAN who is not in the Chamber now to return to the Chamber if he can hear this appeal from me, so that he can listen to my response. As he was not in the Chamber during the discussion on clause 6, he might not have heard what I said then. On the point about class discrimination mentioned by him in his response earlier, I very much hope that he can be here to listen to my response, because several other amendments will be discussed later on. I actually do not wish to repeat what I have already said, but as he was not in the Chamber then and he had repeatedly made this point, I have to state my views once again. If he can return to the Chamber now, I may only have to repeat it just once. So, through the airwave, I urge him to return to the Chamber if he can hear me outside or perhaps in other places, so that we can have a reasonable debate and discussion. I will first respond to the speeches made by other Members and the Secretary. Since I have 15 minutes to speak, I will explain my views slowly, and I think he can return in time even if he is in the lavatory.

Chairman, when she spoke for the first time the Secretary pointed out the need to conduct consultation thoroughly. I understand that it is very important to conduct consultation on the amendment to any law, but it is also necessary to take into consideration the types of legislation and the types of penalty involved in the legislative amendments. What is involved here is causing grievous bodily harm by dangerous driving, and the amendments proposed by me have to do with the penalty of disqualification. From my past experience in handling transport issues, I trust that if a consultation exercise is conducted, many different stakeholders will have different views. There will be many different views even in the transport sector given that many trades, such as taxis, minibuses and buses, are involved. Coupled with the many transport trades in the labour sector, there are bound to be many different views in the transport sector and also in the labour sector.

Having said that, insofar as road safety is concerned, I think it is most important and necessary to grasp, consult and understand the views of the people with the objective of ensuring road safety in the interest of the public. To drivers and passengers, it is most important for accidents not to happen. It is

just this simple. Whether the driver is a professional driver or an ordinary driver of a private car or a driver of other types of vehicles, the objective of road safety is to reduce the occurrence of traffic accidents. This also explains why the Government has consistently promoted "Zero Accidents on the Road, Hong Kong's Goal". This applies to drivers of all types of vehicles. Therefore, when it comes to the so-called consultation, the Legislative Council is actually a microcosm of society, as Members can already reflect the opinions of the community. Certainly, my amendment is subject to the system of separate voting, and although we are strongly dissatisfied with this voting system, we can do nothing about it; nor can we do anything to change it.

With regard to the point raised by Mr TONG, I have also thought about it repeatedly as I reckon that the proposal to increase the penalty to life disqualification for causing death by dangerous driving would not be passed easily. That said, it is quite gratifying to see that the proposal is actually supported by a majority of Members returned by geographical constituencies through direct elections, whereas in the functional constituencies (FCs), if the six abstention votes could turn into supporting votes, the proposal could have been passed. The problem is that regarding those six abstention votes in the FCs, I must state my views once again concerning the several votes of the Hong Kong Federation of Trade Unions (FTU). Let me once again call on Mr WONG Kwok-hing to return to the Chamber. I really very much wish to listen to what Mr WONG Kwok-hing will say.

In the last remark of my speech earlier, I said that our words and deeds must be consistent. With due respect, I really have to criticize Mr WONG Kwok-hing specifically for not being consistent in his words and deeds. My heart aches especially when his words and deeds are inconsistent on transport issues over and over again. Platform screen doors are a most representative example, and I have been greatly saddened. Every year and every month, accidents of passengers falling to death as a result of no platform screen doors being fitted could happen. Chairman, this is certainly outside the scope of our discussion but whenever there was a case of a passenger accidentally falling to death or committing suicide because there was no platform screen door, colleagues from the FTU, including Mr WONG Kwok-hing, would vociferously criticize the MTR Corporation Limited (MTRCL) and the Government, questioning them why they had failed to retrofit platform screen doors. But during the scrutiny of the legislation on the merger of the two railway corporations, when we were here to demand that a provision be included in the

legislation to require the retrofitting of platform screen doors by the MTRCL, he nevertheless did not support the proposal. Chairman, I am sorry for this misdemeanour of mine.

CHAIRMAN (in Cantonese): Mr CHENG, please come back to the amendment to clause 7.

MR ANDREW CHENG (in Cantonese): I know. I am just going to talk about the amendment.

What I am most unwilling to see is that whenever there is a case of drink driving or dangerous driving causing death, Mr WONG Kwok-hing would, when talking to reporters, speak feverishly to slam the Government for not taking actions. Chairman, this is heartrending to me. Why have I flown into a rage? I actually do not wish to, and having seen Mr Albert CHAN being so hot-tempered, I always remind myself that being hot-tempered will do no good to health. But what I consider most abhorrent in this Council is that when answering questions from reporters, some colleagues would always make criticisms vehemently to attract coverage in the press, because the more severe their criticisms, the more coverage of their comments by reporters. But when it comes to amendments with binding effect, what they have chosen to do is not consistent with what they have said. This is misleading to the voters and misleading to Hong Kong people. It makes people think that their behaviour is the same as that of these other Members of us who campaign for more stringent stipulations. I detest this kind of parliamentary behaviour. I detest the behaviour of these Members. I hope that Mr Albert CHAN and Mr WONG Kwok-hing will return to the Chamber and in the meantime, I will continue to speak as I still have eight minutes.

Regarding the views of Mr Paul TSE, as I said earlier, I very much respect his views. As regards his opinions and the remarks made by Mr Ronny TONG earlier, as I said just now, I have pondered over them repeatedly, and I understand that if my amendment to clause 6 relating to causing death by dangerous driving is negated and if the amendment to this clause is unfortunately or fortunately passed, an unsymmetrical, unreasonable situation would arise. So, I had had

some internal struggles, thinking that I might as well propose to the Chairman that I would not follow up or proceed to move this amendment. But this is actually nonsensical, because how possibly will this amendment be passed? I only wish to persevere for this cause and to put this on record, but if this amendment was withdrawn, I would not be able to do anything, nor would it be possible for me to put on record in Hansard what I wish to say, so as to maintain a record of this meeting. On the proposal in respect of causing grievous bodily harm by dangerous driving, I do hope that Members can thoroughly discuss it. Even if it cannot be passed today, I hope that it can be passed in future.

I still do not see Mr Albert CHAN. I am going to refute several points made by him. Chairman, I am sorry that I will actually repeat what I already said in my first speech but I have no other choice. I have to say this again even though he is not in the Chamber. He again alleged that our amendments are not stringent enough. Then he criticized the Secretary and further pointed a finger at the Legislative Council, accusing that we have not adopted a stringent attitude, that we actually aim to make a gesture more than anything else, and that we are simply putting on a show.

This pains me greatly. I have not said that "throwing bananas" is putting on a show; nor have I said that leaving one's seat in this Chamber to cause disruption to the parliamentary proceedings is putting on a show, because I think each person has his own role to play. But if Mr Albert CHAN, who had neither participated in the discussion of the Bills Committee nor proposed any amendment, criticized that the amendments proposed by colleagues who have worked very hard in this Council or the Bills Committee as not stringent enough, and that they are merely making a gesture and putting on a show, I would have to register my very strong protest. I hope that colleagues can respect each other, rather than arguing with each other in such a way. I once again urge him to return to the Chamber to listen to what I am going to say about class discrimination. He always says that the rich people can hire drivers if their driving licence is revoked, whereas the poor people will be plunged into a miserable situation as they would lose their job. While the rich people can hire a driver if their licence is revoked, the poor people have bus drivers; they have railway, MTR and train drivers, and also tram drivers and minibus drivers, and they can also live freely without being subject to any class discrimination.

He kept on asserting that these amendments will not produce any effect on individuals because the rich people can hire private drivers. But Mr Albert CHAN, our objective is not to produce an effect on individuals, but to ensure road safety; and we are not talking about the effect on individuals, whether they are poor or rich, but the effect on road safety. Chairman, I wish to tell Mr Albert CHAN through you that I hope he will not denigrate these amendments by branding them as "class discrimination", so to speak. I have no intention to make a gesture either, and I truly wish that the Government can understand my intention.

I agree that in respect of the term of imprisonment, when an offender is arrested and imprisoned — Mr CHAN, you were not in the Chamber earlier, so let me say this once again. You cited a case earlier about a four-member family of a professional driver whose young children would have to suffer innocently as the father, who works from hand to mouth, would lose his job without a driving licence. That is very miserable indeed. But let me stress once again that if a professional driver has caused death and grievous bodily harm over and over again, this professional driver may not be qualified to work as a professional driver at all. If he is arrested and imprisoned, his young children would suffer even more innocently because he would not be able to even switch to another trade. What can a person do while serving his prison term? Under the amendment that I have proposed now, he will only be disqualified from driving, and he can still take up a lot of other jobs. So, on the point of making young children suffer innocently, I hope that colleagues of the LSD will not put class struggles above road safety.

Chairman, let me emphasize once again that it is most tragic for anyone to suffer grievous bodily harm. I hope that colleagues of the LSD can again respond to my views. I know that Mr WONG Yuk-man has returned to the Chamber, and I always like debating with him. *(A Member interrupted)* I am not provoking an argument. Rather, I hope to debate this matter with reason and good sense. While we may not be able to find out the truth, and perhaps there is simply no absolute truth in this world, we can hold discussions calmly, sum up the views of all sides, and show respect to each other, rather than accusing others for wanting to make a gesture more than anything else and criticizing others for putting on a show. He may say that I have taken his criticisms personally but I heard it very clearly earlier when he said that the amendments are meant only to make a gesture more than anything else. I have never said that "throwing

bananas" is meant to put on a show; nor have I said that holding a placard or tearing a placard apart is meant to put on a show.

I respect what each Member does in this Council. Whether or not I agree with what they do is not important. But please do not rashly make irresponsible remarks based on one's own view to smear the work of those people who have worked very hard in the Bills Committee. This "blue bill" has restricted the room for us to introduce amendments to the provisions on imprisonment, and he absolutely knows this very well. This is not our problem, but the problem with the establishment. To resolve this problem, anyone who is a true democrat should target actions at the Government. I will sit down again and listen carefully to colleagues from the LSD as to what they think about the ideas of class discrimination, aiming to make a gesture more than anything else, and putting on a show. I will listen attentively, and I hope that the more this is debated, the clearer it becomes. Chairman, I wish to tender my apology to you again for my misdemeanour earlier on.

MR ALBERT CHAN (in Cantonese): Chairman, I have never said that Mr Andrew CHENG was putting on a show. It is his personal choice to take the criticism personally. I only said his amendments to increase the relevant disqualification periods from two years and five years to three years and 10 years respectively are nothing more than a gesture without any practical use. I did say so.

As he admitted, and he did so repeatedly during the Second Reading debate and in his speeches just now, given the limitations in the terms of reference of the Legislative Council and the constraints of the legislative amendment exercise, he was unable to move amendments which he considered to be the most effective. These amendments include incorporating into the Bill provisions to impose imprisonment, which is also the request of the LSD and classifying the offence of causing death by drink driving as manslaughter. Therefore, insofar as the stance, direction, spirit, principle and content of the amendments are concerned, his views are basically in line with those of the LSD, and we have no disagreement with each other. Therefore, based on the descriptions he gave at the beginning and when he proposed the amendments just now on the pain and

agony of the victims of traffic accidents and their families, I strongly agree to the remarks he made when he proposed the amendments.

However, I have to point out clearly that his amendments will not be able to achieve the effect of bringing the kind of bitter punishment he described, and this is my main point. Regarding the proposal of the LSD, I already made the requests and arguments of the LSD very clear at the relevant meeting of the Panel on Transport when the Bill was introduced by the Government. I also pointed out that the problem cannot be resolved only by amending the provisions on driving disqualification alone. Throughout the years, the stance, criticisms and views of the LSD have always been the same, without changing at all. These views of ours are not put forth only today. Our great Motherland has already classified causing death by dangerous driving as manslaughter, and the LSD already pointed this out in the past. While our Motherland has adopted this approach, the Hong Kong Government does not accept it.

Therefore, by my comment of "nothing more than a gesture without any practical use" on Mr Andrew CHENG, I was referring to the effect of his amendments rather than his intention. I have never criticized his intention, which is nobler than that of many Members present in the Chamber, including those from the FTU, and I absolutely agree to his intention. Therefore, if my previous comment about the amendments being nothing more than a gesture without any practical use has belittled his intention in proposing the amendments in any way, it is definitely — I wish to clarify that it is definitely not the intention of my remarks. I only wanted to point out that the effect would not be as good as he had imagined.

As he mentioned repeatedly in his remarks, even if the relevant provisions were amended exactly as proposed in his amendments, the actual effect would still fall short of the expected effect. I have also mentioned repeatedly in my remarks that the actual effect involves an element of class discrimination because the amendments will result in the weakening of the effect of the provisions. I have repeatedly pointed out that under the existing provisions, the impact of a disqualification sentence on a professional driver is immensely different from that on a rich tycoon who has knocked down and killed another person while driving a sports car. For a rich tycoon, disqualification is no big deal. Even if a rich tycoon has knocked down and killed another person while driving, he may at most be given a disqualification sentence. Even if he is sentenced to life

disqualification, as Mr Andrew CHENG proposed, so what? If he is disqualified from driving for life, he may well stop driving, and he may migrate to the United States and continue to drive there. There will not be any problem at all because the penalty of disqualification is not enforced globally; and he may also drive in the Mainland, Canada and the United Kingdom because the effect does not apply globally.

However, there will be uniformity if imprisonment is imposed because the same imprisonment sentence will be given under the law, irrespective of whether the person concerned is a rich tycoon, the son of the richest person in the world, a professional driver or an inexperienced driver. Therefore, the LSD insists that if we really uphold the principle of all persons being equal before the law, and if the Government — Andrew CHENG, I am helping you to criticize the Government — I also wish to point out that the Government is hypocritical, biased in favour of the interest of the rich, and it continues to transfer benefits and collude with the business sector. This is the hypocrisy of the Government. It has introduced the Road Traffic Ordinance which is unable to protect the general public of Hong Kong. I have already pointed out during the Second Reading debate that even if this Bill introduced by the Government is passed — Andrew CHENG, I have already pointed it out when you proposed the amendments — even if the Ordinance is amended according to the Government's amendments, it still lacks any deterrence effect.

Therefore, I wish to point out and reiterate that if this Ordinance is amended according to the Government's amendments, the Government must be held responsible in the event that casualties are caused in the future as a result of the lack of any deterrent effect in this Ordinance. Those Members who condone, encourage and support the Government's loaded amendments should also be held responsible.

Therefore, the best approach — this is the fourth time I stressed this point — the best approach is to impose heavy penalties. By heavy penalties, I mean not only disqualification but also imprisonment. If the case involves causing bodily harm, a sentence equivalent to a criminal case involving causing bodily harm should be given; and if the case involves causing death, a sentence equivalent to a criminal case involving causing death should be given. The existing provisions are ridiculous in that the penalties for causing death by driving are immensely different from those for manslaughter. I now wish to censure the Government.

Why does it render favour to drivers who have caused the death of another person by driving? Why does the Government render favour to drivers who have caused the death of another person by drink driving and not treat such cases as manslaughter? Will the authorities give me a reply?

Mr Andrew CHENG, I totally understand your fury and dissatisfaction. This issue has been discussed for years. We would be saddened whenever we learnt from the newspaper that a driver had caused the death of another person by driving. We shared the sorrow and discontent of the families of the victims in traffic accidents, and we were equally outraged and distressed. These people were innocent. Why does the Government continue to condone these drivers and refuse to introduce legislation with deterrent effect by imposing on these people the penalties they deserve? We have been receiving complaints about road racing at night, and illegal road racing is a usual scene on Castle Peak Road and Tai Po Road, with private cars and motorcycles running really fast on the road, which is indeed very dangerous. However, what is the maximum penalty for causing death? It is imprisonment for five years.

Therefore, insofar as the favoritism involved in this policy and its lack of rigour are concerned, Mr Andrew CHENG and I should definitely not be in a confrontational position, and I absolutely support Mr Andrew CHENG's direction. Given that the Legislative Council is now under-powered, and the Democratic Party has crossed over to the Communist, Mr Andrew CHENG, you should stop thinking about it. You have withdrawn from the Democratic Party, and after the Democratic Party has crossed over to the Communist, do you think the Legislative Council can still fight for its power? There is no need to think about the constitutional reform package anymore. Mr WONG Sing-chi said Members of the LSD had not joined this Bills Committee we already expressed all our views when the Bill was introduced, but the Government has not taken them on board. Therefore, we have all along been dissatisfied with and opposed to the direction of the Bill as a whole right from the beginning. Although we did not vote against the Government's amendments, we abstained from voting on them, and we will also abstain from voting on Mr Andrew CHENG's amendments. We agree to the direction proposed by Mr Andrew CHENG, but we think the details and contents of the provisions lack any deterrent effect. There is still a considerable discrepancy between these

provisions and the provisions proposed by us just now in terms of the direction and details.

Finally, I wish to put this on record: That I wish to censure the Hong Kong Government again for ignoring the protection of the public's rights to road safety and point out again that the legislation currently proposed by the Government lacks deterrence.

CHAIRMAN (in Cantonese): Members may speak more than once. However, I wish to remind Members that, first, the fact that a certain Member whom you wish to address is not in the Chamber is not a sound justification for repeating your points; second, Members will please face the Chairman when they speak; and third, Members will please be careful and refrain from using inappropriate language.

DR PAN PEY-CHYOU (in Cantonese): Chairman, originally I did not intend to speak, but Mr Andrew CHENG kept mentioning the FTU and my colleague, Mr WONG Kwok-hing. I was not angry as I consider it a privilege to be able to watch Mr Andrew CHENG's terrific performance. As a relatively new Member of this Council, I think this is a good opportunity to learn from experienced Members.

However, I also wish to say that we from the FTU indeed have a baggage. Why? As everyone knows, we are a labour group, and so we can hear the voices of the labour sector more readily and we also have to listen to them. We should carefully consider the varying degrees of impact of a certain penalty on people in different positions and from different sectors in society. Take the sales tax as an example. It will impose a burden on the poor and the rich to different extents. For this reason, I oppose increasing the sales tax rate.

Coming back to this subject, if a person has committed a serious traffic offence because of drinking and is disqualified from driving for life as a result — I am talking about for his whole life — for many people who can afford to employ a chauffeur, or those who cannot afford to employ a chauffeur but can take public transport, that is, people who do not drive to make a living, life disqualification is a relatively lenient penalty. However, for a professional

driver, this penalty is rather heavy. I believe no one will oppose imposing heavy penalties on drink drivers, and people who have committed the offences of causing death by drink driving and causing grievous bodily harm by drink driving should also be penalized. I believe no one will oppose this, and we definitely go along with this. However, can we give consideration to adopting other penalties which are relatively fairer? When referring to a professional driver, we are talking about a person who is probably not very well-educated and who may have obtained a driving licence by paying for the driving lessons with a loan or his own savings. Besides, driving may be the most important skill in his life, and he may work hard using this skill to earn a living or even support his family. This is the circumstances of a professional driver. If he is deprived of the right to practise his vocational skill, does he necessarily have another means to make a living? He may probably end up living on Comprehensive Social Security Assistance (CSSA). The only thing he can

CHAIRMAN (in Cantonese): Dr PAN, we are now scrutinizing the amendment to clause 7, which is related to causing grievous bodily harm by dangerous driving. This amendment does not involve driving disqualification for life.

DR PAN PEY-CHYOU (in Cantonese): Very well. Thank you, Chairman.

I wish to say that we have to give regard to the fact that for a professional driver, being barred from driving and continuing with his job will have very significant impact on him. Based on these considerations, therefore, we think a more impartial attitude should be adopted in treating different social groups. That is also why Members of this Council are made up of people of different background and professions and from different social circles, so that the aspirations of different sectors can be reflected.

I so submit.

MR WONG YUK-MAN (in Cantonese): Chairman, originally I also did not intend to speak, but I have to because "one always has to uphold good manners in a fight even if one loses". As Mr Andrew CHENG mentioned my name, challenging me to join the debate, I will certainly join in, Chairman, right?

However, I will not argue with him despite his being so emotional when referring to "throwing bananas". Why does he dislike "throwing bananas" so much? The next time I "throw bananas", he should try to dodge them, especially when my marksmanship may not be so good now that I have undergone an eye surgery.

Chairman, there are only three of us from the LSD, but we have also divided the duties among ourselves. "Hulk" and LEUNG Kwok-hung are responsible for overseeing transport affairs, while I am responsible for overseeing matters relating to security, education, home affairs, occupational safety, information technologies, and so on, and I have also joined three Bills Committees. I have to respond to WONG Sing-chi's remark just now: "You are so remarkable. All of you have not joined any Bills Committee." So what? Let me tell you that Members who are most keen on joining Bills Committees must be those people from the Civic Party. This is also their obligation because they are professionals. Let me tell you that I trust them! There is no need to examine the clauses one by one. I once argued with the law drafting people during the clause-by-clause examination, and we were simply unable to communicate with each other. I said, "With your poor use of Chinese, Buddies, what should be done?" Legal English is certainly most precise, but the Chinese translation simply turned out to be a mess in the end. They said this was the way it was and it was professional. They mixed up the subject with the predicate, and sometimes put the object in the front, thereby turning the whole thing into a mess. Those Europeanized sentences

CHAIRMAN (in Cantonese): Mr WONG, please come back to the relevant amendment.

MR WONG YUK-MAN (in Cantonese): I have not finished yet.*(Laughter)* We have divided the duties among ourselves, and we are indeed unable to join so many Bills Committees. There are eight Members from the Democratic Party, and if not for the withdrawal of Andrew CHENG, there were even nine of them. They have divided the duties among themselves, and they also have a huge policy research team with a history of 20 years, just as the DAB does, but we do not. Therefore, regarding these public policies, we always stay cautious and

apprehensive and act as if we are on the brink of a deep gulf and treading on thin ice. As we are not well versed in this area, we simply refrain from talking piffle.

Therefore, in my remarks today, I have addressed the issue purely from the perspective of values and ideology. As restoring order to a chaotic society does not necessarily warrant draconian measures, Hong Kong, with its popularized of education, all the more does not warrant such measures. Do you get it? Legislation is a passive rather than an active approach. Do not take it wrong. Legislation is the most passive approach used to rectify situations which cannot be put right. Very often, when even legislation cannot help bring rectification, we have to bring rectification ourselves by taking to the streets, staging demonstrations, processions and protests and resorting to civil disobedience. Andrew, this is common sense, right? We will not oppose the spirit of your amendments, as I said repeatedly, but why are you so furious? We have never opposed them, and thus we will not cast an opposing vote. However, regarding your proposal that draconian penalties should be imposed on a person who has been convicted twice of driving with an excessive alcohol concentration, we cannot accept it. Do you get it? Our stance is very clear. So, please refrain from framing me, saying that the fact that I do not agree to this point means I think heavy penalties should not be imposed on a person who has knocked down and killed another person. Buddy, this is problematic, and this is what I meant by the undue use of rhetorical skills, advancing a straw argument, adopting a specious interpretation and quoting out of context, thereby distorting the logic. Certainly, you have not gone so far as to confuse right and wrong, right?

The point is we do not oppose penalizing drink drivers, particularly repeat offenders. I made it very clear in my remarks just now that we should "learn from the good examples of other places to overcome our shortcomings". Making reference from successful examples of overseas countries, we will find that draconian laws and penalties are not adopted, and even if they are, some remedial measures may also be in place. The "drink driving court" I mentioned will also order that treatment be arranged for alcoholics. Only in this way will there be any chance that the problem be resolved at root or drink driving cases be reduced, so that the number of these drunkards will be reduced. After making these people serve their sentence for the drink driving offence, we also have to provide them with treatment. It is the same as the case of arresting drug addicts. Do we not require them to quit drug abuse and provide them with treatment? The ideal case is that the offender stops abusing drugs once and for all, and so

there will be one less drug addict. The point is we do not oppose the Government penalizing drink drivers, and we also believe that causing the death of another person is a very serious offence. We do not disagree with each other over this point.

Therefore, I hope Mr Andrew CHENG will not take it too seriously. We also support the spirit of his amendments, but we oppose some of the details. That problem is indeed very serious. Should we impose life disqualification on a person who has been convicted twice of driving with an excessive alcohol concentration? Certainly, my fellow party member Albert CHAN got a bit too emotional. So, I was not trying to "come to his rescue" when I entered the Chamber just now. Do not think that I dashed into the Chamber in order to "come to his rescue". Hearing the remarks you made about him while I was outside, I was afraid that his blood pressure would shoot up. Do you get it? We cannot allow ourselves to collapse, and I do not want him to collapse, and so I have to enter the Chamber to make a few brief remarks. Thank you, Chairman.

MR ANDREW CHENG (in Cantonese): Chairman, I will make a brief response. I believe that after Members have expressed their diverse views or even vented their spleen for more than 10 minutes, they have already given some vent to their exuberant feelings. Although Mr WONG Yuk-man just said he was very supportive of the spirit of my amendments, I am already very glad. Certainly, I all the more hope he will support my amendment with action, (*Laughter*) which will make me even happier.

Chairman, I have never said that I dislike Mr WONG Yuk-man for "throwing bananas". I have always said that we have to respect each other, and he was not bad with the "throw". I have never said anything like that, and what I said was only that our ways of presentation, our roles and our approaches are different. Certainly, after listening to Mr Albert CHAN's remarks, I began to realize what Mr WONG Yuk-man thinks about the effect of my amendments. I agree with him to a certain extent, but it is precisely because of this that we hope to achieve the best results in the most unfavourable situation. Therefore, I will continue to appeal to the three Honourable colleagues from the LSD for their understanding that we cannot score 100%, and neither can we score 80%, but I hope to strive to score 50% or 60%. This is all I hope to do.

Dr PAN Pey-chyou has always maintained his composure, and I have always respected Dr PAN. As the representative of the FTU, he has mentioned some limitations of the FTU or the role it plays, to which I absolutely agree. I have also said that actually a professional driver who has committed the offence of causing death or causing grievous bodily harm by dangerous driving probably should not work as a professional driver anymore. However, as the leader of a labour union, he may be burdened by how he can explain this to members of the union. Certainly, all members will say that they will not drive dangerously, but they are humans after all, and they have their weaknesses. In particular, alcoholics and people who have taken up the habit of drug abuse may be too confident of themselves. As a leader of a labour union, one has to discern all these clearly. I understand that there are difficulties in doing so, and that is precisely the problem arising from the functional constituencies. I believe this problem would not have existed if Dr PAN was returned by geographical direct elections because he would have to be accountable to the public rather than only his working masses and the Labour Functional Constituency. This situation has highlighted such a difference.

However, I still regret that Mr WONG Kwok-hing — Mr CHEUNG Man-kwong told me just now that actually he was only in the Ante-Chamber, and I really want to certainly, Chairman, you have reminded me of the fact that he was not present does not mean he could not hear this. However, I very much hope that apart from listening, he will also make a response, or else when I find that he is even more furious than Albert CHAN and me and criticizes the Government more fiercely than I and Albert CHAN do when he is interviewed by a reporter about a drink driving case the next time or when another incident of dangerous driving causing death happens, I will be at a loss as to what he is up to.

I was very glad to hear the remarks made by the few Honourable colleagues from the LSD. I think I have already responded to the issue of class discrimination just now, and I will not speak on it again as all of us have already expounded on our own ideas to our hearts' content. Those who could convince the others have already done so, while those who could not cannot do anything about it. Besides, all of us respect each other. Certainly, I also wish to call on Mr Albert CHAN to refrain from getting so agitated like I do as succumbing to fits of rage may push up one's blood pressure. In particular, as Albert CHAN is quite bald, we can easily see that his head has gone all red, which has made me

very concerned about his health. All of us hope to stay alive and continue to engage in debates in this Council happily and in a fair and square manner, and all of us are working for the good of Hong Kong and making a positive difference in road safety. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Dr Joseph LEE, Mr Paul CHAN and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU, Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO and Mr WONG Sing-chi voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the amendment, 14 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 23 were present, 11 were in favour of the amendment, seven 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.

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, you may now move your amendment.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendment to clause 7.

Proposed amendment

Clause 7 (See Annex I)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 7 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 7 as amended stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 8.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has given notice to move amendments to clause 8 to add subclauses (1A), (2A) and (3A) and to amend subclauses (2), (3) and (4). Besides, the Secretary for Transport and Housing has also given notice to move an amendment to subclause (5) of clause 8.

Irrespective of whether Mr Andrew CHENG's amendments are passed, the Secretary for Transport and Housing may move his amendment to the clause.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and the amendments of Mr Andrew CHENG and the Secretary for Transport and Housing. I will call upon Mr Andrew CHENG to speak first and move the amendments.

MR ANDREW CHENG (in Cantonese): Chairman, I move the amendment to clause 8. Chairman, clause 8 is related to dangerous driving offences. Under the existing legislation, a person who has committed dangerous driving is liable to driving disqualification for a minimum of six months on first conviction and a minimum of 18 months, that is, half a year, on subsequent conviction. The Government's present amendment does not propose any change to the penalty for first conviction, which remains at six months, while the penalty for subsequent conviction has only been increased by six months from 18 months to a minimum of two years.

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

Deputy Chairman, we understand that the Government's intention is to give the Court greater discretion in handling dangerous driving cases. As there are numerous such cases, which may be of different nature and involve different background and various other factors, the Court is given discretion to determine the disqualification period for individual cases. However, throughout these few hours of discussion today, I have been hoping that Honourable colleagues will understand that the behaviour of repeat offenders, that is, drivers who repeatedly commit the relevant offences, should not be tolerated because it reflects that they may not have made any improvement. Therefore, the penalty of driving disqualification has to achieve a deterrent effect. If the disqualification period for subsequent conviction is raised by only six months from one and a half years to two years, I think it is inadequate to make these drivers draw lessons from their experience. Therefore, I propose a minimum disqualification period of five years on subsequent conviction.

Actually, a minimum disqualification period of five years is not a very heavy penalty for repeat offenders convicted of dangerous driving. Therefore, I wish to appeal here to Honourable colleagues for their support. I will not take up too much of Members' time as it is almost seven o'clock now and we have debated for almost six hours. Besides, there is still the issue of alcohol concentration, which may even be more controversial. Here, I only wish to strive to make Honourable colleagues understand that a person who has committed dangerous driving repeatedly may end up committing the offence of causing death by dangerous driving five years later when he is allowed to drive again because if measures with greater deterrence are not imposed on a person who repeatedly does the same wrongs, he may even go further and do more serious harm. I consider it appropriate to impose strict instead of lenient traffic regulations, and thus I proposed this amendment. Thank you, Deputy Chairman.

Proposed amendment

Clause 8 (See Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now call upon the Secretary for Transport and Housing to speak, but no amendment is to be moved at this stage.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy Chairman, first of all, I wish to point out that I disagree to individual Members' criticisms just now, particularly the criticism that the Government does not attach any importance to road safety, which is totally unacceptable. I have to point out solemnly here that the Government attaches great importance to road safety and the lives of road users, and that is why we have conducted a total of three legislative amendment exercises, including this one, over the past decade to curb and deter irresponsible driving behaviour. In particular, we have repeatedly proposed raising the penalties for drink driving and drug driving, and the critical judgment is to what extent the penalties should be raised so that they will be regarded as appropriate under the present conditions and capable of striking a balance between protecting the rights of individuals and the safety of road users.

Deputy Chairman, given that the minimum disqualification period for drink driving offences has been adjusted substantially, we now propose that the minimum disqualification period for offenders on subsequent conviction of dangerous driving be raised from 18 months to two years, same as the penalty for drink driving offences at tier one. This is a consequential adjustment to keep the penalties for similar offences under the Road Traffic Ordinance proportionate.

Our proposal was drawn up with reference to the penalties for the offences of causing grievous bodily harm by dangerous driving and causing death by dangerous driving. Besides, in formulating this proposal, we have also made reference to penalties imposed on the relevant offences in overseas jurisdictions.

Mr CHENG proposes further increasing the driving disqualification periods for first-time offenders and repeat offenders by increasing the disqualification period for first-time offenders from the existing six months to one year and that for repeat offenders from 18 months to five years, with the increase of the latter being particularly substantial. But the public was not adequately consulted on the relevant proposal.

I think the proposed introduction of the new offence of causing grievous bodily harm by dangerous driving and the new measure relating to the consecutive enforcement of imprisonment and driving disqualification under the Bill can already adequately address the problem of dangerous driving which may result in serious consequences and enhance deterrence against the relevant inappropriate driving behaviour.

For these reasons, and in the light of the points raised in my earlier remarks on the amendment to clause 6, I disagree to taking on board Mr Andrew CHENG's proposal. I implore Members to vote against this amendment. Thank you, Deputy Chairman.

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

MR WONG SING-CHI (in Cantonese): Deputy Chairman, I will not take long either. The Democratic Party will also support the amendment of Mr Andrew CHENG concerning dangerous driving. Our stance is that we hope the driving disqualification period will strike home a clear message and achieve effective deterrence on people who drive dangerously.

First-time offenders will be disqualified from driving for one year. We think people may commit dangerous driving for various other reasons, but if a person commits the offence of dangerous driving again one year later, which means committing this offence repeatedly within such a short period of two years or even less, it shows he may not be adequately alert to the inappropriate behaviour of dangerous driving. Therefore, the Democratic Party will continue to support Mr Andrew CHENG's amendment. Thank you, Deputy Chairman.

MR RONNY TONG (in Cantonese): Deputy Chairman, I also have to explain briefly that there is actually a contradiction in this amendment, as in the case mentioned before. However, this contradiction is not too serious.

The contradiction lies in the fact that the penalty of imprisonment for five years on subsequent conviction proposed in Mr Andrew CHENG's amendment is

the same as the penalty for causing grievous bodily harm by dangerous driving and causing death by dangerous driving. Legally speaking, dangerous driving is certainly a less serious case than causing grievous bodily harm by dangerous driving or causing death by dangerous driving, but I also noticed that the Government has treated the two offences mentioned by me just now, that is, causing grievous bodily harm by dangerous driving and causing death by dangerous driving, in the same way. Hence, I think while there is a bit of a contradiction here, we will not cast an opposing vote or abstain from voting because of this. Therefore, we will continue to render him our support.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): Secretary for Transport and Housing, do you wish to speak again?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Deputy Chairman, our proposed amendment is related to drug driving. To enhance deterrence against drug driving, we propose that a driver be regarded as committing an offence in circumstance of aggravation if any amount of a specified illicit drug, that is, the six drugs I mentioned earlier, is present in the driver at the time of committing dangerous driving.

During the scrutiny of the Bill, some Members suggested that legislative proposals to combat drug driving should be included in the Bill as far as possible to enable their early implementation, thereby enhancing the deterrence against drug driving. After considering these views, we have taken on board the recommendation of the Bills Committee and we now propose this CSA.

I implore Members to support the passage of the relevant amendment. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

MR ANDREW CHENG (in Cantonese): Deputy Chairman, I wish to give a brief response to offences committed in circumstance of aggravation in relation to the six illicit drugs mentioned by the Secretary just now. It is precisely for this reason that before the Government proposes further amendments to address the problem of drug driving in the future, I believe dangerous driving cases caused by drink driving and drug driving will definitely increase instead of decrease in the next couple of years. Therefore, we think the legislation must be able to effect adequate deterrence, particularly on drivers who have such a particular fondness. It is indeed worrying to see professional drivers and drivers of light goods vehicles addicted to drugs, as the case may not be as simple as that in which a driver of an ordinary private car is addicted to drugs. If a professional driver, who often carries some eight to 10 passengers in his vehicle, is fond of drinking or has taken up the habit of drug abuse, his behaviour could lead to serious consequences. To make these people sense the deterrence before driving, stringent penalties and the provision for driving disqualification are essential.

Therefore, I wish to respond to the Government's remarks briefly. The Government introduced offences committed in circumstance of aggravation in relation to the six illicit drugs precisely because the problem of drug driving is becoming more and more serious in society, resulting in dangerous driving even for subsequent conviction, driving disqualification for a minimum period of only two years is imposed, with an increase of only six months. This cannot inadequately reflect the actual situation. Therefore, I wish to repeat my appeal here again, and I also wish to thank Mr Ronny TONG for saying, on behalf of the Civic Party, that he understands that I am also aware of the situation and I hope to take into account the offences of causing death by dangerous driving and causing grievous bodily harm by dangerous driving in my amendment. This is my logic. However, I was beaten again and again, and I certainly hope I will have a chance to win this time. If I do win, the penalty may seem to be the same as that for causing grievous bodily harm by dangerous driving, but I hope Members will accept this minor loophole, and even if we cannot score 100%, we can score 60% to 70%. Thank you, Deputy Chairman.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

DEPUTY CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

(THE CHAIRMAN resumed the Chair)

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE, Mr Paul CHAN and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Kin-por, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, five were in favour of the amendment, 12 against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 14 were in favour of the amendment, seven 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 negated.

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, you may now move your amendment.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendment to clause 8.

*Proposed amendment***Clause 8 (See Annex I)**

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

(Members raised their hands)

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

(Members raised their hands)

Mr IP Wai-ming rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM

Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr Albert CHAN and Mr WONG Yuk-man abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 45 Members present, 42 were in favour of the amendment and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CLERK (in Cantonese): Clause 8 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 8 as amended stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 9.

CHAIRMAN (in Cantonese): The Secretary for Transport and Housing has given notice to move an amendment to clause 9 to add subclause (1A). Besides, Mr Andrew CHENG has also given notice to move amendments to subclauses (2) to (7) of clause 9.

Irrespective of whether the Secretary for Transport and Housing's amendment is passed, Mr Andrew CHENG may move his amendments to the clause.

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and the amendments of the Secretary for Transport and Housing as well as Mr Andrew CHENG. I will call upon the Secretary for Transport and Housing to speak first and move the amendment.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendment to clause 9. It is a technical amendment which seeks to refine the relevant wording in the Chinese version of section 39 of the Road Traffic Ordinance by replacing "以致" with "其程度達致" in the original text of "任何人在任何道路上駕駛或企圖駕駛或正在掌管汽車，而該人當時是受酒類或藥物的影響，以致沒有能力妥當地控制該汽車", to enhance its clarity and make it consistent with the English version. No amendment is required in the English version.

I implore Members to support this technical amendment.

Proposed amendment

Clause 9 (See Annex I)

CHAIRMAN (in Cantonese): I now call upon Mr Andrew CHENG to speak, but no amendment is to be moved at this stage.

MR ANDREW CHENG (in Cantonese): Chairman, regarding driving under the influence of drink or drugs, Members may see that there is considerable discrepancy in the Government's amendment. While the Secretary reiterated on behalf of the Government just now that the Government has actually been making great efforts against drug driving, as many Honourable colleagues pointed out during the resumption of the Second Reading debate, existing efforts are inadequate. Nevertheless, regarding driving disqualification, Members may certainly be aware that the Government has increased the disqualification period from the original minimum period of three months to a minimum period of two years for first conviction and from a minimum period of two years to a minimum period of five years for subsequent conviction. Judging from similar amendments proposed by the Government in the past, we may appreciate that it is already a substantial increase by the Government's standard. This precisely shows that the Government is well aware of the gravity of the problem now. Concerning the gravity of the problem, I need not spend any more time on repeating our viewpoint here, thereby delaying Members' meal time. However, I propose this further amendment in the hope that it will receive Honourable colleagues' support because under the social and road safety conditions in Hong Kong, the problem of drink driving and drug driving has indeed reached the point of red alert.

I think first-time offenders should be disqualified from driving for a minimum of three years, while repeat offenders should be disqualified from driving for a minimum of 10 years because it is not so easy for an alcoholic or a drug addict to kick the habit, to put it vulgarly. It may take them a rather long time to do so and they may have to attend many classes. Besides, they may have been abusing drugs or psychotropic substances for over a decade. Based on these conditions, I think we have to tell these people that they are definitely not suitable to drive, and we should certainly use a long disqualification period to keep them on the alert.

Chairman, these are the few points I wish to add. Logically speaking, I also hope that driving under the influence of alcohol or drugs I agree to the Government's amendment to the relevant wording just now because we have discussed it at the meetings of the Bills Committee. However, regarding these six types of drugs, I wish to reiterate that after all the Government does not have the power to require drivers to provide blood or urine specimens. We are actually unable to obtain such specimens unless the driver provides them

voluntarily, or is involved in a traffic accident, or has breached some regulations or committed an offence. Under these circumstances, therefore, I wish to reiterate my hope for the relevant Bureau to expedite the introduction of further amendments. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Transport and Housing, do you wish to speak again?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, for an offence under section 39, the Court shall be satisfied that the driver is at the time under the influence of drink or drugs to such an extent as to be incapable of properly controlling a motor vehicle. There is no need to establish the proportion of alcohol in the driver's breath, blood or urine.

Although the police mainly rely on section 39A to prosecute drink driving cases, section 39 will also be invoked if circumstances so warrant, for example, if the driver is grossly impaired by drink or drugs and is unable to provide a breath specimen for analysis.

Under the Bill, we have proposed that the minimum disqualification period for contravention of section 39 should be pitched at tier 3. As drivers to be prosecuted under section 39 are influenced by drink or drugs to the extent as to be incapable of having a proper control of a motor vehicle, they are not necessarily posing less safety hazards to other road users than drivers with alcohol concentration in their bodies at tier 3. Therefore, our proposal to bring the penalties under section 39 in line with those for drink driving at tier 3 is appropriate. We propose to increase the disqualification period for drivers who have committed the relevant offences from the existing three months to two years on first conviction and from two years to five years on subsequent conviction, and it already represents a significant increase in penalty.

We think it is inappropriate to take on board Mr Andrew CHENG's proposal.

First, drink driving or drug driving cases may not involve any traffic accidents or injuries, and their penalties should be proportionate to the offences. Mr Andrew CHENG proposes to increase the penalty to three years for first-time offenders and 10 years for repeat offenders. We think such penalties are out of proportion to the consequences of the relevant offences, and the public has not been adequately consulted on such an increase.

Second, we propose to bring the penalties for the relevant offences in line with those for drink driving at tier 3. These penalties are much heavier than the original ones and can achieve considerable deterrence. Actually, Hong Kong is one of the jurisdictions which impose the heaviest penalties on drink driving offences.

Third, the proposed disqualification period only sets out the minimum, and the Court has the discretion to disqualify a driver for a period much longer than the minimum should individual circumstances so warrant.

Fourth, apart from driving disqualification, we have also introduced under the Bill other proposals which will result in taking drivers who have committed the offence of driving under the influence of drink or drugs away from the road for a longer period of time. These proposals include: if a repeat drink driver is sentenced to imprisonment, the Court must order that the disqualification period should commence at the conclusion of the imprisonment sentence unless the Court sees fit not to do so; and if a driver has a Blood Alcohol Concentration (BAC) level of tier 3 or has any amount of the six specified drugs in his body, he is to be regarded as committing an offence in circumstance of aggravation in all dangerous driving offences. In other words, if a drink driver commits a dangerous driving offence in such a circumstance, the maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%. The total effect of the Bill will result in debarring repeat drink drivers, especially those who are concurrently involved in dangerous driving, from driving on the road for a prolonged period. We believe this will be able to meet the public's expectation for imposing heavy penalties on drink driving offences. We should implement the proposals under the Bill before giving consideration to other more stringent measures, having

regard to the results achieved by these proposals and upon adequate consultation with various stakeholders and road users.

For these reasons, I disagree to taking on board Mr Andrew CHENG's proposal. I implore Members to vote against this amendment. Thank you, Chairman.

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

(Members raised their hands)

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

(No hands raised)

Mr IP Wai-ming rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Irrespective of whether the Secretary's amendment is passed, Mr Andrew CHENG may move his amendment.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Mr LEUNG Yiu-chung, have you cast your vote?

(Mr LEUNG Yiu-chung pressed the button to cast his vote)

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Ms Cyd HO and Mr Albert CHAN abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 44 Members present, 41 were in favour of the amendment and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, you may now move your amendment.

MR ANDREW CHENG (in Cantonese): Chairman, I move the amendment to clause 9.

Proposed amendment

Clause 9 (See Annex I)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU, Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin and Mr Albert CHAN abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, four were in favour of the amendment, 13 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 15 were in favour of the amendment, seven against it and three 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.

CLERK (in Cantonese): Clause 9 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 9 as amended stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please put up their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 10.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has given notice to move amendments to clause 10(5) to amend section 39A(2A)(a)(i) to (iii) and (b)(i) to (iii) as proposed in the Bill.

MR ANDREW CHENG (in Cantonese): Chairman, I move the amendment to clause 10.

I believe the amendment is probably one of the most controversial provisions in the resumption of the Second Reading of this Bill and in many debates, and this is on how driving disqualification should be classified as a punishment when the Body Alcohol Concentration (BAC) of a driver is divided into tier 1, tier 2 and tier 3.

Chairman, the amendment proposed by the Government is a minimum driving disqualification of six months on first conviction and two years for subsequent conviction for tier 1. In my amendment, a tier 1 offence will lead to a minimum driving disqualification for one year and three years for subsequent conviction. For tier 2, the Government proposes that offenders be punished by a minimum driving disqualification period of 12 months and three years for subsequent conviction. I propose that offenders be punished by a minimum driving disqualification for two years on first conviction and five years for subsequent conviction. I would like to pause here for a while and leave aside tier 3 for the time being.

Actually Members can note the prescribed BAC in the existing two-tier system. For tier 1, the prescribed limit is exceedance by 0.6 times and for tier 2, the prescribed limit is exceedance by 0.6 to 2 times. The standard used is 22 mcg of alcohol in 100 ml of breath, or 50 mg of alcohol in 100 ml of blood or 67 mg of alcohol in 100 ml of urine. Chairman, if this is seen in terms of times or the number of glasses of beer which some Honourable colleagues have mentioned, actually, when it is tier 2 or close to two times, it means that the person has drunk about 10 glasses of beer. Just imagine, if someone has drunk eight to 10 glasses of beer and his BAC is tier 2, and if he still drives — despite the fact that some doctors and medical personnel may say that some people are not under too much influence of alcohol and they are all fine even if they have taken a lot of alcoholic drinks, and although the effect of alcohol is different on each person, when we know that people are not supermen and they cannot be immune to the effect of alcohol, then we should pay attention. I hope Honourable colleagues will know that in the past, the Government did not accept this three-tier system. At that time people had a wrong impression and that is, it would be fine if they drank a little. So we should be very strict when dealing with driving disqualification and prison term under tier 1 so that the penalties under the three tiers will be higher than the existing system which is not divided into tiers. Then this kind of wrong impression will not arise. It follows that the BAC under tier 2 is already very high and I would think that it is acceptable to sentence subsequent offenders to a driving disqualification of at least five years.

Chairman, on tier 3 which is the most controversial of all, the Government proposes that offenders on first conviction are liable to a minimum driving disqualification period of two years and five years on subsequent conviction. I think this penalty is definitely not enough. Chairman, if a person's BAC is at tier 3, it exceeds the prescribed limit by more than two times. It can be two times, three times, four times, or even six times as found in the driver of the serious traffic accident that took place on 23 January 2009, or 28th day of the twelfth month on the lunar calendar, in which six persons were killed. At that time, the driver's alcohol concentration was six times more than the prescribed limit. It meant that he had drunk about 15 to 16 glasses of beer or more. He should be in a state which was far from being sober. I can now see Dr Philip WONG here. He is recognized as the Member who can drink most. I remember when we drink, at times our mind will not be sober. We would feel

very excited. Drinking can make us forget ourselves. It is relaxing and comfortable. But that kind of feeling should never happen to drivers. So every time when we drink upstairs after the meeting is over, I am sure the cars of the Members will still be in the car park. We will have someone to drive our car or we will ride on public transport or take a taxi. We do this because we respect life and we need to stay sober.

The BAC at tier 3 is very high. I wish to remind Members that it is at least two times in exceedance of the prescribed limit. Mr LEE Cheuk-yan said when he spoke for the first time that many colleagues from the trade unions do support my amendments. This is what Mr LEE said. The reason is that in the example cited by me, it shows that it is only sheer luck for other road users if a driver with a BAC twice or more than the prescribed limit not to hit or kill someone. Chances for that are extremely slim. It is very dangerous to fail to drive in a straight line on the roads in Hong Kong. The Government agrees to that as well. According to government statistics, on average 85 traffic accidents were caused by drink driving each year from 2004 to 2009 with an annual number of casualties at 132 persons on average and of whom, 29 people were either killed or seriously wounded. The chance of this kind of accidents related to drink driving causing death or serious casualties is 22% on average. This is 8% more than other kinds of traffic accidents with an average of 14%. These figures were cited by the Government earlier. In other words, drink driving harms oneself and others. It has a higher chance of causing death and injuries than other kinds of traffic accidents, hence, the problem must be dealt with rigorously.

Chairman, I am not going to recount those heartbreaking cases here. But when we check the records and see many cases of drink driving causing death, the BAC of the drivers concerned are often more than twice above the prescribed limit. It is because of that that we have to be very careful in dealing with tier 3. I suggest that an offender of tier 3 should at least be disqualified for five years on first conviction and life on subsequent conviction, such that the deterrent effect can be enhanced.

Of course, some people may say that they have never had any accident before. Precisely, my purpose in proposing this amendment is to prevent such sad incidents from happening, such that deaths can be prevented and such cases

that tear families asunder will happen no more. The thrust of my amendment is to achieve this deterrent effect, to prevent such accidents from happening.

I wish to make a call here by talking about the distinction between failure to undergo a breath test or providing specimens for analysis and subsequent convictions. Due to the amendment I am going to propose, some drivers may refuse to undergo a breath test on breaking the law for a second time. This is because I only propose a disqualification period of 10 years. It provides an incentive for some drivers. They may refuse to undertake a breath test or provide specimens for analysis, and they would rather be disqualified from driving for 10 years. For drivers found in serious exceedance of the prescribed limit, would they be given preferential treatment in this way? Chairman, I have thought about this issue over and over again. I understand that some Members may think that this argument and penalty may not be appropriate. I agree to that. But reluctantly, I think we should know that if I were to make an amendment and propose that anyone who refuses to undertake a breath test or provide specimens for analysis, he should be disqualified for life, it would make more people who are unhappy about it say that it would be way overboard when there is no direct proof that the BAC has reached tier and the driver should be disqualified for life. Therefore, I propose that the disqualification period shall be 10 years.

A person may not know if his alcohol concentration is at tier 2 or tier 3. So he may think that if it is not at tier 3, even if that is a second conviction, according to my amendment, he will only be disqualified for five years instead of 10 years. I hope he can understand and I hope not every person will refuse a breath test. But if that is really the case, I would think that a disqualification period of 10 years is better than a minimum of five years as proposed by the Government. Therefore, I wish to make an appeal here and point out the gravity of the reasons behind my proposing the amendment, as well as the consequence of refusing to undertake a breath test. I hope Honourable colleagues can understand why I have to make it this way. Thank you, Chairman.

Proposed amendment

Clause 10 (See Annex I)

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and the amendment.

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

MR WONG SING-CHI (in Cantonese): Chairman, with respect to this issue, the Democratic Party finds it impossible to support the amendment proposed by Mr Andrew CHENG. Mr CHENG has talked about a part only, that is, driving with BAC in exceedance of the prescribed limit, but no traffic accident is caused and no one is hit or killed, and if the driver concerned does not undertake a breath test, the penalty is 10 years' disqualification from driving. If the BAC of the driver exceeds the limit for tier 3, he will be disqualified for life. With respect to this point, I have discussed with Mr Andrew CHENG before, and he gave his explanation. But still we think that there is something inconsistent here. This should be seen as a whole. We will support the amendments Mr Andrew CHENG will propose later on to clauses 11 and 12. But about this amendment, we think that it is a bit inconsistent.

Another inconsistency is that we are afraid the public will be given the impression that repeat offenders of driving with an BAC exceeding tier 3 will have a shorter disqualification period than those who drive and cause grievous bodily harm. That is to say, under Mr CHENG's amendment, the penalty for those who hit and wound people is only changed to a disqualification period for 10 years. Seen in this way, it seems that for persons who have not hit and wounded anymore and nothing has happened, if and only if he commits the offence of driving with BAC at tier 3, he will be disqualified for life. With respect to this, we would think that there are inconsistencies.

Even in the amendment to clause 7, if a driver who drives dangerously and causes grievous bodily harm as a result of drink driving, then the original punishment for him will only be increased by 50%. In other words, even if Mr CHENG's amendment is passed, the disqualification in that case is only 15 years, not for life.

In such circumstances, and frankly, the Democratic Party has not discussed this point with Mr CHENG during the deliberations on the Bill. But at this moment in time, we consider that there are some inconsistencies. So notwithstanding our full support for all of the amendments by Mr CHENG, we cannot support him over this amendment because there are some inconsistencies between this amendment and the other amendments. Thank you, Chairman.

MR RONNY TONG (in Cantonese): Chairman, as I have said in the Second Reading, the amendment proposed to the provision is contradictory to the amendment regarding refusal to perform a breathalyzer test. So it is hard for us to lend it our support. Also, as the amendment proposed by Mr Andrew CHENG to clause was negated, if we were to give our support now, a greater contradiction will arise as a result. This is because the penalty for subsequent conviction will be higher than the penalty for dangerous driving causing death. It is due to these two reasons that we do not support this amendment.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, Mr Andrew CHENG's proposed CSA seek to increase the disqualification periods for drink driving under a three-tier penalty system with a sliding scale.

We have made reference mainly to the sliding penalties imposed in New South Wales, Australia before putting forward our proposals in the Bill. In other words, "the higher the limit has been exceeded, the heavier the penalty". Under our proposal, the minimum disqualification periods for first-time offenders range from six months to two years, and two to five years for repeat offenders. These penalties are quite stringent when compared with those in overseas places. Mr CHENG's proposals, such as imposing penalties ranging from a three-year minimum disqualification period to life disqualification for repeat offenders, are considered by us to be too stringent.

I must point out that under Mr CHENG's proposal, if any person is convicted of any drink driving offence at any tier, that is, probably the first or second tier, or refusal to undergo breath tests, he will be disqualified for life when he commits a drink driving offence at tier 3 for a second time.

As pointed out by me just now, the penalties for drink driving offences must be commensurate with the consequences of the offences. Furthermore, the legislation has merely provided for the minimum disqualification periods. The Court may impose heavier penalties in the light of the merits of individual cases. In addition, other measures proposed in the Bill, such as imprisonment and disqualification not to be enforced concurrently as well as "an offence committed in circumstance of aggravation" introduced into drink driving crimes, can also enhance deterrence.

Because of these reasons and the speech delivered by me earlier, I do not agree with Mr Andrew CHENG's proposals. I implore Members to negative this CSA. Thank you, Chairman.

MR ANDREW CHENG (in Cantonese): Chairman, when Mr WONG Sing-chi spoke for a number of times earlier on in support of my amendments, Mr CHEUNG Man-kwong whispered in my ears, "See, are we not true buddies? Come back to the Democratic Party." I was certainly moved. Chairman, but that certainly has nothing to do with this amendment.

With respect to this amendment, Mr WONG Sing-chi has voiced his opposition. I know that in regard to this penalty of disqualification, there are many subjective views. It is true. But I respect the way my Honourable colleagues think of the way I deal with these cases, the number of years in the disqualification period in these penalties and the problem associated with refusal to undertake breath tests. I have explained all of them. I believe the Secretary and I are both hungry and I will not spend too much time on it. I hope it can be finished as soon as possible so that the Bill can be read the Third time.

I just want to add a comment. With respect to the offence of dangerous driving causing grievous bodily harm, I propose that the disqualification period should at least be three years and 10 years. At this point, if the driver concerned

reaches tier 3, then the disqualification period should be at least five years and for life. In the case of the former, no one is wounded or killed. And in this case, no one is hurt. Then why is the penalty so severe? I hope Members can understand and see the point that prevention is better than cure. We should make a driver who has drunk a lot alert to this and refrain from driving, hence reducing the loss of life or injury. This is the thrust of my amendments. So I hope that drivers who have drunk and exceeded tier 3 or twice the limit or more should know that another conviction will land them in disqualification from driving for life. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result be displayed.

Functional Constituencies:

Dr Raymond HO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Ms LI Fung-ying, Dr Joseph LEE, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHEUNG Kwok-che, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Andrew CHENG and Ms Cyd HO voted for the amendment.

Mr Albert HO, Mr James TO, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG and Miss Tanya CHAN voted against the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin and Mr Albert CHAN abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present, 14 were against the amendment and three abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, three were in favour of the amendment, 18 against it and three 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.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 10 as amended stand as part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 11 and 12.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has given notice to move amendments to subclauses (2) to (7) of clause 11 as well as subclauses (2) to (7) of clause 12.

MR ANDREW CHENG (in Cantonese): Chairman, I move the amendments to clauses 11 and 12.

Chairman, although the Democratic Party has voted against my amendment just now, I will have it put on record. This is because at the vote earlier, the Chairman of the Democratic Party, Mr Albert HO, voted in favour of the amendment.*(Laughter)* But that only shows that there are, after all, different views in the party.*(Laughter)* Having said that, he also voted in line with the intention of the party spokesman WONG Sing-chi.

Chairman, I am sure people in the Democratic Party will support my amendments to clauses 11 and 12. Chairman, I do not want to spend any more

time on clauses 11 and 12. These two clauses are provisions on the disqualification periods regarding refusal to undertake a breath test and providing specimens for analysis. The amendments I make to these provisions are more stringent than the amendment from the Administration.

Under the existing law, a person on first conviction will be disqualified from driving for three months and a subsequent conviction will make him liable to disqualification for at least two years. In the amendment by the Administration, a first conviction will mean disqualification for at least two years and subsequent conviction for at least five years. It can be seen that in the Administration's amendment, the penalty is raised from a minimum disqualification period of at least three months to two years substantially to at least two years to five years. Although the Government is well aware of the gravity of the problem, I hope that repeat offenders will at least be disqualified for 10 years before any deterrent effect is achieved.

Chairman, I shall not take everybody's time. The debate has been going on for more than six hours now. I am sure in the debate today, various political parties and groupings should have pondered over issues like road safety, drink driving and drug driving. And at least we have come to a consensus and that is, we hope that the Government can introduce amendments with respect to the problem of drug driving and introduce behavioural tests to handle it, so as to reduce serious traffic accidents caused by drink driving and drug driving.

Thank you, Chairman.

Proposed amendments

Clause 11 (See Annex I)

Clause 12 (See Annex I)

CHAIRMAN (in Cantonese): Members may now have a joint debate on the original provisions and the amendments. After the debate, the Committee will put to vote Mr Andrew CHENG's amendment to clause 11 first. Irrespective of whether such amendment is passed, Mr Andrew CHENG may move his amendment to clause 12.

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

MR WONG SING-CHI (in Cantonese): Chairman, the fact that our Party Chairman voted in favour of the amendment by Mr Andrew CHENG shows that we still count him as one of us. This is a position clear enough.

We have explained the reasons why we oppose the amendment. However, with respect to this particular amendment, we think that when drivers drink drive, they have already broken the law. But they do not want to meet the requirement of the law-enforcement officers. I think their offence is more serious than those who have been proven to have contravened the law after undergoing a breathalyzer test or after some other examination.

As the next amendment by Mr CHENG is more stringent, the Democratic Party will support it.

Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, to ensure the integrity and effectiveness of the drink driving laws, we propose to bring penalties for offences related to driving under the influence of drinks or drugs, refusal to undertake a screening breath test or failure to provide specimens of breath, blood or urine for analysis on a par with tier 3 of drink driving.

The disqualification periods proposed by Mr CHENG for drivers convicted of the above offences and those convicted of tier 3 of drink driving are not consistent. Moreover, the disparity between the penalties for the two is inappropriate.

For the above reasons, I do not agree to take on board the proposals put forward by Mr Andrew CHENG. I urge Members to negative this CSA.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Andrew CHENG, do you wish to speak again?

(Mr Andrew CHENG shook his head to indicate that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 11 moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Andrew CHENG rose to claim a division.

CHAIRMAN (in Cantonese): Mr Andrew CHENG has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Dr Joseph LEE and Mr CHEUNG Kwok-che voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Andrew LEUNG, Mr CHAN Kin-por, Mr IP Kwok-him and Mr Paul TSE voted against the amendment.

Ms Miriam LAU, Ms LI Fung-ying, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mrs Regina IP voted against the amendment.

Mr WONG Kwok-hing, Mr WONG Kwok-kin and Mr Albert CHAN abstained.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that among the Members returned by functional constituencies, 15 were present, three were in favour of the amendment, eight against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 25 were present, 14 were in favour of the

amendment, seven against it and three 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.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 11 stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 12 moved by Mr Andrew CHENG be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

CHAIRMAN (in Cantonese): I think the question is not 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 negatived.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 12 stand part of the Bill.

CHAIRMAN (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 14.

(The Secretary for Transport and Housing was not sure about which page of the Script)

CHAIRMAN (in Cantonese): We are now dealing with page 21 of the Script.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the amendment to clause 14. We propose that a person commits an offence in circumstance of aggravation if any amount of any of the specified drugs, that is, the most common drugs of abuse, is present in his body. As the types of drugs of abuse may vary over time, we propose to add new clause 14 to empower the Secretary for Transport and Housing to, as necessary, by notice in the Gazette amend the specified drugs, and the notice shall not come into operation until after the time provided for the Legislative Council to debate the notice has expired.

I implore Members to support this amendment.

Proposed amendment

Clause 14 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

Mr IP Wai-ming rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Mr LEUNG

Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 40 Members present and 39 were in favour of the amendment. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

CLERK (in Cantonese): Clause 14 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 14 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 21A

Schedule 1A added.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move the Second Reading of new clause 21A. New clause 21A lists six types of drugs, namely heroin, ketamine, methylamphetamine (commonly known as "ice"), cannabis, cocaine and 3, 4-methylenedioxymethamphetamine (commonly known as "ecstasy"). They are currently the most common drugs of abuse or psychotropic drugs in Hong Kong.

I implore Members to support the amendment. Thank you, Chairman.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 21A be read the Second time.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 21A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr IP Wai-ming rose to claim a division.

CHAIRMAN (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for one minute.

CHAIRMAN (in Cantonese): Will Members please proceed to vote.

CHAIRMAN (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr Margaret NG, Mr James TO, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Miriam LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Mr Alan LEONG, Miss Tanya CHAN and Mr Albert CHAN voted for the motion.

THE CHAIRMAN, Mr Jasper TSANG, did not cast any vote.

THE CHAIRMAN announced that there were 34 Members present and 33 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): New clause 21A.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): Chairman, I move that new clause 21A be added to the Bill.

Proposed addition

Clause 21A (see Annex I)

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 21A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

ROAD TRAFFIC (AMENDMENT) BILL 2010

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):
President, the

Road Traffic (Amendment) Bill 2010

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Road Traffic (Amendment) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

Mr IP Wai-ming rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Wai-ming has claimed a division. The division bell will ring for three minutes.

PRESIDENT (in Cantonese): Obviously, we shall not be able to finish all the items on the Agenda before midnight today. Therefore, I will suspend the meeting at around 10 pm until 2.30 pm tomorrow.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr WONG Yung-kan, Ms Miriam LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Dr Joseph LEE, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 31 Members present, 26 were in favour of the motion and four abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Road Traffic (Amendment) Bill 2010.

MOTIONS

PRESIDENT (in Cantonese): Motion. Proposed resolution under the Air Pollution Control Ordinance to amend the Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences.

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

PROPOSED RESOLUTION UNDER THE AIR POLLUTION CONTROL ORDINANCE

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I rise to move the resolution, as set out under my name, to amend the "Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences" (the Second Technical Memorandum). The proposed amendment has been set out in the Agenda distributed to Members.

The Technical Memorandum is made under the provision of section G of the Air Pollution Control Ordinance for stipulating the yearly emission caps of the power sector. During the scrutiny by the Legislative Council of the First Technical Memorandum in 2008, we undertook to review it within two years. The review has found that the two power companies can further reduce their emissions by taking best practicable control measures so as to improve the air quality in Hong Kong and the Pearl River Delta. These measures include taking advantage of the additional natural gas supply under the Memorandum of Understanding on Energy Co-operation signed with the National Energy Administration to maximize the use of the existing gas-fired generation units; and prioritize the use of the coal-fired generation units retrofitted with emission abatement equipment for achieving the 2010 emission reduction targets to reduce the emissions from coal-fired electricity generation. As compared to the First Technical Memorandum, the emission caps of sulphur dioxide, nitrogen oxides and respirable suspended particulates would be tightened by about 50%, 35% and 34%, respectively. These maximum emission allowances will take effect from 2015.

To enable us to have an earlier review on whether the two power companies could further curtail their emissions, I accept the suggestion of the Subcommittee made during the scrutiny of the Second Technical Memorandum on the review frequency, and propose to amend the Technical Memorandum to conduct a review from not less than once every three years to not less than once every two years. We also agree to report the review findings to the Panel on Environmental Affairs of this Council. In addition, I propose to amend the Chinese text of section .1 of the Second Technical Memorandum for consistency in terminology.

To comply with the emission caps requirements in the First Technical Memorandum, the two power companies have already increased the use of natural gas for power generation and retrofitted their coal-fired units with emission abatement equipment. The emission data for the first three quarters of this year showed that the two power companies should be able to comply with the 2010 emission caps. When determining the yearly emission allowances in the Second Technical Memorandum on this basis, we have also considered, in addition to the best practicable measures mentioned earlier, emission increases as a result of the ageing of the newly retrofitted emission abatement equipment and the growth of electricity demand that needs to be taken up by the coal-fired generation units without additional emission reduction retrofits. We, therefore, trust that the new yearly emission caps are stringent and yet practicable.

To further reduce emissions from the power sector, there have to be, as proposed in the "Hong Kong's Climate Change Strategy and Action Agenda — Consultation Document", a significant change in the fuel mix for electricity generation, development of a low carbon economy, and more utilization of clean energy, renewable and nuclear energy, and so on. The public consultation of the proposal will end by the end of this year. We will collate and consider carefully the opinions collected for formulating the future direction and pace of reducing the emissions of the power sector and introducing timely new technical memoranda to further reduce power plant emissions.

President, the amendment resolution has the support of the Subcommittee. I appeal to Members for support of the resolution.

Thank you, President.

The Secretary for the Environment moved the following motion:

"RESOLVED that the Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences, published in the Gazette as Special Supplement No. Gazette No. /2010 and laid on the table of the Legislative Council on 20 2010, be amended:

- (a) in the Chinese text of section .1, by adding "分" after "獲";

and

- (b) in section .5, by substituting "three" by "two"."

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

MS AUDREY EU (in Cantonese): President, in my capacity as Chairman of the Subcommittee, I will report on the discussion outcome of the Subcommittee. The Subcommittee has held three meetings to discuss the "Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences" (the Second Technical Memorandum) with the Administration.

The Subcommittee has noted that under the Second Technical Memorandum, the authorities will set out emission allowances allocated for each power plant from 2015 onwards under the presumption that each of the plants will maximize the use of existing gas-fired generation units and prioritize the use of coal-fired generation units retrofitted with emission abatement equipment. As some of the emission allowances set out in the Second Memorandum for each power plant are higher than those set out in the First Memorandum as well as the actual levels of emission in 2010, the Subcommittee has demanded an explanation from the Administration. According to the Administration, the methods used in ascertaining the quantity of emission allowances under the First and Second Technical Memoranda are different. The Second Technical Memorandum allocates emission allowances directly for each power plant based on the types of fuel used by their generation units and the emission abatement equipment available to them. For instance, since the Castle Peak Power Station uses coal as the primary fuel and cannot retrofit further abatement equipment due to space constraints, it is allocated higher emission allowances for nitrogen oxides (NO_x) and respirable suspended particulates (RSP) than those under the First Technical Memorandum. As the Lamma Power Station and its Extension may have to deploy those coal-fired generation units without emission abatement retrofit for power generation to meet the growing demand for electricity in the coming years, it is allocated higher emission allowances than the actual emission level in 2010 from 2015 onwards. As the book lives of these old generation units will expire starting from 2017, the Administration considers it not

cost-effective to install new emission abatement equipment for them. Hence, the company concerned will have to procure higher quality coal in order to meet the emission caps under the Second Technical Memorandum.

The Subcommittee has demanded that the Administration conduct a review of the Second Technical Memorandum within two years. The Administration has initially advised that following substantial tightening of emission caps in the First and Second Technical Memoranda, any further major reduction in emissions can only be achieved through revamping the fuel mix. As this requires advanced planning and prior consultation and takes time, the Administration has not acceded to it initially. But upon the repeated urges of the Subcommittee, the Administration has reconsidered the request, and eventually agreed to amend section 2.5 of the Second Technical Memorandum to change the review frequency from not less than once every three years to not less than once every two years. It also agrees to report the review outcome to the Panel on Environmental Affairs upon completion of any future review of the Second Technical Memorandum. The Subcommittee has also supported the minor textual amendment proposed by the Administration for the Chinese text of the Second Technical Memorandum.

President, in the following part of my speech, I will talk about the Second Technical Memorandum on behalf of the Civic Party.

Today can be considered a special day for this Council. Today, we are here to discuss this motion on power plant emissions, followed by a motion sponsored by Mr KAM Nai-wai on air pollution, and possibly another motion debate on conservation policy to be put forward by me tomorrow. This indicates that this Council has become increasingly involved in emission reduction or environmental matters. We can see that as power stations and transport account for 85% of the total emissions in Hong Kong, this is a very important matter or issue.

Members can see that environmental issues are of concern not only to some green groups. As a matter of fact, many people also attach importance to and discuss environmental issues from different perspectives. From the perspective of health, air pollution increases the risk of people falling ill as well as the medical cost borne by society. From the economic point of view, environmental problems have implications on whether major foreign corporations will pull out

of Hong Kong or whether expatriates are willing to come to Hong Kong for development. Of course, the problem of waste discussed by us some time ago also has implications on the living environment. From the angle of international obligations, it has something to do with how we can help reduce greenhouse gas emissions to cope with climate change. Hence, the Second Technical Memorandum that we put forward for discussion today is a very important item among all environmental issues.

We can see that as power stations account for 67% of the emissions in Hong Kong, it is essential to make them cut their emissions of sulphur dioxide, NO_x and suspended particulates. As for the emission reduction methods of power stations, apart from installing flue gas desulphurization facilities, consideration should also be given to changing the fuel for power generation. According to the preliminary figures provided by the Government, CLP Power Hong Kong Limited (CLP) has to switch to natural gas if it is to reduce emissions in future, and about 70% to 90% of the reduction will be achieved through the adoption of natural gas. As for Hongkong Electric Company limited (HEC), 60% to 70% of the reduction will come from a switch to natural gas.

Currently, Hong Kong acquires natural gas from many places, including the Mainland as the main source of supply. In 2008, Hong Kong signed a Memorandum of Understanding on Energy Cooperation to secure additional supply of natural gas for Hong Kong in future. But according to the estimation made by the Government, even if all of the natural gas supply prescribed in the Memorandum is to be exhausted, only half of the electricity demand of Hong Kong will be met by 2030.

In the recently released "Hong Kong's Climate Change Strategy and Action Agenda — Consultation Document", the Government has proposed that to further reduce emissions, importing nuclear energy on top of natural gas will also be considered, with a view to increasing the use of nuclear energy from the existing 20% or so to possibly 50%. But Hong Kong people actually have some worries about switching to nuclear energy, particularly when the repeated occurrence of incidents at the Daya Bay Nuclear Power Station has reflected the sheer opacity in our notification mechanism and in the disclosure of information in Hong Kong and the Mainland. Moreover, in releasing this consultation document, the Government has not clearly stated that if the supply of nuclear power is to be increased in future, in which parts of Guangdong Province the nuclear power stations will be built. It also has not disclosed the exact locations and number of

the stations concerned, as well as details on the relevant monitoring mechanism and even environmental assessment, and so on. I have raised an oral question on whether Hong Kong people can take part in relevant planning or preparation, but the Government has yet to give a definite reply. Of course, there are still uncertainties surrounding the cost of investment for nuclear power stations and the handling of nuclear waste in future. In addition, we have repeatedly asked the Government if the consultation period for the consultation document can be lengthened, particularly in consideration of the fact that the Government did not table the independent consultancy study until lately. It is not until we take a look at the recently released Consultancy Study on Climate Change that we learn that apart from the information included in the consultation document of the Government, other suggestions have also been raised. One of the suggestions not made known earlier is that the ratio of nuclear energy is 35% instead of 50%, but there will be corresponding letdown in the level of emission reduction to be achieved.

In fact, we can see this time that the Subcommittee has encountered many difficulties in its discussion on the Second Technical Memorandum submitted by the Government. Even though we do not quite agree to the proposals of the Government, or we are of the view that the emission allowances suggested therein are unsatisfactory, or even that they are set at levels higher than the actual emission level while having no remarkable improvement or reduction when compared to the First Memorandum, we still have to reluctantly accept the agreements currently reached among the Government, the power stations and relevant parties, because this Council very often may not have enough access to consultancy information or expert opinions on these issues.

Therefore, President, my speech today particularly highlights that in respect of power generation or energy development in future, we need to have input from the public and green groups, particularly from such professionals as engineering or energy experts, in order to make this Council and members of the public better informed. I also hope that more people would express their views to demonstrate their concern for the current consultation exercise of the Government on climate change, as well as for the various environmental problems arising from the supply of fuel and power generation. Thank you, President.

MS CYD HO (in Cantonese): President, according to the Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences, starting from 2015, as compared with the emission volume of 2010, the amount of carbon dioxide can be reduced by 50%, NO_x by 35% and suspended particulates by 34%. However, in respect of emission ratio, we can in fact be more aggressive.

In the course of scrutiny, I noted two points. First, the total emission allowance is in fact a "compromise", with the emission cap set for some generation units in 2015 being higher than the actual emission level in 2010. For example, for the power station of the HEC on Lamma Island, the actual emission level of sulfur dioxide of some of the generation units in 2010 is 3 553, but the allowance for 2015 is 6 780, and the case is similar for NO_x. Moreover, as regards the emission of NO_x for the Castle Peak Power Station, the actual emission allowance allocated for one of its generation units in 2015 is higher than that in 2010, an increase from 12 099 to 13 390. The explanation offered to us by the authorities is that due to the ageing of generation units or the diminishing marginal utility sequence for some emission abatement installations, not every generation unit of each power station can keep on reducing emission, thus leading to this situation of "compromise". However, if the power station fails to exert its best to maintain these generation units and let them age, or is unwilling to spend more on proper maintenance before switching to natural gas in the future, it will be very difficult to further reduce emission. Therefore, the negotiation and wrestling between the Government and the power companies have prevented the emission allowance from being made more aggressive.

Second, during the scrutiny, according to the information we obtained through enquiries, it turns out that the emission reduction target for 2015 has not taken into account the possibility of enhancing power generation by nuclear energy. We are aware that recently, Hong Kong is having a consultation on ways to cope with climate change, and because it touches on the proposal of increasing the share of nuclear power generation from 23% to 50% which has stirred up a controversy, the authorities have, in response to public opinion, extended the consultation period by one month. Therefore, we can understand why the present emission reduction cap has not taken into account the increase in power generation by nuclear energy. We also believe that within a year or two, there will be a clearer picture for our energy mix. President, I personally oppose

increasing the supply of nuclear energy, but I also clearly understand that we may not be able to oppose effectively. When we have a clearer picture within a couple of years, if nuclear power generation must increase against our wish, we should review the existing emission allowance for 2015. Thus, during the scrutiny, we proposed that the review of existing emission allowance should be done once every two years instead of three because we believe that after a couple of years, the energy mix concerned can be clearer and if we really have to increase nuclear power generation, this emission allowance should be drastically slashed.

We reached this consensus in the Subcommittee and were ready to propose an amendment. Nonetheless, the executive authorities accepted our proposal and decided to propose it themselves, thereby obviating the need for separate voting, or the scenario of the minority rules. We welcome this move by the authorities. However, on the other hand, nuclear energy is no safe energy. Once we cut carbon emission, we can surely ease climate change, but how are we going to handle the nuclear fuel of nuclear energy? There is no safe method for this. Therefore, apart from adopting this reduction of carbon emission as a target, we should in fact immediately formulate a more enterprising option for energy saving to change the public's habit of electricity consumption, as well as getting rid of business promotions which consume vast amount of energy in order to achieve the target of emission reduction.

President, lately, I discovered something funny in the report of the Audit Commission. In the report No. 55 issued by the Audit Commission last month, there is a chapter on the building services of government properties which focused on describing their energy conservation installations. I do not know if the officials in attendance today have read it or not. The documents we recently received in respect of funding applications for this type of public works in government buildings all pointed out the need to increase this kind of energy conservation installations, including that for air-conditioning saving and lighting. The documents said that the cost can be fully recouped in seven years from the electricity tariffs thus saved. We of course greatly welcome this because this type of installations have been around for some time before the Audit Commission conducted an audit on several of those buildings. It was discovered that after switching to compact fluorescent lamps (CFLs), the buildings concerned have installed a vast number of unnecessary CFLs and lighting fixtures, resulting in one building (the Director of Audit referred to as building C)

having to remove 1 200 lighting fixtures in two years, at the end of 2007 and in 2008. We can see from this incident that using technology or installations to save electricity is not the most effective method. The most important point of all is changing the electricity consumption habit of the people. In the earlier-mentioned example uncovered by the Director of Audit, an 80% saving in electricity has been made after switching to CFLs, but since a lot of lights have been installed, people using the building found it hard to accept the resultant luminance, and 1 200 lighting fixtures had to be removed.

President, apart from changing the mix of our energy supply, the most effective and direct way is actually to change our electricity consumption habit by means of policy incentive or legislative control, as well as to change the approach of certain business promotions.

In addition, I would also like to talk about electricity tariff. The authorities like to say this to us: "It is not that we do not want to cut emissions, but if we only adopt natural gas, tariffs will go up, therefore, we have to use nuclear power because based on current estimate, nuclear power is cheaper." However, President, I must point out that the level at which tariff is fixed is directly linked to the way electricity is generated and the cost of energy. The tariff listed in our electricity bill is in fact the result of negotiation and wrestling between the two monopolistic electricity suppliers and the Government. The gritty example before us is that the tariff charged by HEC is all along higher than that charged by CLP, resulting in residents on Hong Kong Island having to pay a heftier electricity bill but HEC's generation units on the Lamma Island emit more pollutants. In fact, this is most unfair to people living on Hong Kong Island who have to pay and endure the pollutants emitted. It can be seen that high electricity tariffs do not only stem from high or low fuel cost. In the same way, although we are saying today that the cost of coal-fired electricity generation is lower, this does not equate to a lower overall social cost because the suspended particulates emitted by burning coal can lead to respiratory ailments and medical cost. Regardless of whether it is the public system supported by taxpayers through taxes or the medical and drug fees paid by the individual, the public will incur these expenses incurred directly or indirectly by the emission of such pollutants. The only difference is that it is not indicated on the electricity bill. If we take a more macroscopic view, we can see that the emission of a large amount of carbon dioxide will lead to scorching and frigid climate, serious floods,

severe droughts and crop failure, and will also result in surging food prices. These are all costs caused by a high emission of pollutants.

Therefore, in order to lower the overall social cost, we should not just change the energy mix. The most straightforward solution is to reduce emission and save energy. If we want to prevent the tariff on the electricity bill from rising, we ultimately have to rely on the Government to strive to act as a gatekeeper protecting people's interests, rather than using the tariff issues to lobby the people and Members for the expediency in promoting its policy. Thank you, President.

MR KAM NAI-WAI (in Cantonese): President, I am a member of the Subcommittee on the "Second Technical Memorandum for Allocation of Emission Allowances in Respect of Specified Licences" (the Second Technical Memorandum). The Subcommittee certainly supports the Second Technical Memorandum, which prescribes the emission caps for each power station. This is a more desirable practice than the one stated in the previous Memorandum, which purely takes into account the amount of electricity generated by the two power companies in calculating the average emission cap for each kWh of electricity without prescribing the emission cap for each power station. I think the change will enable us to have a clearer picture of the current level of pollution at each power station and what bodes for the future.

But regrettably, as mentioned earlier by Ms Audrey EU, the Chairman of the Subcommittee, I am not satisfied with the emission cap to be imposed on each power station for 2015 and beyond. I originally intended to propose some amendments. Why? As mentioned by two Honourable colleagues from the Subcommittee earlier, relevant figures show that the actual emission levels of such pollutants as sulphur dioxide (SO₂) or nitrogen oxides (NO_x) in 2010 are lower than the emission caps proposed for 2015, because there is an increase in the latter, which is unreasonable. We hope that the levels of emission should get increasingly lower, so why are the emission caps for 2015 higher than the actual emission levels in 2010? I think Hong Kong people will find it difficult to accept.

I originally intended to propose some amendments to lower the relevant figures. An Honourable colleague earlier mentioned that the power station on

Lamma Island — a power station under HEC — has angered residents on Hong Kong Island because of its high tariffs and the seriousness of the problem of emission. As for SO₂, it is shown that the actual level of emission amounts to 3 553 between January and September 2010, but according to my estimation, it will only be 4 737 by the end of the year. However, in 2015, the emission allowance to be allocated will grow to 6 780. In other words, the figure for 2015 is allowed to be higher than that for 2010. How can we accept it? The level of emission should go down, but it turns out that it will increase.

Similarly, as for the emission of NO_x, the figure for the Lamma Power Station of HEC covering January to September this year amounts to 7 364, as provided by the Administration. Dividing the figure by nine and then multiplying it by 12, the projected level will amount to 9 818 by the end of the year, *vis-à-vis* the emission allowance of 10 020 to be allocated for 2015, which is again higher than the actual level of emission in 2010. I originally intended to propose amendments to scale down the emission allowances concerned, but it was found that this would involve the technical issue of shares.

First, according to the information provided by the Environmental Protection Department, if these power stations switch to gas-fired generation, they have to replace their generating units, but they may not have the space to do so. In addition, power stations may continue to use coal, but the coal has to be environmentally-friendly, that is, the kind that produces less emission. Yet, this will push up tariffs. As for the rate of tariff hikes, even if the power stations have the space to replace their generating units, but under the current Scheme of Control Agreements (SCAs), their capital investment will be included in the calculation of tariffs, thus pushing up the rate of tariff hikes. If HEC increases tariffs as a result of the replacement projects at its power plant, I believe this will draw heavy flak from Hong Kong people. Moreover, as shown in the aforesaid information provided by the Government and as mentioned by Ms Audrey EU, the Chairman of the Subcommittee, we have no way to validate or arrive at a so-called achievable emission figure from the technical perspective. Therefore, I cannot propose any amendment to the emission allowances allocated.

Second, I would like to talk about the Memorandum. In a Subcommittee meeting, I took the initiative to propose changing the review frequency from not less than once every three years to not less than once every two years. The

Government stood firm against this idea initially. Later on, the Subcommittee unanimously agreed that if the Government did not propose any amendment, I would personally propose one. Subsequently, the Government accepted the amendment. I do not understand what is in the mind of the Government. Maybe it does not want to have too many things to do, since conducting a review once every two years means extra work. Maybe the Government is thinking that conducting a review is useless, since there may not be any way to change the fuel mix. I consider this mentality of the Government undesirable indeed. As evidenced in the problem of air pollution that we are going to debate later on, the Government is always slow in action and tardy in awareness, instead of taking immediate actions to address the pressing needs of the public. Therefore, I hope the Government can change its mindset. The Government has accepted the proposal on changing the frequency of reviewing the Memorandum from once every three years to once every two years. We welcome this, but we still hope that the work can be done in a more proactive manner.

Third, when it comes to power generation, the SCAs, which I mentioned earlier, come into the question, but they may not be subject to review until 2018. I hope the Government can also take into account the issue of power grid interconnection during the review. Apart from these two issues, in respect of fuel mix, a number of Honourable colleagues have earlier mentioned nuclear energy, that is, how nuclear power should be handled. Nuclear power is a highly controversial issue, as we are very worried about its safety. If the Government hastily states that subsequent to public consultation, the ratio of nuclear power is to be enhanced to 50% by 2015, thus making it a major component in our power supply, I hope the Government should think twice. Members are aware that in a public hearing in this Chamber earlier, I urged the Government to extend the consultation period on climate change, and the Government said it would be amenable to all good advice. The consultation period should have ended in these few days, but now it has been slightly extended to the end of the year.

However, green groups and many other civil groups hope that the consultation period can be extended by three months. Why? Because they have no access to the consultancy study report on climate change released by the Government last Friday until now. Today, I have just got the information Greenpeace provided to us on the dilemma facing Hong Kong in the development of renewable energy. In fact, the consultancy report released by the authorities

last week clearly states that developing nuclear power will only stifle the development of renewable energy in the region. One of the major considerations of the Government in not making renewable energy as a main component of our fuel mix in the past may be because a large number of nuclear power stations in addition to the existing Daya Bay Nuclear Power Station will be built in neighbouring Guangdong Province in future, so it is more convenient to tap into a more accessible source. Therefore, it is claimed that by doing so, the tariffs will be cheaper. Yet, the authorities have not taken the development of renewable energy into account.

According to what the consultancy report says about this proposal, assuming that the plan to increase the use of nuclear power by 2020 is scrapped, the ratio of renewable energy can rise significantly to 15% of the overall electricity consumption of Hong Kong by 2023. Realistically, the key is very often lies in how the Government makes the assumption. As in the case of Government Hill that we have been talking about of late, government consultants have noted that demolishing the Hill and developing a new building on the site is one of the proposals that can be considered, so the key lies only in what assumption the Government will make. If the Government assumes that nuclear power is to be adopted, the consultancy study will be required to set our target for 2020 at 50%. I do not know if the Government will reconsider renewable energy. I believe the development of wind power, hydropower and various other forms of renewable energy is still at a very initial stage in Southeast Asia, while European and American countries have more of such facilities. According to the State policy, the ratio of renewable energy will exceed 10% in future. As for the use of renewable energy, I hold that we should have a long-term plan to consider making renewable energy a key area of development, instead of relying too much on nuclear power. Our intention to change the frequency of reviewing this Memorandum from once every three years to once every two years is that we hope to compel the Government to open up its mind and take a more proactive approach over the issue of fuel mix while taking into account the worries of members of the public over nuclear power. I hope the Government can allocate more resources to examine how renewable energy can be developed in Hong Kong, as well as whether the ratio of renewable energy in our fuel mix should be significantly raised in order to meet the public expectation for a greener Hong Kong.

President, I so submit. The Democratic Party would support the amendments made to the Second Technical Memorandum. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, first of all, I am very grateful for Members' views and support for the amendment resolution. In my speech moving the motion, I explained the essential factors for consideration while drawing up the Second Technical Memorandum, that is, the two power companies must take the best practicable measures to cut emission, and the Government's strategy towards further curtailing emission of the power sector. I will not repeat them here.

Earlier, some Members mentioned that for individual power stations, the emission cap for 2015 is even higher than that for 2010. Just as my colleagues have explained in the Subcommittee, the way we allocate emission allowance has in fact changed. In the past, we used the ratio of local electricity generation as the basis for allocating emission allowance, but this time, we are allocating the emission cap in accordance with the actual situation of the power stations. Therefore, when there is room for some power stations to continue with emission reduction, we will try our best to lower their room for emission. Of course, it may turn out to be the opposite for some power stations. In any case, we will review the room for curtailing the emission by power stations as soon as possible. I would also like to thank the Subcommittee for its work, and hope that Members can support this resolution. As regards the issues raised by other Members, for example, the safety of nuclear energy and the development of renewable energy in Hong Kong, we can again respond to Members in the motion debate to be held later.

Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending four items of subsidiary legislation relating to the commencement of the Minimum Wage Ordinance and related amendments, which were laid on the table of this Council on 17 November 2010.

I now call upon Mr TAM Yiu-chung to speak and move the motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR TAM YIU-CHUNG (in Cantonese): President, in my capacity as Chairman of the Subcommittee, I move the motion under my name, as printed on the Agenda.

In the House Committee meeting on 19 November 2010, Members formed a Subcommittee to examine the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, the Minimum Wage Ordinance (Commencement) Notice 2010, the Minimum Wage Ordinance (Commencement) (No. 2) Notice

2010 and the Employment Ordinance (Amendment of Ninth Schedule) Notice 2010 laid on the table of the Legislative Council on 17 November 2010. To allow sufficient time for the Subcommittee to scrutinize the subsidiary legislation concerned, Members have agreed that I should move a motion to extend the scrutiny period for the subsidiary legislation to the Legislative Council Meeting on 5 January 2011.

With these remarks, President, I urge Members to support the motion.

Mr TAM Yiu-chung moved the following motion:

"RESOLVED that in relation to the —

- (a) Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2010, published in the Gazette as Legal Notice No. 145 of 2010;
- (b) Minimum Wage Ordinance (Commencement) Notice 2010, published in the Gazette as Legal Notice No. 146 of 2010;
- (c) Minimum Wage Ordinance (Commencement) (No. 2) Notice 2010, published in the Gazette as Legal Notice No. 147 of 2010; and
- (d) Employment Ordinance (Amendment of Ninth Schedule) Notice 2010, published in the Gazette as Legal Notice No. 148 of 2010,

and laid on the table of the Legislative Council on 17 November 2010, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 5 January 2011."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr TAM Yiu-chung be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr TAM Yiu-chung be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of the motions each may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendments; the movers of amendments each may speak for up to 10 minutes; and the mover of amendment to an amendment and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Air pollution and public health.

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

I now call upon Mr KAM Nai-wai to speak and move the motion.

AIR POLLUTION AND PUBLIC HEALTH

MR KAM NAI-WAI (in Cantonese): President, this is the third time that I propose a motion debate relating to the air pollution problem in this Council within two years. Just now Ms Audrey EU mentioned today's situation, I do not know whether I shall call today the Legislative Council's "green day", as this Council rarely deals with so many green issues in one day. However, this question is exactly a concern to the public.

Why should I propose three motion debates on the question of air pollution in two years? Please take a look at these photos of Central and Admiralty taken yesterday by LO Kin-hei, the amateur photographer who is also a volunteer in my office. He called them "Hong Kong enveloped in pollution". It is already December now, and these photos were taken at around 4 pm yesterday, without any post-processing. We can see that it was just like spring time, very hazy. In fact, Hong Kong's environment was just like that in October, November and December.

The Government often says that Hong Kong's pollution situation has improved. Perhaps the Under Secretary who is now attending the meeting on behalf of the Secretary may give us a lot of figures later on. I remember that it was the case last time. Today, I would like to share figures with the Secretary. According to data collected by the roadside monitoring stations in 2006, the number of exceedance periods (that is, the Air Pollution Index (API) exceeding 100) was 768 hours from January to October 2006 (I will quote later the statistics of this year from January to October). It was 1 334 hours in 2007, 1 154 hours in 2008 and 2 106 hours in 2009. And in 2010, so far it has reached 2253 hours. In other words, the pollution figures registered by roadside stations have been increasing on a yearly basis. Can the Secretary explain why the pollution problem is deteriorating?

As to the second issue, when I moved the motion debate in May this year, I already mentioned that Mr HEDLEY had left Hong Kong due to the serious pollution problem. However, he left Hong Kong with the Hedley Environmental Index (HEI). The accrued number of premature deaths of people this year has exceeded 732. I have mentioned 635 premature deaths in my motion, but in fact the number has increased to 732, also surpassing last year's figure. The Civic Exchange has just conducted a survey in December.

According to the findings of the survey, one in every four respondents considered leaving Hong Kong due to the air pollution hazard on public health. A similar survey was conducted in 2008, and according to the findings at that time, one in every five respondents expressed the wish to leave Hong Kong. The results this time around showed that the number had increased by five percentage points, as more and more people wanted to leave Hong Kong because of the air pollution problem.

I also mentioned in May this year that some chambers of commerce also pointed out in the findings of their own surveys that many people were dissatisfied with the air pollution situation in Hong Kong, because companies had difficulties even in hiring some professionals to come to work in Hong Kong. In spite of the fact that the environmental quality is so bad, the Government knows only blowing its own trumpet by saying that lot of work has been done and there are figures that could speak for themselves, and so on. However, the Government's progress in this area is just moving at a snail's pace, evident in the Government's review relating to the Air Quality Objectives (AQOs) issued last November. Last October, the Government conducted a review consultation, but a year has passed, no results have been seen.

Today at the Legislative Council Building's entrance, representatives of the Friends of the Earth handed me this book, and they told me to show it to the meeting. Friends of the Earth said I should return this book to them later for the sake of environmental protection. This is a book relating to air quality objectives and it is covered in mildew, dust and cobweb. We all know that the current AQOs have been used for some 24 years, but they have never been reviewed. Perhaps the current AQOs should be placed in the museum because they are already a historic monument. If we do not review this historic monument as soon as possible, I think more and more people will leave Hong Kong. The AQOs tell a great picture about the air pollution situation in Hong Kong, as they can show us how effective the Government's work has been done. However, the AQOs have never been reviewed, and there is no timetable for the full implementation of all the 19 recommendations made in the review on API. There has been all thunder but no rain. For that reason, if the Government does not speed up the its work in tackling the air pollution problem, we do not know how many people will continue to think of leaving Hong Kong, and how many people will shy away from Hong Kong. Perhaps the Government has to address this question publicly.

Of course, the Government has been doing inadequately in terms of publicity and education. At present, a lot of people in the community still believe that Hong Kong cannot do much to improve the air pollution problem because the pollutants in Hong Kong mainly come from China or the neighboring areas. They consider that the smog in the photo shown by me just now was from the North. Therefore, people consider that there is nothing Hong Kong can do. Government publicity and education is certainly not enough.

According to the findings of some surveys, in fact 30% of Hong Kong's pollution comes from local sources of pollution. If more is done on these 30% of pollution sources in a more proper, speedy and positive manner, Hong Kong's pollution problem can see some improvement. Let me cite some figures, such as the recent high API I mentioned earlier, in order to correct these concepts about all the so-called air pollution coming mainly from neighboring areas and that very little can be done by us. In November 2010, about 80% of the API readings registered by general stations were on the high side. Of the 11 stations scattered in Central and Western, Eastern, Kwai Chung, Kwun Tong and Sha Tin districts, the API readings recorded were rather high, too. As to the very high API readings, that is, the API reading exceeding 100, only 0.04% was recorded. These are the figures from general stations.

However, as to roadside stations, including those three locations: Causeway Bay, Central, Mong Kok, the situations were very different. Some 53% of the index was high, that is, API readings less than 100, and for very high API readings, that is, the reading exceeding 100, was 46.9%. We can see that when the index at general stations was not very high, the roadside stations had recorded very high API readings. In other words, roadside pollution is very serious. This figure can prove that in fact we are affected not only by neighboring areas, the roadside air pollution problem in Hong Kong is also very serious.

We all know that buses are the major source of roadside air pollutants. According to some statistics, 40% of the roadside emissions come from buses. Buses have all along been one of the problems to be dealt with in our past discussions. The Government's measures are quite slow, now that it expresses that it will subsidize bus companies to conduct research on the use of electric buses as well as the installation of emission reduction devices on buses. The Democratic Party hopes the Government will provide financial assistance or use the renewal of franchise to urge bus companies to accelerate the purchase of new

buses to replace old ones. This is the fastest way to ameliorate the roadside air pollution problem. However, the Government is still reluctant to do so.

The Democratic Party has also put forward the proposal of rationalizing bus routes, and the Government may have already been dealing with the rationalization of bus routes. Recently, certain media showed their interest in this subject, probably because every district is asking for additional bus routes and the rationalization of bus routes indeed faces a lot of resistance. The Democratic Party proposes that, firstly, the Government should co-ordinate with different political parties and groupings; secondly, it should enhance the interchange concessions as an incentive, because the existing interchange concessions are actually not attractive at all. Passengers may save a few cents, but the interchange may cost them 15 to 20 minutes more of journey time. This is definitely not attractive. Only a small number of bus routes provide the interchange concessions, and the amount is rather nominal. I hope the Government will enhance the interchange concessions.

Besides buses, there is also the replacement of diesel commercial vehicles, and I have previously talked about that in other motion debates. In fact, I feel strange that despite all political parties and groupings in the Legislative Council having reached a consensus and shown the aspiration that the Government should adopt a better way to finance the replacement of diesel vehicles, the Government always turns a deaf ear to it and refuses to do so. If the replacement of diesel vehicles and buses can be expedited, roadside air quality will be greatly improved. Therefore, I hope the Government can listen to the suggestions made by so many colleagues today.

I am not going to elaborate all the proposals in my motion. Lastly, I just wish to raise one point. With regard to the public officers present today — I am very disappointed — there are only officials from the Environment Bureau, and she is just the Under Secretary who is standing in for the Secretary. Perhaps the Secretary is in Mexico now. This makes me feel disappointed somehow. Today's motion is related to air pollution and public health. In fact, Secretary Dr York CHOW should attend today's meeting, because during the formulation of relevant policies, the policies will not be comprehensive without giving due consideration to the effect of air pollution on public health.

One example is the sandstorm which took place earlier. The Government was really going topsy-turvy at that time, as it did not know how to deal with the problem. The Education Bureau did not know whether or not to suspend classes and school sports meets; there were a lot of problems. In fact, we hope that a Policy Bureau can co-ordinate the relevant work from the perspective of public health and requires different Policy Bureaux to work together in the formulation of every policy initiative involving air pollution issues, as they have to take public health into account. Therefore, if Secretary Dr York CHOW or responsible officials from the Food and Health Bureau can require relevant Policy Bureaux to consider the public health viewpoint and take into account the impact of air pollution on public health when formulating the relevant policies, the air pollution problem can be addressed more appropriately.

With these remarks, President, I move the motion as printed on the Agenda. Thank you, President.

Mr KAM Nai-wai moved the following motion: (Translation)

"That, as the problem of air pollution in Hong Kong has continued to be serious, posing threats to public health, yet the Government has not updated Hong Kong's Air Quality Objectives ('AQOs'), and at present, many highly polluting franchised buses and lorries still run on the roads, continuing to emit exhaust gas, this Council expresses its disappointment in this regard; according to the statistics of the Hedley Environmental Index, in the first 10 months of this year, air pollution caused as many as 635 premature deaths and more than 4 million attendances of medical consultation in Hong Kong; given that air pollution has incurred huge monetary losses and social costs, this Council urges the Government to implement the following proposals, so as to expeditiously improve air quality for the protection of public health:

- (a) to immediately update AQOs by adopting the most stringent standards of the World Health Organization's air quality guidelines as Hong Kong's AQOs, and undertake to review AQOs regularly in the future;
- (b) by way of financial subsidy or franchise extension, to push ahead the early phasing out and replacement of franchised buses with high

emissions, so as to improve roadside air quality, and immediately install emission reduction devices on all buses that have not been phased out or replaced;

- (c) to enhance the scheme for the replacement of Euro diesel commercial vehicles mentioned in the Budget of this year, including placing Pre-Euro and Euro-I vehicles under the scheme and allowing those vehicle owners who only write off their vehicles to receive subsidies under the scheme;
- (d) to increase the number, usage and types of electric vehicles; improve and strengthen support facilities to tie in with the introduction of electric vehicles by, for example, actively discussing with various developers the provision of recharging facilities for electric vehicles in the car parks of their properties; and expeditiously study amending the legislation to expedite and streamline the procedure for electric vehicle drivers to apply for the permit to drive on expressways, so as to assist in popularizing electric vehicles;
- (e) to urge bus companies to expand and increase the provision of interchange concessions and services which appeal to passengers, and to expedite the reorganization and improve the arrangement of bus routes, with a view to avoiding the overlapping of bus routes, relieving traffic congestion and reducing air pollution;
- (f) to expeditiously implement the proposal of designating 'low emission zones', so as to restrict the entry of vehicles with high emissions into designated areas;
- (g) in respect of the situation where the Air Pollution Index reaches the 'extremely severe' level, to formulate specific guidelines, including implementation of measures to suspend schools and arrange for workers who need to work outdoors for long hours to suspend work, etc., so as to protect the health of school children and the socially disadvantaged, such as people with chronic illness, the elderly and workers working outdoors, in situations where the pollution is serious;

- (h) when formulating measures to improve air pollution, to adopt the latest objectives and benchmarks of the World Health Organization, and evaluate the effectiveness of each measure in improving public health, and set improving public health as the primary policy objective in addressing the problem of air pollution; and
- (i) to recognize that air pollution is a public health issue, and require accountable officials from the Food and Health Bureau to participate in the formulation of policies on improving air quality."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr KAM Nai-wai be passed.

PRESIDENT (in Cantonese): Four Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the four amendments.

PRESIDENT (in Cantonese): I will call upon Mr CHAN Hak-kan to speak first, to be followed by Mr IP Wai-ming, Mr Ronny TONG and Dr Joseph LEE respectively; but no amendments are to be moved at this stage.

MR CHAN HAK-KAN (in Cantonese): President, just now Mr KAM Nai-wai showed a book covered in mildew — the "Bible" on AQOs given to him by an environmental group. I also noticed that recently, some environmental groups had lodged complaints with The Ombudsman against the Environment Bureau. What was the cause? They complained against the Environment Bureau for not updating the AQOs. President, why were these environmental groups so irritated? It was not hard to understand, because the Government started the public consultation on the study to review Hong Kong's AQOs in July last year, and a report was also submitted to the Panel on Environmental Affairs this June, and the Government's papers submitted to the Panel pointed out that the majority of respondents were in favour of updating the AQOs. Therefore, we could see that the public were expecting the Government to update the AQOs very soon.

However, after waiting for half a year, no action has been taken. For that reason, no wonder environmental groups and the public were so irritated.

In fact, the aspiration of the public is very clear. They just want the Government to update the AQOs which have been put in place for some 20 years, and they just do not want to have such an obsolete indicator which may underestimate the situation of air pollution and affect their health. Therefore, we hope the Government can put forward new AQOs for public consideration as soon as possible. In fact, the public also understand that it is very difficult to achieve the ultimate World Health Organization (WHO) standard in one go. Therefore, we recommend phased compliance. However, I still have to stress that the Government needs to inform the public that it is determined and it has a timetable, so as to let the public know that we are moving towards the ultimate guidelines of the WHO. Therefore, the first thing in my amendment is to start from a pragmatic viewpoint by asking the Government to respond to public aspiration and to implement the new AQOs as soon as possible.

President, I support a number of specific measures to improve air quality as proposed in the original motion. However, I would like to reiterate a few points and to add some others. First, I will focus on the issue of roadside air pollution. I hope the Government can use full electric buses. President, according to the statistics of air pollution for the past five years, the total number of hours during which air pollution reached a very high level registered by general stations dropped from 233 hours in 2005, to 144 hours in 2009; on the contrary, the total number of hours during which air pollution reached a very high level registered by roadside stations hit record highs every year, which had increased from 569 hours in 2005 to 2 786 hours in 2009.

President, these figures illustrate that roadside air quality is deteriorating rapidly, and I believe one of the major reasons is the pollution caused by vehicle emissions, including emissions from buses, which I consider particularly serious and warrant our attention. To encourage bus companies to accelerate the pace of replacement of old vehicles is of course very important, in my opinion, but a more comprehensive method is to adopt zero-emission buses. President, during our trip to the Shanghai World Expo, we had tried the service of some ultracapacitor buses, and those buses have been put into service in Shanghai for some time. Recently, the KMB has also imported an ultracapacitor bus for trial runs. DAB chairman, Mr TAM Yiu-chung, and I had tried to understand its

actual operation in Hong Kong. The DAB considers that there is much room for the development of ultracapacitor buses in Hong Kong as the requirements in terms of hardware and infrastructural facilities are not high. Therefore, I suggest that a trial scheme be implemented in new development areas such as South East Kowloon or the West Kowloon Cultural District by deploying them as regional mass transit carriers. At the policy level, the Government may actually help studying the construction of charging stations; and when approving new regional bus routes, it may give priority to applications by companies which deploy electric buses. I believe that after electric buses have run the roads for some time and considerable on-road experience has been built up, the scope of services can be extended to some other busy districts such as Mong Kok and Causeway Bay, so as to help improve the air quality there. Finally, I also hope that when the Government negotiates the franchise agreements with bus companies in future, it can tighten the terms concerning the emissions of bus, so that bus companies may be required to take the initiative to introduce more low-emission or even "zero emission" buses through funding, with a view to curbing the deterioration of roadside air quality.

President, my second concern is the emission reduction measures relating to the use of energy. We all know that the power plants are one of the biggest emission sources in Hong Kong, and the DAB has been urging for the use of clean energy for power generation and the improvement of energy conservation efficiency. We have been advocating in this Council and on various occasions the setting up of a carbon emission reduction bonus point scheme which may encourage the public to conserve energy. Recently, many organizations are concerned about the Government's intention to increase the proportion of the use of nuclear power. It is undeniable that the emission of nuclear power is very low, but the operational safety and treatment of nuclear waste from nuclear power generation is also a major challenge to the environment and ecology. Besides, under the influence of the imperfect event notification mechanism of the Daya Bay Nuclear Power, the sceptical attitude of the public will only increase over the use of nuclear power. Therefore, I propose in my amendment that the Government should further increase the ratio of natural gas and renewable energy in the fuel mix for power generation, so as to minimize carbon emissions. As to increasing the use of nuclear power, I consider that we need to handle the issue carefully, the Government must enhance the current notification mechanism and the co-operation in safety management, and it should also provide more

information to let the public fully understand the benefits and risks of nuclear power, so that the public can gain a full understanding before making a decision. However, no matter how the fuel mix for power generation is adjusted, the DAB requests the Government to make proper efforts in the work concerning energy conservation and emission reduction by minimizing unnecessary energy consumption, with a view to curbing the increase in electricity consumption.

President, the third point I wish to discuss is that I have added in my amendment an item about actively following up the work of collaborating with Guangdong Province in improving regional air quality. President, time flies, only a month is left for Hong Kong and Guangdong Province to meet the deadline of improving the emission reduction targets of the Pearl River Delta (PRD) Region. Although according to the regional quality monitoring report published by the two places, the concentration of pollution has decreased, whether or not the standard can be achieved before the deadline is still unknown. How should Hong Kong and Guangdong co-operate after 2010? Under the planning for the Green and Quality Living Area of the Greater PRD Region, we have not seen much about the relevant information concerning the air quality improvement strategies and objectives, unlike the existing plan which has a specific emission reduction target, timetable and specific measures. Therefore, I consider that there is still room for co-operation between the two places in terms of control of air pollution. I particularly wish to speak on the marine transport aspect, because many of the co-operation programmes are targeting at emission reduction in land transport, power industries and industrial pollution. However, we should note the fact that Hong Kong is positioned as the country's shipping centre, and there are many large freight terminals and regional river trade terminals in the two places, and maritime transport activities are actually rather frequent, so the air pollution thus caused by these activities should not be ignored. Therefore, I hope governments of the two places will pinpoint this issue when studying the matter, monitor the emission condition and work out specific ways to help emission reduction, so as to achieve comprehensive improvement of the regional air quality.

President, I so submit.

MR IP WAI-MING (in Cantonese): President, today, it is already the third time that Mr KAM Nai-wai moves a motion on air pollution and public health. I

think this is a very important issue which concerns the health of 7 million people. In our daily lives, breathing is indispensable. However, often what we breathe in, the amount of exhaust air or toxic substance we breathe in every day will affect our health without us knowing it.

According to the Hedley Environmental Index which monitors the economic loss incurred by air quality and air pollution in Hong Kong, the tangible loss of Hong Kong due to air pollution is as much as \$1.66 billion, while the intangible loss is even as much as \$10.9 billion this year to date. Besides, air pollution has caused 728 premature deaths and as many as 5.4 million attendances of medical consultation in Hong Kong.

President, air pollution affects not only public health, but it also affects the business environment and competitiveness, as just mentioned by a number of colleagues. In the 2010 Quality of Living Survey announced earlier by an organization, Hong Kong only ranked the 71st, which is far behind some cities like Singapore and New York. The main reason is air pollution, which has dragged down the rating.

In fact, since the reunification, the previous Government and the existing one also said that this problem has to be solved. Nevertheless, most of these measures are merely empty talks with only a few having been implemented. As a result, our API keeps on rising every year. In recent years, it has even shown readings in great exceedance of the standard.

President, the existing AQOs were formulated in 1987. Compared with the new AQOs announced by the WHO in October 2006, the former is rather outdated. Therefore, in 2007, the Government said it was prepared to update Hong Kong's AQOs. However, we have yet to see a set of new AQOs even now. Hence, dissatisfaction from environmental protection organizations and Members can be expected, and the Government should launch the new AQOs as soon as possible. Nonetheless, about the Mr KAM Nai-wai's proposal that the AQOs have to be immediately updated by adopting the most stringent standards of the WHO's air quality guidelines, I have reservations. Because even under the guidelines of the WHO itself, there are also a number of interim targets.

If we take respiratory suspended particulates as an example, the existing objective of Hong Kong is 55 for the whole year, while the WHO has objectives for a few phrases, like 50 for the second phrase, 30 for the third phrase and 20 for the final phrase. If Hong Kong's AQOs, once updated, have to reach the most stringent standards, not only will this entail more supportive measures and policies, but the public and a large number of industries will also need to adapt to them. Otherwise, the target may not be attained finally while chaotic situations may arise instead. In the amendment, we request the Government to have a clear timetable and roadmap which can tell the public and the organizations clearly when the stringent standards of the WHO should be met. It should work step by step. While the public will monitor the progress, the Government will review it regularly. In my opinion, although this may not attain the goal in one go, it can reduce the impact, while the Government and the public can be more sufficiently prepared. However, I have to add here we do not mean that the Government can procrastinate for 10 to 20 years before implementing them. The Secretary has to take note of that.

President, next, I will talk about some transport-related proposals in my amendment. First of all, so far as the replacement of diesel commercial vehicles is concerned, I welcome the measure in the Budget of this year announced by the Financial Secretary to subsidize vehicle owners to replace Euro diesel commercial vehicles and the proposal in the original motion. Nevertheless, I think there should also be actual operational support in addition to providing financial incentives. For instance, the industry and drivers who drive to earn a living hope to use environmentally-friendly vehicles of new models with the cost, performance and maintenance suitable to their operation. Otherwise, even though they want to help in environmental protection by reducing emissions and waste, sometimes they will also be forced to drive the old vehicles for the sake of their living and operational smoothness.

In fact, when the subsidy scheme, which commenced in 2007, came to an end, the replacement rate of commercial vehicles participating in the scheme was below 30%. It is because the new Euro vehicles had some problems and the industry was thus scared off. Take minibus as an example, there were cases of carbon burning and wearing of automotive parts previously. For liquefied petroleum gas (LPG) taxis, they broke down *en masse* at the beginning of this year. Therefore, I hope that the Government will not simply provide subsidy.

It has to take one more step to support the industry, for instance, by providing the industry with technical support for the new model vehicles, and introducing the industry to knowledge of maintenance, effectiveness, and so on, so that the industry can know the merits of the new vehicles and foster a trend of replacement of vehicles. Only in this way can commercial vehicles become more environmentally-friendly.

In regard to reorganization of bus routes, apart from requesting bus interchange points and interchange concessions as proposed in the original motion and other amendments, I think we also have to take into account the livelihood of the staff and number of posts of the bus companies. Because the bus companies have pointed out that demand for buses would be reduced after the reorganization of bus routes and the staff on payroll would also have to be reduced then.

In our opinion, when reorganizing the bus routes, the authorities should consider this point as well as the views of the community. Of course, the best way is to encourage bus companies to switch to electric buses. Not only will this cause no impact on the staff and the public, but it will also be friendly to the environment. As regards low emission zones, I suggest that before the Government implements the specific arrangements, it needs to consult the public and the transport trade, as they are the road users and the Government should consider their opinions.

President, according to the figures in 2009, in the existing fuel mix for power generation of the two power companies in Hong Kong, the ratio of coal fuel is still very high and it accounts for 54%. The second highest are natural gas and nuclear power which account for 23% respectively, while the utilization rate of renewable energy is almost zero. Since the main source of greenhouse gas emission in Hong Kong is power generation, we think that to improve the air quality of Hong Kong, we have to start with the fuel for power generation.

In the paper for Public Consultation on Hong Kong's Climate Change Strategy and Action Agenda published earlier, the Government mentioned it would expect that by 2020, the ratio of coal will be greatly reduced to less than 10% in the overall fuel mix for power generation in Hong Kong, while the ratio of natural gas and nuclear power will be increased to 40% and 50%, and the ratio of renewable energy will be increased to 3% or 4%. On this major premise, I am worried that the two power companies will, on the excuse of switching to

natural gas and environmentally-friendly fuels, shift the cost to the public by greatly increasing the electricity tariffs. In fact, the use of clean fuel and renewable energy for power generation is the global trend as well as the social responsibility of enterprises. Therefore, we hope that when the Government deals with the application for electricity tariff increase by the power companies or in the discussion on profit control in the future, it will require the power companies to switch on a substantial scale to environmentally-friendly means and greener fuels for power generation. The companies have to list the percentage of renewable energy in the overall generating capacity. If they do not reach the target, their profits will be slashed. As to the discussion on the use of nuclear power earlier, I think we need to hold more discussions and conduct more studies to support it, especially in respect of the safety and handling of nuclear waste. In our opinion, the Government should provide more information and we should not rashly adopt nuclear power simply because of its low emission.

Finally, in the amendment, I request that the related diseases contracted by employees who have to work outdoors under severe air pollution conditions be classified as occupational diseases. It is because to many workers who have to work outdoors, they need to work no matter the air quality is good or bad, and the employers will not provide sufficient protective gear. Hence, their chances of getting sick or contracting diseases will naturally be higher. We thus hope that the Government can classify the related diseases contracted by employees who have to work outdoors under severe air pollution conditions as compensable occupational diseases, in order to safeguard the health and rights of these employees who have to work outdoors.

President, I so submit.

MR RONNY TONG (in Cantonese): President, some people say that living in air pollution is the price to pay for living in a metropolis. I personally do not quite agree with this. Although air pollution is the reality that we have to accept in our daily life in a metropolis, can we change this reality? I think it can be changed, but the key lies in whether the Government has the determination and whether it has any available resources. Fortunately in Hong Kong society, government resources cannot be regarded as lacking. At present, we have more than \$2,000 billion in different forms of reserves and funds. If you ask whether it is worthwhile to use these resources to improve our quality of living, I believe

that, after striking a balance among various kinds of core values, the answer to this question is just too obvious.

Regrettably, all along, the Government seems to be not too concerned about this question. Why? President, we all understand that in a large city, the main source of air pollution may be vehicles. Most of the air pollution problems are caused by commercial vehicles, as the length of time that they run on the roads every day is many times longer than that of private cars. However, in this regard, the relevant figures can show that to certain commercial vehicles, the Government is more willing to provide assistance so that the vehicle owners can replace their vehicles with other environmentally-friendly models, but to some other vehicles, the Government just ignore their needs, oblivious to their problems. Take taxis which almost account for the largest number of vehicles on the roads as an example. Since liquefied petroleum gas (LPG) vehicles were introduced in August 2001, there is now only one Pre-Euro taxi and only one Euro taxi. In other words, the situation of taxis seems to be barely acceptable.

For other vehicles, insofar as commercial goods vehicles are concerned, it is true that the Government introduced in April 2007 a one-off subsidy scheme for a period of three years at a cost of \$3.2 billion. It mainly encouraged owners of Pre-Euro commercial diesel vehicles to switch to vehicles of more environmentally-friendly models within 18 months. As regards Euro vehicles, the period for application was 36 months. Nevertheless, given such a scheme, the industry kept on requesting an extension of this scheme so as to give vehicle owners more opportunities to replace their vehicles when they were financially capable. However, in addressing such an aspiration, the Government only extended the period of application for Pre-Euro commercial diesel vehicles in order to tally with the replacement period of Euro vehicles. Later, the Government refused to extend the period of this scheme. In regard to the requests from the industry, the Government's reaction was to tell them to apply for the SME Loan Guarantee Scheme or the Special Loan Guarantee Scheme. As to other matters, it would be difficult for the Government to provide other subsidies.

In regard to buses, the Government is similarly unconcerned. On the one hand, it has indicated that it wants the bus companies to replace the vehicles of their respective fleets so that there will have more environmentally-friendly

vehicles in service. But on the other hand, the Government is very mean, unwilling to provide subsidy.

As far as minibuses are concerned, their situation is even worse than that of buses, as the Government is totally oblivious to minibuses. Early this year, Mr Fred LI obtained some figures from the Secretary for the Environment. These figures indicate that among the total of more than 4 300 minibuses now, there are only 561 minibuses which are Euro and Euro vehicles, accounting for 12.9% of the total number. But relatively speaking, there are a total of 419 minibuses which are Pre-Euro, Euro and Euro vehicles, accounting for 9.6% of the total number of minibuses. President, we can thus see that the situation of minibuses is definitely unacceptable. The figures also indicate that if Pre-Euro, Euro or Euro vehicles can be replaced by Euro vehicles, the emissions of particulates and NO_x by vehicles can be reduced by 87% to 97% and 50% to 61% respectively.

President, I do not wish to argue over these figures. However, it is obvious that if certain schemes can help to replace commercial vehicles with more environmentally-friendly models as far as possible, it can of course greatly benefit society. On the part of the Government, if this target can be reached with the minimum resources, this option can absolutely be considered. Simply because of that, we find the incident which happened two weeks ago very strange. On 26 November, two major green minibus trade associations in Hong Kong raised an apparently all-win proposal for the Government to consider. In the proposal, the two trade associations pointed out that at present, the Government has imposed a limit of 16 seats on each minibus. However, the new model vehicles currently imported actually have 20 seats. And four seats have to be reluctantly removed to provide some space for luggage in order to meet the Government's restriction. These so-called "long-wheelbase" buses are new model vehicles which actually belong to the environmentally-friendly Euro or Euro vehicles. Besides, these two largest minibus trade associations are prepared to, as soon as possible, replace free of charge all 3 000 minibuses of their fleets with the new model Euro or Euro minibuses which can better meet the environmental protection requirements, and it is totally unnecessary for the Government to provide any subsidy. It is because the two trade associations think that if the number of seats can be increased, the increased operational income would suffice as an incentive to freeze the fees for three years and to provide fee concessions to the elderly and persons with disabilities. If they can switch to the new model vehicles as soon as possible, as all new vehicles will be

equipped with seat belts and safety handrails, they can provide safety facilities better than the existing minibuses.

President, the meaning of all these undertakings is that if only the Government agrees, at least all minibuses can be almost immediately changed into environmentally-friendly vehicles. We really cannot understand why the Transport Department (TD) immediately opposed the proposal on the day when the two minibus trade associations raised this proposal. Has the TD discussed this issue with the Environment Bureau? Nevertheless, the TD's reason for opposing the proposal is also baffling, because it says that if the number of seats is increased, the schedule of each minibus trip will be delayed and this delay will lead to traffic congestion. This response can be regarded as totally illogical. This also proves that the TD does not understand the *modus operandi* of green minibuses at all. As green minibuses have to adhere to schedules in providing services, the problem that increased seats will delay the schedule does not exist. Therefore, if each minibus can carry more passengers, an increased number of minibus seats will not necessarily render the traffic more congested. Hence, not only is this reason totally unreasonable, but as I said earlier, it also runs against the request of Hong Kong people to make mitigating air pollution the target.

DR JOSEPH LEE (in Cantonese): President, I am the last Member to move an amendment in this motion debate. My colleagues have actually reminded me that the content of my amendment lacks novelty. The Secretariat also reminded me that if the amendments of Mr CHAN Hak-kan and Mr IP Wai-ming were carried, I would have to withdraw my amendment. I said I knew that, but I insisted on proposing this amendment. Why do I have to do this? Because as teachers, one thing is very important. When we are teaching the students and they do not understand, we have to explain till they do. We do not mind to be long-winded. If they really are not willing to listen, we also have no other way but to explain and hope that they will listen. That is what we can only do. Why am I saying this? To me, the two points that I raise in the amendment are actually not new. They are totally old ideas. Why? During the last term of the Legislative Council — 2004-2008 term and this year, I have raised similar proposals on different occasions.

In fact, air monitoring stations and renewable energy are totally not

something new. The reason I raise these points is that I hope the Government can listen clearly: the Government's way is really very much backward. In terms of policy, the Government verbally says that it totally agrees that the air in Hong Kong should be clean. I remember that in the policy address of a certain year, the Chief Executive pointed out that Hong Kong had to have a blue sky. When I drove here today, I saw that Hong Kong did have a blue sky. However, when I looked further, I saw what Mr KAM Nai-wai mentioned earlier. Mr KAM Nai-wai has reminded me of a word. This word is President, please kindly give me your advice as my English language is not very good. This English word is "shroud" and it is a noun. When did I learn of this noun? It was when I entered the school of nursing, some 30 years ago, I must say. At that time, we learnt how to clean the body of a dead patient and we used a piece of cloth to wrap him up. Informally, this noun means a piece of cerecloth for wrapping up the body of a dead person, or it can be called grave clothes. What is the phenomenon depicted by this noun? The entire Hong Kong will actually be engulfed by a smog. This word can describe it most aptly. I thank Mr KAM Nai-wai for mentioning this word and I am reminded of this situation. For the situation of Hong Kong, is it already surrounded by this kind of unpleasant air? Of course, we do not want to be shrouded by this kind of unpleasant air.

However, it is very obvious that the Government is not doing well in this area. It verbally says that it has to keep the air clean and reduce air pollution with great efforts. However, when implementing the policy, we see that the Government's measures are totally insufficient. The first point in my amendment is about the issue of air monitoring stations. I believe, if my memory is correct, that in 2005 or 2006, we should have mentioned this issue. At that time, the Government said that the AQOs, the data, standard or criteria for monitoring were rather backward and not up to the WHO standard. I thought since the Government was aware of that, it was also good as the Government would conduct a consultation. The Government did consult the public whether a new set of AQOs could be adopted. It said that the WHO had a set of AQOs, but given the special environment of Hong Kong, we would not follow the whole set of AQOs of the WHO. We would adopt a set of rather new AQOs but with reference to WHO's AQOs. Nonetheless, one year after consultation — if I remember it correctly, the consultation should have been finished by early 2009 — what happened next? I do not know. The Government has already

consulted the public. But no one knows what would happen after that. Will we really adopt a new set of AQOs for roadside monitoring? I do not know whether the AQOs will be changed, if so, why is Hong Kong so weird that as an international metropolis, it does not follow the AQOs of the WHO? It says that they are not suitable for us. But actually, what kind of AQOs is suitable for us? I am not very clear and neither has the Government given us an account of that.

Besides, President, the other point is that, as I said earlier, we as teachers are rather long-winded, and thus I have to talk about the issue of air pollution and public health again. There is no helping it. As nursing officers, we have to talk about health, we have to talk about it long-windedly so as to remind people to maintain good health. However, I hope that the word shroud will not be used as a verb, meaning we are just like being wrapped up. Therefore, I have to long-windedly read out some figures, at the risk of being repetitive.

Let us look at the following figures. The roadside monitoring stations have recorded that over the past five years, from 2006 up to this year Mr KAM Nai-wai has actually just mentioned that the average AQO this year is 2 253 hours, which has risen a lot. It actually has risen more than five times. During the third quarter this year, three roadside monitoring stations recorded that for nearly 10% of the time, the API was more than 100, which actually is also over five times of the third quarter figures over the past few years. It is very obvious that the present air quality of Hong Kong is very poor. We are not talking about the air quality in the urban fringe areas, but the air quality in the urban area which is very poor, and we should give deep thoughts to this.

Besides, according to a study conducted by the Civic Exchange, a quarter of the interviewees said that they would consider leaving Hong Kong due to air pollution. The crux of the problem is that a majority of the interviewees have attained a high level of education and are high income earners, and they also consider leaving Hong Kong. Here, we do not mean to talk about the issue of different strata of society. This group of people is able to leave and they choose to leave Hong Kong, as they think that the air pollution level of Hong Kong may have already turned this place unsuitable for people to live. Regrettably, those who are not capable of leaving have to incessantly breathe in the polluted air in Hong Kong. A few weeks ago, the no smoking area was expanded again. We have no choice about air. When you walk in the street, you have to breathe.

For those who are not capable of leaving Hong Kong, do they have to breathe this kind of air in Hong Kong? This is very important. As many different scientific researches have pointed out a study in Canada has just discovered that if women have breathed in some vehicle exhaust gas, that is some unpleasant air, for a long period of time, their chance of developing breast cancer will increase by 100%. This is a frightening figure. Thus, Mr KAM Nai-wai was right in saying that Secretary Dr York CHOW should have attended this meeting and formulated some better AQOs. This also reflects that the Government actually knows this situation, but it is just doing nothing.

Coming back to the issue of roadside monitoring stations that I mentioned earlier, if my memory is correct, at present, Hong Kong should have 11 air monitoring stations but only three roadside monitoring stations. If the information provided to me by my colleagues is accurate, the three monitoring stations are placed in Causeway Bay, Central and Mong Kok. Nevertheless, does it mean that these three places with roadside monitoring stations are the most important? These places have a high pedestrian flow and they are indeed important. But the problem is these three roadside monitoring stations are placed at urban centres. We should not forget that places like Wan Chai, Tseung Kwan O and Kwun Tong also have high pedestrian flows. In places where there are more elderly persons like Sham Shui Po, there is no roadside monitoring station. To my understanding, the main reason for installing roadside monitoring stations is to let the public really know how serious or poor the air pollution situation is in the urban centres where they are living, and whether it is suitable to walk outside or engage in outdoor activities.

The problem is that, as I also mentioned last time, these roadside monitoring stations are installed at 3.5 m above the ground. I do not know whether there are some people who are as tall as basketball stars, otherwise, how can we breathe the air of that height? If my memory is correct, heavy suspended particulates will subside instead of rising. Therefore, we see that the air in the lower area of Hong Kong is more obscure. When the monitoring stations are installed at such high places, will the data be accurate? When the data may not be so accurate, can those AQOs that we count on really reflect the actual situation? I believe that while the Government is not putting enough efforts in this aspect, it also fails to let the public know exactly whether it is really suitable to go outside or do more exercise in the highly populated urban centres of Hong Kong, especially places with more elderly people, such as Sham Shui Po, Kwun

Tong, and so on. In case the situation is not desirable, the Government has to let the public know that it is not suitable to engage in these activities as the air quality is poor. Nonetheless, the Government has done nothing in this aspect.

I hope that through this amendment which I explained rather long-windedly, the Government can really put more efforts and speed up its progress — first, please revise the criteria quickly; and second, install more roadside monitoring stations so that Hong Kong people can know what to do. I actually have an idea or a dream that after the Government has put more efforts, in a situation similar to the last occasion when there was a sandstorm and the index was over 500 while the monitoring stations were unable to take measurements, can the Government tell the public not to drive but to take public transport; or when the API has reached a rather poor level and it is not suitable to go outside but the public need to go to work all the same, can it provide half-fare transport concessions to encourage the public to use public transport instead of driving? All these can actually be done.

President, the other point in my amendment is about renewable energy. This, in fact, is a cliché and Mr CHAN Hak-kan also mentioned this issue earlier. Hong Kong is a very suitable place to use wind power for electricity generation and the Government is aware of that. According to some surveys on renewable energy, in fact a few years ago — in 2003, a consultancy report from the Hong Kong Government also pointed out that according to international experience, the cost for wind generated electricity was actually 20 cents to 35 cents, while traditionally, the cost for each unit of electricity was 20 cents to 40 cents. After all these years of study, why is our Government not stepping up to promote wind generated electricity and renewable energy? These methods can control the source of air pollution in Hong Kong as far as possible. I hope that the Government can consider our suggestions.

President, thank you.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I am very grateful to Mr KAM Nai-wai for proposing this motion entitled "Air pollution and public health" as well as to Mr CHAN Hak-kan, Mr IP Wai-ming, Mr Ronny TONG and Dr Joseph LEE for the views expressed in their

amendments.

Alleviating air pollution and enhancing the protection of public health are the primary tasks and policy objectives of the SAR Government. In order to achieve this target, we have all along been striving to adopt specific measures to reduce emissions of major pollutants affecting the air quality in Hong Kong, with a view to achieving the greatest effectiveness.

As mentioned by Honourable Members just now, the air pollution problem in Hong Kong is attributed to two major sources, namely roadside air pollution and regional smog. Therefore, not only do we need to strive to reduce local emissions, we also have to work hand in hand with the Mainland authorities to reduce emissions of pollutants within the Pearl River Delta (PRD), in order to improve air quality in Hong Kong at source. In fact, thanks to our concerted efforts, the air quality in Hong Kong has improved. During the past five years, the sulphur dioxide (SO₂), nitrogen dioxide (NO_x) and particulates recorded by general air quality monitoring stations all fell by 36%, 4% and 15% respectively. The number of hours with poor visibility also dropped 24%, from 1 502 hours in 2005 to 1 139 hours in 2009.

According to the data recorded by the regional monitoring network in 2009, the annual averages of SO₂, NO_x and respirable particulates had fallen by 38%, 9% and 7% respectively compared with 2006. Furthermore, the roadside air quality has also improved. Over the past five years, the concentrations of SO₂ and particulates dropped 36% and 19% respectively, though the concentration of nitrogen dioxide rose by 15%. Therefore, one of our key tasks in the future is to ameliorate the problem of roadside NO_x.

Locally, power stations are the primary source of air pollution. Therefore, we have to strictly require power stations to enforce the promulgated emission caps while reviewing the caps having regard to their latest developments. As mentioned just now, we have drawn up a new Technical Memorandum to further tighten the relevant emission caps by 30% to 50% since 2015, with a view to improving air quality both locally and in the PRD Region.

In order to achieve the new emission caps, the two power companies

should endeavour to capitalize on the additional supply of natural gas received under the Memorandum of Understanding on Energy Cooperation signed between the SAR Government and the National Energy Administration in 2008 and utilize the existing natural gas-fired generating units for power generation, with a view to increasing the natural gas-fired generation to approximately 50% of the local generation volume. Furthermore, in order to achieve the emission reduction targets set for 2010, the two power companies are required to accord priority to the use of coal-fired generating units retrofitted with emission reduction facilities in order to reduce the pollutants emitted by coal-fired generation. I am very pleased that the relevant resolution was supported and endorsed by Honourable Members earlier in the meeting. We will continue to monitor the scope for further emission reduction by the two power companies and introduce new technical memoranda promptly for further control of the emissions by the power industry.

On improving the roadside air quality, the Government has been striving to introduce measures to reduce vehicle emissions, including requiring vehicles to comply with practicable and stringent emission standards, providing subsidies to encourage vehicle owners to phase out old commercial diesel vehicles, legislating to mandate the turning off of idling engines, and so on, as mentioned by Honourable Members just now, with a view to improving our roadside air quality. Furthermore, franchised buses are also the major source of pollution on busy roads in urban areas. Therefore, the Chief Executive has specially mentioned in the latest policy address some new initiatives for reducing the emissions of franchised buses, including conducting a trial to retrofit selected franchised buses with catalytic reduction devices, for the purpose of reducing emissions. Should the trial prove successful, the SAR Government would plan to fully subsidize the relevant retrofitting costs of the bus companies. The Government has also planned to designate pilot low emission zones, which coincides with the view put forward by some Members in their amendments. A Pilot Green Transport Fund will also be set up to encourage the introduction of innovative transport technologies, and so on. I hope to explain later on the Government's efforts in reducing vehicle emissions to Honourable Members in detail again after listening to Members' views.

On regional collaboration in improving air quality, we are working with the Guangdong Provincial Government in exerting all efforts to reduce emissions, with a view to achieving the emission reduction targets set in 2002 for 2010.

Meanwhile, we have begun exploring the arrangements for achieving the post-2010 emission reduction targets in the hope of further improving the regional air quality.

Of course, air quality cannot be improved overnight. We need the support of the general public and the Legislative Council.

On updating the AQOs, we have completed the public consultation on the review of AQOs. The relevant outcome of the consultation was reported to the Panel on Environmental Affairs on 28 June this year. At the Panel meeting held in July, we also convened a meeting with the Subcommittee on Improving Air Quality Air Quality set up under the Panel to report on how to use the best method to implement various initiatives of improving air quality, the major considerations and progress of implementation of the improvement initiatives with specific plans. We will also continue to report the relevant work progress to the Panel or the Subcommittee and take follow-up actions.

President, I look forward and am pleased to listen to the views expressed by Members on improving air quality. In my concluding speech, I will also respond to Members' proposals and further spell out our strategies and measures for improving air quality.

Thank you, President.

MR CHEUNG KWOK-CHE (in Cantonese): President, in addition to a clean government, a fair and impartial judicial system and a free business environment, clean air and a healthy living environment are also vital elements to an international metropolis.

According to the data published by the Environmental Protection Department (EPD) in 2009, among the air pollutants in Hong Kong, although the contents of respirable suspended particulates, SO₂ and NO_x had seen a falling trend in recent years, the levels remained very high compared with many advanced cities. The ozone concentration, which will greatly increase the incidence of respiratory diseases, had even risen rather than fallen in recent years.

Indisputably, the Government has, at the strong urging of the community,

the media and representative councils, launched a number of initiatives to improve air quality. However, the problem of air pollution in Hong Kong remains serious. It is therefore imperative for the Government to step up its efforts. In my opinion, improving the air quality in downtown areas is its most pressing task.

Vehicle emission is the culprit of air pollution in downtown areas. Vigorous efforts to promote the use of electric vehicles with zero oil consumption and zero emission by the public can greatly reduce air pollution in urban areas. Since the year 1994-1995, electric vehicles have been exempted from first registration tax. Unfortunately, the response to this concession has not been enthusiastic due to the generally more expensive prices of such vehicles, the need to spend money to replace their batteries regularly and the inadequate number of charging stations. According to the Transport Department's new vehicle registration records, only 31 electric vehicles were registered during the past three fiscal years.

Therefore, it is imperative for the Government to provide greater incentives, such as licence fee remission, tax concessions, and so on, to encourage vehicle owners to use electric vehicles. Furthermore, it can also follow the examples of such places as California and New York in the United States by requiring that a certain percentage of vehicles sold in Hong Kong must be vehicles with zero emission. By then, the number of electric vehicles will increase, thus definitely facilitating the development of corresponding hardware support.

Air quality cannot be improved overnight. Furthermore, the air pollution problem cannot be resolved by Hong Kong alone as it is situated at the estuary of the Pearl River. Therefore, it is equally important for legally binding guidelines to be drawn up for the protection of public health.

At present, employers are governed by only two pieces of legislation in Hong Kong, namely the Occupational Safety and Health Ordinance (OSHO) and the Factories and Industrial Undertakings Ordinance, in providing employees with a proper working environment. Nevertheless, only the OSHO has some bearing on protecting employees working outdoors, though it is a pity that it merely requires employers to "ensure, so far as reasonably practicable, the safety and health of their employees and provide a working environment that is, so far as reasonably practicable, without risks to health". The vagueness of these

contents has made the scope of protection very limited.

May I ask the Secretary, once the API reaches the "severe" level, or even reaches the "extreme severe" level as the one recorded in March last year, can the working environment be regarded as posing risks to health? Will employers be regarded as violating the law if they require their employees to work outdoors?

The EPD has these two pieces of advice for employers and employees when the API reaches the severe level: First, employers are advised to evaluate the risks and arrange for appropriate rest breaks for workers; and second, workers may consult medical practitioners and inform their employers of the medical advice. However, these advices actually serve no real purpose. To start with, it is purely voluntary for employers to provide appropriate rest breaks for employees working outdoors. Employers will not be considered as having violated the law even if they refuse to provide such rest breaks. So, how can they be expected to heed such advice? The second point, that is, requiring employees to provide medical advice, is even more ridiculous. Is the Government not a bit detached from the reality to require employees to consult medical practitioners before they go to work and then inform their employers of such whenever the API reaches the severe level?

Under such circumstances, even people who are physically fit may still have difficulty in breathing outdoors. The conditions of schoolchildren, the elderly, the chronically ill and employees working outdoors are imaginable. As the Government is duty-bound to provide the public with a healthy living environment, it should enact legislation expeditiously to prohibit people engaging in certain types of work from working or draw up specific guidelines on rest periods, as well as discussing with the Education Bureau whether suspension of kindergartens, primary and secondary schools and physical education classes is required when the API reaches the severe level.

Recently, the Government has been making vigorous efforts in lobbying Members of this Council to support its bid for hosting the Asian Games. Actually, the Government really needs to be careful in doing this. So long as the air quality in Hong Kong remains poor and the atmosphere remains foul, thus rendering athletics coming to Hong Kong for the Games feeling unwell, Hong Kong will only become an international laughing stock, as if it is washing its dirty linen in the public and making a spectacle of itself. I hope the Secretary can pay

attention to this.

President, I so submit.

MS AUDREY EU (in Cantonese): President, the Secretary said in his speech just now that he very much looked forward to and was pleased to listen to Members' views. President, the debate today is not on emissions; instead, we have been listening to nonsense. In fact, this issue has been debated in this Council many times, but the Secretary still said that he was pleased and looked forward to listening to our views. Will it really work?

President, I think I am committing a slow suicide, whereas the Government is murdering me slowly. Why am I saying this? President, I came to Central before 8.30 am this morning, and it is now past 9.30 pm. In other words, I have been here in Central for more than 13 hours. According to my own calculation, I spend on average 12 hours daily in Central for six days a week. If my calculation is on a monthly basis, I find that I would spend more than 300 hours monthly in Central.

President, I have learnt from the EPD webpage that the roadside API recorded in Central in November reached the "Very High" level. What does the "Very High" level mean? It means excessively high readings in excess of 100. And for how many hours? A total of 489 hours. In other words, the API was excessively high during the 300 hours I spent in Central. As the API hit the "High" level for 231 hours in Central in November, it was excessively high for more than two thirds of the period and very high for one third of the period. In other words, there were no "Medium" or "Low" API readings. Overall, the API was at the "Very High" level for two thirds of the time. In October, the number of hours with the API reaching the "Very High" level was 315. In other words, the API was excessively high in not only November, but also October, when I was in Central. Such being the case, President, do you not think I am committing a slow suicide? I have even not factored into this the remark made by Dr Joseph LEE in his speech just now, that the risk of breast cancer would increase when pollution was so high. This is why I really doubt whether the Government has heeded our views, despite the Secretary's remark that he was pleased to and looking forward to listening to our views.

President, I have talked about buses, buses, buses many times in this

Council because roadside air pollution comes mainly from buses. I have often made appeals on billboards to the Government for the phasing out of old buses and replacement by new ones. How did the Government respond? It said that it was not environmentally-friendly to do so. As a result, the Government has spent \$300 million to set up a Green Transport Fund to subsidize bus companies to conduct a pilot test on the replacement of parts on Euro II buses by retrofitting catalytic converters on these buses to make them meet Euro IV standards. Nevertheless, the pilot test shall take four quarters, or a year, of slow research, before findings can be made available by the end of next year. The pilot test, if successful, will be followed by tender invitation and debates on which type of buses needs to be retrofitted with these catalytic converters. We have no idea what will happen if the test turns out to be unsuccessful.

Despite the availability of electric and Euro V buses and the fact that the Government is not short of money, it is reluctant to replace the existing buses. So, am I killing myself slowly every day, and is the Government murdering me slowly? President, why can the Government not do such a simple thing?

While low emission zones will not be introduced until 2015, they will be restricted to buses only. It is not that the Government incapable of doing it, only that it is reluctant to do it. Hence, the Government is not unaware of the figures recorded by roadside monitoring stations, as cited by colleagues just now. But each time government officials turned up here, they would say that air pollution had actually been alleviated and pollutants reduced. Yet, people walking on the streets every day know the situation. I have even not mentioned the fact that those exceedingly high API readings were measured according to a very low standard. In fact, it is already very unhealthy for those "High" API readings, which are considered not exceedingly high, to reach 51 to 100.

In addition to buses, there are diesel vehicles. When the \$320 million scheme was launched by the Government, we already said that the scheme was infeasible. Yet, the Government insisted on going ahead with the scheme. After the implementation of the scheme for three years, the Government has eventually found that not too many vehicle owners are willing to replace their vehicles. I see that the Government has subsidized only 20 000-odd vehicles so far, and not too many vehicle owners are willing to replace their vehicles. As a

result, the Government has now launched a new \$54 million scheme to subsidize 27 000 Euro II diesel vehicle owners to replace their vehicles.

During my meeting with green groups and the commercial vehicle industry yesterday, they suggested that the Government increase the subsidy amount by subsidizing 25% rather than 18% of the prices of vehicles. When some reporters asked whether I would support the proposal, I responded by asking these questions: Should rewards and punishments be introduced concurrently? Can we consider restricting the access of old vehicles which are still running on the roads to certain busy districts? Should we consider introducing a congestion fee or electronic road pricing in Hong Kong, as is the case in London? Can we consider increasing vehicle licence fees if these old vehicles should run on the roads continually? I very much agree that the Government can give vehicle owners a recovery fee if they allow the Government to recover their old vehicles. Only in doing so can we take the polluting vehicles off our roads, so that we can breathe fresh air.

In fact, the Government still has a lot of things to do, yet it has been reluctant to do anything. President, I have no time to talk about other proposals in the motion. Actually, these proposals have been discussed many times already, not just once. President, I support most of them. We will already be extremely pleased so long as the Government is willing to put words into actions. President, the Secretary needs not keep saying that he is pleased to listen to views. Everything will be fine so long as he is willing to do something. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, I have a suggestion. I propose that we all deliver no more speeches and then adjourn the meeting. President, actually, I live in a remote area, and I spend less time in Central. If I can go home earlier, I can go to bed earlier and so get even healthier. With good health, Members in this Chamber will not meet Buddha or God so soon. Furthermore, if we can leave earlier, we will be happier, and then we will not feel frustrated. If we do not feel frustrated, we will not make so many criticisms.

I am going to talk about this subject of air quality. President, you need not I will discuss this, I certainly will. Why am I joking? It is because we have really been discussing this topic for years. Are there any new ideas in

this script I am now holding? Actually, I have no more new ideas. However, President, I still have to speak, why? Let me suggest that Members make a cross-party proposal. First, we make a collective proposal that from now until the summer holiday of 2012, there will be no more debates on air quality. In other words, there will be no more debates proposed by Honourable Members, including me, you, the DAB, the FTU, the Neighbourhood and Workers Service Centre (NWSC), Mr CHEUNG kwok-che, Dr Joseph LEE, the Civic Party and LEUNG Yiu-chung from the NWSC. In that case, the Secretary will not need to worry, and there will not be so many tasks for him to handle. Hence, he will have more time to work, and he will not have to listen to our repeated comments here. He will have more time for his work. First, I expect him to have more time to work. Second, I propose that all Members stop asking oral questions on environmental protection to allow Secretary Edward YAU and the Under Secretary more time to work. Third, when we from the Democratic Party meet with the Financial Secretary in January, we will propose that an additional \$50 billion be granted to the Environment Bureau to do anything, so that it needs not apply for funding for the replacement of buses. Furthermore, it can even replace submarines, or blocks of buildings. So long as what is done is good for the environment, the Bureau will not have to worry about the lack of funding. Fourth, I suggest that the Secretary for the Environment run for the office of Chief Executive of the next term because he often says that he has no power. Sometimes, when I chatted with him, he would say, "What you are talking about is not merely under my purview." I had once joined the Under Secretary in inspecting fly-tipping in Ho Sheung Heung. I have not since asked the Secretary any more questions. I dare not disturb him, as he has been pretty busy lately. I have not asked him even one single question about whether the matter has been concluded after more than a year. I even dare not ask him this question. Should the Secretary become the Chief Executive, all government departments, including the Lands Department, the Environmental Protection Department, the Buildings Department and the Hong Kong Police Force, will all come under his command. It will then be a bit easier for him to do anything. Should the Secretary become the Chief Executive, he will have no more troubles.

Of course, the remarks made by me just now are all fantasy. In fact, I really wish to do something. But, President, it sometimes occurs to me that when I wish to do something, the Secretary is reluctant to act. And if I do not do anything, he will do nothing. So, we had better not do anything. In that case,

we will have less work, and so will he. Then, we will be happier and our efficiency will get even higher. I am really very positive in calling on Members — CHAN Kin-por, listen to me — in the coming year or so, we stop proposing any motion debates on air quality and asking oral and written questions on air quality. Let us make concerted efforts in putting fewer questions to the Environment Bureau to give it more time to work and then make a calculation before the summer holiday of 2012 to ascertain if it can really accomplish its tasks. Having said that, I have to come back to something serious. No, President, the remarks made by me just now are actually serious, too. I am being very serious.

When I came into the Legislative Council Building today, Friends of the Earth recommended me to join an event which had something to do with the outdated API held by Mr KAM Nai-wai. Is it something new? No. It has been reported by the press and mentioned many times before. The Secretary should have known that our API is already outdated without listening to my reading out the news reports. This should not be tolerated in a modern society. Therefore, I said to members of Friends of the Earth, "Why would the Government do this?" Actually, I think that Friends of the Earth is not right. It is wrong. I have to criticize it on behalf of the Secretary. It should lower the API a bit. It is actually a good deed to require the Government to further lower the API for in doing so, the Government can then get a passing mark and needs not make so much efforts. Therefore, I said to Friends of the Earth, "The Government will fail completely if you request it to review the API and update all information to meet such standards as the international or American standards." Should the Government fail completely, the Under Secretary will be very busy, and so will the Secretary. In that case, they will not respond to our requests. Hence, I can only ask the Bureau this question very sincerely, "Will it be better if I really encourage the Democratic Party and other colleagues not to raise so many questions and conduct fewer debates instead, and if we only write to the Bureau in private asking it to hand us one, two, three, four, five, six, seven, eight, nine or 10 assignments before the summer holiday of 2012 and then leave it alone?"

President, I am being very sincere. Furthermore, I am pessimistic, and I will not scold anyone. I only implore the Environment Bureau to heed my advice. Should my advice be accepted, I will first lobby the Democratic Party, to be followed by the pan-democrats and other people, to support this proposal.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, actually, some surveys conducted before and after the reunification had already found that the problem of air pollution in Hong Kong was the greatest concern to employees of multinational corporations. How about the local people? Recently, a survey conducted in December found that among the 1 000 interviewees, one in every four of them had contemplated leaving Hong Kong because of the serious air pollution in Hong Kong. This figure is higher compared with the one recorded two years ago. This survey also found that people with higher educational attainment, particularly professionals, registered a higher ratio in terms of people contemplating leaving Hong Kong. Furthermore, the interviewees were sceptical about the Government's determination in improving the air quality of Hong Kong. One in every five interviewees simply did not believe the Hong Kong Government would draw up and implement new AQOs, and sorry, not even one in every 10 interviewees expressed confidence in the Government.

What did this survey tell us? It actually told us that if the Government merely kept talking without doing anything in implementing environmental policies, just as the Chief Executive's Policy Address, which is packed with clichés, more and more people would contemplate moving out of Hong Kong. Unfortunately, many people capable of leaving are people with higher education or better financial means. Should they decide to leave, wastage of talent and departures of multinational corporations will produce catastrophic impacts on Hong Kong.

President, though to a considerable extent, the source of air pollution in Hong Kong is on the Mainland, I think that we should still seek to, despite our limitations, reduce emissions and gradually improve air quality.

Just now, colleagues concentrated on the issue of vehicle emissions, but we should examine the actual figures. At present, we can say that air pollution in Hong Kong mainly stems from power plants. A considerable number of power plants in Hong Kong are still using some not at all clean fuels for power generation. About one third of the respirable suspended particulates in the air come from local power plants, which is similar to vehicle emissions. However,

if we look at NO_x, we will find that emissions from power plants and vehicle emissions account for 44% and 23% respectively, with SO₂ being the most alarming. Being an extremely toxic gas, SO₂ may cause respiratory tract and mucosal irritations, thus leading to breathing difficulty. Some 89% of the SO₂ in the atmosphere comes from power plants. In comparison, vehicles produce a mere 1% of SO₂. Therefore, looking at the pollutants in these several perspectives, I think that power plants are an even bigger source of pollution.

Hence, I think that if we can improve the power generation facilities in Hong Kong and introduce cleaner energy for power generation, we actually have the conditions to improve the air quality in Hong Kong and its neighbours in concrete terms. The problem is the profits of the two power companies in Hong Kong are protected — the profit control schemes were signed in 2008 for implementation in 2009 for a period of 10 years. Under such protection, the power companies can adjust their tariffs according to their respective production costs, which means that their profits are assured.

As far as I know, the profit ratio still stands at 10% under the new agreements. Therefore, if we require the power companies to make more use of clean energy To my understanding, the agreement signed between HEC and the Government provides that should HEC use renewable energy, its profit ratio may reach 11%, which is 1% higher than using conventional energy. Therefore, if we require the power companies to use clean energy, they might use this as an excuse to increase tariffs.

The profit control schemes signed with the two power companies have actually made them progress-shy, reluctant to improve their operational effectiveness for a long time. In addition, the pricing disparity between the two companies has persistently angered the people, particularly those living on Hong Kong Island. Their anger is partly attributed to air pollution as well as unfairness.

At present, CLP and HEC are charging about 90 cents/kWh and 120 cents/kWh respectively. In terms of effectiveness, CLP obviously fares better than HEC, and yet the pricing disparity between them has even reached 31%. The disparity is surprisingly great with the two companies separated by

the Victoria Harbour only. In my opinion, these figures fully reflect that the operational effectiveness of HEC is unreasonably low. This is really extremely infuriating.

I think that the Administration must look squarely at the issue of unfair pricing. What is the connection between unfair pricing and air pollution? I think that it is only reasonable for HEC to refund at least half of its additional tariffs to the people of Hong Kong, and use the remaining extra tariffs for the development of renewable energy. Doing so can at least make people living on Hong Kong Island and the outlying islands feel fairer, and the additional tariffs paid by them can at least make some contribution.

Furthermore, we think that the Government should re-examine its energy policy to ascertain the possibility of conducting an earlier review of the profit control schemes, revising the schemes signed with the power companies, and increasing the incentives of using clean energy for the power companies while preventing them from using investment in equipment thus required as an excuse to increase tariffs frantically.

Among the clean energies, as pointed out by colleagues just now, solar energy and wind energy stand a better chance of development in Hong Kong. I think that Hong Kong really needs to consider making more use of renewable energy to enable us to enjoy a better life.

President, I so submit.

MS CYD HO (in Cantonese): President, although the motion today is on air quality, we can see that a number of proposals put forward in the original motion focus on facilities with a view to improving roadside air quality in the local community, with the replacement of heavy vehicles, reorganization of bus routes, designation of pedestrian precincts, and so on, as the major issues. As roadside air pollution is really quite alarming, this was cited by the Government recently as a reason in initiating the turning off of idling engines in the hope that vehicles on the roads could reduce emissions of suspended particulates and exhaust gas, in order that pedestrians walking or standing in the streets or proprietors sitting in roadside shops and small stalls can live a better life.

However, can air pollution be alleviated solely by upgrading vehicles or

replacing heavy vehicles? As 50% of the air pollution in Hong Kong comes from power generation, we will be far from able to resolve the problem if we solely talk about options such as replacement of buses without discussing energy mix and modes of power generation. Hence, I am grateful to Mr IP Wai-ming for proposing an amendment to propose use of clean energy. However, I must make it clear that although the carbon emission of nuclear energy is relatively less serious, nuclear energy is not safe. We must be very careful in discussing increasing the supply of nuclear energy from 23% at present to 50%. Otherwise, though we might have averted a disaster caused by high carbon emissions brought about by climate change, we will find ourselves in another dangerous situation, because human beings will face another crisis if spent fuel is not treated properly.

As regards the AQOs, I do not want to go as far as talking about the index adopted by the United Nations. Let us first begin with the method of measuring the local API. I still recall when Hong Kong was last hit by a sandstorm, we were all shocked to find that the API could no longer be measured when it reached 200, as it is already the highest point, whereas readings higher than 200 indicate a very "severe" level. However, we actually cannot tell the level of exceedance as it is not represented by any figure. Therefore, I call on the authorities to expeditiously discuss the API afresh, such that we can tell which dangerous level air pollution has reached when Hong Kong is hit by severe pollution again.

Furthermore, the authorities should formulate contingency measures to be adopted when pollution is high. Dr Sarah LIAO, a former Policy Secretary, once said in this Council in 2002 and 2003 that when the API reached 200, incineration facilities had to cease operation. However, when Hong Kong was hit by a sandstorm last time, the Government merely encouraged the relevant parties to deal with the matters themselves regarding whether schools should continue to stage sports days and whether manual labourers working on roadsides should continue to work outdoors. If we do not have proper policies and legislation and instead rely solely on the understanding of employers, whereas workers keep their mouths shut for fear of being thrown out of work, then we will really be unable to protect these socially disadvantaged groups.

President, for the sake of coping with changes brought about by climate change, there have been advocacies in overseas countries that for the purpose of justice, socially disadvantaged groups should be protected, including being

helped to move out of dangerous places. Some grass-roots concern groups have proposed that the Government should offer them air-conditioning subsidy when air pollution in Hong Kong worsens, and this is the only way to help them. Although I do not approve of this proposal, as doing so will lead to increased electricity consumption, thereby making air pollution even worse, we are fully capable of assisting these socially disadvantaged groups and helping them move out of cubicle apartments and cage homes, where the living environment is deplorable. The Government should increase the supply of public housing, so that the socially disadvantaged groups can have a reasonable living space and will not be compelled to lead an even more difficult life because of poor weather.

President, I have to bring up old scores again. This document in my hand, with the reference CB(1)1057/08-09(01), was obtained by the Subcommittee on Improving Air Quality Air Quality from the Government on 19 March 2009. As the Government had launched 36 measures and claimed that air quality could be improved, we asked the Government the amount of cost to be injected and the effectiveness to be achieved before according priorities and determining which measures should be adopted first and which measures could be postponed. In fact, Mr KAM Nai-wai's original motion has also mentioned that the cost-effectiveness of several of these measures is quite high. Let me cite the phasing out of old buses as an example. According to the figures provided by the Government, the cost to be injected is \$3.9 billion, whereas the effectiveness to be achieved is \$24.3 billion. The ratio of cost-effectiveness is as high as 6.3. Furthermore, we can also see that the cost-effectiveness of the Building Energy Codes, which was endorsed just now, is 28 times, whereas the cost-effectiveness of promoting the use of household electrical appliances with high energy efficiency is 27 times. Strangely, the cost of nuclear energy mix is \$2.89 billion, but the effectiveness that can be achieved is a mere \$91 million. Yet, the authorities have indicated that there is no way to calculate the ratio of cost-effectiveness. Secretary, I am very pleased to lend this document to you, so that you can make a response tomorrow.

Hence, President, I hope that the authorities can consider the priorities in improving air quality by first adopting measures incurring the lowest costs, achieving the maximum effectiveness and meeting minimum political resistance (*The buzzer sounded*)

PRESIDENT (in Cantonese): Ms HO, time is up.

MS CYD HO (in Cantonese): Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 2.30 pm tomorrow.

Suspended accordingly at ten minutes past Ten o'clock.

ROAD TRAFFIC (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
4	By deleting everything after “amended” and substituting “by repealing “36(1), (3) and (4), 37(1) and (3), 38, 39(1), 39A, 39B, 39C” and substituting “36 (other than subsections (2), (2A), (2B), (2C), (2D) to the extent that it relates to minimum disqualification periods and (3)), 36A (other than subsections (2), (3), (4), (5), (6) to the extent that it relates to minimum disqualification periods and (9)), 37 (other than subsections (2), (2A), (2B), (2C), (2D) to the extent that it relates to minimum disqualification periods and (3)), 38, 39 (other than subsections (2), (2A), (2B) and (2C)), 39A (other than subsections (1A), (2), (2A), (2B) and (2C)), 39B (other than subsections (7), (7A), (7B) and (7C)), 39C (other than subsections (16), (16A), (16B) and (16C))”.”.
6(5)	In the proposed section 36(2E), by deleting everything after “committing the” and substituting— “offence— (a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or (b) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.”.
7	In the proposed section 36A(7), by deleting everything after “committing the” and substituting—

“offence—

- (a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or
- (b) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.”.

8(5) In the proposed section 37(2E), by deleting everything after “committing the” and substituting—

“offence—

- (a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or
- (b) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.”.

9 By adding before subclause (1)—

“(1A) Section 39(1) is amended, in the Chinese text, by repealing “以致” and substituting “其程度達到”.”.

14 (a) In the heading, by deleting “**Section 39H**” and substituting “**Sections 39H and 39I**”.

(b) In the English text, by deleting “is added” and substituting “are added”.

(c) By adding—

“39I. Amendment of Schedule 1A

(1) The Secretary for Transport and Housing may by notice in the Gazette amend Schedule 1A.

(2) A notice under subsection (1) is not to come into operation until after the time provided for the Legislative Council to debate the notice under section 34 of the Interpretation and General

Clauses Ordinance (Cap. 1) has expired.”.

- 18
- (a) In the proposed section 69A(1)(b), by deleting “and”.
 - (b) By deleting the proposed section 69A(1)(c) and substituting—
 - “(c) the court or magistrate sentences the person to undergo a term of imprisonment or detention and the sentence is not suspended; and”.
 - (c) In the proposed section 69A(1), by adding—
 - “(d) the court or magistrate orders that the person be disqualified for a fixed period.”.
 - (d) In the proposed section 69A(2), by deleting “person is released from custody” and substituting “expiration of the term of imprisonment or detention, or of any other term of imprisonment or detention which the person is undergoing at that expiration, or has been previously sentenced to undergo (whichever is the later)”.
 - (e) In the proposed section 69A, by adding—
 - “(3A) Subject to subsection (3B), a person is disqualified by this section for the whole of any day during which or during part of which the person is released from custody before the disqualification period is to start to run by virtue of a direction given under subsection (2) and any such day must be deducted from the period of disqualification to be served by the person.
 - (3B) The court or magistrate may direct that a person is not disqualified by this section during any period of release from custody of a kind referred to in subsection (3E)(a) (admission to bail pending sentence or appeal).
 - (3C) Subsection (3A) ceases to operate if the period of disqualification becomes exhausted because of deductions made under that subsection. In such a case the disqualification period

does not start to run in accordance with the direction of the court or magistrate and must be taken for all purposes to have been served.

(3D) For the purpose of subsection (3C), each 30 days deducted under subsection (3A) is to be treated as being equal to a month.

(3E) Without limiting subsection (3A), a person must be taken to be released from custody for the purposes of this section during any period that he or she—

- (a) is, following his or her conviction of the relevant scheduled offence, admitted to bail pending sentence or appeal;
- (b) is released from prison or detention on leave of absence granted under—
 - (i) section 12A of the Prisons Ordinance (Cap. 234);
 - (ii) rule 17(1) of the Prison Rules (Cap. 234 sub. leg. A);
 - (iii) regulation 14(1) of the Detention Centres Regulations (Cap. 239 sub. leg. A);
 - (iv) regulation 13(1) of the Drug Addiction Treatment Centres Regulations (Cap. 244 sub. leg. A);
 - (v) regulation 18(1) of the Training Centres Regulations (Cap. 280 sub. leg. A); or
 - (vi) section 17(1) of the Rehabilitation Centres

Regulation (Cap. 567 sub. leg. A);

- (c) is released from imprisonment under section 7(1) or (2) of the Prisoners (Release under Supervision) Ordinance (Cap. 325);
- (d) is released under an order made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524); or
- (e) while undergoing a period of residence at a rehabilitation centre referred to in section 3(b) of the Rehabilitation Centres Ordinance (Cap. 567), is engaged in activities outside that centre under permission granted under section 5(1) of that Ordinance.”.

New

By adding—

“21A. Schedule 1A added

The following is added—

“SCHEDULE 1A [ss. 36, 36A,
37 & 39I]

DRUGS

1. Heroin
2. Ketamine
3. Methylamphetamine
4. Cannabis

-
5. Cocaine
 6. 3,4-methylenedioxyamphetamine (MDMA)”.”.

ROAD TRAFFIC (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Honourable Andrew CHENG Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
6 [NEGATIVED]	By adding— “(1A) Section 36(2A)(a) is amended by repealing “2 years” and substituting “5 years”.”.
6(2) [NEGATIVED]	By deleting ““3 years” and substituting “5 years”” and substituting ““a period of not less than 3 years” and substituting “life””.
6 [NEGATIVED]	By adding— “(2A) Section 36(2B)(a) is amended by repealing “2 years” and substituting “5 years”.”.
6(3) [NEGATIVED]	By deleting “amended by repealing “3 years” and substituting “5 years”” and substituting “repealed”.

6

NEGATIVED

By adding—

“(3A) Section 36(2C)(a) is amended by repealing “2 years” and substituting “5 years”.”.

6(4)

NEGATIVED

By deleting ““3 years” and substituting “5 years”” and substituting ““for a period of less than 3 years” and substituting “less than for life””.

7

NEGATIVED

- (a) In the proposed section 36A(3)(a), by deleting “2 years” and substituting “3 years”.
- (b) In the proposed section 36A(3)(b), by deleting “5 years” and substituting “10 years”.
- (c) In the proposed section 36A(4)(a), by deleting “2 years” and substituting “3 years”.
- (d) In the proposed section 36A(4)(b), by deleting “5 years” and substituting “10 years”.
- (e) In the proposed section 36A(5)(a), by deleting “2 years” and substituting “3 years”.
- (f) In the proposed section 36A(5)(b), by deleting “5 years” and substituting “10 years”.

8
[NEGATIVED]

By adding—

“(1A) Section 37(2A)(a) is amended by repealing “6 months” and substituting “1 year”.”.

8(2)
[NEGATIVED]

By deleting “2 years” and substituting “5 years”.

8
[NEGATIVED]

By adding—

“(2A) Section 37(2B)(a) is amended by repealing “6 months” and substituting “1 year”.”.

8(3)
[NEGATIVED]

By deleting “2 years” and substituting “5 years”.

8
[NEGATIVED]

By adding—

“(3A) Section 37(2C)(a) is amended by repealing “6 months” and substituting “1 year”.”.

8(4)
[NEGATIVED]

By deleting “2 years” and substituting “5 years”.

9(2)
[NEGATIVED]

By deleting “2 years” and substituting “3 years”.

9(3)
[NEGATIVED]

By deleting “5 years” and substituting “10 years”.

9(4)
[NEGATIVED]

By deleting “2 years” and substituting “3 years”.

- 9(5) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]
- 9(6) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]
- 9(7) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]
- 10(5) (a) In the proposed section 39A(2A)(a)(i), by deleting “6 months” and substituting “1 year”.
[NEGATIVED]
- (b) In the proposed section 39A(2A)(a)(ii), by deleting “12 months” and substituting “2 years”.
- (c) In the proposed section 39A(2A)(a)(iii), by deleting “2 years” and substituting “5 years”.
- (d) In the proposed section 39A(2A)(b)(i), by deleting “2 years” and substituting “3 years”.
- (e) In the proposed section 39A(2A)(b)(ii), by deleting “3 years” and substituting “5 years”.
- (f) In the proposed section 39A(2A)(b)(iii), by deleting “5 years” and substituting “his or her lifetime”.
- 11(2) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]

11(3) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]

11(4) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]

11(5) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]

11(6) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]

11(7) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]

12(2) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]

12(3) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]

12(4) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]

12(5) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]

12(6) By deleting “2 years” and substituting “3 years”.
[NEGATIVED]

12(7) By deleting “5 years” and substituting “10 years”.
[NEGATIVED]

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Transport and Housing to Mr Alan LEONG's supplementary question to Question 2

The Government's Safety Net and Support Measures

Purpose

The Government has always attached importance to meeting the needs, including housing needs, of low-income persons and families. This paper outlines the safety net and support measures provided by various government departments.

Public Rental Housing

The Government provides public rental housing (PRH) to low-income families who cannot afford private rental accommodation through the Housing Authority (HA). People with housing needs can apply for PRH through the Waiting List. The HA's target is to maintain the Average Waiting Time (AWT) at around three years for general applicants (excluding non-elderly one-person applicants under the Quota and Points System). As at the end of September 2011, the AWT for general applicants and elderly one-person applicants were 2.3 and 1.2 years respectively. According to the latest Public Housing Construction Programme (PHCP), the HA will build about 75 000 flats in total in the five years from 2011-2012 to 2015-2016, that is, an average of about 15 000 PRH flats per year. However, the production of 15 000 new PRH units per year is not a fixed target. Our objective is to maintain the AWT for general applicants at around three years. To this end, the HA will roll forward and review the five-year PHCP every year. When necessary, the HA will endeavour to adjust and increase the production volume in order to keep the AWT for general applicants at around three years.

Safety Net

People with genuine and pressing housing needs but who are incapable of meeting such needs themselves may seek assistance from the Integrated Family Service Centres of the Social Welfare Department (SWD) or non-governmental organizations (NGOs) authorized by the SWD. The Centres will provide

WRITTEN ANSWER — *Continued*

assistance appropriate to the needs of these people after considering their actual circumstances. The form of assistance may include provision of short-term financial assistance to meet rental and removal expenses, arrangement for admission to urban singleton hostels or temporary shelters operated by the NGOs, or making recommendations to the Housing Department for admission to PRH for cases eligible for Compassionate Rehousing (CR). In 2010-2011, about 2 400 cases were allocated PRH flats through CR.

Besides, the NGOs subsidized by the SWD operate five urban hostels for single persons and two temporary shelters to provide short-term shelters and counselling services for persons in need, for example, street sleepers, persons living in bedspace apartments and homeless persons. These hostels and shelters now provide 202 residential places.

Persons and families who cannot support themselves financially can apply for Comprehensive Social Security Assistance (CSSA) to meet their basic needs. The CSSA recipients will receive rental subsidies to pay for rental expenses. The SWD will continue to assist persons with welfare needs, and will visit residents in bedspace apartments from time to time to introduce to them current welfare support services, and to provide appropriate assistance to those in need.

Other support measures

The Government has set up the Community Care Fund (CCF) to provide assistance to people with financial difficulties, especially those who do not fall into the safety net, or those who are in the safety net but have some special needs that are not taken care of. The CCF has implemented an assistance programme in October 2011 to provide a one-off subsidy to CSSA households living in rented private housing and paying a rent which exceeds the maximum rent allowance under the CSSA Scheme.

Conclusion

The existing safety net and support measures address the housing and other needs of low-income persons and families. The Government will continue to provide, through the concerted efforts of various departments, appropriate assistance to persons in need.

Appendix II

WRITTEN ANSWER

Written answer by the Secretary for Food and Health to Mrs Regina IP's supplementary question to Question 6

As regards the price of corn flour, as advised by the Census and Statistics Department, according to the classification in the Consumer Price Index (CPI), corn flour is an item under the group "Other cereals and cereal preparations", which reflects the price movement of cereals other than rice such as noodles, spaghetti, instant cereals and flour, and so on. For the first 10 months of 2010, according to the Composite CPI, the prices of other cereals and cereal preparations rose by 0.5% over a year earlier. The year-on-year rates of change for the group in the past 12 months are listed in the table below for reference.

<i>Year</i>	<i>Month</i>	<i>Year-on-year rate of change for other cereals and cereal preparations in the Composite CPI (%)</i>
2009	November	+0.4
	December	-1.6
2010	January	-0.6
	February	+0.3
	March	+1.8
	April	+3.6
	May	+3.1
	June	+0.3
	July	-0.2
	August	-1.2
	September	-1.8
	October	+0.0*

Note:

* Less than 0.05%