

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 January 2012

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

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, G.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, J.P.

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, J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

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

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

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE STEPHEN LAM SUI-LUNG, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

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

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

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

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

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

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

THE HONOURABLE RAYMOND TAM CHI-YUEN, J.P.
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Clerk, please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): The meeting starts.

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>
Undesirable Medical Advertisements (Amendment) Ordinance 2005 (Commencement) Notice 2012	3/2012

Other Papers

No. 59 — Hospital Authority Annual Report 2010-2011

No. 60 — Samaritan Fund
Financial statements together with the Report of the Director of Audit and the Report on the Samaritan Fund for the year ended 31 March 2011

Report No. 9/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

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

PRESIDENT (in Cantonese): Questions. I have permitted Mrs Regina IP to ask an urgent question under Rule 24(4) of the Rules of Procedure.

Air Quality Inside Legislative Council Complex

MRS REGINA IP (in Cantonese): *President, according to the Indoor Air Quality (IAQ) Objectives drawn up by the Government after the outbreak of the "Severe Acute Respiratory Syndrome" in 2003, the safety threshold of the total volatile organic compounds (TVOC) in the air indoor after fitting-out works should be no more than 261 ppbv (that is, parts per billion by volume), and that of suspended particulates (SP) should be no more than 10 000 per litre of air. Earlier on, a newspaper commissioned air quality examination experts to conduct air quality tests inside the Legislative Council Complex. The experts conducted tests inside the Office of Mrs Regina IP and found that the highest TVOC measurement was over 44 000 ppbv, exceeding the prescribed threshold by almost 170 times. The experts also conducted tests inside the Office of Mr Paul TSE, and similarly found that the volume of SP there was over 13 000 per litre of air, and the highest TVOC measurement also reached as high as 9 700 ppbv, which exceeded the prescribed threshold by more than 30 times. The measurements of other locations (including corridors, the Coffee Corner, the Cafeteria and rear staircases) in the Legislative Council Complex also seriously exceeded the prescribed thresholds. On the contrary, the tests conducted at the corridors, the cafeteria, the press rooms and the toilets of the new Central Government Complex (new CGC) indicated that the level of air quality there was good and did not exceed any prescribed threshold. The experts warn that staying in such environment for a long time may result in infertility in men and breast cancer in women, and that the high concentration of TVOC may be related to remedial works being carried out continuously inside the Legislative Council Complex as well as the new furniture inside the rooms releasing toxic substances, and it may take at least one and a half years for vaporization and clearance. In this connection, will the Government inform this Council:*

- (a) *given that the aforesaid test results indicate that the air quality recorded inside the Legislative Council Complex is at a dangerous level at present, which has seriously affected the safety of the people, including all Members of the Legislative Council, all staff members and members of the public, inside the Legislative Council Complex, while the level of air quality recorded in the new CGC at present is good, whether the authorities had examined the air quality inside the Legislative Council Complex according to the standards adopted for*

the new CGC prior to the occupation of the Legislative Council Complex; if not, of the reasons for that, and whether the authorities will immediately examine the air quality inside the entire Legislative Council Complex and conduct a thorough investigation into the matter; and

- (b) *of the contingency measures to be adopted by the authorities for the serious air quality problem of the Legislative Council Complex at present?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the Government attaches much importance to the IAQ of the Legislative Council Complex. New Central Government Offices and the Legislative Council Complex are frequented by government officials (including myself and my colleagues), Members of the Legislative Council and their staff, as well as the public for work and deliberation of public policies. We strive to upkeep the environment of the Complex including the air quality at good level. As far as I know, in view of Members' recent worries over the air quality of the Complex, the Architectural Services Department (ASD) and the Legislative Council Secretariat has conducted daily measurements in the past few days on the air quality of the Complex. Meetings have been held with Members and the staff to explain the situation and follow up on issues raised.

Our reply to the questions raised by Mrs Regina IP is set out below:

- (a) The New Central Government Offices and the Legislative Council Complex form an interconnected building cluster. It is planned to participate in the voluntary IAQ Certification Scheme for Offices and Public Places (the Scheme) of the Environmental Protection Department, with a view to obtaining the "excellent" class grading in future. The air quality of participating office buildings will be assessed with parameters of two classes under the Scheme. The IAQ objectives comprise over 10 parameters, including temperature, humidity, air movement, and some common indoor air pollutants including respirable SP, Formaldehyde (HCHO), TVOC and airborne bacteria. Relevant details and the objectives are set out at

Annex 1. In general, participating buildings will conduct measurement after the completion or the moving-in and relevant fitting-out works (that is, usually about one year after the moving-in), to assess the air quality and the relevant class. Regular recertification should be conducted thereafter to assess whether the air quality can be maintained. The Scheme also specifies the measurement method and qualification of measurement staff.

The ASD conducted air quality measurement on various floors of the Legislative Council Complex in November last year, shortly after the moving-in exercise. It was found that air quality of some of the floors had yet to reach the "good class" of the Scheme, largely due to the fact that the moving-in had just completed. Detailed results of the measurement conducted in November are set out at Annex 2. The ASD had conducted a series of air quality measurements between 14 and 17 January. The air quality of samples taken on some of the floors on 14 January was worse than that of November last year. Yet, there had been a significant improvement after the air-purging exercise on 15 and 16 January, at which fresh air had been taken into the Complex. Please refer to Annex 3 for details of the latest measurement.

The aforesaid measurement results differ much from the results of measurement conducted at Members' offices as quoted by the press. The difference may result from different measurement methods. In any case the Government is striving to tackle the problem, will continue to monitor in collaboration with the Legislative Council, and will work on improvement and follow up measures.

IAQ of a building can be affected by many factors in particular when the moving-in had just completed. For instance, for the Legislative Council Complex, a number of improvement works and defects rectification had been conducted shortly after the moving-in, including the installation of damping materials, painting, replacement of wall paper and glass panels, as well as floor finishes and rectification. Such works may need to use materials with low VOC content (for example, paint, glue, and so on). As far as I

know, a number of such works had been conducted recently during the long Christmas and New Year holiday. As these works had to be conducted indoors within a short stretch of time, they may have increased the VOC concentration in the Complex.

- (b) To tackle the problem, the ASD had conducted air purging exercises over the past few days in a row to take outdoor air into the Complex and to promote air exchange within the Complex. Air quality measurement results of 17 January indicate the positive impact of the exercises. The ASD will continue with the air purging exercise to further improve the air quality of the Complex.

President, as for the upcoming works, the ASD will liaise with the Legislative Council Secretariat to schedule them during long holiday or stagger the works, so as to reduce the impact to building users. If possible, the works area would be concealed, with air purging conducted during or after the construction of works. Regarding work processes for precast or individual units, such as the painting of precast or individual units, they would be conducted outside the Complex as far as possible. These measures could help prevent the increase in VOC concentration in the Complex.

According to the Department of Health, though the health effects of different VOCs will depend on the nature of compounds, as well as the level and duration of exposure, in general major health impact would only occur following prolonged exposure running into years to high concentration of VOCs. Discomfort or acute symptoms that may be caused by short-term exposure to high concentration of VOCs would resolve rapidly without any long-term health effect.

Relevant departments would continue to closely monitor the air quality of the Legislative Council Complex, and will work with the Legislative Council Secretariat to adopt appropriate measures, with a view to reducing pollutants and impact on building users.

Annex 1

Indoor Air Quality (IAQ) Objectives for Offices and Public Places

<i>Parameter</i>	<i>Unit</i>	<i>Eight-hour Average</i>	
		<i>Excellent Class</i>	<i>Good Class</i>
Room Temperature	°C	20 to < 25.5	< 25.5
Relative Humidity	%	40 to < 70	< 70
Air Movement	m/s	< 0.2	< 0.3
Carbon Dioxide (CO ₂)	ppmv	< 800	< 1 000
Carbon Monoxide (CO)	µg/m ³	< 2 000	< 10 000
	ppmv	< 1.7	< 8.7
Respirable Suspended Particulates (PM10)	µg/m ³	< 20	< 180
Nitrogen Dioxide (NO ₂)	µg/m ³	< 40	< 150
	ppbv	< 21	< 80
Ozone (O ₃)	µg/m ³	< 50	< 120
	ppbv	< 25	< 61
Formaldehyde (HCHO)	µg/m ³	< 30	< 100
	ppbv	< 24	< 81
Total Volatile Organic Compounds (TVOC)	µg/m ³	< 200	< 600
	ppbv	< 87	< 261
Radon (Rn)	Bq/m ³	< 150	< 200
Airborne Bacteria	cfu/m ³	< 500	< 1 000

Annex 2

Total Volatile Organic Compound (TVOC) Concentration
in the Legislative Council Complex on 16 November 2011

<i>Floor</i>	<i>TVOC level (in ppbv)</i>
10	27-33
9	30-57
8	225-480
7	217-628
6	450-493
5	147-153
3	113-600
2	99-495
1M	104-483

<i>Floor</i>	<i>TVOC level (in ppbv)</i>
1	700
GM	129-174
G	139-158

Annex 3

Total Volatile Organic Compound (TVOC) Concentration
in the Legislative Council Complex before and after the Air Purging Exercise

<i>Floor</i>	<i>TVOC level (in ppbv)</i>			
	<i>14 January 2012 (3 pm)</i>	<i>15 January 2012 (3 pm)</i>	<i>16 January 2012 (7.30 am)</i>	<i>17 January 2012 (7.30 am)</i>
10	147-295	349-581	110-210	71-163
9	192-216	390-443	161-192	38-97
8	663-1 180	646-727	247-381	233-255
7	650-1 313	632-750	332-480	231-305
6	1 290-1 304	704-713	437	279-285
5	-	-	387-452	310-320
3	691-1 830	500-579	340-385	161-274
2	478-1 640	343-580	252-372	151-253
1M	930-1 600	582-670	334-381	219-260
1	-	400	299	234
GM	795	508	394	259
G	530	330	279	157

MRS REGINA IP (in Cantonese): *President, the Secretary mentioned in his main reply that when the ASD conducted air quality measurements again between 14 and 17 January, although the air quality of samples taken still failed to meet the relevant standards, the results were better than those of measurement conducted inside my office by environmental experts on 11 January. In other words, the results of measurement conducted inside my office and in other locations on 11 January exceeded the prescribed thresholds even further.*

I would like to provide some information to the Secretary. I found that the situation was worst when I opened all the cabinet doors in my office. At that time, the highest readings were recorded. I have both old and new furniture items in my office. Some old items such as desks were taken from the former

Central Government Offices. These desks, being used items, do not pose any problem in terms of air quality. However, when I opened the doors and drawers of a new bookshelf cabinet, the readings seriously exceeded the standard. Hence, I worry that the air quality problem may not be caused by remedial works undertaken within the Legislative Council Complex during the holidays, but caused by materials used to make the new bookshelf cabinet or cabinet doors. Can the Secretary conduct further study or investigation along this direction?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, thank you Mrs Regina IP for your views. I was told by my professional colleagues that there are three major factors affecting IAQ of a building, namely design (which also includes building materials as mentioned by Mrs Regina IP), usage, as well as subsequent repair and maintenance.

As far as I know, when the Complex was first designed, the objective was to attain better IAQ as far as possible. Hence, the ASD has already specified that materials with low VOC content should be used inside the Complex, so as to reduce VOC concentration in the air. However, the situation in each office may vary and one possible cause is the ratio between old and new furniture items in the office. For instance, as many departments in the new CGC use old furniture items, the VOC concentration in these offices may be lower. Nonetheless, the ASD has conducted air purging exercises in the Complex. It will continue with the air purging exercise so as to reduce the pollutants. If the source of pollution can be identified, the ASD will follow up accordingly.

DR SAMSON TAM (in Cantonese): *President, let me provide Members with some data. According to the Secretary's explanation just now, remedial works may be the cause of air pollution, and the situation has already improved after the air purging exercise. In other words, it appears that the situation is getting better. However, when I reviewed the results of measurement taken on 16 November, I noticed a fundamental question about the design of the Complex. On some floors of the Legislative Council Complex, that is, the ninth and 10th floors — I wonder which Members have offices on those floors — the situation was notably better. The difference is clearly evident from the results of measurement taken back then. Even though the air quality of those two floors also deteriorated after the remedial works, their situation was still better than*

other floors. Hence, I would like to ask the Secretary whether the air quality problem is in fact caused by defective design, such as the ventilation system or other structural defects, rather than temporary problems such as the carrying out of remedial works?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, according to the data I have on hand, the situation on the ninth and 10th floors was relatively good during the said period. But as I have said just now, the IAQ of a building is affected by three factors, namely design, usage, as well as subsequent repair and maintenance. As I learn from my professional colleagues, ancillary facilities have been built for the entire Complex, such as the air purging facilities mentioned earlier for taking outdoor air into the Complex, and they are intended to operate on all floors. In other words, it is unlikely that different floors are given different levels of treatment. Regarding the question of whether other factors are involved, I will further consult my professional colleagues later and ascertain the difference between the ninth and 10th floors as well as other floors, such as whether there is any difference in usage.

MR CHAN HAK-KAN (in Cantonese): *President, in his reply just now, the Secretary said that the numerous remedial works were the likely cause of poor air quality in the Legislative Council Complex. But as far as I know, such works will probably continue until July. In other words, the problem of poor air quality inside the Legislative Council Complex will continue for a certain period of time. Moreover, as the Government usually conducts the air purging exercises at night, our colleagues must still work in an environment with poor air quality during daytime.*

I would like to ask the Government whether any interim or immediate measures can be taken, such as allow Members and their staff to open the windows, or provide us with air purifiers? Without such measures, we can only rely on traditional methods, such as placing pineapples or durians to remove or absorb the odour. President, can the Government tell us what new measures will be taken?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, first of all, we must identify the source of higher VOC concentration inside the Complex before the problem can be tackled. If the problem is caused by pollutants left behind as a result of the relatively large number of works projects undertaken recently (especially during long holidays), I think we should first of all, as stated just now, conduct the air purging exercises on a daily basis to take outdoor air into the Complex and dilute the concentration of pollutants.

Secondly, actions can be taken in respect of operational arrangements. As I have said in the main reply, for other upcoming improvement or remedial works, consideration will be given to scheduling them during long holiday or stagger the works, so as to reduce the impact on building users. In addition, for works to be carried out in local areas, both I and my colleagues have mentioned the use of negative pressure technology to extract the air. I think the situation will improve with these measures. In fact, as we can see, with fewer remedial works upon the moving-in of different offices to the new CGC, air quality has already been improved.

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

MR CHAN HAK-KAN (in Cantonese): *President, I ask the Secretary whether additional interim measures will be taken, such as allow us to leave the windows open and provide us with air purifiers. Are these measures feasible?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I am aware that this issue was also brought up during the meeting held yesterday between Members and the ASD staff. Under certain circumstances, if Members consider it necessary to open some windows, I think that can be done.

However, I was told by my colleagues that air purging is still the primary and most effective solution because it can be conducted over a long period of time. Moreover, greater effects can be achieved if pressure technology is used to improve the air purging process both in terms of speed and frequency.

MR CHAN KIN-POR (in Cantonese): *According to media reports, the level of VOC concentration in Members' Offices increased by folds once we open the cabinet doors. Regarding the provision of new cabinets or furniture in Members' Offices, I would like to ask the Government whether any prior tests have been conducted to ensure their compliance with relevant standards?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, first of all, the ASD is responsible for the design of the entire Complex. I have no information of this kind on hand, such as whether the furniture in individual Members' Offices was provided centrally or from various sources. As far as I know, some furniture items may be less desirable, for example, if glue with high VOC content has been used in the course of manufacturing. I think Members should also take note of this point.

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

MR CHAN KIN-POR (in Cantonese): *President, I hope the Secretary can answer my question: if no test has been conducted, will the Government conduct such test now? I hope prior tests will be conducted when new furniture items are available for use in Members' Offices in future.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I was just told by colleagues from the Administration Wing that furniture and fixtures in the Legislative Council Complex were supplied by the Government. As I have just said, given the ASD's objective to attain better IAQ standards for the entire Complex, requirements on furniture have been imposed, for example, materials with low VOC content should be used. However, different items of furniture may come from various sources.

DR MARGARET NG (in Cantonese): *President, I was told by some officials this morning that the Administration Wing had known about the air quality problem for quite some time. That is why Sansevieria trifasciata (commonly*

known as Tiger's Tail Orchid) has been planted extensively in the new CGC as this plant is best known for improving IAQ. Indeed, the effect is quite remarkable. But if the Administration Wing has been aware of this problem for a long time, why has it not told us earlier? Now that the problem has been exposed, will consideration be given by the Director of Environmental Protection to provide an abundant supply of Tiger's Tail Orchid to staff of Members' Offices and the Legislative Council Secretariat, so that we can have a temporary respite from the toxins in the air?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, as I have said in the main reply, there is basically a transitional period during the moving-in stage of every building. In other words, with the new paint and new furniture, or possibly some ongoing residual works during the moving-in stage, air quality may be less than desirable. This phenomenon is not confined to this Complex; it is the same for other buildings. Hence, we know that air quality tests are not generally conducted for other buildings during the moving-in stage.

On the other hand, regarding the issue raised today, I have already explained in the main reply as well as my replies to supplementary questions just now that air purging should be the best solution from a systemic and macro point of view. That is what our professional department will continue to do. Regarding the issue of office greening, as mentioned by Member, I will always give my support to the relevant initiatives.

PRESIDENT (in Cantonese): The Member asked about whether an abundant supply of Tiger's Tail Orchid would be made available by the Government.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have no scientific or professional information on hand to support the view that this is indeed a solution. However, if Members consider it a good initiative from an office greening point of view, I will give my support from the perspective of the environment.

DR PRISCILLA LEUNG (in Cantonese): *President, I think you may also recall my suggestion that we should move to the new Legislative Council Complex six months after its completion because even though the construction work has completed, we have no way to ascertain the air quality, and the air may contain elements causing great harm to human beings. If the Secretary visits my office, I will tell him about the traditional method used by us last week, that is, we have placed onions and lemons sliced in half in the office. Even though I dislike the pungent smell of onions, I must do so because whenever I walk into my office, my eyes will become dry. The situation has remained the same over the past few months. When I learnt of this tip, I put it in practice immediately. I have no idea which method works better, but I do notice some improvement when I go to my office this morning. Therefore, when it comes to a practical issue, it is the view of users that matters. Notwithstanding the views expressed by experts and the data provided by the ASD, the Secretary should seek the view of users who actually work in the Complex. In fact, we move into this Complex immediately after its completion, and our bodies have indeed absorbed all the VOC gases.*

Under this circumstance, I think we must take remedial actions accordingly. As mentioned by other Honourable colleagues, the Government should provide holistic advice to the staff working in the Complex so that they are fully informed about the situation. Such advice should include, in particular, information about possible impact on babies — according to study reports published in the Mainland, babies should not stay in such places for a long period of time

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

DR PRISCILLA LEUNG (in Cantonese): *Hence, I would like the Secretary to give an undertaking as follows. Firstly, the Government will implement protective measures for the staff as well as Members. Clear instructions should be issued to specify the situations under which prolonged stay in the Complex are considered inappropriate. Secondly, as stated by Honourable colleagues just now, I hope the Secretary will undertake to allocate additional resources for Members to equip their Offices so as to ensure the well-being of staff members who have inhaled the VOC gases.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, as I have pointed out in the main reply just now, the results of measurement in the past few days show that the air purging exercises conducted by the ASD in the Legislative Council Complex are effective. I think it is our common aspiration to continue with such work. The ASD will continue with the air purging exercises until the situation has improved.

Regarding the views in other aspects, such as the advice from the Department of Health, I have already mentioned about them in the main reply, and so I will repeat no more.

PRESIDENT (in Cantonese): This Council has spent nearly 23 minutes on this urgent question. Last supplementary question.

MR JAMES TO (in Cantonese): *President, the crux of the question is whether the Government knows about the exceedingly high concentration of VOCs in the Complex. President, given that the Government is only conducting the air purging exercises now, I would like to ask the Government whether it has any previous knowledge about the matter? Or is it aware of the problem but has not taken any action to conduct the air purging exercises, or even postpone the moving-in? Moreover, notwithstanding the Government's reply that in general, major health impact would only occur following prolonged exposure running into years to high concentration of VOCs, some experts have warned about the serious impact involved. In fact, many colleagues have been working in the Legislative Council Complex for a long time before the air purging exercises. In this regard, can the Government tell us whether persons who are particularly vulnerable, such as expecting mothers or persons having some special symptoms might have already been impacted, and what advice it has for these persons? Does the Government know about the high concentration of VOCs well in advance?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, first of all, I understand the Member's concern in this matter because my colleagues in the Government also work within the same building cluster, and we share the same moving-in experience.

Let me talk about the standard first. The so-called standard cited by Members just now is in fact the "good" class grading under the voluntary IAQ Certification Scheme. In other words, a particular building would achieve the "good" class grading if the two measurements cited by Members, such as 261 ppbv for TVOC, are achieved. Therefore, it is not a formal safety standard. In fact, many new buildings cannot achieve this standard right away upon completion. Hence, as I mentioned in the main reply, measurement will in general be conducted after a certain period of time. Even for this standard, it is just referring to an eight-hour average measurement.

Nonetheless, in response to the concerns raised by Members, we have already listed out a series of practical measures to address the problem. Regarding Mr James TO's question about whether previous measurements have been taken by the Government, I have already stated in the main reply that measurements have been taken in November last year, as well as recently in the past week. We note that the measurements in January have become worse. However, the situation has improved after the improvement works. Therefore, we are really convinced that the present course of action is more effective. Regarding the area of concern raised by Mr TO, I have already mentioned the advice from the Department of Health in the main reply.

PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered? Please state it clearly.

MR JAMES TO (in Cantonese): *My question is whether some special advice will be given to particular groups of staff members, especially those who are more prone to allergies or those who are relatively vulnerable, before the conclusion of the air purging exercises? For example, persons who are more prone to allergies may be advised to work at home. At the same time, the Government should also clearly indicate whether special precaution is required for any particular groups of persons.*

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

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have reviewed the situation with doctors from the Department of Health yesterday, and nothing of particular concern was detected. Of course, if colleagues working in the Complex are worried about their health, they should consult a doctor. However, based on the present measurement results, no special advice is given by government doctors.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): First question.

Promoting Hospitality and International Perspective in Hong Kong

1. **MR PAUL TSE** (in Cantonese): *President, a famous brand store was suspected to discriminate against Hong Kong people as it only allowed Mainland customers but not Hong Kong people to take photos outside the store, causing a stir among Hong Kong people who were unhappy with the unfair treatment they received at their home town, and the incident developed into one involving a thousand people surrounding the store to protest and take photos, yet some people were so agitated that they bitterly insulted the Mainland tourists who passed by, and some tourists reflected that such overly radical behaviour of the like will damage the reputation of Hong Kong's tourism industry. Furthermore, a survey organization in France earlier conducted a survey on the ranking of prestigious commercial shopping avenues in 30 cities in the world, and due to reasons that Hong Kong people are not friendly enough towards tourists, and so on, Hong Kong ranks the second last in the survey. Earlier on even the "Avenue of Stars" was ranked by the website of the Cable News Network of the United States as the second most disappointing tourist attraction around the world. Some members of the tourism industry have pointed out that the aforesaid incidents have reflected the large gap between the standard of the tourism ancillaries and tourist attractions in Hong Kong and that expected by tourists from overseas countries, and that the authorities taking charge of tourism are unable to feel the pulse of the international tourism market. Regarding the aforesaid incidents relating to the tourism industry in Hong Kong, will the Government inform this Council:*

- (a) *whether it has assessed the causes of the series of incidents above, and what negative impact they have on the development of the tourism industry in Hong Kong; if it has, of the results; if not, whether it can seriously conduct the assessment;*
- (b) *with respect to civic education, of the existing policies in place to foster the civic awareness and hospitality of members of the public as citizens in a cosmopolitan city, upgrade their ability in commanding international languages, minimize as far as possible the conflicts arising from members of the public alienating Mainland tourists in particular, and enhance Hong Kong's appeal as a premier tourist city; and*
- (c) *of the policies put in place by the Government to maintain the balanced development of Hong Kong as a cosmopolitan city, and prevent the tourism market and related initiatives from overemphasizing the preferences of Mainland tourists and ignoring the long-term benefits and the direction of development of the tourism industry?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, visitors from around the world have all along recognized Hong Kong as a premium international tourist destination. The Hong Kong Tourism Board (HKTB) conducts a Departing Visitors Survey every year, including an assessment of the overall satisfaction level of visitors towards Hong Kong. According to the survey findings, the overall satisfaction rating given by respondents ranged from 8.2 to 8.3 on a 10-point scale in the past five years. The findings also indicated that on average over 80% of the respondents found shopping in Hong Kong satisfactory or highly satisfactory.

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

- (a) We are aware of recent media reports of an incident in which an international fashion brand store was alleged to have prohibited Hong Kong people from taking photographs in front of the store. We understand that the store has issued a statement afterwards, saying that it has no intention to offend Hong Kong people. We

consider this an isolated incident. We encourage employees of various trades to, and believe that they will, keep enhancing their level of service to the local public and tourists in terms of efficiency, quality and professionalism. This is conducive to maintaining the status of Hong Kong as an international tourist destination.

We also noted Member's opinions on the survey report as stated in the question. We respect the surveys carried out by any organizations and will make reference to survey findings published by various organizations on the performance of our tourism industry for conducting appropriate analyses, reviews and follow-up actions. Judging from such indicators as visitor satisfaction level, number of visitors, their duration of stay in Hong Kong and consumption level, we have found no impact of such surveys on visitors' impression towards Hong Kong. Indeed, Hong Kong's world-class shopping experience has repeatedly received recognitions in recent years. For instance, in May 2011, the TripAdvisor, the world's most popular travel commentary website, announced the "Top Ten Destination Worldwide" and Hong Kong was ranked as one of the 10 best tourist destinations, which was the only Asian city on the list. In May and September 2009, Hong Kong was ranked as the world's best city for shopping and the "Best City for Shopping in Asia" in the online poll run by the CNN International and the online travel magazine *Smart Travel Asia* respectively. Nevertheless, we will continue to strengthen the training for front-line staff of the tourism industry through the Travel Industry Council of Hong Kong and various trade organizations so as to enhance the service level of the industry and the retail sector. Moreover, we will continue to maintain close contact with various government departments concerned to improve the environment and supporting facilities at our shopping avenues and tourist attractions.

- (b) All along, the school curriculum of Hong Kong has accorded importance to enhancing students' quality as citizens. Learning elements related to students' values and attitudes, such as "respect for others", "sincerity" and "courtesy" are incorporated in Key Learning Areas and subjects. In addition, a number of relevant subjects (for example, General Studies at primary level, Life and Society

Curriculum at junior secondary level, Tourism and Hospitality Studies and Liberal Studies at senior secondary level) cover the topics of Hong Kong as an international cosmopolitan city with a view to widening students' horizons, enhancing hospitality culture, thereby strengthening Hong Kong's attractiveness as a tourist centre.

On raising language proficiency, the Government aims to enable our people to be biliterate and trilingual. Upon the advice of the Standing Committee on Language Education and Research, the Government provides and supports language education for students, as well as continues its ongoing efforts in improving the language skills of the community in general through various projects which would be either funded or sponsored by the Language Fund.

On fostering the hospitality culture, the Tourism Commission, together with the Hong Kong Federation of Youth Groups, launched the Hong Kong Young Ambassador Scheme in 2001 to instil in young people a sense of courtesy and helpfulness to visitors. Since then, over 2 200 young ambassadors have completed the training courses and been deployed to various tourist spots to introduce attractions to visitors. They have also participated in large-scale activities and tourism promotion events. To date, the Scheme has provided over 180 000 hours of service and received positive feedback from schools, youngsters and their families.

- (c) To sustain Hong Kong's image as a cosmopolitan city and the world's premier tourism destination, the Government and the HKTB attach great importance to maintaining a diverse portfolio of visitors. When designing tourist attractions and organizing mega events, we would consider the tastes and interests of different visitors, with a view to highlighting the unique status of Hong Kong as a meeting point of Chinese and Western cultures. On promotional strategies, the HKTB reviews from time to time its priorities in resource allocation. In 2012-2013, the HKTB plans to invest its marketing resources in 20 target source markets around the world. Seventy percent of the resources will go to the international market while the remaining 30% to the Mainland market. Such an arrangement aims to ensure the long-term and steady development of the tourism industry of Hong Kong and maintain a high degree of flexibility so

as to reduce the impact of any fluctuation in individual markets on our industry.

MR PAUL TSE (in Cantonese): *President, the Secretary has just listed the awards we received and boasted about our "glorious achievements", but we are not concerned if there are more merits or demerits. The most important point is that, with respect to this D&G incident according to my understanding, they issued a formal apology this morning, hoping that this incident would enter a new phase and it would no longer affect our tourism industry. More importantly, which government department is responsible for handling these crises? Had any official stepped forward and said something when the store was surrounded by so many people? Or, did they just dodge and did nothing? These incidents have significant impacts on our tourism industry and all those media reports damaged the image of Hong Kong. It is useless for the Secretary to talk so much now after so many things have happened, which serve to prove that things do not work out well. President, how can we do better in the future?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): *President, I think I have already given Mr TSE a response in my main reply. Mr TSE has analysed the situation from three different levels but he has jumbled together these three levels. In my main reply, I have explained our measures in respect of tourism. Mr TSE has just said that D&G made an apology for the incident this morning. We believe Hong Kong people would deal with the incident rationally. The Government respects the freedom of speech of everyone but we deal with business operations under statutory mechanisms.*

MR LAU KONG-WAH (in Cantonese): *President, the Secretary said that this is an isolated incident. Although the company has indicated that it has no intention to offend Hong Kong people, whether this act is intentional or unintentional, it hurts the feelings of Hong Kong people all the same. Even though the company has made an apology, I wish to ask the Secretary if there are reasons for employees of a company to on the street. (Mr LAU found that he had not worn a microphone) Sorry, President, do I need to repeat what I have just said?*

PRESIDENT (in Cantonese): No need to do so, just state your supplementary question.

MR LAU KONG-WAH (in Cantonese): *Will the Government have a better understanding of the reasons for the company to stop people from taking photos?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): In reply to Mr LAU's supplementary question, in general, the public can take photos in public places so long as they do not affect other people.

MR LAU KONG-WAH (in Cantonese): *President, is the Secretary saying that there are no reasons for the company to act that way?*

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I have just answered the part of Mr LAU's supplementary question about public places. However, the supplementary question also involves the issue of intellectual property. On the whole, under the Copyright Ordinance, a copyright owner can exercise his exclusive right to his copyright works, including reproductions in any form (such as photo-taking). Hence, reproducing works without authorization by the copyright owner may constitute copyright infringement.

To balance the interests of copyright owners and users, there are some exemptions under the Copyright Ordinance. For instance, under section 40 of the Copyright Ordinance, if the photograph taken incidentally includes certain copyright works, such as movie posters, artwork or works of art, the photo-taking itself does not constitute infringement. In that case, sending or providing these photos to the public via the Internet does not constitute copyright infringement.

MR CHIM PUI-CHUNG (in Cantonese): *President, we understand that our tourism service industry has become a very important pillar to our economy. My supplementary question is: with respect to this incident, which government department should step forward to mediate or impose pressure so as to maintain the dignity of our tourism industry, and let other people know that we are handling matters orderly? Or, should we let the incident develop which may result in the loss of confidence in our tourism industry under the Government's laissez-faire policy?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I have not noticed any act of injustice by the Government in this incident. Therefore, I wonder what the justifications Mr CHIM has in raising this supplementary question. As I have just mentioned, people in Hong Kong are allowed to take photos in public places so long as they do not affect other people. There are very explicit statutory mechanisms and legal basis for the conduct of commercial activities.

MR CHIM PUI-CHUNG (in Cantonese): *President, I am even more surprised after the Secretary has given this answer. No government department stands out to handle the incident and government departments are shirking responsibilities among themselves. How can the whole tourism industry be treated fairly?*

PRESIDENT (in Cantonese): The Member asked which government department is responsible for handling similar incidents. Please reply, Secretary.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, Mr CHIM's question is about tourism. In my main reply, I talked about the tourism ancillaries and initiatives, and explained how they can cater to the development of our tourism industry. Concerning the D&G incident, if the supplementary question just raised by the Member is related to intellectual property, I have also addressed the matter in my reply just now.

MRS REGINA IP (in Cantonese): *President, the Secretary mentioned the Copyright Ordinance, which made me even more worried, and I hope he would clarify the relevant points further. He said that under the Copyright Ordinance, an owner of intellectual property has the right to protect his intellectual property and disallow others from taking photos. However, many famous brand stores allow people to take photos on the street as they please. Some owners of intellectual property (including designers) also allow people to take photos at fashion weeks and fashion shows. When can people take photos and when they cannot do so? Have the laws assumed that there is intentional plagiarism when someone takes photos or draws, and photo-taking is thus disallowed? The Secretary should clarify this point; otherwise, we dare not take photos when we stroll along the streets in future.*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Mrs Regina IP for her supplementary question. In reply to Mr LAU Kong-wah's supplementary question earlier, I said that generally speaking, the public can take photos in public places so long as they do not affect other people.

I have talked about the issue on copyright because we have to protect the exclusive rights of copyright owners under the Copyright Ordinance. There are exemptions under the Copyright Ordinance for acts of reproduction, such as photo-taking. Let us take photo-taking as an example; one of the exemptions under section 40 of the Copyright Ordinance is that copyright in a work is not infringed by its incidental inclusion in a photograph taken. Hence, this exemption has struck a balance between the rights of copyright owners and the freedom of photo-taking.

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

MRS REGINA IP (in Cantonese): *Yes. The Secretary has explained the Copyright Ordinance, but*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MRS REGINA IP (in Cantonese): *Does he mean to say that, under the Copyright Ordinance, D&G or other stores have the right to assume that we are infringing their rights in taking photos, and thus photo-taking is not allowed?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I have stated very clearly that, under section 40 of the existing Ordinance, the incidental inclusion of a copyright work in a photograph; for example, the inclusion of a copyright work next to a friend for whom we took a photo, is exempted under section 40 of the Copyright Ordinance.

MR PAUL TSE (in Cantonese): *President, any responsible government or any capable government will not allow certain incidents to drag on for weeks. I am afraid this is not an isolated incident because there are many reports that the management staff of these famous brand stores frequently drive people away and reporters have also complained that they have been driven away. I am very disappointed at the Secretary's reply because he has just read out the exact wordings in his main reply and told us what the Government has accomplished.*

Mr CHIM Pui-chung has just raised a very good question: Which government department is in control of the overall situation? Which department should assume responsibility? We spend \$500 million to \$600 million a year on promoting our tourism industry but a single incident can "ruin" the whole tourism industry. What has the Government done in this connection? If no department will assume responsibility, which person should be responsible for handling this incident?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I have stated very clearly in my main reply that this is an isolated incident that reflects one of the values of Hong Kong people, that is, we respect freedom of speech so long as people express their views rationally. I am not sure if Mr Paul TSE wants to say that the Government should disallow people's expression of views and it should exert certain control.

Within the legal framework, we orderly and fully encourage people to express their views without affecting other people, and I do not think this will have any impact on tourism. Of course, there should be mutual understanding between the Government and the public, and we should handle each incident in a rational and respectful manner.

MR PAUL TSE (in Cantonese): *We simply ask the Secretary to make a statement.*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR PAUL TSE (in Cantonese): *At an appropriate time, the Secretary should step forward and say, "This has nothing to do with copyright and we cannot accept such acts". That will be enough. Yet, the Government cannot dodge and say nothing. I would like to tell the Secretary, in that case, the police would not be needed to stop the demonstrations and riots.*

PRESIDENT (in Cantonese): Mr TSE, it is unsuitable to start a debate.

MR PAUL TSE (in Cantonese): *President, in my supplementary question, I ask if any person is in charge of the overall situation and handle these issues. Or, should we just sit still and wait helplessly whenever such incidents have happened? If so, should we improve the monitoring authorities of the tourism industry?*

PRESIDENT (in Cantonese): Which government department or official should be responsible for handling this incident? Secretary, do you have anything to add?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, regarding this incident, I have just said that Mr Paul TSE

has jumbled together the three levels today, that is, speech, civic awareness and the tourism industry, and I have already answered the part on the tourism industry.

PRESIDENT (in Cantonese): The follow-up question of this Member concerns which government department or official should handle this incident of forbidding people to take photos.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, if disallowing photo-taking involves civil issues such as copyright, this is certainly a civil issue. The police are certainly responsible for handling the incident if it leads to a conflict. We will determine which department should assume responsibility in light of the circumstances.

PRESIDENT (in Cantonese): We have spent 21 minutes on this question. Last supplementary question.

MR FREDERICK FUNG (in Cantonese): *President, the Secretary's answer is so ambiguous. Using my privilege as a Legislative Council Member, I would like to criticize D&G for not allowing people to take photos, leading to one or two thousand people surrounding the shop to take photos I assume that this is the "roaring response" of the public. Can the Government remain indifferent and do nothing, and allow the public to impose pressure on the company to issue a statement of apology today? Can the Government be so indifferent?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, if the public think that this incident has infringed upon their freedom of expression or freedom to take photos, they can make a civil claim for compensation. President, concerning this incident, people have the room to express their views, they can express their views through their actions. We respect their actions.

MR FREDERICK FUNG (in Cantonese): *President, the Secretary has not answered my supplementary question. My question is, in the event of such incidents, can we only get fair treatment by relying on public pressure?*

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

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

PRESIDENT (in Cantonese): Second question.

Electoral Legitimacy of Former Mainland Officials in Hong Kong

2. **MR KAM NAI-WAI** (in Cantonese): *President, it has been learnt that some people who had worked in the party apparatus on the Mainland have successfully been re-elected or elected as members of the Fourth Term District Council, and some members of the public suspect that they are members of the Communist Party of China (CPC). Since the reunification of Hong Kong, Mainland officials are required to obtain "Exit-entry Permit for Travelling to and from Hong Kong and Macau for Official Purposes" (the Permit) if they are posted to work in Hong Kong in their official capacity. In 2002, the Legislative Council passed the Immigration (Amendment) Bill 2001 to exclude those Mainland officials from being treated as ordinarily resident in Hong Kong during the period for which they worked in Hong Kong in their official capacity. In this connection, will the Government inform this Council:*

- (a) *if it has assessed whether these people, who worked in the party apparatus on the Mainland and are suspected to be members of the CPC, have become members of the second governing team in Hong Kong after being elected into the councils, and whether such a situation causes interference in Hong Kong's internal affairs and damage to the principles of "one country, two systems", "a high degree of autonomy" and "Hong Kong People ruling Hong Kong"; if it has assessed, of the details; if it has not, the reasons for that;*

- (b) *in view of the principles of "one country, two systems", "a high degree of autonomy" and "Hong Kong People ruling Hong Kong", whether it will consider requiring any Hong Kong permanent resident who is a member of the CPC to disclose to the electorate his/her affiliation with political parties when standing in the elections in various councils and of the Chief Executive, including whether he/she is a member of the CPC; if it will, of the details; if not, the reasons for that; and*
- (c) *of the numbers of Mainland officials staying in Hong Kong with the Permit and the respective numbers of those Mainland officials holding such document who worked in the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (HKSAR), the Office of the Commissioner of the Ministry of Foreign Affairs in Hong Kong and the People's Liberation Army Hong Kong Garrison in each year from the date of unification of Hong Kong to 31 December of last year, together with a table setting out such information; whether it has assessed and discussed with the Central Authorities if the confidence in "one country, two systems", "a high degree of autonomy" and "Hong Kong People ruling Hong Kong" among members of the public will be undermined when such officials apply through other means to become Hong Kong permanent residents after returning to the Mainland; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, our reply to the three parts of Mr KAM Nai-wai's question is as follows:

- (a) Since the establishment of the HKSAR, the Central Government has been acting strictly in accordance with the fundamental policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" and the provisions of the Basic Law, and supporting the HKSAR Government in administering Hong Kong in accordance with the law, with a view to maintaining the prosperity and stability of Hong Kong.

As regards the elections of the Legislative Council and District Councils (DCs), section 37 of the Legislative Council Ordinance (Cap. 542) and section 20(1) of the District Councils Ordinance (Cap. 547) provide that a person is qualified to be nominated as a candidate for a Legislative Council or DC election only if, *inter alia*, the person is a permanent resident of the HKSAR. All Legislative Council and DC elections have been conducted strictly in accordance with the relevant law and regulations, and all candidates must meet the relevant statutory requirements.

- (b) At present, the candidates for the Legislative Council or DC elections are given an option as to whether to fill in their political affiliations on the nomination forms and the Introduction to Candidates published by the Registration and Electoral Office. In addition, the Particulars Relating to Candidates on Ballot Papers (Legislative Council and District Councils) Regulation (Cap. 541M) provides that candidates may request the Electoral Affairs Commission to print particulars relating to them on ballot papers, including the registered emblem and name (or abbreviation) of a prescribed political body or a prescribed non-political body, or the registered emblem of a prescribed person and/or the words "Independent Candidate" or "Non-affiliated Candidate".

There is no requirement in the relevant law that candidates must disclose their political affiliations on the Introduction to Candidates or ballot papers.

As regards the Chief Executive election, under the current law, candidates are not required to disclose their political affiliations. However, section 31 of the Chief Executive Election Ordinance (Cap. 569) stipulates that a person who has been declared as elected at a Chief Executive election must make a statutory declaration to the effect that he or she is not a member of any political party.

We believe the current practice is appropriate and the government of the current term has no plan to introduce any change to the relevant requirements. We would continue to ensure that all public elections

are conducted in an open, fair and honest manner in accordance with the law.

- (c) In the past three years (that is, 2009 to 2011), the number of first arrivals holding "Chinese Travel Permit" were 8 579, 7 259 and 7 432 respectively. The figures do not include members of the Hong Kong Garrison of the Chinese People's Liberation Army. The Immigration Department does not maintain categorized statistics on the number of holders of "Chinese Travel Permit" working in the Liaison Office of the Central People's Government in the HKSAR, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR or Chinese enterprises which have been set up in Hong Kong with the approval of the Mainland authorities.

The Immigration Department processes applications for verification of eligibility for permanent identity card in accordance with the requirements under the Immigration Ordinance (Cap. 115). Under section 2(4)(a)(ix) of the Ordinance, a person shall not be treated as ordinarily resident in Hong Kong during any period in which he remains in Hong Kong as a holder of a prescribed Central People's Government travel document (that is, a travel permit issued by the Central People's Government printed with the title "因公往来香港澳门特别行政区通行证" on its cover and bears an endorsement stating that "持证人系国家公职人员，受委派在香港、澳门特别行政区工作".) As a result, the aforesaid persons do not satisfy the requirements of Hong Kong Permanent Resident as set out in section 2(b) of Schedule 1 of the Ordinance.

MR KAM NAI-WAI (in Cantonese): *President, Hong Kong people eagerly hope that the Central Government will follow the principles of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", and the last thing that Hong Kong people would wish to see is "Beijing people ruling Hong Kong".*

According to the data provided by the Secretary just now, more than 7 000 people holding such permit came to Hong Kong in each of the past few years.

On this basis, more than 100 000 people have come to Hong Kong with such official visas since reunification. May I ask if the Government has compiled any statistics on the number of such permit holders who have applied to become Hong Kong permanent residents through other means upon returning to the Mainland? This is because our gravest concern is, as in the case of District Council member Jackson WONG Chun-ping cited by me earlier, being the former deputy division chief of the publicity and education division of the Liaison Office of the Central People's Government in the HKSAR, he had used such a capacity to run and subsequently win the District Council election. Although the President considers his election complies with the law and is no big deal, we are deeply concerned that he would act in this capacity. I wish to ask whether the Government has discussed with the Central Government on restricting former liaison office officials from meddling in Hong Kong affairs, so as to uphold the principles of "Hong Kong people ruling Hong Kong" and "a high degree of autonomy"?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I will try to respond to the issues raised by Mr KAM Nai-wai in his supplementary question one by one. Firstly, the Immigration Department has not compiled statistical figures on the number of officials staying in Hong Kong and the figures mentioned in the main reply earlier were just the number of first arrivals. As far as we understand, the abovementioned figures mostly confine to people who work in Chinese enterprises set up in Hong Kong with the approval of the Mainland authorities, or people engaging in temporary cultural and sports exchanges or performing arts. The abovementioned figures recorded over the past three years mainly belong to this category. This is the first issue raised in the supplementary question.

Secondly, regarding the eligibility criteria of the District Council elections, I would like to inform Mr KAM Nai-wai, as I have highlighted in the main reply, relevant election laws provide that a person is qualified to be nominated as a candidate if, *inter alia*, the person is a permanent resident of the HKSAR. Therefore, any person who is a permanent resident meets the relevant criteria of the election laws and is absolutely qualified to run in the election. In fact, according to Article 26 of the Basic Law, which I believe Mr KAM must be very familiar with, "Permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with law." Similarly, Article 25

also provides that "All Hong Kong residents shall be equal before the law." Therefore, either the Electoral Affairs Commission or the Administration will treat a person who is eligible under the existing election laws on equal footing.

Thirdly, if I did not hear or remember wrongly, Mr KAM has cast doubt on candidates who are ex-government officials. Similar to my earlier reply, so long as the person concerned meets the eligibility criteria required of a candidate and an Electoral Officer also reckons his/her eligibility, he/she will be accepted as a candidate. Regardless of whether the person or other eligible candidates contesting in the same election wins in the end, it means he/she has won the ballots of members of the public. In other words, whoever wins in the election reflects the voting will of local electors. I believe this is attributable to the efficient election system which Hong Kong has practiced for years.

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

MR KAM NAI-WAI (in Cantonese): *President, I ask in my supplementary question if the Government has discussed with the Central Government on the restriction of former liaison office officials from meddling in Hong Kong affairs in other capacities. Has the Secretary ever engaged in such discussions with the relevant authorities?*

PRESIDENT (in Cantonese): In fact, the Secretary has already answered. Secretary, do you have anything to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, you are right. I believe I have already given a pretty comprehensive reply in this regard just now.

MR CHAN KAM-LAM (in Cantonese): *President, the fact that WONG Chun-ping was elected a District Council member has been blown up to state that he is a member of the second governing team in Hong Kong. This is indeed too*

exaggerating and is nothing but a mean and dirty political trick. WONG Chun-ping did not stand for election in his capacity as a former liaison office official, which he had departed for many years. Rather, he has beaten his rival from the Democratic Party in a glorious battle with his years of services in the district. Mud-slinging using dirty tactics should not be encouraged.

President, Article 67 of the Basic Law stipulates that "The Legislative Council of the Hong Kong Special Administrative Region shall be composed of Chinese citizens who are permanent residents of the Region with no right of abode in any foreign country. However, permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region". The proportion of such members is as high as 20%. At present, there are also Members who are Hong Kong permanent residents not of Chinese nationality
.....

PRESIDENT (in Cantonese): Mr CHAN, please raise your supplementary question.

MR CHAN KAM-LAM (in Cantonese): *I wish to ask the Secretary, according to the wordings of Mr Kam Nai-wai's main question, WONG Chun-ping is not a Chinese; yet, WONG Chun-ping is not only a Chinese, but also a Hong Kong permanent resident, he is therefore fully eligible to run in any council elections,*

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

MR CHAN KAM-LAM (in Cantonese): *but the Basic Law provides that Hong Kong permanent residents not of Chinese nationality can run in the elections and the proportion is as high as 20%. Hence, I wish to know if there is a need for a review given that Hong Kong has reunified with the Motherland for more than a decade. Will the Secretary explore the need to review Article 67 with the Central Government?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): I thank Mr CHAN Kam-lam for his supplementary question. Mr CHAN has given a correct statement of Article 67, highlighting the requirements that Legislative Council Members must have permanent residency, and the proportion of permanent residents who are not of Chinese nationality or who have the right of abode in foreign countries should not exceed 20% of the total number of seats in the Legislative Council.

Actually, the HKSAR Government has previously issued two consultation documents on constitutional development to consult the general public on this provision. If I remember correctly, the two consultation exercises and the findings showed that the majority of Hong Kong people still consider Hong Kong a metropolis, and considering that the constitutional system was designed based on Hong Kong's actual situation in a gradual and orderly manner, thus there is no need to immediately amend the relevant provision at this stage. This is the view obtained from our public consultation exercises and I believe the majority view still remains the same as the findings mentioned by me earlier.

MR ALBERT HO (in Cantonese): *President, the sincere remarks made by Mr CHAN Kam-lam really impressed me, though it also thrilled us while we were listening.*

President, my supplementary question is as follows: Does the Government agree that allowing members from political parties outside Hong Kong to run in local elections will undermine the principles of "a high degree of autonomy" and "one country, two systems", especially when they are Communist Party members from the Mainland? If it agrees, is it necessary to provide for the mandatory disclosure of any affiliations with political organizations outside Hong Kong in the election regulations? I certainly consider it necessary to provide for the mandatory disclosure of affiliations with local political organizations.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Mr Albert HO for his supplementary question. As I have explained earlier in the main reply, there is no such mandatory

requirement in the existing law. The existing provision is merely an enabling provision of a supplementary or enabling nature, meaning that if any candidate running in the Legislative Council or District Council election wish to indicate his/her political affiliations on the Introduction to Candidates or ballot papers, he/she may request to do so. I believe when the legislation was enacted back then, the relevant arrangement was made on the basis of the philosophy and principle of promoting further democratic development, as well as laying the good foundation for the gradual development of party politics.

In the past few years, many publicly spirited individuals with political background or affiliations have already made disclosure in this regard, and electors also agreed that this facilitate their voting decisions. However, if we move further to require mandatory disclosure as Mr Albert HO has suggested, the issues or considerations involved will become more complicated. The introduction of a mandatory provision might necessitate a more comprehensive consideration of the provisions and monitoring in respect of political affiliations or background. Subsequently, we can decide whether or not to implement the mandatory provisions, which include the request for the Government to review or consider the enactment of political party law, as some people have suggested previously. As there are divergent views on this pretty complicated issue, I believe careful consideration should be made.

As I have pointed out in the main reply, we believe the current practice of reporting political affiliations to electors on a voluntary basis have promoted and therefore laid a good foundation for the development of elections towards democracy and party politics over the past few years. After building a good foundation, we must then exercise extra caution in considering whether it is necessary to further introduce mandatory provisions.

MR ALBERT HO (in Cantonese): *President,*

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

MR ALBERT HO (in Cantonese): *He has not answered the most important part of my supplementary question and has completely evaded*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

MR ALBERT HO (in Cantonese): *My supplementary question is: From the standpoint of the Government, will the permission of people having affiliations with political parties outside Hong Kong, especially Communist Party members, to stand for local elections undermine the implementation of the "one country, two systems" and "a high degree of autonomy" principles?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I do not have the relevant information on hand. However, as far as I can recall, political party laws of overseas countries also have provisions requiring political parties to disclose affiliations or connections with overseas political parties or countries. It is believed that consideration should be made by looking at the macro situation. As I have just said, in the case of Hong Kong, it is believed that electors should be able to make informed decisions under the existing laws.

MR WONG KWOK-KIN (in Cantonese): *President, if I remember correctly, it is now January 2012. However, the earlier speeches have brought the entire Council back to the 1950s when McCarthyism dominated the United States Congress and sent it into an anti-Communist period of "white terror". Honestly speaking, I strongly agree with one point raised by Mr CHAN Kam-lam in his earlier speech, and that is, why some people acted so indifferently to the fact that 20% of Members are of foreign nationalities, but reacted so strongly to the election of an ex-Chinese official as a mere District Council member? May I ask if there is any provision in the existing law prohibiting Mainland government officials from standing for elections or joining the HKSAR Government as civil servants?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, Mr WONG Kwok-kin asked about joining the HKSAR Government as civil servants, right? Articles 99 to 104 in section 6 under Chapter IV of the Basic Law have provided for the appointment of HKSAR's principal and other officials as well as public officers. After the reunification, the HKSAR Government has all along acted in accordance with the Basic Law, and therefore the 100 000-odd civil servants (including principal officials) in the HKSAR Government are currently employed and appointed in accordance with the Basic Law.

MR WONG KWOK-KIN (in Cantonese): *It seems that the Secretary has not answered if ex-Chinese government officials can join the HKSAR Government as civil servants. Can the Secretary give a clear response?*

PRESIDENT (in Cantonese): Secretary, can you answer in the affirmative or negative?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, according to Article 99 of the Basic Law, "Public servants serving in all government departments of the Hong Kong Special Administrative Region must be permanent residents of the Region." This is one of the provisions. Article 101 highlights that, the HKSAR Government "may employ British and other foreign nationals previously serving in the public service in Hong Kong, or those holding permanent identity cards of the Region, to serve as public servants in government departments at all levels". And yet, they are not allowed to fill certain posts, which "must be filled by only Chinese citizens among permanent residents of the Region with no right of abode in any foreign country". This has been clearly provided in Article 101. As I have just pointed out, the authorities have appointed public officials in accordance with the Basic Law as well as the terms and conditions for appointing civil servants.

PRESIDENT (in Cantonese): This Council has spent more than 22 minutes and 30 seconds on this question. Third question.

Management Agreement Scheme and Public-private Partnership Pilot Scheme

3. **MR CHEUNG HOK-MING** (in Cantonese): *President, the authorities have already implemented the New Nature Conservation Policy (NNCP) for more than seven years, and only the projects at two sites of conservation value (that is, Fung Yuen and Long Valley respectively) have been included under the Management Agreement (MA) Scheme so far; and there has not been any case of successful application for the Public-private Partnership (PPP) Pilot Scheme. In this connection, will the Government inform this Council:*

- (a) of the latest progress of the projects implemented in respect of the 12 priority sites of conservation value under the MA Scheme and the PPP Pilot Scheme;*
- (b) as I have learnt that the Advisory Council on the Environment (ACE) has earlier indicated its support for the Sha Lo Tung project in Tai Po and the Fung Lok Wai development project in Yuen Long under the PPP Pilot Scheme, yet so far there has not been any progress in implementing such projects, of the reasons for that; and*
- (c) whether it has reviewed and assessed the effectiveness of the implementation of the MA Scheme and the PPP Pilot Scheme at present; and whether there are other new measures for implementing the aforesaid two schemes effectively, so as to respond to the demand of the community for conserving the 12 sites of high ecological value?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, thanks to Mr CHEUNG Hok-ming for the question.

In 2004, the Government announced the NNCP to regulate, protect and manage natural resources that are important for the conservation of biological diversity of Hong Kong in a sustainable manner, taking into account social and economic considerations and for the benefit and enjoyment of the present and future generations of the community. Under the NNCP, we aim at identifying practicable ways to better achieve the nature conservation objectives, in

particular, to enhance conservation of ecologically important sites which are under private ownership while respecting the landowners' property right. A total of 12 priority sites of high ecological importance for enhanced conservation (the priority sites) had therefore been identified. Two new measures were proposed for the conservation of these ecologically important sites under the NNCP, namely the PPP and MA schemes, with a view to encouraging the participation of the landowners, non-governmental organizations (NGOs) and private sectors on nature conservation through providing financial incentives under these two schemes. My replies to Mr CHEUNG's question are as follow:

- (a) For part (a) of the question, under the MA scheme, funding support would be provided under the Environment and Conservation Fund (ECF) to enable competent NGOs to enter into MAs with landowners of the priority sites for enhancing conservation. Out of the 12 priority sites, three MA projects have been carried out at four priority sites, including the Long Valley Priority Site by the Conservancy Association (CA) and the Hong Kong Bird Watching Society (HKBWS); Fung Yuen Priority Site by the Tai Po Environmental Association (TPEA); and the Ramsar Site and Deep Bay Wetlands outside Ramsar Site Priority Sites by the HKBWS. Up till today, the total funding support amounts to some \$26 million. Through ECF's support, these NGOs have entered into MAs with landowners or tenants to enhance conservation of the private lands within these priority sites through co-operation.

Since their implementation in late 2005, the MA projects at both Fung Yuen and Long Valley have produced encouraging results. There has been an increase in the number and diversity of butterflies at Fung Yuen. The total number of butterfly species at the site increased from 162 in 2005 to over 210 in 2011, covering about 90% of the butterfly species in Hong Kong. At Long Valley, the total number of bird species increased from 221 in 2005 to 275 in 2011, covering over half of the bird species in Hong Kong. In addition to the direct benefits to biodiversity, the MA projects also raised the public and local communities' awareness on nature conservation. For instance, with funding support from the ECF, the CA entered into MAs with local farmers in Long Valley for planting conservation-friendly crops. This enabled the farmers to continue

their farming activities and at the same time participate in conservation. The CA also assisted the farmers in exploring more sales outlets to enhance the sales of the produce. As for the MA project at Fung Yuen, the public and local communities gained more understanding and awareness of nature conservation through various public activities organized by the TPEA. In light of the merits of the scheme, the ECF supported the continuation of these two MA projects.

Besides, in November 2011, the ECF committee endorsed the funding application submitted by the HKBWS for implementing a new MA project at the Ramsar Site and Deep Bay Wetlands outside Ramsar Site Priority Sites to enhance the conservation value of fishponds at the two priority sites through MAs between the HKBWS and the fishermen at Northwest New Territories to promote traditional fish pond operation that would favour the foraging of birds. This pilot project, which will last about one year, is now ongoing.

As with the latest progress of the projects under the PPP Pilot Scheme, it is provided in my reply to part (b) of the question.

- (b) For part (b) of Mr CHEUNG's question, under the PPP scheme, developments of an agreed scale and plan would be allowed at the ecologically less sensitive portions of the 12 priority sites provided that the developer undertakes to conserve and manage the rest of the site that is ecologically more sensitive on a long-term basis. This scheme not only encourages the participation of private sectors and NGOs in nature conservation, but also balances development and conservation.

We have received a total of six applications to carry out PPP project at the 12 priority sites. In 2008, after deliberation the ACE supported the Sha Lo Tung PPP project. The project proponent proposed to set up an Ecological Reserve of over 50 hectares at the Sha Lo Tung valley to conserve the biodiversity there. On the other hand, a columbarium and related facilities of about 5 hectares would be set up at the ecologically less sensitive portion of the Sha Lo

Tung valley. Since this is a designated project under the Environmental Impact Assessment Ordinance (EIAO), the project proponent submitted the environmental impact assessment (EIA) report on 30 December 2010. Unfortunately, in view of the earlier judicial review relating to the EIAO of the Hong Kong-Zhuhai-Macao Bridge (HKZMB), the project proponent withdrew the report on 16 May 2011. Now that the judicial review on the HKZMB has been concluded, it is understood that the project proponent will resubmit the EIA report to the ACE shortly. The project proponent will also apply to the Town Planning Board on land use matters.

The Government also received a development proposal at Fung Lok Wai, which lies within one of the 12 priority sites. The project proponent proposed the development of a low-density private residential of about 4 hectares, while dedicating about 70 hectares of the site for conservation through setting up a Wetland Nature Reserve. The EIA report was endorsed by the ACE in November 2009. The project proponent submitted an application for planning permission to the Town Planning Board on 19 August 2011. The application is being considered by the authority.

- (c) For part (c) of the question, we found that the MA projects have produced encouraging results both in terms of enhancing the conservation value of the sites and promoting public awareness on nature conservation. I would like to thank the participating organizations and local residents for their co-operation. We will continue the liaison with different NGOs and relevant communities and encourage them to participate in the conservation of suitable sites through MA projects. For the PPP scheme, in view of the requirements on conservation, planning and development, and the need to keep a balance between these aspects, relevant project submission and deliberation would take a longer time.

President, with reference to latest progress, we reviewed the effectiveness of the MA and PPP schemes and made various enhancements last year. Firstly, to enhance the conservation of land which has ecological or aesthetic value, but has yet to be

included into country parks, ECF has agreed to extend the scope of the MA scheme to cover private land in country park enclaves and within country parks. To ensure the sustainability of the pledged conservation programmes under PPP, the project proponent would be required to donate upfront to the ECF a lump sum sufficient to generate recurrent incomes to support the pledged conservation programmes, and to identify competent bodies as their conservation agents to manage the ecologically sensitive portion of the concerned sites. The above injection arrangements will be applicable to the Sha Lo Tung project and Fung Lok Wai project, and we have required the concerned project proponents to consider the above. We believe these arrangements will help take forward the pilot PPP projects. Based on the experience gained from the Sha Lo Tung and Fung Lok Wai projects, we will carry out timely review on the effectiveness of the PPP scheme.

Apart from the above two schemes, the Government have implemented the NNCP, in particular, to protect sites of ecological importance through various conservation measures, including designating country parks, special areas, marine parks, coastal protection areas and conservation areas; formulating and carrying out conservation action plans for species and habitats of conservation importance; and regulating developments at sites of high ecological value through the EIAO so as to respond to the aspiration of the community for conservation.

MR CHEUNG HOK-MING (in Cantonese): *President, as mentioned by the Secretary, the relevant schemes were introduced in 2004. At that time, the Government indicated that the schemes would be implemented for two years. But now, they have already been implemented for seven years.*

In his main reply just now, the Secretary went to great lengths to underpin the success of the schemes. The two schemes are essentially two components of the NNCP, and judging from the Secretary's reply just now, the MA scheme is a success. But I consider the PPP scheme a failure as no progress has been made so far. I think it is a pity that the Government has not conducted any review on this scheme after seven years.

President, the Secretary indicated in the past paragraph of the main reply that the Government would continue to adopt these two schemes to implement the NNCP, including the designation of country parks, special areas, marine parks, coastal protection areas and conservation areas.

President, my question to the Secretary is: given the unsatisfactory result of the scheme in the first seven years of its implementation, how can he ensure support from landowners or persons affected for the scheme as he said in the last paragraph of the main reply?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I agree with Mr CHEUNG Hok-ming that of the two complementary schemes under the NNCP, MA projects are relatively easy to be activated as one-off grant is provided to fund direct co-operation between relevant organizations and local residents. On the other hand, PPP scheme would involve issues about land titles and how to ensure sustainable operation of the proposed conservation programmes. We can see that certain progress has been made after the 12 priority sites were identified. In the past, two projects have been taken forward to a detailed stage involving EIA and planning permission application. I call on Mr CHEUNG's understanding that while the process is by no means easy, it is still a step forward.

For one project, while we originally anticipated earlier implementation as the EIA report had been completed, unfortunately, the report had to be withdrawn and resubmitted as a result of a court case. Hence, the vetting and approval process has taken a longer time. In this connection, we cannot say that the scheme produces no result; instead, we should examine ways to ensure its better implementation. Therefore, as I have just said in the main reply, we have introduced various enhancements to the scheme after review. For instance, in order to ensure the long-term sustainability of the relevant conservation programmes, the ECF will take up an intermediary role in the management of up-front donations. In time, we will review the effectiveness of this arrangement. We hope that we can review the situation while carrying on with the work. Of course, we will also make reference to the views expressed by various parties, in particular, the views of Heung Yee Kuk and rural committees in respect of land in the New Territories, so that the scheme can work better.

MR CHAN HAK-KAN (in Cantonese): *President, when it comes to deal with the conflicts between development and conservation, the challenge is not unique to the Environment Bureau; the Development Bureau also faces the same problem. If we compare the work of these two bureaux, we can see that the Environment Bureau is somewhat indecisive in carrying out the work in this respect, while on the other hand, the Development Bureau has resolved many conflicts between development and conservation, such as the case of King Yin Lei, through employing special measures to tackle special problems. Nonetheless, the approach of employing special measures to tackle special problems is not a policy. In fact, Mr CHEUNG Hok-ming and I, as well as the Democratic Alliance for the Betterment and Progress of Hong Kong and many persons in the community have suggested to the authorities that reference be made to the model of the United Kingdom to establish a charitable nature conservation fund with the objective of acquiring and operating places and buildings with conservation value. I would like to ask the Secretary whether consideration will be given to implementing this proposal which is greatly supported in the community, and how he can further achieve the balance between development and conservation?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Thanks to Mr CHAN Hak-kan for the question. Mr CHAN's question touches on two issues, namely whether the approach of land acquisition should be adopted for conservation, and whether a fund should be established to consolidate resources from the Government as well as in the community to undertake this initiative. Regarding the first issue relating to land acquisition by the Government, we have said previously that the Government has no policy to acquire land solely for the purpose of conservation. Instead, we have adopted a series of measures as outlined in the main reply to undertake nature conservation through the town planning process, designation of country parks, and so on. As I said previously, the transfer of land title does not necessarily mean conservation. As we can see from this scheme, conservation can only proceed with participation from various parties, and the transfer of land title is not necessarily the solution. That is what makes conservation work so difficult.

Regarding the second issue brought up by Mr CHAN, that is, whether a fund should be established to undertake conservation initiatives, this is exactly the function performed by the present ECF because the fund is designed to co-opt

resources outside the Government. In the past, funds have been provided by persons and organizations outside the Government for various conservation initiatives. Besides, as I mentioned in the main reply, we hope that this fund can take up the role of managing conservation resources because some programmes may last more than six months, one year or even longer as these programmes may require sustainable operation for years once the conservation framework is formulated. As we have no way to guarantee the perpetual existence of landowners or managers, the ECF will act as a buffer for a lump sum will be deposited with the fund first. Afterwards, the programmes can maintain continued operation through designated organizations or qualified persons. I think this arrangement is in line with the approach just mentioned by Mr CHAN Hak-kan to undertake conservation work through a fund.

MS AUDREY EU (in Cantonese): *President, as I sit here, I hear the Secretary mention the HKZMB twice, and he said the judicial review had delayed the entire EIA process. I do not know whether the Secretary has read the relevant information, because as explained in the detailed papers submitted by the Development Bureau, all the works under the HKZMB project are in progress throughout the process, even in the course of the judicial review. Nonetheless, I have this question for the Secretary. He announced yesterday that the new Air Quality Objectives (AQOs) would only be implemented in 2014, but in the interim, many EIA studies would have to be conducted against the old and obsolete AQOs, why can he not implement the new AQOs as soon as possible? In particular, the new AQOs were first proposed two years ago, but the Government has all along been reluctant to put them into operation. Moreover, according to the legal opinion of the Legislative Council, no legislative process is required and the AQOs can be updated after gazettal by the Government. Why has the Government not implemented the new AQOs as soon as possible, with the result that all EIA studies must still be conducted against the old and obsolete AQOs?*

PRESIDENT (in Cantonese): Ms EU, what is the relationship between your supplementary question and the main question?

MS AUDREY EU (in Cantonese): *President, my question is definitely related to the main question because the Secretary has mentioned twice the legal case and EIA in his replies. Therefore, I am telling the Secretary that he may not know that according to papers submitted by the Development Bureau, the legal case has no impact on the HKZMB project. Instead, I am asking him that in respect of EIA, why should these studies still be conducted against the obsolete AQOs? The issue has been mentioned twice in his reply.*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, regarding the first part of the question, as stated in the main reply, a proponent who originally intended to undertake a PPP project had indeed withdrawn the EIA report during the deliberation stage after the Court of First Instance made its ruling. I am merely stating the facts which have been clearly reflected in the main reply.

Regarding the second part of Ms Audrey EU's question, I think it is unrelated to the PPP scheme. However, it is of course an important issue, and I will be happy to answer any questions when it is discussed by the relevant Panel in future. However, regarding Ms EU's question, Members can refer to papers we submitted to the Legislative Council previously, or my explanation to the press in the past two days. I do not want to spend time now to respond to this question.

PRESIDENT (in Cantonese): Fourth question.

Concession of Government Rent

4. **MR CHAN KAM-LAM** (in Cantonese): *President, in recent years, some minority owners have often reflected to me that they have to pay rates and Government rent each year at 5% and 3% respectively of the rateable value of their properties, and that while rates concessions were given by the Government in the past five financial years, Government rent concession has never been offered. In respect of alleviating the financial burden of minority owners, will the Government inform this Council:*

- (a) *in each of the past three financial years, of the respective numbers of private residential units and non-residential units which were required to pay Government rent and the respective total amounts of Government rent collected by the authorities from these two categories of units; of the respective numbers of private residential units and non-residential units which were required to pay Government rent at 3% of the rateable value to be adjusted from time to time and the respective total amounts of Government rent collected by the authorities from these two categories of units; of the respective numbers of private residential units and non-residential units which were required to pay Government rent at an amount of more than \$4,800 and the respective total amounts of Government rent collected by the authorities from these two categories of units;*
- (b) *whether it has studied injecting funds into the accounts of the residential units which are required to pay Government rent, or implementing other measures to alleviate the burden of payment of Government rent on members of the public; if it has, of its conclusions and justifications; and*
- (c) *given that the Executive Council decided on 15 July 1997 that the lessees of residential land leases newly approved thereafter would be required to pay Government rent each year at 3% of the rateable value, and that the subsequent amount of Government rent would be adjusted in step with subsequent changes in the rateable value, whether the Government plans to review this arrangement, and in drawing up the conditions of newly approved residential land leases, allow the lessees not to pay Government rent, or to pay a nominal amount of Government rent only; if not, of the reasons for that?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, private land in Hong Kong is normally held from the Government by way of a lease (known as a "land lease"). Under the lease, the lessee (more commonly known as the "owner" of the lot) is required to pay Government rent to the Government in return for the right to hold and occupy the land during the term (that is, duration of the tenancy) specified in the lease document. Moreover, the liability to pay Government rent is governed by legislation such as the Government Leases Ordinance (Cap. 40) and the Government Rent (Assessment and Collection) Ordinance (Cap. 515).

Under leases granted by the Government, all property owners have the obligation to pay Government rent. At present, Government rent can be broadly classified into two types, namely Government rent payable in an amount stipulated in the leases and Government rent payable at 3% of the rateable value of the property. Depending on the applicable Ordinances and provisions in the leases, Government rent is collected by the Rating and Valuation Department (RVD) and the Lands Department (LandsD).

My answers to the three parts of the question are set out below. Replies from the Development Bureau to parts (a) and (c) of the question have been incorporated.

- (a) Statistics on Government rent collected by the RVD under the Government Rent (Assessment and Collection) Ordinance (Cap. 515) are at Annex 1. Statistics on Government rent collected by the LandsD in accordance with the amount stipulated under the leases or at 3% of the rateable value of the property are at Annex 2.
- (b) According to Article 121 of the Basic Law, for all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047 (including all land leases in the New Territories and Kowloon north of Boundary Street), the lessee is not required to pay an additional premium as from 1 July 1997, but an annual rent equivalent to 3% of the rateable value of the property, adjusted in step with any changes in the rateable value thereafter, shall be charged.

As the Basic Law has stipulated the obligation to pay Government rent for the abovementioned leases, we have studied the matter in detail and have sought legal advice. To uphold the requirement as enshrined in the Basic Law, the Government is not able to provide any form of concession on Government rent for the relevant leases (including injection of funds into the Government rent accounts or refunding Government rent paid).

Indeed, based on RVD's records, about 1.6 million tenements are currently required to pay Government rent. Of these tenements,

only around 15 600 tenements are merely required to pay Government rent but not rates. Hence, the overwhelming majority payers of Government rent have already benefited from the rates concessions in the past few years.

When formulating the 2012-2013 Budget, the Financial Secretary will continue to consider various measures to relieve the economic pressure of the public at large in the light of the social and economic outlook as well as the Government's fiscal position.

- (c) For new leases granted as from 1 July 1997, the lessees are required to pay an annual Government rent equivalent to 3% of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. The objective of this policy is to ensure consistency in the treatment of leases granted as from 1 July 1997 and those granted before 1 July 1997. As such, the Administration has no intention to review the arrangement.

Annex 1

Statistics on Government rent collected by the RVD⁽¹⁾

		<i>2009-2010</i>	<i>2010-2011</i>	<i>2011-2012⁽²⁾</i>
Private Domestic Premises ⁽³⁾	Number of tenements	1 364 000	1 378 000	1 382 000
	Rent payable (\$ million)	2,867	3,064	3,554
Non-domestic Premises	Number of tenements	222 000	224 000	225 000
	Rent payable (\$ million)	2,830	2,931	3,154

Notes:

- (1) The table contains statistics on Government rent collected by the RVD at 3% of the rateable value according to the Government Rent (Assessment and Collection) Ordinance (Cap. 515).
- (2) Estimated figures as 2011-2012 has yet to expire.
- (3) Excluding public domestic premises.

Statistics on Government rent collected by the RVD
at an amount of more than \$4,800 per year⁽¹⁾

		2009-2010	2010-2011	2011-2012 ⁽²⁾
Private Domestic Premises ⁽³⁾	Number of tenements	78 000	87 000	119 000
	Rent payable (\$ million)	784	842	1,120
Non-domestic Premises	Number of tenements	65 000	68 000	74 000
	Rent payable (\$ million)	2,544	2,641	2,864

Notes:

- (1) The table contains statistics on Government rent collected by the RVD at 3% of the rateable value according to the Government Rent (Assessment and Collection) Ordinance (Cap. 515).
- (2) Estimated figures as 2011-2012 has yet to expire.
- (3) Excluding public domestic premises.

Annex 2

Statistics on Government rent collected by the LandsD⁽¹⁾
(Including premises with Government rent charged at 3% of the rateable value)

	2009-2010 (as at 31.3.2010)	2010-2011 (as at 31.3.2011)	2011-2012 (as at 31.12.2011)
Number of accounts	256 655	259 685	260 011
Rent payable (\$ million)	640	659	660

Statistics on Government rent collected by the LandsD and
charged at 3% of the rateable value

	2009-2010 (as at 31.3.2010)	2010-2011 (as at 31.3.2011)	2011-2012 (as at 31.12.2011)
Number of accounts	197 599	200 872	201 194
Rent payable (\$ million)	637	656	657

Statistics on Government rent collected by the LandsD⁽¹⁾
at an amount of more than \$4,800 per year

	2009-2010 (as at 31.3.2010)	2010-2011 (as at 31.3.2011)	2011-2012 (as at 31.12.2011)
Number of accounts	27 852	28 627	28 635
Rent payable (\$ million)	408	423	423

Note:

- (1) The above statistics have not included those accounts which are exempted under the Government Rent (Assessment and Collection) Ordinance (Cap. 515) from the payment of Government rent equivalent to 3% of the rateable value of the property, and which are as a result paying the previous Government rent.

MR CHAN KAM-LAM (in Cantonese): *President, according to part (b) of the Secretary's main reply, Hong Kong people or owners are required to pay Government rent mainly for land granted before 30 June 1997, and by paying Government rent, these owners are not required to pay an additional premium as from 1 July 1997. We understand that this is stipulated under the Basic Law. However, for land granted after 1997, which is brought by owners at land value in cash, the Government still requires those owners to pay Government rent. It is obviously charging double land premium. President, may I ask the Secretary whether this policy contravenes the Basic Law, or exceeds the scope of the Basic Law and whether the portion of additional land premium charged exceeds the amount that should be borne by the public? Will the Government review this issue?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *President, I would like to stress that Government rent, irrespective of the amount, is the rent owners must pay in return for the right of occupying and using the leased land. Regarding the leases granted after 1 July 1997, as I have explained in the main reply, the arrangement seeks to ensure consistency in the treatment of such leases and those granted before 1 July 1997. Hence, based on this principle, we have no intention to amend the arrangement for Government rent.*

MR CHEUNG HOK-MING (in Cantonese): *President, in part (b) of the Secretary's reply, it is mentioned that the lessee is not required to pay an additional premium as from 1 July 1997. Secretary, according to my understanding, back then, the arrangement for charging Government rent instead of additional land premium for land in the New Territories was made out of the concern that the requirement to pay additional land premium after 1 July 1997 would involve a colossal sum which the public in general could not afford. As such, an alternative arrangement was made to set the Government rent at 3% of the rateable value. We may recall that the rent in 1980s was extremely cheap, yet it has increased several times by now. The point at issue is whether the 3% Government rent is affordable to the public. At present, will the Government consider lowering the 3% rate so that it can be well afforded by the public? Secretary, you may see that the 3% and 5% charged will add up to 8%, which is an enormous amount. Will the Government conduct a review?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): *President, there are indeed many categories of Government rent, and as I mentioned in the main reply, different categories of Government rent are involved. Apart from that mentioned by the Member, according to the Government Leases Ordinance (Cap. 40), there are certain Government leases of specified lease period, where the lease is granted with a specified renewable period. Upon the expiry of the lease, the lease will be regarded as renewed and new arrangement for Government rent will be adopted, where new Government rent will be charged at 3% of the rateable value of the property. Hence, in respect of Government rent, certain arrangements may vary at different times but some are consistent. In this connection, I believe it reflects that consistency in policy is required. Hence, we do not consider a review in this respect necessary.*

MR CHEUNG HOK-MING (in Cantonese): *President, the Secretary has not responded directly*

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

MR CHEUNG HOK-MING (in Cantonese): *whether the Government will consider reviewing the 3% rate.*

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I think consistency is an essential consideration in handling the arrangement for Government rent, so the Government does not consider it necessary to review the arrangement.

MR CHAN KAM-LAM (in Cantonese): *President, in part (c) of the reply, the Secretary said that a requirement was included in new leases, requiring lessees to pay Government rent equivalent to 3% of the rateable value. When the land is put up for sale, it is sold at market value by the Government, yet the Government charges Government rent as a form of additional premium. May I ask the Government whether the arrangement is unfair to the lessees of new leases? Since the practice adopted by the Government in this respect does not involve the stipulation of the Basic Law, will it change the policy? Since the Government can decide on its own in this respect, why the Government is unwilling to do so?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have stated in the main reply that all owners in Hong Kong have to pay Government rent, yet the amount of Government rent may vary according to the time the leases are signed. Though the Government rent for certain leases signed at an earlier time had been set at a fixed amount, it will be adjusted at the time of renewal to 3% of the rateable value. Hence, the point at issue is not the amount of Government rent charged, for it is stipulated under the laws of Hong Kong that owners are required to pay rent in return for the right to use and lease the leased land. As this requirement is included in the existing laws, we do not consider that there is a need for review under this circumstance.

PRESIDENT (in Cantonese): Mr CHAN, do you want to raise a follow-up question?

MR CHAN KAM-LAM (in Cantonese): *President, may I ask the Secretary to provide us with the information on whether the Government rent for all previously and newly granted land leases is set at 3% of the rateable value, or is there any other arrangement?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I will give a brief reply. The arrangement for Government rent is not standardized. For certain leases granted at an earlier time, the arrangement for Government rent was specified in the lease at the time they were granted. We have provided the data in Annexes 1 and 2, setting out the statistics on Government rents charged at 3% of the rateable value, as well as other statistics on whether Government rent is charged according to rateable value.

PRESIDENT (in Cantonese): Fifth question.

Academic Freedom in Hong Kong

5. **MR FRED LI** (in Cantonese): *President, it has recently been reported in the press that some academics are worried that academic freedom in Hong Kong is being sorely tested. On 28 December last year, the Public Opinion Programme (POP) at the University of Hong Kong released the results of a survey on Hong Kong people's ethnic identity, which showed that people's identification with "Hong Kong citizens" had reached a 10-year high while that of "Chinese citizens" had dropped to a 12-year low. At a tea gathering with television media held on 29 December last year, the Director-General of the Department of Publicity, Culture and Sports Affairs of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) criticized that the aforesaid survey was conducted in an "unscientific" and "illogical" manner. After the official has made such remarks, certain Hong Kong newspapers immediately echoed and published a number of articles for several consecutive days, criticizing the purpose of the aforesaid survey, the words and deeds of the Director of POP, and commenting that the online election of the Chief Executive by all Hong Kong people, which is being organized by him to be held on 23 March this year (that is, two days before the polling date for the election of the new term Chief Executive by the Election Committee), of*

"challenging the constitutional arrangements of Hong Kong". In this connection, will the Government inform this Council:

- (a) whether it has assessed if the LOCPG official making the aforesaid remarks is interfering in Hong Kong's internal affairs; if it has assessed, of the details; if it has not, the reasons for that;*
- (b) whether any measure is in place to ensure that academic freedom in Hong Kong is free from political interference; if so, of the details; if not, the reasons for that; and*
- (c) whether it has assessed if the online election of the Chief Executive by all Hong Kong people, which is being planned and organized by POP, poses "a challenge to the constitutional arrangements of Hong Kong"; if it has assessed, of the details; if it has not, the reasons for that?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, our reply to the three-part question raised by Mr Fred LI is as follows:

- (a) Since the establishment of the Hong Kong Special Administrative Region (HKSAR), the Central Government has been acting strictly in accordance with the fundamental policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" and the provisions of the Basic Law and supporting the HKSAR Government in administering Hong Kong in accordance with the law, with a view to maintaining the prosperity and stability of Hong Kong.

Freedom of speech and freedom of expression are Hong Kong's core values protected by Article 27 of the Basic Law and the Hong Kong Bill of Rights Ordinance. Hong Kong is a free, pluralistic and open society. Anyone can give opinions on various matters and the HKSAR Government fully respects the freedom of opinion of every individual.

- (b) According to Article 34 of the Basic Law, Hong Kong residents shall have freedom to engage in academic research, and so on. Moreover, Article 137 of the Basic Law states that educational institutions of all kinds may retain their autonomy and enjoy academic freedom.

Academic freedom is an important social value treasured by Hong Kong. The HKSAR Government has been striving to uphold academic freedom and maintain a free academic environment in strict accordance with the Basic Law so that academics can conduct academic activities, such as research and survey, uninhibited.

- (c) The Chief Executive Election to be held on 25 March this year will be conducted in strict accordance with the Basic Law and the Chief Executive Election Ordinance (Cap. 569), and other requirements and regulations. Other so-called Chief Executive Election activities conducted by individual institution or organization are not part of the aforesaid statutory process.

MR FRED LI (in Cantonese): *President, part (a) of the Secretary's main reply reads, "Anyone can give opinions on various matters". The Secretary thought that he has answered my question. In other words, he thinks it is acceptable for the LOCPG officials to make comments because they are the "anyone". I guess this is the logic adopted by the Secretary in answering my question. As he is unwilling to directly answer my question, I have no choice but make this interpretation.*

My question for the Secretary is as follows: being one of the "anyone" in Hong Kong, does he echo Mr HAO Tie-chuan's view that the survey conducted by Mr Robert CHUNG is "unscientific" and "illogical"? May I ask the Secretary for his view on the incident?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Mr Fred LI for his supplementary question. Mr Fred LI asked in part (b) of the main question whether the Administration has any measure in place to ensure that academic freedom in Hong Kong is free from

political interference. I wish to say that, as a public officer of the HKSAR Government, I will not comment on any academic research conducted by academic institutions in Hong Kong. This is the long-standing stance and policy that we have adopted. The reason is precisely what Mr Fred LI has aspired, that is, the Administration strives to uphold the principle that academic freedom in Hong Kong is not subject to any political interference. Given that Mr Fred LI's supplementary question has referred to a particular academic research, I will refrain from commenting on it due to the long-standing stance of public officers.

MR FRED LI (in Cantonese): *President, I am not asking him about his stance as a "public officer". You have heard me clearly that I ask him a question in relation to the part on "anyone" in part (a) of his main reply, hoping that he can share his view as an "anyone" in society. I ask him whether he considers the survey "unscientific" and "not objective".*

PRESIDENT (in Cantonese): Member has to understand that the Secretary attends this meeting to answer Members' questions in his capacity as public officer of the Government.

MR FRED LI (in Cantonese): *Is he not an individual?*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I can answer his last question, and that is, I am an individual. However, as the President has just explained, I attend this meeting in my capacity as Secretary for Constitutional and Mainland Affairs. This is in line with the Rules of Procedure. Just now, I also answered Mr Fred LI's question in that capacity. As a public officer, I will not comment on academic researches conducted by any academic institutions.

MR WONG TING-KWONG (in Cantonese): *President, my ancestral hometown is in Dongguan of Guangdong Province. I was born in Hong Kong and my nationality is China. May I ask the Secretary whether I am a Hong Kong citizen or a Chinese citizen? In fact, the three descriptions which I have just used define who I am. The survey, which has time and again raised the question of whether we identify ourselves as Hong Kong citizens or Chinese citizens, is either inane or ignorant. I even suspect whether he has any ulterior motive*

PRESIDENT (in Cantonese): Mr WONG, please raise your supplementary question.

MR WONG TING-KWONG (in Cantonese): *..... Hong Kong has returned to China for 15 years. It is now a special administrative region of the People's Republic of China, and the colonial era is now part of history. The past colonial governors have framed a concept in Hong Kong people that they do not belong to any country, nor do they have any passion for their nation. To my surprise, today, this concept is still being wantonly preached*

PRESIDENT (in Cantonese): Mr WONG, please raise your supplementary question.

MR WONG TING-KWONG (in Cantonese): *May I now ask, as descendants of the ancient Chinese emperors, can we not criticize these issues? Are these academic surveys untouchable like a tiger's buttock? Can such surveys, conducted under the name of an academic research, ignore logics, disregard reasons and need not have any definitions? Will the Secretary please answer my question?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Mr WONG for his supplementary question. As I have just said in the main reply, Hong Kong is a cosmopolitan which is free, pluralistic and open. Our Basic Law protects freedom of speech, freedom of expression as well as freedom to engage in academic research.

I am aware that the community or the media have published various views and commentary articles on a wide range of subjects, including academic researches or other issues, and this rightly manifests Hong Kong's core values: anyone who complies with the basic legal requirements can freely and fully express their views. I believe this is the most precious value of Hong Kong. As a public officer of the HKSAR Government, I will continue to strive to safeguard all these forms of freedom. In particular, I will ensure that the freedom provided under the Basic Law will continue to be safeguarded.

DR MARGARET NG (in Cantonese): *President, the Secretary has just clearly replied that academic freedom and freedom of speech are the foundation of Hong Kong people's confidence. They are very important.*

I believe the Secretary also remembers that a few years ago Dr Robert CHUNG was severely criticized by certain people because of a survey he conducted, and that the storm over the Hong Kong Institute of Education due to criticism of a public officer aroused much concern. Investigations were conducted over the two incidents, which have dealt a great blow to the confidence of Hong Kong people. Now, Dr Robert CHUNG's survey has again come under attack, but apart from Dr CHUNG, Professor Ming SING who has written many political analyses and commentaries has also come under attack by certain newspapers.

President, Mr HAO Tie-chuan, just like the Secretary, is an official, not anybody. His remarks can trigger a confidence crisis among the people of Hong Kong. May I ask the Secretary: in order to safeguard Hong Kong people's confidence in academic freedom and freedom of speech, has he liaised with Mr HAO Tie-chuan or the LOCPG to draw their attention to the fact that their remarks will have an impact on society? Does the Secretary agree that they have already made such an impact?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Dr Margaret NG for her supplementary question. I will reply in two points. First, on behalf of the HKSAR Government and as a public officer of the HKSAR Government, I only wish to reiterate our long-standing stance that we will only draw reference from the results of

academic researches conducted by academic institutions in Hong Kong, and we will not comment on them. This is our past, present as well as future stance. With respect to comments made by people of other institutions, I believe it is more appropriate for the people concerned to explain or elaborate their views.

Coming back to the example of Dr Robert CHUNG, he has conducted many surveys on different subjects over the years, including opinion polls and head-counts of the number of participants in rallies. I am aware that exchanges on his different areas of work have been made at academic level. The precious asset of Hong Kong is that people are free to express and exchange different views academically. However, as I have just said, as a public officer of the HKSAR Government, I will not comment on academic researches and their results. We will only draw reference from them but will not make any comments.

DR MARGARET NG (in Cantonese): *President, the Secretary has not answered my supplementary question. As pointed out just now, Mr HAO is not an ordinary citizen, nor is he a nobody. He is an official with a special status. Hence, in my supplementary question, I ask the Secretary if he has noticed that Mr HAO's remarks will undermine our confidence? And, has the Secretary liaised with the LOCPG on this matter?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, Dr Margaret NG has specifically asked a supplementary question on this academic research and its results as well as the ensuing discussion in society. In this connection, the Constitutional and Mainland Affairs Bureau has not communicated or discussed with the LOCPG about the related incidents.*

MS EMILY LAU (in Cantonese): *President, the Central Government must exercise self-restraint in terms of free speech and freedom of expression in order to successfully implement the policies of "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong" because Central Government officials are not common folks, and if they quibble over every matter in the HKSAR During his visit to Hong Kong last year, WANG*

Guang-ya, the Director of the Hong Kong and Macao Affairs Office, made a lot of comments concerning many Hong Kong affairs. Indeed, his words are like a stone which has triggered numerous ripples in society. The frequent comments of Mainland officials on affairs in the HKSAR will lead to the building up of two power centres. In reply to our question at the Panel meeting on Constitutional Affairs this Monday, the Administration said that there would not be two power centres, adding that the Chief Executive-elect would not form another power centre, not to mention Central Government officials. Thus, my question for the Secretary is as follows: should the HKSAR Government remind the Central Government again that the latter should not quibble over the internal affairs of the HKSAR, or influence their officials publicly or privately, or force them to do certain things?

I believe the President is also aware that many people in the business sector are now saying that "Western District is controlling Central". Thus, may I ask the Secretary, by saying that anyone can give opinions, whether he encourages the LOCPG officials or officers of the People's Liberation Army and the Office of the Commissioner of the Ministry of Foreign Affairs in the HKSAR to publicly express their views every day? If so, will the Secretary and his colleagues' authority in administering the HKSAR be undermined?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Ms Emily LAU for her supplementary question. As I have reiterated in the main reply, since the reunification, the Central Government and all its offices in the HKSAR have been acting in strict accordance with the policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy". Everyone (whether they are officials, Members or members of the public) in Hong Kong has to act in accordance with the Basic Law and the related ordinances. As long as they comply with the provisions of the Basic Law and the related ordinances, their freedom of speech, freedom of expression as well as academic freedom shall be fully protected. In saying that everyone is entitled to freedom of speech, based on my personal experience as the Director of Bureau, I sometimes have to be cautious with my words and deeds when I act in my capacity as a public officer of the HKSAR Government under certain circumstances or most of the circumstances. I take this as my motto.

MS EMILY LAU (in Cantonese): *President, the Secretary has not answered the part of the question on whether Central Government officials' quibbling over Hong Kong affairs has dealt a blow to the policies of "one country, two systems", "a high degree of autonomy" and "Hong Kong people ruling Hong Kong".*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): *President, based on my contacts with officials at different levels, I can say that national leaders hold fast to policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", as mentioned by me, as well as the provisions of the Basic Law. They act in strict accordance with these requirements. In this regard, I believe the Central Government will continue to scrupulously abide by the principles and fundamental policies in this regard.*

MR IP KWOK-HIM (in Cantonese): *President, I hold that the implementation of the policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy" also hinges on the support of the Central Government. Only under such a circumstance can "one country, two systems" and "Hong Kong people ruling Hong Kong" be fully implemented.*

As mentioned by the Secretary just now, academic freedom and freedom of speech of every individual are safeguarded in Hong Kong. These forms of freedom, which are enshrined in the Bill of Rights and the Basic Law, are the core values of Hong Kong. I would like to raise a question in relation to some Members' remarks just now about the quibbling of Mainland officials, so to speak. In response to the criticisms or comments made by our national leaders earlier that Hong Kong had to deal with some deep-rooted conflicts, many Members in this Chamber, who have just lashed out at the subject of the question, said at that time that the Government should expeditiously identify the problems, and no Members, as far as I know, said that the above comment was an interference in the internal affairs of Hong Kong. However, in response to the criticism made publicly by the Director-General of the Department of Publicity, Culture and Sports Affairs of the LOCPG who has commented an incident as "illogical", which is an expression of his personal view, Members regarded the criticism as an interference, particularly an interference in Hong Kong's internal

affairs. This obviously reflects that Members, who hold such double standards, have been led by their political orientation or political values. May I ask the Secretary how the HKSAR Government will assess, handle and interpret freedom of expression or freedom of opinion of individuals versus interference in Hong Kong's internal affairs?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Mr IP Kwok-him for his supplementary question. I can only answer from a general point of view as I believe Mr IP's question is also raised from a general point of view.

In respect of the administration of Hong Kong, the very foundation of the HKSAR Government is certainly the Basic Law which constitutes part of "one country, two systems". In the Basic Law, we can find sections detailing the application of "a high degree of autonomy". For instance, in some of my past positions, I had to attend negotiations at the World Trade Organization (WTO) as the representative of Hong Kong, China. At that time, our country was not yet a member of the WTO. This is one of the examples showing that the Basic Law has conferred an extensive scope and power of "a high degree of autonomy" to the HKSAR Government.

Members may have noticed that in some discussions a few years ago, particularly those concerning constitutional development, the Central Government (especially the Standing Committee of the National People's Congress) has exercised its constitutional power conferred by the Basic Law. In this regard, they have given their opinions on this constitutional power and responsibility or authority; and some motions were even passed in the year before last to hammer out the constitutional development of Hong Kong. Hence, in handling different affairs, we must take into consideration their nature and the policy purview to which they belong.

Many affairs are under our own purview. While the HKSAR Government may certainly have the full power and responsibility to administer Hong Kong affairs, it has to discuss with the Central Government in handling some affairs. For instance, the HKSAR Government must discuss with the Central ministries on matters relating to integration with the Mainland, no matter it is about CEPA or offshore Reminbi centre. Moreover, in the event when Central Authorities

need to execute their constitutional power, they may have to take up greater role in handling certain matters, such as the constitutional affairs which I have just mentioned. Hence, we cannot over generalize a situation and we must look into the level or the nature of the affair concerned. Nevertheless, the overriding principle is that we must act in accordance with the Basic Law and the well-established policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

MR LEE CHEUK-YAN (in Cantonese): *President, I do not know why Mr WONG Ting-kwong has treated Hong Kong people's identification with Hong Kong citizens as if it is a heinous crime. People's ethnic identity is something coming from the heart, as in the case that Mr WONG Ting-kwong has identified himself as a native to Guangdong Province. However, I think the Secretary is too eager to "lick the boots" of the Central Government, saying right at the beginning in his reply that the Central Government has acted strictly according to the fundamental policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy", and further adding that everyone can enjoy freedom of speech. By saying so, the Secretary has made his reply feeble, showing that he is totally ignorant of the fact that the HKSAR Government has to defend "one country, two systems" and "a high degree of autonomy". If this is the case, Mr HAO Tie-chuan or the LOCPG can say anything they want. They can freely interfere in all internal affairs in Hong Kong Not only academic freedom*

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

MR LEE CHEUK-YAN (in Cantonese): *..... He can comment on anything we have discussed today. Here is my question. Has the HKSAR Government handed over its responsibility to defend "one country, two systems"? Does the HKSAR Government dare to request the Central Government not to make any comments to interfere in Hong Kong's internal affairs, as a principle mentioned by the HKSAR Government? Does the Secretary think that he has such a responsibility? Does he admit that he should request the LOCPG to do so?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I thank Mr LEE Cheuk-yan for his supplementary question. I will not repeat what I have said in the main reply, but I will reiterate one point, that is, the HKSAR Government (particularly the Chief Executive) is responsible for executing the Basic Law. We all along strive to uphold the provisions in the Basic Law, including the protection of the rights just mentioned. We have done so in the years past. Regarding the incident in discussion today, particularly concerning academic freedom, I have made myself clear just now the stance of the HKSAR Government. First, we will do our utmost to protect such freedom; and second, as a public officer of the HKSAR Government, I will draw reference from these academic researches and their results, but I will not comment on them. I believe I have made my stance clear.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary has not answered my supplementary question. He only said what he would not do. I asked him whether he would bring the incident to the attention of the Central Government or Central Authorities such as the LOCPG. He has not answered whether he will do so.*

PRESIDENT (in Cantonese): Secretary, will you liaise with the LOCPG?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I believe the provisions of the Basic Law are also applicable to Central Authorities in Hong Kong. I believe these authorities are well aware of the constitutional arrangements in this regard.

PRESIDENT (in Cantonese): This Council has used 22 minutes 30 seconds on this question. Last question seeking an oral reply.

Land Supply in Hong Kong

6. **MR FREDERICK FUNG** (in Cantonese): *President, in response to my question on anti-property speculation measures earlier, the authorities stressed*

that they would maintain their efforts in combating short-term speculative activities to ensure the healthy and stable development of the property market, and that in the long run, they would increase land supply to tackle the housing issue. However, according to the fourth-quarter Land Sale Programme of this financial year announced earlier, the Government has only selected five residential sites and one commercial site from the Application List for sale by tender, and the five residential sites will only supply a total of about 430 flats, representing a substantial reduction of 75% when compared with the 1 770 flats supplied in the previous quarter. Although the authorities explained that the annual target of supply had already been met, some academics consider that increasing land supply is the long-term policy to stabilize the property market, and land supply should not be reduced even if the annual target of supply has been met. In this connection, will the Government inform this Council:

- (a) of the factors considered by the authorities and their justifications for deciding whether land sales should be initiated by way of tender or public auction; whether in the past the authorities have studied and compared the differences between the two ways, including conducting analyses on the transaction prices, market response and effectiveness, and so on; if they have, of the results;*
- (b) in deciding on the fourth-quarter Land Sale Programme of this financial year, whether the authorities have considered the factor that a drop in property prices may be triggered by economic slowdown in the future; whether they have assessed if the substantial reduction in the number of flats which may be built on the residential sites supplied by the Government will convey a wrong message to the market and the public, causing them to suspect that the Government is boosting the market or its determination to combat property speculation is shaken; how the authorities will respond to such market and public conjecture; whether the authorities will make clear their determination to increase land supply in the new financial year; and*
- (c) whether it has assessed how the increasing risk of external economic recession and the influence of property-related industries will affect the Government's short-term and medium-term policy on land*

supply; if it has, of the results; whether the authorities will thus suspend or adjust the measures on combating property speculation, ensuring transparency in the property market and preventing excessive expansion in mortgage lending, and whether the long-term policy of tackling the housing issue by ways of expanding land resources and increasing land supply will also be affected?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, just as the Government reiterated in its reply to Mr Frederick FUNG's written question on 21 December 2011, the Government has been monitoring developments in the private residential property market closely and remains vigilant on the risks of a property bubble. Since 2010, the Government has been responding to the situation through the introduction of long, medium and short-term measures in four areas, including increasing land supply, combating speculative activities, ensuring the transparency of property transactions, and preventing excessive expansion in mortgage lending, with a view to ensuring the healthy and stable development of the property market. Mr FUNG's question raised today targets at the area of land supply.

Since 2010, we have fine-tuned the measures of selling Government land by taking the initiative to sell land through public auction or tender. Starting from 2011, while retaining the Application List System, the Government has been selling land in a proactive manner and announcing Land Sale Programmes in advance on a quarterly basis to increase housing land supply. In the current financial year up to 13 January 2012, a total of 21 residential sites that could provide about 6 300 flats in total have been sold. Of them, only one small site was successfully triggered by developer and the remaining sites were initiated for sale by the Government. In the remainder of the current financial year, there are one residential site in Tuen Mun being tendered and five residential sites announced for sale in the fourth quarter which could provide an addition of about 1 500 flats. Furthermore, through West Rail property development projects at Nam Cheong Station and Tsuen Wan West Station TW5, redevelopment projects of the Urban Renewal Authority (URA), projects subject to lease modification/land exchange, and private redevelopment projects not subject to lease modification/land exchange, the private residential flats that could be provided by the total land supply is estimated to have exceeded 20 000, meeting

the working target that in the next 10 years on average land needs to be made available annually for some 20 000 private residential flats as mentioned by the Chief Executive in his 2010-2011 Policy Address.

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

However, I must point out that the working target of making land available annually for some 20 000 private residential flats on average in the next 10 years refers to the housing land that could be supplied to the market for private residential developments within a certain time frame. It is not a target of private residential flat production. The actual supply of housing land supply will depend on market factors, such as the results of Government land sales, tenders of railway property development projects and the URA's redevelopment projects, as well as developers' initiative to modify leases and redevelop projects, and so on.

My reply to the three parts of Mr FUNG's question is as follows:

- (a) All along, the Government normally sells land through open tender or public auction. When deciding on the appropriate means of land sale, the Government considers relevant factors such as market conditions, characteristics of individual sites and land sale conditions, and so on. However, whether by way of tender or auction, both are fair, just and competitive means of land sale. In fact, sites for railway property development projects and the URA's redevelopment projects adopt the means of tender.

All sites differ in location, size, surrounding environment, land sale conditions and market attractiveness, and so on, and they are sold by way of either public auction or public tender. Under such circumstances, the Government is unable to do meaningful studies on and analyses of individual sale sites to compare the differences between the two sale means in respect of the transaction prices and market responses, and so on, of the sites concerned.

- (b) I understand that under the arrangement of announcing quarterly Land Sale Programmes, the public will inevitably compare them and speculate just as Mr FUNG raised in the question. Since the flat supply quantity in the land sales for the fourth quarter in the current financial year is less than those for the previous three quarters, I went into length to explain the land sale arrangement to dispel the public's worries when announcing the Land Sale Programme for the fourth quarter on 21 December 2011. My speech that day is largely as follows.

First, in the first three quarters of the current financial year, the supply of housing land from different sources to the market could provide about 20 000 flats, basically meeting the working target set by the Chief Executive that on average land needs to be made available annually for some 20 000 private residential flats. On the other hand, the Financial Secretary will unveil the 2012-2013 Budget on 1 February 2012 in which he will mention the salient points of the forthcoming Land Sale Programme. I will normally, soon afterwards, announce the new annual Land Sale Programme, which will normally supersede the previous Land Sale Programme and come into effect on the day of the press conference without waiting until the commencement of the new financial year on 1 April.

Furthermore, there would be four sizeable sites for sale by tender in January and February 2012, including one Tseung Kwan O site whose tender would close in early January, one Tuen Mun site whose tender would close in early February, and the two TW5 projects at Tsuen Wan West Station whose tender would close in January. Based on these considerations, I indicated that we could have put an end to the 2011-2012 Land Sale Programme; but in order to supply land in a continual and stable manner, especially sending this clear message to the market and the public, we still decided to sell land in the fourth quarter of 2011-2012, that is, to sell five residential sites in January to March this year.

Regarding the land sale in the fourth quarter, I wish to supplement that the 2011-2012 Land Sale Programme announced in February

2011 includes, apart from the Application List, five residential sites with flat size restrictions on the Sale by Tender List. Two sites located in Tsuen Wan and Yuen Long respectively were originally intended for sale in the fourth quarter of 2011-2012 when ready, but were re-allocated for the purpose of the new Home Ownership Scheme (HOS) pursuant to the Chief Executive's Policy Address announced in October last year.

Therefore, the Government does not intentionally reduce housing land supply in the land sale arrangements for the fourth quarter of the current financial year. On the contrary, we will increase land supply in a continual and stable manner so as to ensure the healthy and stable development of the property market.

As for the 2012-2013 Land Sale Programme asked in the question, the Financial Secretary and I will announce the details next month. I am unable to disclose such information at this juncture. However, the Government's determination to increase land supply remain firm.

- (c) As I pointed out above, the Government has been monitoring developments in the private residential property market closely and remains vigilant on the risks of a property bubble. At present, such monitoring has not entailed the adjustment of our work on land supply. As for the "influence of property-related industries" mentioned by Mr FUNG, I am not clear what it is about. However, housing land supply aims to meet the community's demand for private housing and ensure the healthy and stable development of the property market.

In fact, in response to some speculative reports, the Chief Executive reiterated on 9 December 2011 that the Government would continue to combat short-term speculative activities and implement a host of other measures to ensure that the property market would remain healthy and stable. The Government would review these measures as and when necessary, but the said mechanism is not activated in the meantime.

In respect of land supply, the Chief Executive has indicated that we will continue to increase supply through different measures to meet demand. Our determination and efforts on land expansion will not be affected by economic cycles and property market fluctuations. Our aim is to ensure an annual supply of land for an average of about 40 000 residential units of various types. When demand for land declines, land development will continue. The newly developed land will be kept in the Government's land reserve and made available when appropriate. By doing so, we will be able to supply sufficient land for more than 40 000 units each year when demand rises.

MR FREDERICK FUNG (in Cantonese): *Deputy President, I would like to raise a supplementary question on three points made in the main reply. Firstly, in the first paragraph of part (c), the Secretary stated in the last two sentences that "land supply aims to meet the community's demand for private housing and ensure the healthy and stable development of the property market". This is a principle. Next, in the third paragraph of the introduction to the main reply, the Secretary stated in the last few sentences that while the Government could provide sites for the construction of 20 000 private residential flats, it could not guarantee that there would be private developers buying these sites and using them for residential developments. The third point that I would like to bring to your attention is in the fourth paragraph of part (b) of the Secretary's main reply. In the last two sentences, the Secretary said that the Government had re-allocated two sites with flat size restrictions in Yuen Long and Tsuen Wan for the purpose of the new HOS pursuant to the Chief Executive's Policy Address announced in October last year. From these three points, I have drawn the following conclusions. First, the Government has formulated its land policy based on the principle that housing demand must be met and the market must develop in a healthy and stable way. Second, there is no guarantee that developers will buy land and construct 20 000 flats. Third, some of the sites which were originally intended for sale have been re-allocated for the purpose of the HOS.*

The HOS has all along been a scheme that Hong Kong people are in need of and fight for

DEPUTY PRESIDENT (in Cantonese): Mr FUNG, please raise your supplementary question immediately.

MR FREDERICK FUNG (in Cantonese): *I am asking my supplementary question now. According to these three conclusions, Hong Kong people very much hope that the Government can maintain a sufficient supply of public rental housing (PRH) and HOS flats; and HOS flats, which are subject to household income limit, are affordable by the public.*

I would like to ask the Secretary: according to the three conclusions that I have just mentioned, in case the private market is not interested in buying the sites offered for sale by the Government, will the Government re-allocate these sites for the purpose of the HOS?

SECRETARY FOR DEVELOPMENT (in Cantonese): With regard to land supply, we will try our best, and as committed by the Chief Executive, to make land available for the construction of private residential flats, PRH units, the new HOS flats and flats under the My Home Purchase Plan (MHPP), so as to meet the demands for different types of housing. However, we must strike a balance in land supply. We cannot designate all sites available at any one time for building a particular type of housing; if so, the market will lose its equilibrium.

In response to Mr Frederick FUNG's supplementary question, land use can be changed in principle. We would try to optimize the use of land available at any one time, but if the market is obviously uninterested in some of the sites due to a change of market factors, and if the location, characteristics and other conditions of the sites are suitable for other uses, we may re-allocate these sites accordingly. Hence, land use can be changed in principle, but the decision is made on a case-by-base basis.

Why can I say boldly that land use can be changed in principle? In my main reply, I mentioned that there were two sizeable sites originally planned for private residential developments with flat size restrictions, one in Tsuen Wan and the other in Yuen Long; and in view of the Chief Executive's announcement of

the resumption of the new HOS last October, we handed the two readily available sites to the Housing Authority (HA) for the purpose of the new HOS.

Previously, at least during my term of office, there were some other examples indicating that land use can be changed. For instance, a private residential site at Lin Shing Road, Chai Wan had been on the Application List for quite a long time but had not been triggered for sale; we subsequently handed the site to the HA, and the latest information I have is that the site would be used for building PRH. Moreover, a small residential site at Hospital Road, Hong Kong Island had been handed to the Education Bureau for teaching and hostel facilities for the University of Hong Kong.

MR RONNY TONG (in Cantonese): *Deputy President, it does not matter how many sites have been put up for tender or auction by the Government, a competitive market is vital for property development. In the past, there were incidents where developers suddenly lost interest in sites generally considered to be attractive, and the Government had to withdraw the sites as no bids were received. I would like to ask the Government, apart from putting up sites for tender and auction, has it assessed if there is sufficient competition in our property market?*

Deputy President, what I am saying is that, as we all know, very often a temporary agreement or a consensus is reached among developers during land auction, and they will then join hands to push down the land price or even refuse to make any bids. I would like to ask the Government: firstly, has it conducted any investigations or studies in this area? Secondly, is there any measure to ensure that there is real competition among developers?

SECRETARY FOR DEVELOPMENT (in Cantonese): I would like to firstly respond to Mr TONG's question on whether we have looked into the said cases. According to the information available, we have not done so. We have not particularly studied the cases mentioned by him because we firmly believe in market economy. As long as land auctions are conducted in a fair, just and competitive manner, the market will be able to give a proper response. Yet, a certain market condition will be formed for different industries during different stage of urban development. This is exactly why we have to enact so many

pieces of legislation to promote economic activities and sufficient competition in our society. Mr TONG is one of the facilitators.

However, from the previous open land auctions, we have learnt that it is necessary to introduce measures for ensuring that auctions will be conducted in a fair, just and competitive manner. As mentioned in Mr FUNG's supplementary question, we tend to sell land through open tender lately. Why is it so? Perhaps it is because our professional surveyors have considered the market situation and regarded open tender as an effective way to increase competition in land sale.

Yet, the fact is, we have recently learnt that there is a tightening of credit in financing in the market. Hence, in putting up lands for sale, particularly sizeable sites involving an investment of more than \$10 billion, the interest and competitiveness of the market will be affected. This is a true fact.

MR ALBERT HO (in Cantonese): *According to the reply just given by the Secretary, in respect of land supply, what she can do now is to make land available annually for 20 000 private residential flats on average in the next 10 years. However, as she has said just now, it does not mean that the above number of flats will actually be built, as the new flat supply depends very much on market factors and development plans drawn up by developers after getting the land. Besides, the public do not think that there is sufficient competition in the market right now. The sites put up for tender or auction are often too big for small and medium developers to join in the competition.*

In view of this, will the Government consider: firstly, should sites to be triggered from the Application List or sites to be sold by tender or auction necessarily be large in size? Is it possible to divide a large site into several smaller pieces of land through comprehensive planning so as to encourage developers to join the bidding? Secondly, will the Government specify a time frame in the Conditions of Sale to require developers to complete the construction works within a specific period? In this case, contractual provisions will be made to stipulate that developers will have to pay an extra premium for late completion. This is a way to ensure competition and sufficient flat supply.

SECRETARY FOR DEVELOPMENT (in Cantonese): Regarding the second part of Mr HO's supplementary question, the answer is affirmative. At present, there is a building covenant stating the time frame for completion in all the final land leases granted for the sales of Government land, as well as for lease modifications or land exchanges concerning private developers. It is a time-limited contract. Late completion will result in penalty which can only be waived with the consent of the Director of Lands on special grounds. Therefore, you can see that we have this kind of arrangement in place.

In regard to the first part of Mr HO's supplementary question, we have not deliberately put up sizeable sites for sale. On the contrary, when I talked about or analyse our Land Sale Programmes in recent years, I often emphasized that sites of large, medium and small areas should be included. According to our internal standard, sites with an area smaller than 5 000 sq m or half a hectare will be categorized as small sites. Among the 52 private residential sites in the 2011-2012 Land Sale Programme, 21 (or 40%) of them are small sites. As for big sites, which are over one hectare in area, there are only 16 (or 31%) such sites.

The division of land is subject to certain restrictions and cannot be subdivided arbitrarily. The restrictions may include comprehensive planning or transportation arrangements. In principle, when we devise our forthcoming Land Sale Programme each year, we will pay special attention to see if there is any land suitable for subdivision so as to increase market competition.

MR FREDERICK FUNG (in Cantonese): *Deputy President, I am glad to hear that the Secretary will, in principle, consider re-allocating some of the sites which are originally intended for sale for building HOS flats on a case-by-case basis.*

The Government is now facing two kinds of pressures. One kind of pressure comes from the market, which is related to freedom of trade and may even involve investment and speculation. The other kind of pressure comes from the housing demand of the public. The implementation of the HOS can certainly relieve the pressure originated from housing demand. However, the Government has not told us its annual target in the HOS production. How long

will the production take? One year, two years, three years or four years? What is the annual production target?

As the Secretary has just said that, in principle, she will consider if it is possible to re-allocate some private residential sites for the purpose of the HOS, I would like to ask the Secretary if she has prepared for both scenarios to activate two different sets of procedures at the same time. First, activate the procedure for land auction, which has clearly been done; and second, set up a mechanism so that sites withdrawn from auction can automatically be re-allocated for the purpose of the HOS? When will she inform us of this mechanism?

SECRETARY FOR DEVELOPMENT (in Cantonese): First of all, Mr FUNG seems to think that there is no production target of the new HOS announced by the Chief Executive last year. Actually, there is a production target, and our duty is to provide land for the construction. This explains why I have stated in my main reply that we are working on land development. Land reserve will be used to make land available for an average of 40 000 residential units each year. Among these units, 20 000 of them are private residential units and 15 000 are PRH units. The remaining 5 000 units are the HOS production target. We have not counted the 5 000 units to be built under the MHPP as they are provided in one go. We have already identified most, if not all, of the required sites. In the meantime, we have given priority to the annual average production of 5 000 HOS flats in the allocation of existing land as well as land under planning.

However, Mr FUNG should understand that there is still an actual demand for private housing. If private residential sites are re-allocated for the purpose of the PRH and HOS indiscriminately, we will then fail to meet the housing needs of people whose income and assets are above the limits for PRH and HOS applications. How can we satisfy the home purchase aspirations of these families?

Therefore, Members can rest assured. As land is precious and its supply will be tight for a while, we will optimize the use of land readily available so as to meet different housing demands.

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

MR FREDERICK FUNG (in Cantonese): *My supplementary question is whether the Government will consider establishing a mechanism under which land use can be changed according to actual circumstances. If there is such a mechanism in place, will the Government announce it?*

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

SECRETARY FOR DEVELOPMENT (in Cantonese): Deputy President, according to our internal practice, the relevant permanent secretaries in the Transport and Housing Bureau and the Development Bureau are responsible for monitoring land use planning and land allocation regularly. As land is a sensitive issue, it is not appropriate for us to openly discuss particular arrangements on land supply.

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

WRITTEN ANSWERS TO QUESTIONS

Auction of Vehicle Registration Marks

7. **MR ANDREW LEUNG** (in Chinese): *President, in December last year, the Transport Department (TD) put up 280 traditional vehicle registration marks (VRMs) for sale by public auction, with most of them being sold at low prices. Moreover, the TD also auctioned quite a number of non-transferable special VRMs, with more than half of them being recalled involuntarily due to a lack of bids for them. In this connection, will the Government inform this Council:*

- (a) *of the number of public auctions of traditional VRMs held by the authorities in each of the past three years; the number of VRMs (both transferable and non-transferable ones) put up for sale at each*

auction, as well as the respective numbers of VRMs being sold and recalled at each auction;

- (b) of the cost involved and the amount payable to the Lotteries Fund for charity at each auction in the past three years; and*
- (c) how the reserve prices of special VRMs are determined, and whether adjustments will be made in response to the prevailing economic situation (including adjusting the reserve auction prices and recalling some VRMs); if not, of the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, in 2009, 2010 and 2011, the TD conducted 19, 25 and 23 auctions (a total of 67 auctions) of traditional VRMs respectively, where a total of 17 048 registration marks were put up for auction (that is, an average of about 250 marks per auction). Of the 17 048 marks, 9 070 (53%) were transferable and 7 978 (47%) were not transferable; while the numbers of sold and unsold marks were 14 185 (83%) and 2 863 (17%) respectively.

For the past three years, the average proceeds and related expenses per auction were about \$3.4 million and \$135,000 respectively; and an average of about \$73 million per year was paid into the account of the Government Lotteries Fund.

The reserve price of a special registration mark is set with reference to the auction prices of similar marks sold at recent auctions, which should have reflected the latest economic conditions. Marks put up for auction will be withdrawn if there are no bids. Such arrangements have proved effective as over 80% of the registration marks put up for auction were sold in the past three years. Taking the three auctions conducted by the TD in December last year as example, 280 registration marks were put up for auction on each occasion, of which an average of 65% were sold at prices higher than the reserve prices, and an average of only 30% of the non-transferable registration marks were withdrawn.

Class Restructuring Measures of Secondary Schools

8. **MR PAUL CHAN** (in Chinese): *President, it has been reported that, without the Education Bureau announcing in advance, a number of Anglo-Chinese secondary schools in Hong Kong were permitted to resume offering five Secondary One (S1) classes in the new school year and thus each of these schools can admit 180 S1 students, resulting in more discretionary places for such secondary schools than for those offering four S1 classes. Some parents claimed that, in the course of selecting secondary schools for their children, their planning had been affected without such knowledge. In this connection, will the Government inform this Council:*

- (a) *after launching the Voluntary Optimization of Class Structure Scheme (the Scheme) early last year, whether the authorities have published the class structures of various secondary schools for the next six years; if they have, of the details; if not, the reasons for that;*
- (b) *of the criteria based on which the authorities balance the demands for S1 places in different school nets in approving the schools concerned to opt for a general reduction of classes or switch to a "cyclic symmetrical class structure", and how they ensure that parents may receive fair treatment in a highly transparent manner as far as possible when they select schools for their children; and*
- (c) *given that some schools pointed out that switching to a "cyclic symmetrical class structure" is for striking a balance between the enrolment aspirations of students and the overall interests of the education sector, whether the authorities have assessed the situation of schools switching their choices in the next six years; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): *President, it has been the practice of the Education Bureau to approve the class structure of each school for the following school year in the light of the yearly review of the supply and demand of school places in each district, the school's actual enrolment and its future development plan, and so on. As a result, the class structure of a school may change over the years. It is therefore inappropriate to release the class*

structure of each school for the coming six years as it may cause confusion should the actual situation deviate from the planned one. Nonetheless, schools will publish their current class structure in the annual Secondary School Profiles. Besides, before the Central Allocation stage of the Secondary School Places Allocation (SSPA) System commences each year, the Education Bureau will also distribute a Secondary School List to the parents of participating students, setting out S1 places provided by each school participating in the SSPA System in the relevant school net for parents' reference in making their choices.

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

- (a) The Education Bureau launched the Scheme in 2010 to enable schools operating five S1 classes to reduce one S1 class in order to alleviate the impact on the school sector caused by the drastic decline in secondary school student population in the coming few years. Since the more the participating schools, the greater the stabilizing effect on the school sector will be, schools joining the Scheme are also welcome to adopt a cyclic symmetrical class structure (that is, reducing one S1 class every other year), other than a symmetrical class structure (that is, reducing one S1 class every year). All schools joining the Scheme are required to indicate on the application form their proposed class structure for the Education Bureau's approval. However, since the future class structure of a school may change subject to various factors outside the Scheme, such as the school's actual enrolment and its future development plan, and so on, it is inappropriate to release such information as it may cause confusion should the actual situation deviate from the planned one.
- (b) Since participation in the Scheme is voluntary, the Education Bureau will approve schools' applications according to their proposed class structure as far as possible. We understand that schools applying for the Scheme would have taken into account their own circumstances, including administrative arrangements after class reduction and the number of teachers approaching retirement, and so on, before they decided on the class structure to be adopted for class reduction. As mentioned above, it has been our practice to review and approve the class structure of each school on a yearly basis with

reference to the relevant factors. Besides, before the Central Allocation stage, the parents of students participating in the SSPA System will receive a Secondary School List which provides the number of S1 school places offered by the participating schools in the relevant school nets for them to make suitable choices.

- (c) Under the Scheme, the Education Bureau will grant approval and arrange support measures based on the class structure proposed by each participating school. As far as the Scheme is concerned, schools should not switch to another class structure once approval has been granted. In the event that a participating school later requests to change its class structure, the Education Bureau will review the situation of the school concerned and make a decision in accordance with the general practice as mentioned above. Since such a change of class structure is outside the scope of the Scheme, the support measures offered by the Scheme are not applicable to this subsequent change.

Issuance of One-way Permits to Mainland "Over-age Children" of Hong Kong Residents

9. **MR TAM YIU-CHUNG** (in Chinese): *President, under the new policy implemented from 1 April last year, Mainland "over-age children" of Hong Kong residents (namely, those children of Hong Kong residents on the Mainland, who (i) were below the age of 14 when their natural fathers or mothers, before 1 November 2001, obtained their Hong Kong identity cards; and (ii) turned 14 while awaiting approval of their applications for One-way Permits (commonly known as OWPs) and hence lost their approval status) may apply for OWPs for settlement in Hong Kong. The Mainland public security authorities indicated that they would accept such applications by phases, and the first batch of applicants would be those "over-age children" whose natural fathers or mothers are Hong Kong residents who had obtained their Hong Kong identity cards before 1980. Moreover, the Secretary for Security said that the consensus with the Mainland authorities was that such applications would be processed by making use of the accumulated unused OWP quotas. In this connection, will the Government inform this Council whether it knows:*

- (a) *the total number of applications received by the Mainland authorities since 1 April last year from "over-age children" for settlement in Hong Kong; the number of OWP applications approved so far;*
- (b) *the average time required by the Mainland authorities for vetting and approving each OWP application from "over-age children", as well as the estimated time required to finish processing all OWP applications from the aforesaid first batch of "over-age children"; and*
- (c) *when the Mainland authorities will start to receive OWP applications from other "over-age children", including those whose natural fathers or mothers are Hong Kong residents who obtained their Hong Kong identity cards in and after 1980?*

SECRETARY FOR SECURITY (in Chinese): President, pursuant to Article 22 of the Basic Law, for entry into the Hong Kong Special Administrative Region (HKSAR), people from other parts of China must apply for approval. Mainland residents who wish to settle in Hong Kong must apply for OWP from the Exit and Entry Administration Offices of the Public Security Bureau of the Mainland at the places of their household registration. The application, approval and issue of OWP fall within the remit of the Mainland authorities.

In response to the request of Hong Kong residents and their Mainland "over-age children" for reunion in Hong Kong, the Central Government decided that, starting from 1 April 2011, Mainland eligible "over-age children" of Hong Kong residents, that is, Mainland residents who were below the age of 14 when their natural fathers or mothers, on or before 1 November 2001, obtained their Hong Kong identity card and whose natural fathers or mothers still reside in Hong Kong on 1 April 2011, may apply for OWP to Hong Kong. The phased submission of applications by "over-age children" to the Mainland authorities will be scheduled chronologically according to the order in which their natural fathers or mothers obtained their Hong Kong identity cards. The Mainland authorities are accepting applications from Mainland residents whose natural fathers or mothers obtained their first Hong Kong identity cards before 1980.

Replies to the three parts of the question are as follows:

- (a) According to the information provided by the Mainland authorities, from 1 April 2011 to 31 December 2011, the authorities received 28 286 applications by "over-age children" for settling in Hong Kong, among which 5 335 OWP applications were approved.
- (b) During the assessment process, the Mainland authorities will normally interview the fathers or mothers of the applicants, and verify information, such as the date when the fathers or mothers of the applicants obtained their Hong Kong identity cards, through the Immigration Department of the HKSAR. Therefore, the assessment of applications by "over-age children" may be more time-consuming than normal OWP. On average, assessment of applications could be concluded within a few months, upon receipt of all supporting documents. The Mainland authorities are further refining the assessment procedures with a view to shortening the assessment time.
- (c) The Mainland authorities will endeavour to complete processing of the applications received in the first phase. Depending on progress, the Mainland authorities intend to accept second phase applications in the first half of this year. The Mainland authorities will announce the details later.

Arts Development Fund

10. **MR RONNY TONG** (in Chinese): *President, I have received complaints from some arts organizations, and they consider that the criteria of the Arts Development Fund (the Fund) for assessing the standards and achievements of individual arts organizations are unclear, not transparent and unfair, making it impossible for them to successfully apply for subsidies, as well as making it difficult for them to participate in international exchanges and performances as representatives of Hong Kong, and hindering the development of valuable non-governmental arts organizations. In this connection, will the Government inform this Council:*

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- (a) *in the past five years, of the total number of outbound project applications approved under the Fund; among the organizations which had been granted subsidies, the number of those engaged in Chinese music; the number of approved outbound projects for participating in international performances, as well as their performance programmes;*
- (b) *of the specific standards (for example, of the interpretation of "attaining a high level of artistic excellence or possessing a proven track record in arts", and so on) for vetting and approving cultural exchange projects under the Fund; whether the Sub-committee on Arts Development Fund (the Sub-committee) is responsible for the assessment; whether the members who are responsible for the assessment are appointed by the Government or returned through elections; if they are appointed by the Government, of the criteria for making such appointments; if they are returned through elections, of the eligibility for the elections and the timing of the elections;*
- (c) *given that "attaining a high level of artistic excellence or possessing a proven track record in arts" is currently one of the conditions for granting subsidies under the Fund, among those members who are responsible for the assessment at present, whether there are people with knowledge in assessing different arts achievements; if not, how they can make assessment with regard to arts with which they are not familiar;*
- (d) *of the respective numbers of outbound project applications which were rejected in each of the past five years, and from which kinds of arts organizations such applications had been submitted; of the reasons for rejecting their applications; whether there is any appeal mechanism at present; if not, the reasons for that, and under what conditions the arts organizations concerned can submit applications again;*
- (e) *whether the Fund has considered listing on a website information about the arts organizations which had been granted subsidies for their outbound projects in the past, as well as the details of the exchange projects in which they participated, so as to enable*

members of the public and other arts organizations to make reference to such information, and enhance the transparency of the Fund's operation; if not, of the reasons for that; and

- (f) whether it knows the number of arts organizations engaged in Cantonese music (also known as "Guangdong music") in Hong Kong; whether the Fund had granted subsidies for projects of such arts organizations in the past five years; and whether there are any other programme or measure to promote or subsidize the development of arts organizations engaged in Cantonese music; if so, of the details; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) The Fund approved grants for a total of 177 applications between 2006-2007 and 2010-2011, nine of which supported outbound projects by Chinese music groups. The approved projects were multifarious, ranging from performing arts, visual arts to multi-disciplinary arts. Apart from performances and exhibitions, there were projects which involved participation in international arts and cultural conferences.

- (b) and (c)

Applications for funding are assessed by the Sub-committee under the Advisory Committee on Arts Development (ACAD), which subsequently provides its advice to the Home Affairs Bureau.

The Sub-committee assesses the applications for funding according to the following vetting criteria, which are set out in the "Notes on Application" and uploaded onto the Home Affairs Bureau's website for reference by the public:

- (i) Individual/organization applicants must attain a high level of artistic excellence or possess a proven track record in arts;

- (ii) The organizers must be either non-local government/quasi-government organizations, or any fairly reputable and prominent non-local arts and cultural organizations. If the cultural exchange activity is not hosted by such organizations, the application will normally not be considered unless the activity is of significant importance to the arts and cultural exchange; and
- (iii) Proposed exchange projects must help promote local arts and culture outside Hong Kong as well as enhance Hong Kong's international image.

Members of the Sub-committee include veteran arts practitioners, academics engaging in arts and cultural research or teaching, experienced personnel in arts and cultural management, and representatives of the Home Affairs Bureau, the Leisure and Cultural Services Department (LCSD) and the Hong Kong Arts Development Council (HKADC). The membership list of the Sub-committee has been uploaded onto the Home Affairs Bureau's website for public information.

- (d) Between 2006-2007 and 2010-2011, a total of 61 applications were declined, as shown by year as follows:

<i>Year</i>	<i>Number of projects declined</i>
2006-2007	7
2007-2008	8
2008-2009	17
2009-2010	12
2010-2011	17
Total	61

Reasons for the unsuccessful applications included failure to meet the basic requirements, late submissions, insufficient information and subsequent failure to submit supplementary information within the specified time frame as requested by the Secretariat, failure to meet the vetting criteria, funding support had been already been given to the same applicant for a maximum of two cultural exchange

projects in the preceding 12 months, and so on. At the request of individual/organization applicants, the Sub-committee or the ACAD may examine the case information to consider whether revision to the recommendations shall be made.

- (e) The Home Affairs Bureau has uploaded the list of grantees onto its website.
- (f) Cantonese music is an important music genre in Hong Kong. It is often performed by a large number of local Chinese orchestras and ensembles, such as the Hong Kong Chinese Orchestra. Committed to the promotion of arts and culture in Hong Kong, the Home Affairs Bureau and the LCSD have attached great importance to local cultural treasures such as Chinese music, including Cantonese music, and have spared no effort in the continuous promotion of the music genres concerned. In the past five years, the Fund has granted subsidies to Chinese music groups for overseas cultural exchange to promote Cantonese music. Moreover, a Cantonese Music Series was organized by the LCSD which engaged local Chinese music groups to give concerts featuring Cantonese music as the theme. Local Chinese music groups also received support in the promotion of Cantonese music through outreach activities such as talks, concerts, exhibitions under the Department's Community Cultural Ambassador Scheme. In addition, the HKADC subsidized activities of Chinese music groups, including the promotion of Cantonese music, through various project schemes.

Investigation into Sale of First-hand Residential Properties

11. **MR LEE WING-TAT** (in Chinese): *President, after the media uncovered the unusual behaviour in the property transactions of the development project of "39 Conduit Road" in December 2009, the Government had first written to the developer of the property in March 2010 to make enquiries, and then submitted the relevant correspondences to the Legislative Council in July of the same year, and indicated that it would follow up and investigate the incident. The police had also officially stepped in immediately to investigate the cancellation of the Agreement for Sale and Purchase (ASP) of some of the first-hand units of "39*

Conduit Road", and went to the developer's head office as well as the law firm concerned to seize a batch of documents suspected to be related to the case. In this connection, will the Government inform this Council:

- (a) whether it knows how many units and which units of "39 Conduit Road" have been successfully sold to date, as well as the respective selling prices of the units sold, and the number of units the ASP of which has been cancelled and the units involved, as well as the number of these units for which only a 5% deposit was charged; the respective numbers of units for which deficiency in price has and has not been recovered, and the deficiency in price recovered;*
- (b) of the total number of times the authorities have exchanged correspondences with the developer of "39 Conduit Road" (the developer) to date, and how many correspondences have not been submitted to the Legislative Council, and how they will arrange to pass those correspondences to the Legislative Council; the progress and outcome of the follow-up actions taken and investigations conducted by the Lands Department (LandsD) and the police on the incident; whether anyone has been interviewed; if so, which people have been included; whether they have examined if there was anyone who conspired to create fraudulent property transactions;*
- (c) what follow-up investigations have been conducted so far after the police seized the documents from the developer, and which government departments are responsible for and under which legislation the investigations are conducted;*
- (d) when the authorities expect to complete the investigations, and whether they will consider releasing the interim investigation results; and*
- (e) whether the authorities have learnt any lesson from the incident, and will, under the proposed legislation to regulate the sale of first-hand residential properties, include provisions to avoid any loophole that enables developers to collude with buyers to create the illusion of transactions on the market; if so, of the provisions to be included?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Government is committed to enhancing the transparency of the sales of first-hand private residential properties, safeguarding the reasonable rights of consumers, and ensuring that consumers have access to accurate and comprehensive property information when purchasing first-hand private residential properties. The Government does not tolerate deceptive transactions and the release of misleading and incomplete information on flat sales.

Following the media reports on the exceptionally high transaction prices of individual units at "39 Conduit Road", the Government and the public were concerned about 24 of those transactions ("the 24 units or transactions of the first batch"). In this regard, the LandsD has issued a series of letters to the developer between 18 March 2010 and now, to make enquiries about the transactions concerned. The developer announced on 15 June 2010 that only four out of the 24 units of the first batch had been taken forward to completed transactions. Relevant government departments, including the police, are now investigating the case.

The Administration's reply to the five parts of the question is as follows:

- (a) As regards the transaction status of the 24 units of the first batch, according to the Land Registry (LR)'s record, as at 6 January 2012, four out of these 24 units had completed transactions (that is, the assignments were completed). The transactions of the remaining 20 units were cancelled.

The LR's record shows that in respect of the four units (out of the 24 units of the first batch) which had completed transactions, namely Units 30A, 30B, 31A and 31B, the amount of consideration was around \$124 million, \$134 million, \$126 million and \$134 million respectively.

The LR's record shows that the 20 units (out of the 24 units of the first batch) which had cancelled transactions involved Units 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, 12A, 12B, 28A, 28B, 29A, 29B, 32A, 32B, 33A, 33B, 45A (also known as 68A) and 45B (also known as 68B).

According to the developer's reply letter to the LandsD, the developer retained 5% of the transacted price of each of the 20 aforementioned cancelled transactions. The developer had not pursued recovering the deficiency in prices of the 20 cancelled transactions.

Besides, the LR's record shows that, as at 6 January 2012, apart from the 24 units of the first batch, there were three other units of "39 Conduit Road" which had completed transactions, and another three units which had cancelled transactions (that is, cancellation of the ASP has been registered). As regards the three units (not being part of the 24 units of the first batch) which had completed transactions, namely Unit 21B, 41 Duplex Unit B (also known as 61B) and 43 Duplex Unit A (also known as 66A), their amount of consideration was around \$94.5 million, \$338 million and \$361 million respectively.

The LR's record shows that the three other units (not being part of the 24 units of the first batch) which had cancelled transactions involved Units 16B, 26B and 36B. The developer retained 10% of the transacted price of each of these three cancelled transactions and reserved the right to recover the deficiency in prices of these three cancelled transactions.

- (b) Between 18 March 2010 and now, the LandsD and the developer exchanged a total of 31 letters in relation to the 24 units of the first batch. Of the 31 letters, 13 were sent by the LandsD to the developer, requesting the developer to provide information on the 24 transactions of the first batch; and the remaining 18 were replies from the developer to the LandsD.

In respect of the 20 letters exchanged (covering the period from 18 March 2010 to 5 July 2010) between the LandsD and the developer, after the developer took the initiative to pass to the Legislative Council on 5 July 2010 its reply letters to the LandsD, the Administration also passed to the Legislative Council on the same day the LandsD's letters to the developer by that time and in their entirety. Subsequently, the Administration passed to the

Legislative Council on 12 July 2010 a duplicate set of the 20 letters between the LandsD and the developer for the period from 18 March 2010 to 5 July 2010 in chronological order.

Thereafter, another 11 letters were exchanged between the LandsD and the developer between 24 August 2010 and now. Of the 11 letters, four were issued by the LandsD to the developer, and seven were issued by the developer to the LandsD. Primarily, the four letters of the LandsD made further enquiries on the 24 transactions aforementioned.

As the Administration had emphasized when it passed to the Legislative Council in July 2010 the letters between the LandsD and the developer, and reiterated at the Legislative Council meeting on 26 January 2011, under normal circumstances, the Administration will not disclose information relating to a case which is under investigation by the law-enforcement agencies, lest such disclosure will adversely affect and prejudice ongoing investigations or undermine any future actions that the Administration may take upon completion of the investigations. However, the decision by the developer to take the initiative to release on 5 July 2010 its letters changed the situation by removing one of the major legal considerations, that is, the possibility of any prejudicial effect on the developer resulting from the disclosure of the correspondence between 18 March and 5 July 2010. Therefore, the Administration passed to the Legislative Council the exchange of correspondence immediately after the developer had passed its letters to the Legislative Council.

Regarding the 11 letters exchanged between the LandsD and the developer from 24 August 2010 until now, the Administration understands that the developer has not taken the initiative to disclose them. Therefore, the Administration has not disclosed the correspondence concerned in accordance with normal practice. The Administration has also ascertained the developer's position on this. The developer considers that as the case is under investigation by the police, it would be inappropriate to disclose the aforementioned 11 letters under the circumstances.

(c) and (d)

The Commercial Crime Bureau of the police is conducting a thorough investigation on the case, and is considering from various perspectives whether it involves any criminal element. It is not appropriate for the Administration to comment on details of the investigation at this stage.

- (e) To enhance the transparency and fairness of the sales arrangements of first-hand residential properties, the Transport and Housing Bureau set up a Steering Committee in October 2010 to consider issues relating to the regulation of the sales of first-hand residential properties by legislation. The Steering Committee completed its work within one year, and came up with detailed recommendations on regulating the sales of first-hand residential properties by legislation. Having considered the recommendations made by the Steering Committee, the Transport and Housing Bureau issued the public consultation document in the form of a draft legislation in November 2011 to seek views from the public on the draft legislation. The public consultation exercise will end on 28 January 2012.

The proposed legislation sets out measures to enhance the transparency of the sales arrangements and transaction information of first-hand residential properties, which include:

- (i) the vendor is required to release the price list at least three calendar days before the commencement of the sale, and sell the units according to the prices as set out in the price list. The first and subsequent price lists have to meet the prescribed minimum number of units. If the vendor would like to change the prices of the units, the vendor must revise the relevant price lists and the units can only be sold three calendar days after the revised price lists have been issued;
- (ii) the vendor should make public at least three calendar days before the commencement of the sales certain key information relating to sales arrangements, such as the date and time for

the commencement of sales, the sales venues, and the method to be used to determine the order of priority of purchasers;

- (iii) the vendor should disclose transaction information using a standardized template within 24 hours upon the signing of the Preliminary Agreement for Sale and Purchase (PASP). The vendor should also disclose information concerning the ASP on the Register within one working day after the signing of an ASP. If the ASP is not duly signed by the purchaser within three working days after the signing of the PASP, the vendor should indicate such information on the Register on the fourth working day; and
- (iv) the vendor should disclose whether a transaction involves the directors of the developer, the immediate family members of the directors or the senior staff of the developer.

The proposed legislation sets out clearly the penalties for breaches of the requirements, including misrepresentation and dissemination of false or misleading information. Depending on the nature of the offences, the maximum penalty is a fine of \$5 million and imprisonment of seven years.

The Transport and Housing Bureau will submit the draft bill into the Legislative Council in the first quarter of 2012, and will make every effort to have the legislation enacted in 2012.

Corporate Social Responsibilities of Companies Listed in Hong Kong

12. **MS EMILY LAU** (in Chinese): *President, at present, the Hong Kong Exchanges and Clearing Limited (HKEx) has not listed any requirement in respect of the discharge of corporate social responsibilities for the vetting and approval of listing applications from companies. It had been reported before the listing of a company in Hong Kong last year that the subsidiary of that company in Japan was suspected to have condoned incidents of sex discrimination and sexual harassment, and have dismissed employees unreasonably. On the other hand, the Companies Bill gazetted in January last year contains a proposed provision that a business review must include certain*

environmental, social and governance (ESG) matters (for example, environmental policies and performance, compliance with the relevant laws and regulations, and key relationships with its employees, customers and suppliers, and other matters which have a significant impact on the company), and the HKEx has also planned to issue an "ESG Reporting Guide" (the Guide). In this connection, will the executive authorities inform this Council:

- (a) of the measures the authorities have in place to promote the discharge of corporate social responsibilities (including compliance with the requirements under the international standards of the treatment of workers, women's right, human rights and environmental protection) by listed companies;*
- (b) whether they know if the HKEx regulates the discharge of corporate social responsibilities by companies listed in Hong Kong, including conducting relevant vetting of companies applying for Initial Public Offering (IPO); and if it does, of the details; if not, the reasons for that; and*
- (c) given that the HKEx has indicated that its long-term vision is to upgrade the reporting requirements under the Guide from requirements that are recommended best practices to those which "require explanation in case of non-compliance", whether they know the timetable of the HKEx for materializing this vision?*

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

- (a) The HKEx is actively taking steps to create a long-term culture for listed companies to report ESG issues. As a first step, the HKEx seeks to raise awareness and introduce the approach for such reporting among listed companies, and reason therefor. To this end, the HKEx sponsored five free half-day seminars and 10 free full-day workshops for listed companies between May and July 2011. As a next step, the HKEx seeks to equip listed companies with tools to start reporting ESG matters by uploading on its website training and reference materials on how to start reporting.

The HKEx is currently conducting a consultation on a draft ESG Reporting Guide. The Guide is intended to be a simple and easy-to-use reference for listed companies to report on ESG matters, covering Workplace Quality, Environmental Protection, Operating Practices and Community Involvement. The consultation will end on 9 April 2012.

Separately, under the Companies Bill now being examined by the Legislative Council, a new requirement is introduced for public companies and relatively large private companies to prepare an analytical and forward-looking business review as part of the directors' reports. Such review will, among others, cover a discussion on the company's environmental policies and performance, and an account of the company's key relationships with employees, customers, suppliers and others. This is conducive to the promotion of corporate social responsibility. We look forward to the early enactment of the Bill in this Legislative term.

- (b) The requirements for listed companies and IPO applicants in Hong Kong with regard to corporate social responsibilities are in general on par with the practices in other major markets. They cover ESG issues.

The Listing Rules of the Stock Exchange of Hong Kong recommend listed companies to disclose in the management discussion and analysis section of their annual reports information regarding business risks, environmental policies, policies and performance related to community, social, ethical and reputation issues, key relationships with employees, customers, suppliers and others.

For IPO applicants, according to the Companies Ordinance, the prospectus must contain information that is necessary to enable an investor to make an informed assessment of the applicant's activities and prospect. Under the Listing Rules, the prospectus must disclose whether the IPO applicant has any material breach of laws and regulations, and any ESG issues that might be material to an investor's assessment of the applicant's activities and prospects. In addition, if the IPO applicant is a mineral company, it must include in its listing document information on risks arising from

environmental, social, and health and safety issues; non-governmental organization impact on sustainability of mineral and/or exploration projects; funding plans for remediation, rehabilitation and closure and removal of facilities in a sustainable manner; environmental liabilities of its projects or properties; and any claims that may exist over the land on which exploration or mining activity is being carried out, including ancestral or native claims.

- (c) On raising the level of obligation of the Guide to "comply or explain", the HKEx will evaluate the issue after implementation of the Guide. Based on market feedback and progress, the HKEx will conduct further market consultation on the disclosure content and level of obligation.

Allowing Public to Use Clubs and Clubhouses of The Hong Kong Jockey Club

13. **MR WONG SING-CHI** (in Chinese): *President, at present, the Government has granted land to the Hong Kong Jockey Club (HKJC) under Private Recreational Leases (PRLs) to set up clubs and clubhouses, and most of these clubs and clubhouses are for members' use only and are not open to the general public. In this connection, will the Government inform this Council:*

- (a) *whether it knows the number of HKJC members at present; the numbers of clubs and clubhouses managed by the HKJC, as well as their respective areas, purposes and average number of users in each month (broken down by name of the clubs and clubhouses); which of them are set up on land granted under the aforesaid PRLs; and among such clubs and clubhouses, the ratio of those which are open to the public and those which are for HKJC members' use only;*
- (b) *whether it knows the criteria adopted by the HKJC at present for determining whether to open such clubs and clubhouses to the public; if it knows, of such criteria; whether the HKJC has any plan to open such clubs and clubhouses to the public; if it has, of the details; if not, the reasons for that; and*

- (c) *whether the authorities will discuss with the HKJC the formulation of a set of rules or guidelines and a concrete timetable, requiring the HKJC to open a certain percentage of areas in its clubs and clubhouses for use by the general public; if they will, of the details, and whether discussion will be conducted in one go when the land lease for the Sha Tin Town Lot is due to expire in the middle of this year; if not, the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President, we have explained to the Legislative Council in detail the historical basis and practical considerations in respect of the policy on PRLs. Lessees of PRLs, which are non-profit making organizations including social and welfare organizations, uniformed groups, "national sports associations" (NSAs) and district sports associations, have all made contributions to the promotion of sport and the provision of sports and recreational facilities in the past few decades.

Among the 73 PRLs, 55 have expired or will expire between November last year and December this year. These include the PRL held by the HKJC in respect of the Sha Tin Racecourse. In the past, most of the lessees have opened up their sports and recreational facilities for the use of the general public and outside bodies. We propose that, in renewing their leases, lessees should be required to open up their facilities more extensively to outside bodies, such as schools, NSAs and social and welfare organizations, so as to complement our policy objectives for sports development.

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

- (a) We understand that at present, the HKJC has a total membership of approximately 28 000, and runs three clubhouses in Hong Kong, namely the Sha Tin Clubhouse at Sha Tin Racecourse, the Happy Valley Clubhouse and the Beas River Country Club. Except for the Sha Tin Clubhouse, the other clubhouses are built on private land that is not held under PRLs.

The lot held by the HKJC in Sha Tin under a PRL has a total area of around 682 300 sq m with major facilities such as the Sha Tin Racecourse, Penfold Park and the Sha Tin Clubhouse. Built, maintained and managed by the HKJC, the Penfold Park is in the

centre of the racecourse. The landscaped area in the Park has always been open for public use free of charge, and the equestrian facilities in the Park are available to the Hong Kong Equestrian Federation and equestrian athletes for competition and training. The grandstand of the Sha Tin Racecourse is open to the public on race days and during morning trackwork hours. The facilities in the Sha Tin Clubhouse, including squash courts, a billiard room and a gym, are for the use of HKJC members and their families and guests. A total of about 560 000 visits were made to the facilities in the Clubhouse in 2011.

(b) and (c)

As mentioned above, we consider that all PRL lessees, taking account of the respective conditions of their clubs, should open up their facilities more extensively to eligible outside bodies upon lease renewal. In this regard, the Home Affairs Bureau informed all lessees (including the HKJC) in writing in August 2011 of this requirement and conducted a briefing in September to explain to PRL lessees the specific guidelines on increasing access. These include:

- (i) requiring lessees to allow use of their facilities by outside bodies for 50 hours per month or more;
- (ii) requiring lessees to give priority to outside bodies to hire certain designated sessions;
- (iii) giving outside bodies the option of booking sports facilities of lessees directly, rather than having to go through a "competent authority";
- (iv) allowing NSAs to use the facilities of lessees for training or competitions for a minimum of 10 hours per month;
- (v) the definitions of eligible outside bodies; and
- (vi) the Government's arrangements for strengthening monitoring of and publicity for the above arrangements.

We also issued a questionnaire to help lessees formulate detailed proposals for the implementation of the enhanced access requirement. In their proposals, lessees have also been asked to provide us with details of their publicity measures, charges and application procedures. We have begun receiving the proposals from lessees, including the HKJC. The HKJC has proposed to open up most of the sports facilities in the Sha Tin Clubhouse for use by outside bodies.

We have also begun discussion with PRL lessees individually to ensure that they would comply with our increased access requirements. Once the detailed arrangements and other specific matters in relation to the modification of lease conditions have been finalized, the Lands Department will prepare formal lease renewal documents which will incorporate the requirements for opening up facilities for the use of outside bodies. PRL lessees will be required to abide by the above conditions after lease renewal.

Lifting Ban on Firecrackers at Festivals

14. **MS AUDREY EU** (in Chinese): *President, under the Dangerous Goods (General) Regulations (Cap. 295B), any person without a permit granted by the Authority shall not discharge any firework. Quite a number of members of the public have reflected that the festive atmosphere in Hong Kong during the Chinese New Year period is considerably reduced because of this stipulation. In this connection, will the Government inform this Council:*

- (a) of the number of applications for discharging firecrackers received by the Authority in the past three years;*
- (b) of the number of applications for discharging firecrackers approved by the Authority in the past three years;*
- (c) whether it has any plan to invite the disadvantaged children to discharge firecrackers at the Government Headquarters and Government House during the first month of every Lunar Year to celebrate the Spring Festival together; if it has, of the details; if not, the reasons for that; and*

- (d) *whether it has considered, with reference to the practice of Macao, permitting members of the public to discharge firecrackers in a safe and orderly manner at specified locations (for example, certain harbourfront areas, specified outlying islands or theme parks); if it has, of the details; if not, the reasons for that?*

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

- (a) Under the Dangerous Goods (General) Regulations (Cap. 295B), the Secretary for Home Affairs and the Director of Marine are the respective Authorities for the approval of permits for discharging firecrackers and fireworks on land and over water. As regards applications for discharging firecrackers in the past three years, the Home Affairs Bureau has received one application to set up designated firecrackers discharge zones during Chinese New Year. The Marine Department has not received any applications for discharging firecrackers over water.
- (b) The application described in part (a) above was not approved, and the Authorities have not approved any application to discharge firecrackers in the past three years.
- (c) and (d)

Whilst some people take the view that discharging firecrackers would enhance the festive atmosphere, the explosives contained in the firecrackers, if not handled properly, may pose a threat to public safety. Considering the circumstances of Hong Kong, it is not appropriate at this time to relax controls on the discharge of firecrackers, nor will we consider partial relaxation of controls. We do not have any plans to implement the suggestion contained in part (c) of the question, nor to follow the practice of Macao as suggested in part (d) of the question.

Assaults on Immigration Officers by Travellers at Boundary Control Points

15. **MS EMILY LAU** (in Chinese): *President, I have learnt that some officers of the Immigration Department (immigration officers) have been assaulted by travellers when discharging duties at the various boundary control points. In this connection, will the executive authorities inform this Council:*

- (a) of the number of cases of immigration officers being assaulted by travellers at boundary control points in the past three years; and the number of such cases reported to the police for handling, together with the respective numbers of persons who were prosecuted and convicted;*
- (b) whether the authorities have any special arrangement for the convicted attackers when they visit Hong Kong again;*
- (c) of the measures adopted to prevent such acts of violence from taking place at the various boundary control points; and*
- (d) whether consideration will be given to increasing the number of immigration officers stationed at the various boundary control points to ensure their safety in discharging duties?*

SECRETARY FOR SECURITY (in Chinese): *President, regarding the cases of immigration staff being assaulted by travellers when discharging duties at the boundary control points, my reply is as follows:*

- (a) There were 16 cases of immigration staff assaulted by travellers at the boundary control points in the past three years. All were reported to the police for following up. Among them, nine were subsequently prosecuted and convicted.*
- (b) When travellers convicted of such an offence seek to enter Hong Kong again, immigration staff will take into consideration their adverse record in deciding whether to permit their entry.*

(c) and (d)

The Immigration Department (ImmD) will seriously handle each assault case in accordance with the law to ensure the safety of immigration staff when discharging duties. Besides, all the immigration staff stationed at the boundary control points have received training in handling contingencies (including the handling of violent incidents). The ImmD will augment its manpower and flexibly deploy its staff in the light of the passenger traffic and operational needs at the various control points.

Chinese Temples Ordinance

16. **MISS TANYA CHAN** (in Chinese): *President, it has been reported by the media earlier that at least 17 private columbaria which were operated in the name of temples had not been registered with the Government as Chinese temples in accordance with the requirement under the Chinese Temples Ordinance (Cap. 153) (the Ordinance). According to the reply made by the Secretary for Home Affairs to my written question at the Legislative Council meeting on 8 December 2010, the authorities would review the Ordinance from time to time to ensure that it could meet the present-day needs of the community. In this connection, will the Government inform this Council:*

- (a) *given that under section 5 of the Ordinance, any Chinese temple shall be registered with the Government, of the number of newly registered Chinese temples in the past 10 years; and the number of registered Chinese temples at present;*
- (b) *apart from temples which are directly administered by the Chinese Temples Committee (the Committee) or those administered with its entrustment, whether the Government seeks financial statements or operating accounts from the various registered Chinese temples on a regular basis; if it does, of the operating income and expenditure as well as surpluses recorded by the various registered Chinese temples in each of the past five years; if no such accounts were sought, the reasons for that;*
- (c) *whether the Government had received any complaint in the past five years about temples being operated without registration under the*

Ordinance; if it had, of the number of complaints and details of the follow-up work;

- (d) whether the Government had taken law-enforcement actions in accordance with the Ordinance in the past five years against temples which were not registered under the Ordinance; if it had, of the details; if not, the reasons for that;*
- (e) whether the Government will investigate, take law-enforcement actions against and ban at least the 17 temples disclosed by the media; if it will, of the details; if not, the reasons for that; and*
- (f) given that the authorities indicated in the past that they would review the Ordinance, whether the authorities consider that it is now the appropriate time to review the Ordinance; if so, whether the authorities have formulated the work-plan and timetable for the review; if not, of the reasons for that?*

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

- (a) In the past 10 years, four Chinese temples were newly registered under the Chinese Temples Ordinance (Cap. 153) (CTO). Currently, there are a total of 346 registered Chinese temples.
- (b) The Government of the Hong Kong Special Administrative Region respects the autonomy of religious organizations. It is not the intention of the Committee to monitor the operation of Chinese temples other than those directly administered by the Committee or managed by delegated organizations.
- (c) and (d)

In the past five years, the Home Affairs Bureau and the Committee received a total of 18 cases relating to suspected operations of temple without registration under the CTO.

As the CTO was enacted in 1928 according to the needs at that time, the social circumstances have changed nowadays. The Committee

has not applied the provisions under CTO to take actions against those temples operating without registration under the CTO in the past five years. Any possible violation(s) against other ordinance(s) by those temples will be followed up by the relevant government department(s).

(e) and (f)

The Administration is currently reviewing the CTO. It is estimated that the review will be concluded by the end of 2012. The Administration will decide on the way forward after the review is concluded.

Measures to Enhance Reputation of Hong Kong as Shopping Paradise

17. **DR LAM TAI-FAI** (in Chinese): *President, it has been reported that a survey organization in France published a report in early January this year on the ranking of prestigious commercial shopping avenues in 30 cities in the world, pointing out that as passers-by in Hong Kong are not friendly enough, and do not seek to help tourists, Hong Kong ranks 29th among the cities. There have been comments that the ranking result will damage Hong Kong's reputation as a shopping paradise, and will have a negative impact on the tourism and retail industries in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of complaints received by the authorities from overseas and Mainland tourists in each of the past five years (with a breakdown of the complaints by category), and the difference in the numbers and categories of complaints made by these two categories of tourists;*
- (b) *whether the authorities had conducted surveys or studies in the past five years, so as to understand the perception of overseas and Mainland tourists towards the attitude of Hong Kong people; if they had, of the details; if not, the reasons for that;*
- (c) *what measures the authorities had put in place in the past five years to improve the service quality of people engaged in the tourism and*

retail industries in Hong Kong, and the expenses incurred in implementing the various measures;

- (d) what measures the authorities had put in place in the past five years to promote the sense of hospitality among Hong Kong people, and the expenses incurred in implementing the various measures;*
- (e) whether assessment on the effectiveness of the measures under parts (c) and (d) has been made; if so, of the details; if not, the reasons for that;*
- (f) whether the authorities had compared the levels of satisfaction of overseas and Mainland tourists in sightseeing and shopping in Hong Kong in the past five years; if they had, whether there is any difference between the two; if they had not made the comparison, of the reasons for that;*
- (g) whether it has assessed if the aforesaid ranking result will have a negative impact on the tourism, retail and hotel industries, and so on, in Hong Kong; if it has, of the details; if not, the reasons for that;*
- (h) whether the authorities will take the initiative to contact the aforesaid survey organization to find out the details of its survey and make clarifications; if they will, of the details; if not, the reasons for that;*
- (i) whether the authorities have assessed if it is due to the quick pace of life or decline in English standards of Hong Kong people that they are reluctant to stop on the streets and communicate with tourists from other places; if they have, of the details; if not, the reasons for that;*
- (j) given that many incidents which have damaged the reputation of the tourism industry in Hong Kong have been widely reported in recent years, whether the authorities have assessed if Hong Kong's reputation has been damaged; if they have, of the details; if not, the reasons for that;*

- (k) *whether the authorities know if, in the past five years, any local or overseas organization had conducted surveys of a similar nature to this survey on the ranking of prestigious commercial shopping avenues in the world; if so, of the details; and*
- (l) *whether the authorities know if, in the past five years, any local or overseas organization had conducted surveys on the perception of overseas tourists towards Hong Kong people; if so, of the details?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the Government all along promotes a culture of hospitality, and the overall impression of Hong Kong among inbound visitors is generally good. We launched the Hong Kong Young Ambassador Scheme with the Hong Kong Federation of Youth Groups in 2001 to instil a sense of courtesy and helpfulness to visitors in young people, as well as to cultivate a hospitable culture in schools and local communities. Announcements of Public Interest along the same theme are broadcast on television to spread the message to the general public. Different trade organizations also strive to enhance their services. The Hong Kong Tourism Board (HKTB) introduced the Quality Tourism Services (QTS) Scheme in 1999 to encourage merchants from different sectors to provide quality service. The Scheme has received wide support from industries.

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

- (a) The respective numbers of complaints (with a breakdown by category) from Mainland and non-Mainland tourists received by the Travel Industry Council of Hong Kong (TIC), the HKTB and the Consumer Council over the past five years (that is, from 2007 to 2011) are set out in the Annex. As an overview, in the past five years, although there was a significant growth of inbound visitors from 28.17 million in 2007 to 41.92 million in 2011, the respective numbers of complaints received by the three organizations in 2011 were lower than those in 2007.
- (b), (f) and (l)

The HKTB conducts a Departing Visitors Survey (DVS) every year to assess, among others, the overall satisfaction level of visitors

towards Hong Kong. According to the survey, the overall satisfaction ratings given by the respondents in the past five years are as follows:

	2007	2008	2009	2010	2011
Satisfaction rating (on a 10-point scale)	8.2	8.2	8.3	8.3	8.3

The DVS also collects visitors' comments on shopping in Hong Kong. In the past five years, among the interviewed Mainland and non-Mainland tourists, on average over 80% of the respondents found shopping in Hong Kong satisfactory or highly satisfactory. The respective percentages are as follows:

	2007	2008	2009	2010	2011
All tourists	83%	83%	83%	86%	86%
Mainland tourists	83%	85%	86%	88%	88%
non-Mainland tourists	82%	81%	79%	83%	83%

No information is available on whether any local or overseas organization has conducted any survey on overseas tourists' impression of Hong Kong people.

(c), (d) and (e)

On fostering the hospitality culture, the Tourism Commission, together with the Hong Kong Federation of Youth Groups, launched the Hong Kong Young Ambassador Scheme in 2001 to instil in young people a sense of courtesy and helpfulness to visitors. Since then, over 2 200 young ambassadors have completed the training courses and been deployed to various tourist spots to introduce attractions to visitors. They have also participated in large-scale activities and tourism promotion events. To date, the Young Ambassadors have provided over 180 000 hours of service and the Scheme has received positive feedback from schools, youngsters and their families. In the past five years, we have also collaborated with various trade organizations to organize more than 50 activities for managerial and front-line staff of the tourism industry, taxi and coach drivers, and retail trade employees. A total of 5 500

participants have taken part in these activities, which included seminars, workshops, courses on language skills and customer services knowledge, and continuous training courses for tourist guides. The cost for implementing the Hong Kong Young Ambassador Scheme and co-organizing the above activities in the past five years was around \$6 million.

In addition, the HKTB launched the QTS Scheme in 1999 to award accreditation to merchants that have attained an established level of service, with a view to encouraging the retail and food and beverage industries to provide quality services. The Scheme has been expanded to cover hair salons and licensed guesthouses in recent years. As at the end of 2011, over 7 500 local merchants in Hong Kong have received accreditation under the QTS Scheme.

On the other hand, to encourage different industries to enhance their services, the Hong Kong Retail Management Association and Hong Kong Association for Customer Service Excellence also launch professional training programmes and award schemes from time to time, such as the Mystery Shoppers Programme and the Customer Service Award, to foster a culture of quality customer service in their member agencies.

As mentioned above, according to the HKTB's DVS, the overall satisfaction rating given by respondents ranged from 8.2 to 8.3 on a 10-point scale in the past five years. The findings also indicated that on average over 80% of the respondents found shopping in Hong Kong satisfactory or highly satisfactory.

(g) and (j)

We do make reference to the findings published by survey organizations on the performance of Hong Kong's tourism industry for conducting appropriate analyses, reviews and follow-up actions. Judging from such indicators as visitor satisfaction level, number of visitors, their duration of stay in Hong Kong and consumption level, we have found no negative impact of such surveys on their impression towards Hong Kong.

In view of the latest findings from Presence, a survey organization in France, we will work with the TIC and various trade organizations to strengthen the training for the front-line staff of the tourism industry so as to enhance the service level of the industry and the retail sector. We will actively encourage Hong Kong people to be courteous and hospitable to visitors. We will also continue to liaise closely with the government departments concerned to improve the environment and supporting facilities at our shopping avenues and tourist attractions. Moreover, the HKTB will continue its efforts in promoting Hong Kong as a world-class tourist destination around the world.

- (h) We have studied the executive summary of Presence's survey findings. The French organization has also explained to us the methodology adopted for this survey. We will share the aforementioned executive summary and methodology of this survey with the tourism industry.
- (i) We did not conduct any survey on whether the Hong Kong people are willing to communicate with tourists. According to information from the Education Bureau, the language proficiency of our students and workforce has been improving over years. For example, among all university graduates who have taken part in the International English Language Testing System on a voluntary basis, their average score has been assessed at Level 6 (Competent Users) or above, rising from 6.46 in school year 2002-2003 to 6.72 in school year 2009-2010. Besides, according to the annual business outlook survey released in 2009 by the American Chambers of Commerce in Hong Kong, 75% of the respondents considered that Hong Kong's business environment in terms of English language proficiency of employees was satisfactory, comparing favourably with the 67% and 47% in 2004 and 2002 respectively.
- (k) The image of Hong Kong as a premier international tourist destination is well established among travellers around the world. Our world-class shopping experience has won awards in recent years. For instance, in May 2011, the TripAdvisor, the world's most popular and the largest travel commentary website, announced the "Top Ten Destination Worldwide" and Hong Kong was the only

Asian city listed as one of the 10 best tourist destinations on the list. The TripAdvisor commended Hong Kong as a place that offered fabulous shopping experience to tourists. In September 2010, in a reader poll of *Condé Nast Traveler*, a travel magazine, Hong Kong was voted first in the "Best Islands" category and came third in the "Best of the Best Top 100 Travel Experiences" category of the Readers' Travel Awards. In September 2009, Hong Kong was voted the "Best City for Shopping in Asia" in a reader poll of *Smart Travel Asia*, an online travel magazine. In May 2009, Hong Kong was named the city for "Best Shopping" in the online global consumer survey on travel and tourism conducted by CNN International. Besides, in February 2011, the Chinese New Year celebrations in Hong Kong was selected as one of the 10 Best Events of the Year by leading business magazine *Forbes*; in November 2010, Hong Kong was the only Asian city selected as the "Top ten places to spend your Christmas" by CNN.com. Regardless of the comments of the surveys on Hong Kong, we will make reference to their findings and analyse whether there is room for improvement.

Annex

Number of complaints from Mainland (M) and non-Mainland (non-M) visitors received by the TIC, HKTB and Hong Kong Consumer Council (2007 to 2011)

I. TIC

Category of complaints by package tour visitors	2007		2008		2009		2010		2011	
	M	Non-M	M	Non-M	M	Non-M	M	Non-M	M	Non-M
1. Shopping	232	0	87	0	252	1	288	2	165	0
2. Arrangements by travel agents	22	7	44	4	33	10	40	13	46	6
3. Tour guide services	77	8	132	4	88	4	143	2	98	1
4. Others	1	0	1	2	1	0	0	0	0	0
Total (Sub-total)	332	15	264	10	374	15	471	17	309	7

II. HKTB

Category of complaints	2007		2008		2009		2010		2011	
	M	Non-M	M	Non-M	M	Non-M	M	Non-M	M	Non-M
Free independent travellers										
1. Shopping	156	153	111	102	129	92	141	103	130	87
2. Food and beverage	15	37	11	22	12	29	17	36	13	28
3. Accommodation	42	54	34	42	40	35	50	46	54	41
4. Transport	21	28	11	37	24	43	27	57	47	50
5. Attractions	2	6	4	7	7	2	4	11	9	5
6. Airlines	9	13	10	14	5	12	9	9	21	9
7. Others	23	53	11	31	7	29	12	21	16	30
Package tour visitors										
1. Shopping	121	1	15	1	39	0	53	3	50	2
2. Arrangements by travel agents	123	18	43	15	43	5	43	15	72	14
3. Tour guide services	4	1	14	0	5	1	26	4	8	0
Total (Sub-total)	516	364	264	271	311	248	382	305	420	266

III. Consumer Council

Category of complaints	2007		2008		2009		2010		2011	
	M	Non-M	M	Non-M	M	Non-M	M	Non-M	M	Non-M
1. Shopping	1 703	678	1 080	529	1 132	419	1 276	460	1 492	451
2. Arrangements by travel agents	60	42	55	100	39	27	26	39	57	54
3. Food and beverage	17	24	20	17	18	22	25	21	29	28
4. Accommodation	33	37	40	38	21	22	23	24	38	34
5. Others	100	119	96	90	94	82	70	69	82	77
Total (Sub-total)	1 913	900	1 291	774	1 304	572	1 420	613	1 698	644

Remarks:

Based on the following reasons, the complaints received by the three organizations may be double counted:

- The complainant has lodged a complaint to more than one organization at the same time; and/or
- Some complaints are referrals between organizations so that the complaints could be followed up by the appropriate organization(s). For instance, the HKTB will refer those complaints related to shopping to the Consumer Council, while the Consumer Council will refer those related to travel agents to the TIC, and so on.

Collection of Fuel Surcharge and Air Passenger Departure Tax by Travel Agents

18. **MR PAUL TSE** (in Chinese): *President, on 23 February 2009, the Panel on Economic Development of this Council discussed the issue of the commission for the collection of fuel surcharge (surcharge) and air passenger departure tax (APDT) by travel agents on behalf of other parties. Members of different professional background and political parties who spoke on the subject matter at the meeting considered that as travel agents actually paid operating costs and provided manpower to collect APDT but they did not receive proper compensation, the Government should pay the administrative fee directly to travel agents for collecting APDT on its behalf; and one Member explicitly requested the Civil Aviation Department to heed his views and change the existing system under which travel agents were requested by airlines to collect surcharge but without being given any commission by the airlines. However, the Government has so far not actively responded to the views of the Members. In this connection, will the Government inform this Council:*

- (a) *given that the aforesaid Members have clearly indicated that the system which requires travel agents to collect APDT without receiving commission over the past years is unfair, why the Government has so far not yet switched to paying the administrative fee to travel agents instead of airlines for collecting APDT on its behalf, in order to respond to the views of the Members;*
- (b) *whether the authorities have assessed the cumulative impact of the aforesaid system on the operation of travel agents in the past 10 years; if not, whether they will immediately make an assessment; and*
- (c) *whether the authorities have considered setting up a government counter at the airport to directly collect APDT from passengers and, at the same time, collect the surcharge from passengers on behalf of airlines, so as to eradicate the aforesaid phenomenon of "travel agents bearing the responsibility of collecting fees on behalf of other parties but not being able to receive commission or recover their costs"; if not, of the justifications, and whether they will consider such an arrangement as soon as possible?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, this serves as a consolidated reply from the Financial Services and the Treasury Bureau, Transport and Housing Bureau and Commerce and Economic Development Bureau to parts (a) to (c) of the question.

Under the Air Passenger Departure Tax Ordinance (Cap. 140), airlines are responsible for collecting the APDT from departing passengers on behalf of the Government, and the Government may pay an administration fee to airlines for collection of APDT. Currently, the Government pays to airlines an administration fee of about \$2.79 (representing 2.322%) for every \$120 of APDT collected. The administration fee level is determined based on information provided by the airlines.

As air passengers may buy air tickets at different sales outlets, only the airlines are able to keep track of the actual number of departing air passengers, thereby facilitating the calculation of APDT payable to the Government. Hence, we consider that the current arrangement of having the airlines collecting APDT from departing passengers on behalf of the Government is appropriate and effective. The airlines' commissioning of travel agents for collection of APDT is a commercial arrangement between the airlines and the travel agents. It would not be appropriate for the Government to interfere. The Administration understands from the Travel Industry Council of Hong Kong that with regard to sales of air tickets, travel agents collect on behalf of the airlines not only the APDT but also other charges such as airport taxes or insurance premium applicable in other countries.

The existing arrangements that the Government collects APDT through the airlines and the airlines collect surcharge through the travel agents are effective and convenient to passengers. The Government therefore has no plan at this stage to set up a counter at the airport to directly collect APDT and surcharge from the passengers.

Allowing Dogs to Enter Restaurants

19. **MR LAU KONG-WAH** (in Chinese): *President, some members of the public have relayed to me that quite a number of people like to keep dogs and wish to bring their dogs to restaurants; yet, other restaurant patrons, who are not*

pet lovers, may be worried that dogs may cause nuisance to them and may even affect the sanitary conditions. Hong Kong's existing legislation imposes certain restrictions on the scope of activities of pets and, under the Food Business Regulation (Cap. 132X) (the Regulation), members of the public shall not bring any dog onto food premises, and they commit an offence if they do so. I have learnt that the restrictions on dogs entering restaurants are less stringent in some overseas places where dogs are not only allowed to enter restaurants but there are also restaurants for pets. In this connection, will the Government inform this Council:

- (a) of the number of complaints regarding members of the public bringing dogs to restaurants received by the authorities in each of the past three years; the number of prosecutions against the persons concerned; and the penalties generally imposed on the convicted persons;*
- (b) while the authorities prohibit dogs from entering restaurants, whether they impose the same restriction on other kinds of pets; if not, of the reasons for that and whether the authorities will review the relevant legislation; and*
- (c) whether any legislation is currently in place in Hong Kong to regulate pet restaurants; whether eateries which only provide food for pets are required to obtain restaurant licenses; if there is no such regulation, whether the authorities will study advocating the development of pet restaurants and consider introducing legislation to regulate such restaurants when necessary?*

SECRETARY FOR LABOUR AND WELFARE (in the absence of Secretary for Food and Health) (in Chinese): President, it is stipulated under section 10B of the Regulation that no person shall bring any dog onto any food premises and no person engaged in any food business shall knowingly suffer or permit the presence of any dog on any food premises, except for dogs serving as guide dogs for the blind or performing statutory duties (for example, police dogs). Upon conviction, offenders are liable to a maximum fine of \$10,000 and imprisonment for three months.

- (a) The numbers of complaints about bringing dogs into eateries received by the Food and Environmental Hygiene Department (FEHD) in the past three years, namely 2009, 2010 and 2011, are 81, 68 and 91 respectively. The FEHD handles each and every complaint received, and gives advice or warning to or takes prosecution action against the individuals and food premises concerned as appropriate. In 2009, one eatery was prosecuted by the FEHD for knowingly suffering or permitting the presence of dog(s) on its food premises. The offender was convicted by court and fined \$500.
- (b) Apart from section 10B, section 5(3)(b) of the Regulation provides that no person engaged in any food business shall knowingly suffer or permit in any food room (that is, any room used for food preparation or cleaning of equipment) the presence of live birds or animals. Upon conviction, offenders are liable to a maximum fine of \$10,000 and imprisonment for three months. Animals may become a source of contamination of food and equipment as their hair, bodies and excreta may carry pathogens and parasites. In this connection, the Regulation aims to safeguard food safety and public health. It is understood that there are also express provisions prohibiting animals from entering food premises in Australia, Canada, Singapore, and so on.

Physical co-presence of humans and animals increases the risk of transmission of communicable diseases, and domesticated dogs are used to making close contacts with humans. Permitting dogs to enter food premises will pose higher health risk to patrons within, especially those physically weak or susceptible (for example, elderly, children, pregnant women and the chronically ill). It is necessary for the Regulation to lay down strict provision prohibiting dogs from entering food premises. The Administration currently has no plan to review the legislation but will continue to keep the situation in view.

- (c) Food premises governed by the Public Health and Municipal Services Ordinance (Cap. 132) are premises which provide food for consumption by the general public. Shops providing food for pets

only are not governed by the Ordinance. As food premises in Hong Kong are generally cramped, and it could be difficult to keep animal behaviour under total control at all times, there is the possibility that accidents may arise if different animals are permitted to gather in a place to consume food. The Administration does not have plans to advocate the development of, or regulate by way of legislation, pet restaurants.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions. Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of motions each may speak, including reply, for up to 15 minutes; and other Members each may speak for up to seven minutes. The mover of the second motion may have another five minutes to speak on the amendments; and the movers of amendments to this motion each may speak for up to 10 minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

DEPUTY PRESIDENT (in Cantonese): First motion: Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance.

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

I now call upon Mr James TO to speak and move the motion.

ANNUAL REPORT 2010 TO THE CHIEF EXECUTIVE BY THE COMMISSIONER ON INTERCEPTION OF COMMUNICATIONS AND SURVEILLANCE

MR JAMES TO (in Cantonese): Deputy President, in my capacity as Chairman of the Panel on Security, I move that the motion, as printed on the Agenda, be passed.

Deputy President, let me first highlight the salient points in the report. The Interception of Communications and Surveillance Ordinance (the Ordinance), enacted in 9 August 2006, provides for a statutory regime for the conduct of interception of communications and covert surveillance by the law-enforcement agencies (LEAs). The Commissioner on Interception of Communications and Surveillance (the Commissioner), appointed by the Chief Executive on the recommendation of the Chief Justice, is responsible for overseeing the compliance by the LEAs with the relevant requirements of the Ordinance.

The Commissioner is required to submit an annual report to the Chief Executive, and the Chief Executive shall cause a copy of the Report to be laid on the table of the Legislative Council. The Commissioner submitted the Annual Report 2010 to the Chief Executive on 30 June 2011, and a copy of the report was laid on the table of the Legislative Council on 30 November 2011.

Deputy President, at the meetings held on 5 December 2011 and 3 January 2012, the Panel discussed the Annual Report of the Commissioner and the results of study of matters raised in the Annual Report by the Commissioner. Deputy President, one of the major points discussed by many Members was the Commissioner's proposal to amend the legislation to allow the Commissioner to listen to intercept products. Deputy President, I believe that in our discussion of this issue today, no reference is better than the speech made by the Commissioner at the briefing on 5 December. Hence, I now quote the relevant part of the speech, though it is a bit long: "As the Ordinance does not have express provision empowering me and my staff to listen to intercept product (or surveillance product), we did not listen to the recording of the intercept product when we reviewed these cases. Hence, we could not discern what had been reported by the department or the listener in the report was true or not and whether there was any concealment including concealing any proceeding calls which should have been reported but were not reported."

I continue to quote, "The lack of power to listen to intercept product affects the efficacy of unearthing non-compliance or concealment. This is understood by all. In April 2009, I made a recommendation to the Security Bureau. My recommendation is to require LEAs to preserve the intercept product of each and every interception and related records to enable my staff and me to check (by listening to the audio recording of the intercept product) cases of special interest

or chosen at random. All such records should be preserved at the premises of individuals LEAs concerned and only I and such staff as designated by me could have access to them. LEA officers and any other persons should not be allowed access to these materials. Details of my recommendation to empower us to examine intercept and covert surveillance products were set out in Chapter 9 of my Annual Report 2008 It has been two and a half years since I made the recommendation but regrettably it has not yet been accepted by the Security Bureau."

Let me continue with the quote from the speech of the Commissioner, "The inability to listen to the recording of intercept product or surveillance product also debilitated me in reviewing certain cases comprehensively. The following are some instances:

- (a) Report 2 in Chapter 7: As I did not listen to the recording of the surveillance product, I could not find out whether the caller was the subject and whether things said by the caller had been recorded.
- (b) In Report 3 in Chapter 7, the junior supervisor claimed that the 51 calls did not involve any legal professional privilege information. The two senior officers who were tasked to re-listen to these calls also confirmed the same. I (the Commissioner) had no way to verify the claim and could only accept their claim as proffered.
- (c) Regarding paragraphs 7.155 to 7.156 under Report 4 in Chapter 7, if the recording of the meeting could be listened to, it could be known whether one of the two persons who attended the meeting with Subject H was, as the department claimed, the interceded nicknamed Subject J. If it was not, the covert surveillance on that occasion was unauthorized. In the absence of power to allow me to listen to the recording of surveillance product, I could not review or query the veracity of the department's claim.

More importantly, the provision of power for me to listen to and inspect intercept and surveillance products would act as a strong deterrent against any malpractice or concealment by LEA officers."

Deputy President, regarding the remarks that allowing the Commissioner or his staff to listen to the intercept or surveillance products may increase the possibilities of privacy infringement, I must quote paragraph 5.92 of the Report of the Commissioner. The Commissioner would like to repeat the salient points he made on the public forum on 29 November 2010 in response to the concerns and worries of the public about privacy:

- (a) A Judge will issue an authorization for the interception of communication of suspected offenders of serious crime when there is reasonable suspicion, and the listening of the recording of the intercept product will not affect the privacy of the ordinary citizens.
- (b) Since the conversation has already been listened by LEA officers, the additional intrusion of privacy caused by Justice WOO or his staff will be very limited.
- (c) The new initiative will expose non-compliance, which is the best preventive measure to effectively deter non-compliance.
- (d) Section 61(4) of the Ordinance provides that if an LEA obtains from the intercept product any information which might be capable of assisting the case for the defence or undermining the case for the prosecution against the defence, it shall disclose the information. If the Commissioner is given the power to listen to the intercept product, it will deter non-disclosure practice not in compliance with this provision.
- (e) The Commissioner and his staff are subject to the Official Secrets Ordinance, and similarly, the police and officers from the Independent Commission Against Corruption may also leave their existing posts or resign, and they are just subject to the same Official Secrets Ordinance.
- (f) At present, the Commissioner and his staff, though have not listened to intercept products, have had access to a lot of highly confidential information, so the listening of intercept products will not cause further intrusion to the privacy of the public. Such worries are incomprehensible.

Deputy President, the Commissioner has also put forth recommendations on other aspects in Chapter 8 and Chapter 9 of the Annual Report, which include:

- (a) amending the Code of Practice to require LEAs to report to the Commissioner, in addition to cases involving legal professional privilege information, cases where information involving contents of any journalistic material may be or likely to be obtained;
- (b) LEAs should report each of the cases to the Commissioner mentioned in paragraph 120 of the Code of Practice in a separate letter rather than including those cases in the weekly report; all relevant records should be preserved for the Commissioner to perform his review functions;
- (c) regarding a specific declaration in support of the applications in the preceding two years for the issue of an authorization for interception submitted by a certain LEA, the Commissioner considers that it should be drafted in a more direct and positive manner;
- (d) whenever legal professional privilege or likely legal professional privilege information is involved, LEAs should preserve the relevant audit trail report up to three weeks after the facility concerned is disconnected, be it occasioned by revocation or natural expiry of the authorization. This arrangement should also be applicable to cases involving journalistic material;
- (e) regarding the executive authorization of Type 2 covert surveillance, the reason for the proposed end time of the authorization and detailed information or the sequence of occurrence in respect of the surveillance operation should be provided in the statement in writing and the discontinuance report;
- (f) the authorized period for executive authorization should be reasonably supported and limited to the shortest possible time. The applicant should consider the duration strictly according to the actual need of the operation. The authorizing officer should check the

content of the statement in writing and ensure that all the information (including the proposed starting date and time and finishing date and time of Type 2 surveillance) had been filled in before granting the authorization;

- (g) regarding cases involving legal professional privilege cases, all the records preserved for the performance of the Commissioner's review functions should not be destroyed without prior consent of the Commissioner; and
- (h) LEAs should only take disciplinary actions against any offending officer after they are apprised of the view of the Commissioner at the conclusion of the Commissioner's review.

Deputy President, in the Annual Report, the Commissioner has reported certain cases of non-compliance and irregularities, yet he fairly indicated that no cases of non-compliance or irregularities due to deliberate flouting or disregard of the statutory provisions or the law have been discovered. However, the Commissioner has, at the same time, indicated that since he cannot listen to the intercept products, he cannot review certain non-compliance cases in a comprehensive manner. For this reason, I have quoted the many paragraphs above to illustrate the difficulties he has encountered.

Since the Commissioner has no way to verify the case, he resorts to very harsh wordings in certain circumstances, such as the word "proffered" to suggest that "I can just believe what you have said". In some other cases, say when all of the three persons involved failed to recall the date of the report, he described this as "a strange coincidence", and in other cases, he described the situation as "unimaginable", "difficult to understand" and "difficult to imagine", and so on. Deputy President, his choice of these phrases indicates that he has much suspicion of the cases and he considered that hardly acceptable.

Deputy President, in my capacity as Chairman of the Panel, I have quoted certain content of the Commissioner's Report as above.

I will now give a brief account of my personal views.

First, I think the authorities should conduct a comprehensive review of the Ordinance, and the scope should not be restricted to the recommendations put forth by the Commissioner in the Report. Second, the present situation rightly proves that: With the enactment of the legislation after the completion of the debate on the Bill and the amendment to the sunset provision, the Government has been fast in getting the power but slow in enhancing the monitoring power. During the past two years, the Government had procrastinated in enhancing legal regulation and improving the legislation.

Deputy President, the empowerment of the Commissioner in this respect will rightly overcome the inadequacy of the Commissioner in overseeing interception comprehensively under the legislation in the absence of the power to listen to intercept products. I notice that though the Commissioner, who is subject to various constraints, has put forth only one proposal of empowering him to listen to intercept products, the Government has procrastinated for several years. I see no sincerity in the Government in enhancing the enforcement of the legislation. I suspect that it is covering up and condoning certain officers who are abusing their power or likely to abuse their power.

Deputy President, I will first listen to the views of other colleagues, and then I will give my response to other important views.

With these remarks, I implore Members to support the motion.

Mr James TO moved the following motion: (Translation)

"That this Council notes the Annual Report 2010 to the Chief Executive by the Commissioner on Interception of Communications and Surveillance."

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr James TO be passed.

SECRETARY FOR SECURITY (in Cantonese): Deputy President and Honourable Members, the Annual Report 2010 of the Commissioner on Interception of Communications and Surveillance (the Commissioner) gives an account of the implementation of the Interception of Communications and

Surveillance Ordinance (the Ordinance) in 2010. As instructed by the Chief Executive, the Annual Report has been laid on the table of the Legislative Council on 30 November last year. A press conference was held by the Commissioner on 5 December last year, and attended by several Members. The Bureau attended the special meeting convened by the Panel on Security on the same day to give detailed responses to issues raised in the Report. To address the concerns of Members about the Report, we attended the meeting of the Panel on Security two weeks ago to have an in-depth discussion about the Annual Report again. The debate today is the third occasion on which Members express their views about the Annual Report in the past month or so. Since the motion has not stated the views and responses of the Member towards the Annual Report, nor has it pointed out which proposals the Commissioner or the Government should endeavour to follow up, I will only give a brief account of the major items included in the Report and the follow-up work the Government has undertaken.

The Commissioner has reviewed the implementation of the Ordinance during the year in the Annual Report, and expressed that he is satisfied with the overall performance of the law-enforcement agencies (LEAs) and their officers in their compliance with the Ordinance.

The efficacy of the Ordinance during the report period is well evident by the arrest of 456 persons as a result of or further to any operation carried out pursuant to a prescribed authorization.

The Security Bureau and various LEAs have all along tried to support and assist the Commissioner in performing his overseeing function. In fulfilling these functions, the Commissioner has put forth a number of proposals to further reinforce the implementation mechanism under the Ordinance. For most of the proposals, particularly those that can improve the operation procedures immediately and do not involve the amendment of the legislation, they have been implemented immediately through the amendment of the Code of Practice and other administrative arrangements, with a view to ensuring the smooth implementation of the Ordinance and facilitating the Commissioner in performing his overseeing function.

Regarding proposals requiring the amendment of the legislation, we had examined the proposals in detail during the comprehensive review of the Ordinance. After consulting the views of the Commissioner and panel judges,

we briefed Members at the meeting of the Panel on Security held in July last year of the legislative amendments proposed in the comprehensive review of the Ordinance. At the same time, the first round of consultation was launched to seek the views of stakeholders, including panel judges, legal professional groups, the faculties of law of local universities, media organizations and the Privacy Commissioner for Personal Data, and so on.

In the first round of consultation, stakeholders had provided us with very precious opinions. Among the many legislative proposals, the one which Members are gravely concerned, as mentioned by Mr James TO earlier, is the Commissioner's proposal to empower the Commissioner and his staff to listen to intercept products by legislation. As we had explained at the meeting of the Panel on Security, regarding the Commissioner's view on the need to listen to intercept products for the performance of his functions under the Ordinance, the Security Bureau had no objection in principle. In fact, at present, LEAs have preserved all relevant records as per the request of the Commissioner for his examination at all time. However, I must stress that any proposals to amend the Ordinance to enable more extensive access of intercept products, including those involving legal professional privilege information, the preservation of these intercept products for purposes other than that in the prescribed authorization and the extension of the time of preservation, will arouse considerable controversy. We are obliged to explain clearly the legal perspectives involved and the spirit for enacting the Ordinance, and carry out detailed and comprehensive consultation, so as to ensure that the amended Ordinance will continue to be in compliance with the principles of protecting the privacy of communications and the right to receive confidential legal advice, and so on.

In the first round of consultation conducted in the middle of last year, stakeholders in general welcomed the principle of reinforcing the overseeing function of the Commissioner. Yet, they proposed that the authorities should consider setting up a check and balance mechanism, so that when more people can gain access to the information on the one hand, adequate measures will be put in place to prevent the leak or abuse of intercept products.

In this connection, we had commenced the second round of consultation in December last year, and added two legislative proposals mentioned by the Commissioner in the Annual Report published in November. We hope to

consolidate the views collected during the two rounds of consultation as soon as possible, and to give a conclusive report to the Panel on Security in the first half of this year.

Deputy President, I welcome Members to give valuable views on the comprehensive review, which is now in full swing, particularly on the specifications for allowing the Commissioner to listen to intercept products.

Deputy President, I so submit. After listening to the views of Honourable Members, I will give my response again.

Thank you, Deputy President.

DR MARGARET NG (in Cantonese): Deputy President, in August 2006, this Council spent almost 130 hours on the debate on the Interception of Communications and Surveillance Bill, during which about 450 amendments had been proposed by the Government and Members. Among the amendments, 60 had been voted down, and among the remaining 380 amendments, about 100 were proposed by me and several dozens were proposed by Mr James TO. All the amendments proposed by the Government had been passed whereas those proposed by Members had all been voted down. Yet, the Ordinance passed is fraught with problems, which can in no way protect the freedom of communication to which the public are entitled under Article 30 of the Basic Law.

More importantly, the legislation is obviously a direct infringement of the basic rights of the public. But since the Government had all along been conducting unconstitutional interception in the absence of legitimate authority, it had an urgent need to enact the legislation after it had lost three lawsuits, and no prior public consultation had been conducted. I put forth the "sunset provision" as the last amendment to require the Government to conduct the overdue public consultation and a comprehensive review of the Ordinance before a specified date, stipulating that the failure to do so would result in the lapse of certain enabling provisions on 8 August 2008 and the Government could no longer obtain further authorization.

Had the "sunset provision" I proposed at the time been passed, the Government should have reviewed the Ordinance. And by now, we would have

passed the Interception of Communications and Surveillance (Amendment) Bill, instead of conducting this debate on a motion with no legislative effect proposed by Mr James TO to "note" the report submitted by the Commissioner on Interception of Communications and Surveillance (the Commissioner).

Back then, Mr LAU Kong-wah fervently prevented the passage of the "sunset provision", for he was certain that the authorities, and I quote to the effect that, "would conduct a review within 2009, which would be a comprehensive and practical review" (end of quote). However, the reality proves that Mr LAU Kong-wah is wrong, for Secretary Ambrose LEE had not conducted a comprehensive review in 2009. Not only that, to date, as the Secretary mentioned earlier, the review and the amendments he expects to put forth will only be focused on the one or two points the Commissioner considered unacceptable, that is, stating clearly that the Commissioner has the power to listen to the communications obtained through unauthorized means and involved legal professional privilege to judge whether law-enforcement agency (LEA) officers have carried out non-compliance interception.

In this respect, we notice that the law — as pointed out in the submission of the Hong Kong Bar Association (HKBA) — the legal provisions have stipulated very clearly that the Commissioner must be given such power. However, since the authorities disagree that the Commissioner should have such power, we have to discuss amending the law now.

In fact, this is not the only major problem of the Ordinance, for there are at least four main areas of concerns:

First, the threshold for issuing authorization for interception is too low, which enables LEA officers to intercept large volume of telecommunications. In its submission to the Government in September last year, the HKBA pointed out that LEA officers had abused the Ordinance to intercept large volume of telecommunications, which was not proportionate to the actual situation in Hong Kong. The HKBA pointed out in its report that in 2008, there were 800 authorizations for interception alone and 918 renewals, that is, two interception cases each day on average. In 2009, there were 830 authorizations and 950 renewals, which meant more than two interception cases each day on average, and among those cases, the authorization of 47 cases had been renewed five

times, which meant that interception had been conducted for a continual period of 150 days.

As a comparison, in Canada, there were only 80 authorizations in 2008 and 72 authorizations in 2009; and in New Zealand, there were 68 authorizations in 2008 and 99 authorizations in 2009. We can see that the number of interception cases in Hong Kong is 10 times of that in other countries. Why do we have to intercept a large volume of telecommunications in Hong Kong, a city with good law and order? Why is there such a great number of interception cases? It is evident that the thresholds for the issuance of authorization are too low.

Second, the scope of regulation is too narrow. As a result, legal authorization is not required for many types of interception and covert surveillance.

Third, too many restrictions are laid under the complaint mechanism, which made it impossible for the public to know that they have been intercepted, and even if they are aware of the situation, there is no way for them to lodge their complaints.

Fourth, the monitoring power of the Commissioner is inadequate and there are too many barriers in the system. This Council feels strongly about this point from the several reports submitted by the Commissioner.

Deputy President, in terms of operation, we have indeed projected that a lot of problems will arise in the implementation of the Ordinance, but regrettably, our views have not been heeded by the authorities. A case in point is the issue now under dispute, that is, when should the authorization expire, and why LEA officers can continue with the interception for a period of time after the authorization has expired.

We have pointed out that since panel judges will issue the authorization according to the facts stated in the declaration of LEA officers, the declaration must be specific and in detail. When there are changes with the basic facts or when the additional conditions laid down by panel judges cannot be met, the authorization should expire automatically. LEA officers should stop the interception immediately, but not at a time so-called "reasonably practicable", where application for revocation of authorization is first submitted and the

interception will only be discontinued at a "reasonably practicable" time after the revocation of the authorization is approved.

Deputy President, the current system as a whole is fraught with problems, for the judges are being "exploited". The situation in Hong Kong is different with that in the United States where the authorization is approved by the judiciary, and in the United Kingdom, the judiciary is responsible for monitoring. In the course of the scrutiny of the Bill, Mr Ronny TONG, Mr Albert HO and I had pointed out that there should be authentic authorization by the judiciary, and judgments should be made according to judicial principles and in accordance with judicial proceedings. However, the Government firmly refused the proposal, which has given rise to the present situation.

The last biggest loophole is that LEA officers are not liable to criminal liabilities even if they deliberately carry out unauthorized interception, and they will at most be required to attend disciplinary hearings at the request of the authorities. In comparison with our right to free communication stipulated in the Basic Law, it is really a great irony. Deputy President, the Interception of Communications and Surveillance Ordinance should be subject to practicable and comprehensive review immediately for the protection of the rights of the public.

MR LAU KONG-WAH (in Cantonese): Deputy President, the new legislation has been implemented for several years. In the past, no legislation had been put in place to monitor the interception carried out by law-enforcement agency (LEA) officers, by now, LEA officers are regulated by the legislation in performing the necessary interception. From this perspective, I think improvement has been made. Regarding the implementation in the past few years, experience has definitely been gained, yet review should be carried out at the same time to enhance the legislation and bring it to perfection.

The essence spirit of the legislation is to empower LEA officers to carry out necessary interception while putting in place proper check and balance. For this purpose, the Commissioner on Interception of Communications and Surveillance (the Commissioner) is appointed.

In the past few years, we had read reports from the Commissioner and had interactions with him. I strongly think that Justice WOO, as the first

Commissioner, has done a great job in performing his duties and has set a good example. The key is that for every single case of interception, he would seriously examine the details and the need for interception. I think this is a good start. He has particularly pointed out some non-compliance cases on the part of LEA officers I think there is a problem with the mindset of those non-compliant LEA officers. In the past, when there was no such legislation, they could act on their own way. But since the legislation is now in force, I think LEA officers must follow the procedures strictly in performing their task, no matter how serious the case is and how eager they want to handle the case. The Commissioner is responsible for overseeing LEA officers to ensure that they will not adopt a resisting attitude. In fact, Justice WOO has pointed out in this year's report that LEA officers have in general changed their attitude.

Moreover, Justice WOO has repeatedly mentioned in reports issued in the past that he must listen to the information of certain intercept products to prove whether LEA officers have conducted, commenced or discontinued the work according to their duties. Deputy President, I recall that in the course of scrutiny, no Members had raised this point. Certainly, no Member or no one is a prophet. As I said earlier, this is what we get from the experience gained over the past few years. Particularly when Justice WOO, who is at the forefront, puts forth the need to listen to the relevant information, I think this new proposal is of considerable importance. During the scrutiny, we had attached particular importance to one point — intercept products should be destroyed as soon as possible. At that time, our concern was that it was risky to preserve such information for a long period. Since the information might involve private conversations or privacy, the continual preservation of such information would be risky in the sense that human rights and privacy might be infringed. As such, our focus back then was the early destruction of such information. As for the present proposal put forth by Justice WOO, both the Government and Members consider it justified, otherwise, how can he perform his function?

However, the problem at issue is how to strike a balance? In a paragraph of the Report, Justice WOO talked about under what conditions are LEA officers allowed to carry out interception, he mentions two principles — it should meet the conditions of necessity and proportionality, and I think these two principles are important. If the Commissioner is given the power to listen to all the information in future, I think these two principles should also apply. After all, I

still worry that the preservation of such information for a long time may not necessarily be desirable. Yet, when it is necessary, proper and proportionate, I think it is important to allow the Commissioner to listen to the relevant information. We are not discussing the issue from an individual perspective. In fact, different Commissioners will have different approach. However, the system should allow the Commissioner to listen to relevant information while ensuring proper check and balance, which I consider highly important.

The Secretary has stated repeatedly that the authorities will accept this proposal, yet how will the relevant details be set out? I tend to apply the two principles that I mentioned earlier. Moreover, is it necessary to provide a channel for the Commissioner to submit such applications? I think that check and balance in this aspect may be required. We are but human; it is thus desirable to have checks and balances in place. Hence, first, the Commissioner should be allowed to listen to the information, then, the information should not be preserved for a long time, and a check and balance mechanism should be put in place. I think the authorities should head towards these three directions.

Regarding the conclusion arrived at by the Government after considering the views of all Members or other stakeholders, Deputy President, we will discuss it at the Panel meeting later.

During the implementation of the new legislation in the past few years, much experience has been accumulated. Most important of all, such interception work has indeed helped LEAs to crack certain serious crimes and even arrested the criminals. Hence, it is now the appropriate time to review the legislation, and I hope the review will be carried out as soon as possible. If the Government can submit all the proposals to us for discussion within this year and then follow up with the amendments, I think it would be most desirable.

Finally, I would like to quote a remark from Justice WOO in paragraph 1.5 of page 4 in the latest report: "The experience gathering exercise since the start of the tenure of my office as the Commissioner is still progressing", this was how he felt, and he went on stating that it was "for the benefit of the society in which we live". I thus hope that the review to be conducted will follow this direction. Thank you, Deputy President.

MR RONNY TONG (in Cantonese): Deputy President, the Chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), Mr TAM Yiu-chung, had once criticized Chief Executive Donald TSANG for engaging in perverse acts. On that day, he was referring to the issue on "fruit grant". Yet, we all know that Chief Executive Donald TSANG has engaged in numerous perverse acts throughout his governance in the past seven years. The enactment of the Interception of Communications and Surveillance Ordinance is a notorious example. At first, he adamantly opposed to legislate on the issue. Later, being reprimanded by the Court of Final Appeal, he requested the Legislative Council to pass the legislation in three months, yet he resolutely refused to protect the fundamental right to privacy of the people of Hong Kong in the legislation. The incident has laid bare his perverse acts.

Article 30 of the Basic Law stipulates explicitly that: "The freedom and privacy of communication of Hong Kong residents shall be protected by law. No department or individual may, on any grounds, infringe upon the freedom and privacy of communication of residents except that the relevant authorities may inspect communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences." Article 35 also stated clearly that "Hong Kong residents shall have the right to confidential legal advice". Why has the SAR Government never enacted legislation to protect the confidentiality of communications of Hong Kong people?

Not long ago, in 2007, an editor of the British *News of the World* and an investigator were sentenced to imprisonment for six months and four months respectively for interception. In July last year, criminal prosecution was initiated against the *News of the World* for intercepting communications of certain celebrities, including members of the royal family, and the news agency had to close down in the end because of the incident.

Why does overseas governments attach such importance to confidentiality of the communications of the public, yet this is not the case in Hong Kong? Is it because such incidents have never occurred in Hong Kong? Deputy President, we should never ever deceive ourselves as well as others that our privacy has not been infringed by interception. I believe any Member from the democratic camp may testify that they have experienced awful nuisance in their telephone communications during election. I had once invited certain members of the

media and experts on interception of telecommunications to check my office and it was confirmed that interception devices were found in my office.

However, the key of the incident is that fundamental rights like this should be protected by laws whether or not there is factual evidence that telecommunications have been interrupted. I do not think that the newsworthiness of overseas celebrities is lower than their counterparts in Hong Kong. If overseas news agencies have been involved in infringement of privacy time and again, I do not believe that similar incidents have not happened in Hong Kong.

Why do we not introduce legislation to protect our privacy? In 2006, the Law Reform Commission of Hong Kong (LRC) issued a report and requested the SAR Government to enact legislation to regulate activities involving the interception of telecommunications. Two recommendations had been made in the report. First, "It would be an offence for a person to enter private premises as a trespasser with intent to observe, overhear or obtain personal information therein". Second, "It would be an offence for a person to place, use, service or remove a sense-enhancing, transmitting or recording device (whether inside or outside private premises) with the intention of obtaining personal information relating to individuals inside the private premises in circumstances where those individuals would be considered to have a reasonable expectation of privacy."

The LRC pointed out in the recommendations that for the purpose of detecting crimes, interception should certainly be allowed under the law, and hence a certain institute should be given the power to carry out authorized interception. Yet, this recommendation of the LRC was made from the perspective that interception was completely prohibited. In other words, the premise is that the privacy of everyone should be protected, and exemption under the law will only be granted when it is proved that the interception carried out is for the lawful detection of crimes.

However, under the Interception of Communications and Surveillance Ordinance in Hong Kong, the situation is just the other way round. The police are authorized to intercept telecommunications, and as mentioned by Dr Margaret NG, the check and balance mechanism in place is fraught with problems. Had the SAR Government followed and accepted the recommendations of the LRC back then, I mean six years ago, the legislation would have significant deterrent

effect on the interception of telecommunications carried out by the Government for the purpose of detecting crimes. According to the recommendations of the LRC, it would be an offence for a person to carry out interception in the absence of proper authorization. This is certainly applicable to non-compliance interception carried out by police officers or legal enforcement agency officers, including officers engaging in political interception, as well as private investigators and persons infringing the privacy of personages or people in the entertainment business through interception of telecommunications.

A comprehensive legislation has to be put in place before we can truly protect the rights we are required to protect under the Basic Law. The authorities should not enact legislation that rewards or spurs government officers to carry out interception, where the check and balance mechanism under the legislation is just faulty.

I think this is the most blatant and unacceptable example of the perverse acts of the Chief Executive. *(The buzzer sounded)*

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

MS EMILY LAU (in Cantonese): Deputy President, I speak in support of the motion of Mr James TO. Some time ago, at the meeting of the Panel, I also proposed that a motion debate should be held on the report submitted by Justice WOO. I know that some colleagues do not like to debate on the report after its publication, and they prefer to propose a subject for debate of their own accord. However, since a lot of efforts have been made, I think it is desirable to propose a debate on the report, and the legislature should adopt this as a routine practice.

Deputy President, as colleagues have said earlier, the Interception of Communications and Surveillance Ordinance came into force under a very difficult situation. At that time, the authorities were facing extreme embarrassment and the issue was handled in a hasty manner. Hence, society as a whole had not been properly consulted, whereas the legislature was pressed, almost threatened, to pass the legislation expeditiously. Since legislation is a must, and yet there were restrictions, had a proper balance been established? I believe, as the Secretary has said, this is a highly controversial issue.

Dr Margaret NG has quoted certain figures earlier to state that other overseas places do not carry out interception of telecommunications as frequent as we do. Deputy President, do you know how many prescribed authorizations had been issued in 2010 according to the report of the Commissioner? It was 1 490, yet these were only approved cases, together with the 11 refused cases, there were over 1 500 in total, an average of about four cases each day. Later, the Secretary may have to give a brief response, explaining why there are more such cases in Hong Kong than in other places? Is the large number of authorizations really necessary? Why there are so many such cases? Deputy President, I agree that the law and order in Hong Kong is in general good, and the Secretary may say that this should be attributed to the large number of operations carried out. It is pointed out in the Commissioner's report that 365 people were arrested due to these operations last year, that is, 2010. I do not know the actual figure as of today. Perhaps the Secretary will have the latest information. These practices, which seriously infringe the privacy of the public, are allowed for the purpose of combating serious crimes and protecting public safety, and we do understand this is necessary in certain circumstances. However, have law-enforcement agencies be given too much authority in the course; and as a result the privacy of the public has been seriously infringed, and the public have been deprived of their rights protected under the Basic Law? I think this issue should be discussed publicly.

As such, I very much agree with the views of colleagues that a comprehensive review should be conducted. Mr LAU Kong-wah has left the Chamber. As mentioned by Dr NG earlier, Mr LAU did say that a review should have been completed by 2009, yet he did not mention this point in his earlier speech. If what he said had not happened — not that he had not said so, Deputy President, but that he might come forward to explain that he had been wrong at that time, and that he was wrong to trust the Secretary, or that he had given the wrong information at the legislature. The point at issue is that no review was conducted in 2009. So, should a review be conducted as soon as possible now? The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) or other Members from the pro-government camp may not speak today, yet they should have their views about this issue. Deputy President, the Secretary said he had received "orders" from the legislature, which merely required him to work on the requests made by the Commissioner. However, the Secretary has done nothing in certain areas which the Commissioner has asked the Secretary to make changes. Hence, I think a review is warranted.

Deputy President, there is one area that the Commissioner strongly aspires to change, yet colleagues have not mentioned earlier. What is the title of the Commissioner? It is the "Commissioner on Interception of Communications and Surveillance". He says that the title has caused him much trouble, for people think that he is the person doing the interception of telecommunications. He had mentioned this point some time ago — not at the meeting of the Panel, but at another meeting with us — that the title should be changed. He is responsible for monitoring issues relating to the interception of telecommunications, but he is given such a title. However, to this day, the title has not been changed, thus, he is quite unhappy. Secretary, the review has to be comprehensive. The authorities should issue a consultation paper to explain various issues, including the change of the title for the Commissioner, so that society will not be misled.

Another issue is about the introduction of criminal offence, as mentioned by some colleagues earlier. If law-enforcement agency (LEA) officers violate the law deliberately and listen to information they are not entitled to, it should not merely be dealt with as if it is a "common law offence of misconduct in public office", for this is inadequate. I believe many Members in the legislature have put forth this point repeatedly, and I hope the authorities will not be so stubborn.

Deputy President, many colleagues have mentioned the remarks of the Commissioner, and we had attended the briefing held by the Commissioner. However, Deputy President, in page three of the Report, he said that there was favourable change of the attitude of LEA officers, yet, last year — the Government Secretariat had not been relocated at that time and the briefing was held there — he said, "I am terribly furious". Yes, he was furiously angry, for those people simply ignored him. Hence, he said this time that "the favourable change of the attitude of the LEAs All these have whetted my aspiration that a sound foundation for the operation of the Interception of Communications and Surveillance Ordinance scheme in Hong Kong for the welfare of the community as a whole will be laid before my retirement of the post of Commissioner. The aspiration has, however, been dampened." The important proposal he put forth, as mentioned by Members earlier, was to allow him and his staff to listen to the intercept products, which he said would deter against malpractice of law-enforcement agencies in their operations of interceptions of telecommunications, but the Government had not accepted this proposal, let alone

implementation. He said that if he was given such power, he might expose those malpractices.

Deputy President, the Commissioner has done a lot. He is no saint, and he is met with criticisms. Despite the difficult circumstances, he has been doing his level best to protect the rights of Hong Kong people enshrined in the Basic Law. However, there are things he cannot do, and I believe he needs the unanimous support from Members of the legislature. Hence, Deputy President, I hope the representatives of various political parties who speak will help Hong Kong so as to set the mind of Hong Kong people at ease.

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

MS CYD HO (in Cantonese): Deputy President, this is the second time this subject is debated by the Legislative Council in its current term. Last time, eight Members spoke on this subject, and I hope at least one or two more Members will speak today.

This is the fourth annual report submitted by the Commissioner. The four reports issued have become more and more voluminous, even though the scope of subjects covered had been narrowed down. When compared with the first report, the issues of concern raised and the incidents exposed have reduced; yet, the report still gets thicker and thicker. It is revealed in the reports that law-enforcement agency (LEA) officers in general resist the monitoring of the Commissioner, and the problem is serious. Hence, if we do not make up for the time lost promptly and immediately by amending the legislation at once, I believe the situation of wiretapping and intercepting of telecommunications will deteriorate.

Justice WOO Kwok-hing will soon retire from the present post. Even though he is a relatively competent person for this public office, he still says that he may not be able to exercise adequate monitoring within his tenure. His great efforts have gained recognition by members of the public and Members. However, if another person appointed by the next Chief Executive does not make as much effort as Justice WOO, and the legislation has yet to be amended, the situation will be even worse.

The authorities are cunning in exploiting the politely worded report submitted by Justice WOO to claim that Justice WOO does not consider the situation out of control. However, Justice WOO, being a Judge, counts on evidence, and he will not make groundless inference on certain issues. Hence, in many cases, he said that the relevant situation could not be proved or established, yet he raised many doubtful points in those cases. However, the authorities take advantage of this decent act of a gentleman. Since Justice WOO adopts the attitude of not coming to any groundless conclusion, the authorities manipulate this practice to entirely deny the many possible scenarios and turn a deaf ear to the verbal remarks made by Justice WOO. As Ms Emily LAU said earlier, the verbal comments from Justice WOO were different, which were all strident criticisms, and he was furious. It is evident that the Secretary only uses information that is convenient, beneficial and useful to him in his response. This practice is extremely improper.

In the past two years, Justice WOO have been focusing on one point, that is, the power to conduct random checks on recordings obtained by interception. This is very important. When the Commissioner is given such power, all LEA officers must be very careful and cautious when they carry out interception, for they will be anxious about the random checks to be conducted by Justice WOO, fearing that irregularities may be identified and they will be in trouble.

However, the authorities surely do not want Justice WOO to take that action. Someone unidentified — no one admits of saying so by now — told Justice WOO that he did not have such power under the law, and the legislation had not empowered him to conduct random check on interception. For this reason, Justice WOO did not take such action. Yet he stated in the report that this is an extremely effective way to monitor LEAs. What do the authorities do? The authorities take the part for the whole by citing a case in Canada as an example to demonstrate that courts overseas also ruled that public officers did not have the power to conduct random checks on intercept products, but omitting the verdict of the case that they were not empowered to do so for it is not provided under the law. If such power is not provided for and Justice WOO considers it improper to do so, we have to amend the legislation as soon as possible. However, the proposals concerned have been put forth for two years, and why the legislation has still not been amended?

Moreover, there is another major loophole that we must deal with, and this has been mentioned in the latest report from Justice WOO. He pointed out that several interception cases involving the infringement of legal professional privilege were discovered this year, and at the same time, he said that infringement of privacy of journalists had not been discovered — why the term "non-discovery" was used? Since he is not authorized to monitor the situation, he definitely cannot discover such cases. Why there are so many non-discovery cases and Justice WOO has to highlight this point? Because there is a need to do so.

(THE PRESIDENT resumed the Chair)

President, intercepting the telephone conversation of journalists is more rewarding than intercepting those of political figures, for political figures will only communicate with people in the political arena, and they will only talk about secrets or plans in the pipeline with people from the same party or camp. Yet journalists have an enormous network, and intercepting their telephone conversations will be more rewarding.

We should pay attention to this point raised by Justice WOO when we amend the legislation. In the past, the Commissioner has introduced some administrative measures to improve the situation. For instance, device suppliers are required to state the time for lending and renting the devices, so as to verify whether LEA officers have used interception devices for interception operations beyond the authorized period. It is evident that Justice WOO cannot request LEA officers to provide such information, so he can only exert his influence and exercise his power to examine device suppliers outside the Government to obtain the information. What kind of Government is this?

I am so enraged that the Government refuses to allow Justice WOO to listen to the information obtained by interception he chooses at random on the grounds of protecting privacy. This logic is extremely absurd. The Government, which is the big machinery most likely to infringe privacy, dares to use the excuse of protecting privacy to turn down the request to examine whether

the Government has been involved in acts infringing privacy. It is downright ridiculous. It manifests the administrative hegemony of the SAR Government.

MR WONG YUK-MAN (in Cantonese): President, the Commissioner on Interception of Communications and Surveillance (the Commissioner) is a "toothless tiger". I believe that whenever the Secretary for Security reads the report from WOO Kwok-hing, he will surely agree with this remark of mine at heart, though he will not admit. WOO Kwok-hing has put forth the request for amending the legislation repeatedly. This time, in his report In fact, the first time I quoted from the report was during the discussion held by the Panel on Security, and I brought up the aspiration of Justice WOO at that time. Today, many Members have also quoted that remark. Upon reading that paragraph and his own account of the situation, we know that he is a "toothless tiger" through and through, and he is thus greatly frustrated. Justice WOO Kwok-hing had been so imposing when he was the Chairman of the Electoral Affairs Commission, his successors were far less satisfactory. The last two Chairmen, one surnamed PANG and the other surnamed FUNG, are getting from bad to worse, there is no comparison between them and Justice WOO. Justice WOO is truly a man of integrity, and he takes an extremely fair and superior position in treating officers responsible for interception of communications and covert surveillance. Yet, he has to face such a heavy blow. I have much sympathy for him. We are good friends. We used to be smokers and smoked often. I often persuade him to quit smoking, yet he refuses to do so no matter how. This may somehow be related to his character. He has suffered really severe setbacks.

With the enactment of the legislation, the post of the Commissioner is established to set the mind of the public at ease to some extent. However, it turns out that he keeps complaining like a grieving woman. WOO Kwok-hing used to be my idol, but now I regard him a grieving woman. Why would he act like a grieving woman? Thanks to you all. The reason is simple and I need not give further explanation.

Today, you people, including this "buck-teeth", are stating your unanimous stance again. During the scrutiny of the legislation, this man, the best guardian of the pro-government camp, feared that the Government would become a "toothless tiger" after the enactment of the legislation, and thus they turned the

Commissioner into a "toothless tiger". Since then, our human rights have been infringed constantly.

I hope that after the debate today, the Government will at least feel ashamed of the inadequacies, even though it may not reflect deeply, it should commence the procedure of amending the legislation seriously. Otherwise, we will despise such behaviour as well as the complete lawlessness of the LEAs.

In the past reports made by Justice WOO Kwok-hing, he had more than once made the request for amending the legislation to empower the Commissioner and his staff to examine and listen to intercept product, and expressed the hope of giving express power to the Commissioner to check and listen to the product of covert surveillance when necessary. These are specific and reasonable requests. Nonetheless, the Secretary only says that "the requests are heard but" With this "but" clause, he keeps on procrastinating in making the amendment. I hope the Secretary will give a concrete answer to the Legislative Council in his reply today. Otherwise, any further discussion will only be a waste of time and effort. If we allow the procrastination to continue, we will have to discuss the issue year after year, yet the situation will remain unchanged next year.

Moreover, Justice WOO Kwok-hing has stressed more than once that the penalty for non-compliance is too lenient. More often than not, if we pay attention to his reports, we will notice that he does not believe that the authorities have responded to his queries. He does not believe in you people every time. He has never believed in your explanations nor has he ever believed in people from the authorities. Does the Secretary find this odd? Examples indicating Justice WOO's distrust are abundant. Let me just pick one example. In one of the cases — it should be paragraph 7.99 to 7.135 in Report 3 — Justice WOO said that" Since the passage is quite long, I will not give the details here lest wasting the time. After listening to the responses given to his queries, he still doubted the explanation given by the junior supervisor, and he said, and I quote, "While I have strong doubt on the junior supervisor's explanation about his listening to the outstanding calls, I have no evidence to prove that he was under instruction or expected by the Specified Rank listeners to complete the unfinished calls intercepted before the lifting of the additional conditions. Nor do I have proof that the Specified Rank listeners similarly misunderstood the effective

period of the additional conditions as all officers in the Section declared they were aware of the entirety of the normal practice." (End of quote)

Obviously, Justice WOO is not fully satisfied with the explanation of the LEA, and this is not a single incident. Secretary, have the authorities reflected on this? LEAs have not reflected on this, yet as the Secretary of the Bureau accountable for the issue, you have not made any reflection as well. This legislation is about human rights, a matter of great importance, yet every time when the report is issued, the deficiencies mentioned will remain To put it simple, certain deficiencies put forth by the Commissioner in the current report will be found again in the next report, how strange it is? The same mistakes are made repeatedly. Every year, after the report is issued, a discussion will be held at the Panel on Security. The Secretary will give a perfunctory report and call it a day, and he will come back next year. Yet, LEAs will stick to their old practices. To put it bluntly, what can we do about such attitude? The penalty is too light, is it not? The authorities are being lenient to itself but straight to others.

In conclusion, up to now, the Commissioner on Interception of Communications and Surveillance, does not have adequate legal foundation to listen again to the recordings obtained by LEA officers via interception, which render it difficult for him to examine the cases thoroughly. The issue has been dragged on for two and a half years. The People Power urges the Government to commence the work on amending the legislation on interception of communications and surveillance as soon as possible, so as to eliminate all kinds of inadequacies.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, interception of communications and covert surveillance are a significant means for law-enforcement agencies (LEAs) to investigate and combat crimes. However, to strike a balance between maintaining law and order and protecting privacy of individuals, the Liberal Party supports that the Government should impose proper regulation on such acts.

Since the Interception of Communications and Surveillance Ordinance (the Ordinance) came into effect in 2006 and the formulation of the relevant rules and codes, the Commissioner on Interception of Communications and Surveillance

(the Commissioner) has been submitting annual report to the Chief Executive to report on the implementation of the Ordinance and put forth improvement proposals.

In the latest Annual Report 2010, the Commissioner urges the authorities to regularly review the forms concerned and clarify the ambiguity in the Code of Practice, and so on. We welcome that many of these proposals have been accepted by the authorities.

Regrettably, the authorities have only implemented improvement measures on insignificant and minor issues, whereas a comprehensive review which should long since be carried out is still nowhere in sight.

Since the work on interception of communications and surveillance is sensitive in nature and involves privacy of individuals, the authorities undertook at the Third Reading of the Bill in 2006 that an inter-departmental task force would be set up to conduct a comprehensive review of the legislation after receiving the second annual report submitted by the Commissioner to the Chief Executive. However, the authorities are seemingly adopting the delaying tactic. The review should have been completed by the first or second quarter of last year as scheduled, and a proposal on the work to be carried out should have been submitted to the Legislative Council, yet the authorities continue to procrastinate and the work has not been completed by now. It is really regretful.

This is particularly so for the focuses of the review are closely related to the monitoring of LEAs and the protection of privacy of the public. For instance, as early as 2009, the Commissioner had pointed out that he lacked the power to examine and listen to the intercept product obtained by LEAs, hence he would only be aware of non-compliance situations and irregularities when the authorities report the cases to him, otherwise, he had no way to identify such cases. In this connection, the Commissioner proposed that he and the subordinate officers designated by him should be empowered to check the intercept product obtained by LEAs and to conduct random checks.

Nonetheless, government officials had, on the one hand said that they did not oppose the proposal in principle and would handle the proposal in the comprehensive review, yet on the other hand, they pointed out that there was no such precedent overseas. At another time, it gave the excuse that the arrangement might involve the privacy of individuals and consultation of

stakeholders was required, and so on. All these gave people the impression that the authorities are insincere in allowing the Commissioner to reinforce the monitoring.

As a result, this proposal, like the comprehensive review, has been dragged on for more than two years, and no progress has been made. Since the Commissioner does not have the power to conduct random checks, he can only depend on the report submitted by LEAs out of self-discipline. How can the Commissioner effectively monitor the work of LEAs and deter LEA officers from acts of non-compliance? Is the Commissioner only fulfilling his monitoring function in name but not in substance? May I ask how does that differ from making the Commissioner a mere figurehead?

In fact, many LEA officers simply do not respect the Commissioner. The most well-known case occurred in 2008. At that time, a LEA officer, who ignored the request of his supervisor and the Commissioner, destroyed the conversation record of the interception carried out by him after the authorization expired, which had impeded the investigation of the Commissioner. Later, he told the Commissioner that the information destroyed was not related to the power and functions of the Commissioner and he believed that the Commissioner might obtain the information for investigation through other channels. His attitude was supremely arrogant. However, it was learnt that the LEA officer concerned was only subject to the penalty of transfer, which had aroused the doubt that officials were protecting each other and the problem was serious.

Apart from that typical case, the Commissioner has not identified any cases involving arrogant LEA officers with scornful attitude and contempt for monitoring, yet the situation of non-compliance cases has still been serious. For instance, in 2010, a LEA officer had breached the condition and listened to 51 restricted recordings, but he had only been advised after the incident. Moreover, certain LEA officers had breached the condition of the authorization to conduct interception of communications on the target, and they co-incidentally forgot the date and time the non-compliance interception was conducted, and the Commissioner suspected that there was a cover up. Eventually, the several officers involved were each given a written warning only.

The many incidents mentioned above rightly reflect that the current arrangement can neither deter non-compliance, nor prompt LEA officers to be

vigilant about the requirements of the legislation. It is also evident that when the Commissioner lacks proper power, he is not just a "toothless tiger", but a "paper tiger".

Certainly, we do not think that Justice WOO is the one to be blamed. In fact, the efforts made and improvement measures proposed by Justice WOO since his assumption of office are worthy of recognition.

As such, the Administration should honour its promise by completing the review of the legislation as soon as possible, including the conferment of suitable power to the Commissioner to exercise proper monitoring as soon as possible, and express instruction should be imposed to require relevant LEAs to impose strict penalty on officers conducting non-compliance interception. Only by doing so can the Commissioner effectively monitor law-enforcement operations, with a view to protecting the interest of the public.

With these remarks, President, I support the motion.

MR ALBERT CHAN (in Cantonese): President, it is an indisputable fact that law-enforcement departments of the Government are abusing the power to interception, and the public in general considers that the situation is worsening. The Hong Kong Bar Association (HKBA) has put forth a series of proposals to amend the legislation and increase the power of the Commissioner on Interception of Communications and Surveillance (the Commissioner), and it considers that the monitoring should be reinforced. However, the Government turns a blind eye and a deaf ear to the proposals put forth by the authoritative organization. It simply ignores the proposals.

This is not the first time the Government refuses to take the views of the HKBA. Regarding the approach for the replacement mechanism, the Government only amended the replacement mechanism after the HKBA had issued four declarations and 220 000 people took to the streets to exert public pressure. Hence, even if the Interception of Communications and Surveillance Ordinance (the Ordinance) is subject to continuous criticism and arouse extensive discussion in this Chamber, I believe, the Government will "remain unchanged for 50 years".

The justifications, motives and reasons for not making any change are worthy of examination. Perhaps some senior officers of the Hong Kong Police Force have a mania for interception, and they may be sex mania, for a young girl had been raped inside a police station. Hence, certain power of police officers should be confined and monitored by means of the Ordinance. Or the Commissioner should be given more power to listen to the information obtained by police officers through interception. These proposals will definitely reinforce the monitoring on police officers, officers of senior rank in particular. Obviously, the Secretary will surely say that the arrangement will increase the work pressure of police officers.

The Government often brags that police officers in Hong Kong are excellent and outstanding. If they are truly excellent, outstanding and capable, they will not fear being monitored. Why would they fear being monitored? Emperors fear being monitored, for emperors have the highest power. Karl MARX once said, "In a democratic country, law is the king; in a dictatorial country, the king is the law."

Now, in Hong Kong, the police have unlimited power. The power of the police is ultimate, allowing it to arrest any body according to its subjective preference. President, I have been arrested by the police. Tomorrow, I will have to attend a proceeding to answer the three charges initiated against me. I will definitely not plead guilty. They had arrested 400-odd people but had only initiated prosecutions against 10 to 20 of them. Under the leadership of Secretary Ambrose LEE, the problem of "unlimited police power" has been worsening in the past year or so.

Concerning the problem of "unlimited police power", the Government has simply refused the proposals of The Law Society of Hong Kong and the HKBA, which is evident that the Policy Bureaux concerned are still bringing the power abuse of police in Hong Kong into full play. Police officers are superior to all, all other people have to shut up.

This problem did not occur only after the reunification. In fact, before the reunification, during the rule of the Hong Kong British Government, this problem had already existed. However, the Hong Kong British Government, being the colonial government, would obviously be dictatorial and autocratic. This is the characteristic of a colonial government. However, since the reunification, "one

country, two systems" is implemented, and democracy and human rights are enshrined in the Basic Law. There is a big difference with the situation during the colonial era, when Hong Kong people were only regarded as second-class citizens. For the purpose of displaying the characteristics of a powerful state, the importance of "one country, two systems" and the rule of law, as well as the respect for human rights, should the authorities overthrow and revise the harsh policies adopted by the former dictatorial Hong Kong British Government during the colonial era, as well as the situation of "unlimited police power"? Should the authorities make changes and improvements? However, the Government adamantly refuses to make any amendment and corresponding changes.

Members may take a look at the relevant figures and examples. As many Members have mentioned such information and Mr WONG Yuk-man has quoted certain examples earlier, I will not repeat them now. However, according to the information provided by the HKBA, the refusal rate of applications for interception authorization is less than 1%, which indicates that applications will be approved as a "routine". One of the reasons for the high approval rate of application is that the threshold is too low. Officers concerned only need to present "reasonable suspicion" to apply for authorization for interception and the applications will be approved.

I recall that when I first joined the former Legislative Council in 1991, Martin LEE, a former Member, told me in the first place that I should be prepared psychologically that all telephone conversations, particularly those made at the office, would be intercepted, and I should never ever use the telephone at the office to discuss important issues. Before the preparatory meeting of the "five geographical constituencies referendum" — Miss Tanya CHAN and Mr Alan LEONG were aware of this — all telephones had to be removed from the venue and all the mobile phones of the meeting had to be put inside a box and be placed in the neighbouring room temporarily. During the meeting, no phones were allowed. In other words, back then, all Members of the Legislative Council and political groups knew very well that the problem of interception had deteriorated and gone out of control.

President, when Members of the Legislative Council had to place all the phones in the neighbouring room at the time of meeting, it is imaginable that the situation has been outrageous. Since the Government had been opposing the

"five geographical constituencies referendum", we knew for sure that the Government would collect all kinds of information to besmirch the persons concerned. When people convened a meeting on a lawful campaign and election campaign, they had to put away all the phones before the meeting commenced. Is this not a great irony and a severe condemnation to the ruling authority and the Government?

President, the final point is that: Why some people are unwilling to give up? Someone told me that senior police officers could find jobs easily after their retirement, for they might have learnt some information about certain people from the privileged class or the wealthy class through interception, and the latter would definitely recruit the senior police officers concerned out of fear (*The buzzer sounded*) and to ensure that the information obtained from interception would not be misappropriated.

PRESIDENT (in Cantonese): Mr CHAN, your speaking time is up. Does any other Member wish to speak?

DR PAN PEY-CHYOU (in Cantonese): President, the Interception of Communications and Surveillance Ordinance (the Ordinance) has been implemented for several years by now. As I go over the reports submitted by the Commissioner on Interception of Communications and Surveillance (the Commissioner) to the Chief Executive in the past few years, I find that the Commissioner has in general satisfied with the law compliance situation of the four law-enforcement agencies (LEAs) being monitored. Concerning this point, we, people of Hong Kong, are glad. However, the Commissioner has also pointed out that there are some obvious inadequacies in the existing legislation and requirements. Earlier, several colleagues of this Council have mentioned that the Commissioner has reflected in the past reports the power conferred by the Ordinance is inadequate and he has to subject to various restrictions in his work, and the Commissioner has felt quite helpless about that. Moreover, in the course of discharging his duties, the Commissioner has been treated with contempt from individual LEA officers. We consider that such attitude is definitely unacceptable.

The most obvious inadequacy in the legislation is the absence of a clear provision empowering the Commissioner and the persons designated by the Commissioner to examine the products obtained from interception of communications and surveillance. The Commissioner considers that this has greatly undermined the effectiveness of his work. In the Annual Report 2008, he had given a clear elucidation on this point. I have made an effort to find out the relevant report, and I will read out certain paragraphs. I will now quote the views of the Commissioner recorded in paragraph 9.2 of Chapter 9: "A member of the public may, justifiably or without any expressed justification, suspect an LEA officer to conduct communications interception or covert surveillance against him without the authority of a prescribed authorization. In such a situation, my enquiry with the LEA concerned may not produce the true answer: the LEA officer himself will certainly keep his unauthorized activity to himself and his senior officers and the head of the LEA will not know it. Depending on how secret the unauthorized activity is, my enquiries with other parties and their constant periodic reports of information to me may not help expose it. Apart from enquiries with other parties, I had not been able to design and devise further measures to detect such possible unauthorized activities or to fully ensure that LEAs operate in accordance with the requirements of the Ordinance and the Code." In Paragraph 9.3, it is stated "It was only recently that I came up with ideas for further improving the review measures regarding interception of communications, which are for the content of intercept products and related records to be preserved to enable my staff and me to check cases of special interest or chosen at random."(End of quote)

The Commissioner then pointed out the benefits for allowing him to check intercept product. In a nutshell, first, the Commissioner can check the intercept product against the report submitted to him by LEAs in accordance with the law or against the report of relevant judges to see if the content of the report is accurate. Second, the Commissioner can check whether the LEA involved has infringed the legal professional privilege of the people of Hong Kong. Third, the Commissioner can conduct random check of intercept product to see if there is non-compliance or non-report of irregularities by LEAs.

In the Annual Report 2008, the Commissioner had put forth certain specific proposals on the ways to preserve such information and the procedures to be

adopted by LEAs. I support the proposals made by the Commissioner. In fact, the function of the Commissioner and his department is to monitor whether the four LEAs have infringed the relevant rights of members of society when they carry out interception of communications and surveillance, with a view to protecting the privacy and legal professional privilege of the public. In other words, people of Hong Kong have the right to discuss cases related to them with lawyers and such communications should be kept confidential.

However, in implementing the proposals put forth by the Commissioner, a number of issues have to be considered. Regarding the specific arrangement for implementing the proposals, discussions have to be held. First, regarding the Commissioner's request for preserving the intercept product by the departments concerned, we have to discuss the preservation period and methods of preservation, as well as who have the access to such information — the access should definitely be restricted to a selected few — as well as the security measures.

Second, since the Commissioner has to discharge his duties, he naturally has to access and check the intercept product, yet for people other than the Commissioner, who else can the Commissioner designate in handling the work? Can the Commissioner designate persons outside the department concerned? Which ranks of officers in the departments can be given the authorization? What are the procedures for authorization?

In my view, we should be extremely cautious in formulating legislation, for we are indeed striking a balance between two issues: first, the power of LEAs in enforcing the law and investigation; second, the protection of privacy of the people of Hong Kong. A proper balance between the two has to be struck.

With these remarks, I support the original motion.

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

MR ALAN LEONG (in Cantonese): President, "If our society makes us worry that every time we speak, our speech will be recorded by the Government at will

with electronic devices and kept indefinitely the meaning of the term privacy will be reduced to naught." President, this remark is not made by me but Justice Robert TANG, Vice President of the Court of Appeal, in the judgment of the case on LAM Hon-kyok in 2006. To better protect the privacy of the people of Hong Kong, the Civic Party urges the authorities to review the Interception of Communications and Surveillance Ordinance (the Ordinance) immediately.

President, according to the annual report submitted by the Commissioner on Interception of Communications and Surveillance (the Commissioner) to the Chief Executive in 2010, the problem of non-compliance by law-enforcement agencies (LEAs) is still serious. Today, I would like to focus on interception cases involving legal professional privilege information. In the report, it is stated that there were 21 such cases and 11 cases involved irregularities, and among them, three cases involved the breach of additional conditions imposed by panel judges, where listeners were suspected of intercepting communications on "prohibited numbers", and another four cases involved unauthorized interception of duration ranging from four to 22 minutes after the prescribed authorization was revoked by the panel judges.

However, since the Commissioner is not empowered to listen to intercept product, LEA officers can act in whatever way they like. Justice WOO Kwok-hing pointed out unequivocally in the Annual Report that in reviewing cases involving legal professional privilege information, he found himself under tight restriction in fulfilling his reviewing function. Since the Commissioner was not authorized to listen to the recordings of intercept product, he could not confirm the veracity of the REP-11 report submitted to him by LEAs and the veracity of the gist of the conversation of the calls involving legal professional privilege. By the same token, he could not find out whether calls preceding calls reported to involve legal professional privilege information also included information involving legal professional privilege, or that the likelihood of involving legal professional privilege had increased and required immediate report to the panel judges.

As stated in the report, Justice WOO believed that officers responsible for interception had very likely obtained legal professional privilege information, but since he had no authority to listen to the recordings obtained by interception, he could not but accept that the representation in the REP-11 report was true and

correct. Since LEAs also know that the Commissioner is just a "toothless tiger", they may make true or false representation.

President, Article 35 of the Basic Law provides that "Hong Kong residents shall have the right to confidential legal advice". Obviously, Justice WOO is deeply worried whether LEAs have complied with the law in protecting the right of the public in interception operation. As such, in the past two years, he proposed repeatedly that the Government should amend the legislation to empower the Commissioner to listen to recordings obtained by interception, so as to ensure that LEAs were being monitored in interception operations.

Regrettably, apart from the statement of no objection to empowering the Commissioner to listen to the recordings in principle made by the Under Secretary for Security, LAI Tung-kwok, the Government continues to adopt the procrastination tactic. It probably hopes that by delaying the issue till the expiry of its current term, it will not have to deal with the problem. In 2009, the Security Bureau stated that proposals would be submitted by the second quarter of 2010, and then it was postponed to the first half of 2011. In the end, nothing has been submitted. It is stated in the latest remark that the consultation will be completed in the first half of this year, yet the tenure of this Government will expire by the end of June. I would say that the amendment of the legislation will be nowhere in sight. We do not know the progress of the so-called consultation with other stakeholders conducted by the Security Bureau, which includes the HKBA, The Law Society of Hong Kong, journalism associations, members concerned in universities and human rights organizations, and so on. Recently, the HKBA has submitted a representation to the Legislative Council, stating its stance on supporting the empowerment of the Commissioner to listen to recordings obtained by suspected unauthorized interception, and querying LEAs of abusing the legislation as indicated by the large number of applications for interception of communications and video surveillance, which far exceed that in Canada.

President, the Government says that allowing the Commissioner to listen to the recordings again may infringe privacy, yet this is but a flimsy excuse. For if the Commissioner is empowered to listen to the recordings again, only target persons under the prescribed authorization, who are suspected of involving in serious crime, will be affected, and the interception of their communications had

already been authorized by panel judges. Since the public in general are not target persons under the prescribed authorization, the empowerment will not affect the privacy of the public in general but will facilitate the exposure of non-compliance on the contrary.

There is no doubt that interception of communications will help LEAs combat serious crimes, yet a proper balance must be struck between the protection of public safety and privacy. Besides, monitoring measures and check and balance should be put in place to ensure that the public will not live under the white terror as described by George ORWELL in the novel "1984".

President, I so submit.

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

MS AUDREY EU (in Cantonese): President, Mr LAU Kong-wah pointed out in his earlier speech that no one had a crystal ball and no one could tell what would happen after the legislation was enacted, and the Legislative Council could hardly know what problems would arise in the future when they debated the Interception of Communications and Surveillance Ordinance back then. He also pointed out that the legislation had been implemented for some time and a review was due to be conducted. The history of this legislation has nearly been dismissed by him. As such, I think a revision of the history of the legislation will enable Mr LAU Kong-wah and those who are not familiar with the subject to understand that the situation we encounter today is indeed long expected.

Article 30 of the Basic Law protects the right to privacy of communication of Hong Kong residents. However, the Government, such as the police or law-enforcement agencies (LEAs), had been carrying out interception all along. Its unwillingness to legislate on the issue had caused widespread rumour and suspicion in the legal sector that communications of lawyers were also being intercepted, for their clients were often people under investigation. But still, the Government was unwilling to introduce the legislation. When several lawsuits in this respect emerged, the problem related to this type of interception of communications was exposed, and the Government had to yield.

However, the Government still failed to introduce any legislation. The first step was the introduction of an administrative instruction in 2005, stating that there was no problem with the interception of communications and it was in compliance with Article 30 of the Basic Law. However, this was obviously against the spirit of the rule of law in Hong Kong and in breach of Article 30 of the Basic Law. Subsequently, a Member of the Legislative Council applied for judicial review against this administrative instruction. The Government pursued the incident through legal proceedings to the High Court, but it lost its case every time. It eventually agreed to enact legislation on interception of communications. At that time, when the Court ruled that the Government had lost its case, the Government had in *de facto* no authority to carry out interception of communications. It then applied to the Court for a stay of execution, so that interception of communications carried out during the period would not be illegal. The arrangement had given rise to a "window period" which only lasted for a very short duration. The Legislative Council must pass the relevant Bill within the said period, otherwise, the stay of execution issued by the Court would lapse and it would be illegal for the Government to carry out interception of communication.

Under this circumstance, the Legislative Council at the time must work to meet the deadline of 8 August, which meant that the Bill must be passed within a short time. As such, Members were not only facing a very tight schedule in the scrutiny of the Bill, but also a tight time frame during the Second Reading debate at the meeting of the Legislative Council. I recall certain newspapers reported that Dr Margaret NG from the Civic Party did not even have the time to go to the restroom as she had to stay in the old Legislative Council Building to propose the many amendments.

One of the amendments was the "sunset provision" mentioned by Dr Margaret NG as she spoke earlier. According to her proposal, if the Government failed to submit a report on the review of the legislation within 27 months, the legislation would lapse, as explained by the word "sunset". This amendment would in *de facto* provide the incentive for the Government to conduct the review within 27 months and submit the report, so that in case any loopholes were found in the legislation, which was passed hastily at the time, there would be an opportunity for a proper review or amendments.

We should pay attention to the speech made by Mr LAU Kong-wah at the time. As read out by Dr Margaret NG earlier, he opposed all the amendments put forth by the democratic camp, and the "sunset provision" as well. He said that the fear was uncalled for, for the Government had undertaken to conduct a review three years after the implementation of the legislation, and he queried why the review could not wait till then and must be done within 27 months, for it would be alright to wait for three years. Yet, it turns out to be a six-year wait. Just consider, from 2006 till now, we have not seen any sign of a review. The Government proposed that consultation should be carried out first, and then after the consultation, only some technical amendments, but not the relatively important parts mentioned by the Commissioner, will be discussed.

Hong Kong people may learn from history that debates with no binding effect are insignificant and Members may speak at will. However, at the crucial moment like the passage of legal provisions, as in the case of endorsing the "sunset provision" or exercising the power under the Legislative Council (Powers and Privileges) Ordinance, Members from the pro-establishment camp would be nowhere in sight. As seen from the Chamber now, it seems that no Member from the pro-establishment camp is present. This phenomenon conveys the impression that the Legislative Council can do nothing more than mere talks and it is but a coward in action. As for the views of the common mass, they will not be heeded. As many colleagues have mentioned earlier, despite the repeated requests made by Justice WOO in a seething manner, the Government simply ignored them. The Hong Kong Bar Association has also submitted a number of representations, but the Government has ignored them as well.

Very often, the Government will query why certain Members from the democratic camp have to put forth so many views. But in fact, we are bringing up essential issues under the Basic Law, the rule of law or the fundamental rights to which we are entitled. Yet, when it comes to these issues, the Government will always consider that administrative convenience and law enforcement should be given priority. More often than not, the Government is unwilling to adopt the correct approach in dealing with issues involving important principles. Take the interception of communications as an example. Actually, when the problems were raised at the very beginning, the Government should commence the work on legislation and it should not wait till 2006.

Given the previous history, I am not quite optimistic that the "rectification" of the Ordinance will be completed within a reasonable period. Moreover, I implore Hong Kong people to pay attention to the debates in this respect. All of us should show more concerns about the affairs of the SAR Government or the Legislative Council. We have to muster adequate (*The buzzer sounded*) power of the public to induce the Government to change.

Thank you, President.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): President and Honourable Members, I have listened attentively to the speeches made by Members earlier and would like to thank Members for their valuable views.

I believe Members would recall that the Interception of Communications and Surveillance Ordinance (the Ordinance) was enacted in August 2006. It has been nearly six years since its implementation. Members would agree that it is the duties and mission of law-enforcement agencies (LEAs) to maintain law and order and to eradicate the bad elements for the safety of law-abiding citizens. Interception of communications and covert surveillance have served as an investigation means of extreme significance to LEAs in combating serious crimes and protecting public security. The objective of the Ordinance is to formulate comprehensive regulation as well as implement check and balance measures for the conduct of lawful interception of communication and covert surveillance operations by LEAs. The mechanism under the Ordinance seeks to ensure that LEAs will give due regards to the protection of privacy and other rights of the public while combating crimes and protecting public security effectively.

As LEAs have gradually come to understand the requirements under the Ordinance and made constant improvement, and coupled with the fact that the Commissioner has put forth proposals and reminders in his Annual Report, LEAs have become more matured as they have gained experience in the full

implementation of the Ordinance. Since the implementation of the Ordinance, the Commissioner has been satisfied with the overall performance of LEAs. He has not found any case of deliberate flouting or disregard of the statutory provisions or the law, nor has he found any of the officers committing the mistakes or irregularities being actuated by ulterior motive or ill will. The number of non-compliance cases was minimal, where most of the cases were caused by technical problems or unfamiliarity on the part of individual officers with the requirements of the Ordinance. The Commissioner has pointed out in the Annual Report that panel judges have been prudent and stringent in approving applications for prescribed authorizations, and they have been particularly cautious in dealing with cases involving legal professional privilege information and determining the duration of authorization.

Moreover, all applications for authorizations must satisfy the stringent conditions stipulated in the Ordinance, which provide that the objective of the operations must be for "preventing or detecting serious crime; or protecting public security", and the operations concerned must meet the dual-assessment conditions of "proportionality" and "necessity". Authorizations are not issued simply when there is reasonable suspicion as Mr Albert CHAN said earlier. As stipulated under the Ordinance, in conducting such operations, a reasonable balance has to be struck between preventing and detecting serious crimes and protecting public security and protecting privacy and other personal rights, including the right to receive confidential legal advice.

To perform the monitoring function, the Commissioner had put forth a number of proposals in the Annual Reports submitted in the past five years to reinforce the operation of the mechanism under the Ordinance. For most of the proposals, particularly those bringing immediate improvement to the operation procedures and involving no amendment to the legislation, they have been implemented immediately via the amendment of the Code of Practice and other administrative arrangements, so as to facilitate the smooth implementation of the Ordinance and the fulfillment of the monitoring function by the Commissioner. The content of the Code of Practice is part of the requirement of the Ordinance, and if LEA officers contravene the requirements in the Code of Practice, the Commissioner will regard the incident as a non-compliance case. Amendments and perfections have been made to the Code of Practice a number of times according to the proposals of the Commissioner. More than 30 items of

amendments have been made to the Code of Practice, and the amendments have been reported in detail in the papers submitted to the Panel on Security every year.

On the whole, with the experience gained by LEAs in the practical operation of the mechanism, the proposals and reminders put forth by the Commissioner in the annual report each year, and the update of the content of the Code of Practice according to the Commissioner's proposals by the authorities, the implementation of the Ordinance has become increasingly smooth.

While the Ordinance and the Code of Practice have become extremely stringent after constant improvements, we agree that there is still room for enhancement. In the middle of last year, we commenced the first round of consultation with stakeholders, including panel judges, legal professional groups, faculties of law of local universities, media organizations and the Privacy Commissioner for Personal Data, on the comprehensive review of the Ordinance for the implementation of the improvement proposals put forth by the Commissioner. After consulting the Commissioner and panel judges, we briefed Members at the meeting of the Panel on Security held in July last year on the proposed legislative amendments to the Ordinance. Last December, we conducted the second round of consultation on the new legislative proposals put forth by the Commissioner.

Earlier, some Members criticized the authorities for procrastinating and lacking in sincerity to carry out the review and the authorities are even suspected of shielding LEAs. These are absolutely groundless remarks. On the contrary, as the authorities know clearly that the Ordinance is a matter of great importance with far-reaching impact, any amendment to the Ordinance must be considered carefully and with adequate consultation before implementation.

As I have mentioned in my opening speech, the objective of the Ordinance to strike a balance between preventing and detecting serious crimes and protecting public security on the one hand, and protecting privacy and other personal rights, including the right to receive confidential legal advice on the other. Regarding the implementation of the Commissioner's proposals, we must ensure that for any proposed amendments to the Ordinance, which include expanding the scope of access to intercept products, preserving intercept products

for purposes other than those set out in the prescribed authorization and extending the preservation time, a balance must be struck between the protection of privacy of communication and the right to receive confidential legal advice, and that the amendments will not undermine the capability of law-enforcement agencies in combating serious crimes and protecting public security.

Regarding the proposal put forth by the Commissioner to amend the Ordinance to empower him and staff members he designated to listen to intercept product, no precedence is found overseas. The authorities can only draw reference from the experience of panel judges and law-enforcement departments, and conduct an extensive consultation on the views of professional organizations and stakeholders, in order to formulate an effective and practicable legislative direction. Hence, during the review of the Bill and the formulation of the legislative proposals, we have to give due regard to the views of panel judges, stakeholders and Members, apart from the views of the Commissioner. Moreover, we will make every effort to maintain the effectiveness of LEAs in combating serious crimes and protecting public security, and to continue to strive for the improvement of the operation under the Ordinance.

Some Members hope that the authorities will submit the proposed amendment to the Ordinance as soon as possible. We undertake that we will consolidate the views collected at the two rounds of consultation, and then we will report the consolidated results of the consultation to the Panel on Security in the first half of this year.

Regarding the proposal on empowering the Commissioner and officers designated by the Commissioner to listen to intercept product, I would like to highlight one point in particular, which has indeed been mentioned by Mr Alan LEONG earlier, that is Article 35 of the Basic Law protects the rights of the public to receive confidential legal advice, protecting the communications between the client and lawyers from being disclosed, to avoid bringing any damage to the client. The importance of protecting this right is indisputable. However, since there is no express provision in the Ordinance to empower the Commissioner to listen to intercept product, and no international standard and precedence are found overseas, we have to be extremely cautious in examining the implementation of the Commissioner's proposal. With reference to the results of the first round of consultation, we had established certain specific issues

worthy of detailed discussion relating to the implementation of the proposed amendments to the legislation and the details of implementation. The views of stakeholders are being sought in the second round of consultation which commenced in December last year.

In the second round of consultation, we look forward to obtaining the views of stakeholders as soon as possible on the specific issues we have established. These issues include: Should the Commissioner and his staff also comply with the confidentiality requirements imposed on LEAs; in the case of non-compliance by individual designated officers, should arrangement for internal investigation, public report or disciplinary actions be put in place; should certain basic principles be stipulated with regard to listening of intercept product by the Commissioner and officers designated by the Commissioner, for instance, intercept product should only be listened to when there is reasonable suspect of non-compliance; and should higher threshold be set for listening to intercept product likely to involve legal professional privilege information, and so on. We hope that stakeholders and Members will give their views on the implementation details.

Just now, some Members have criticized the Government for disregarding the law and deliberate flouting, and they even suspected that senior officers were covering up their subordinates. I point out once again in a solemn and formal manner that the authorities definitely disagree with these accusations. The remarks are completely groundless and totally unacceptable. Besides, these remarks are unfair and unjust to LEA officers who have endeavoured in combating serious crimes and protecting public security. In fact, the requirements imposed under the Ordinance are extremely stringent, which were enacted after prolonged discussion of the Bills Committee and the comprehensive debate at the Second Reading of the Bill back then.

Over these years, under the monitoring of the Commissioner, the mechanism of the Ordinance has been significantly improved. However, we agree that there is room for further enhancement, and we undertake to report the consolidated results of the two rounds of consultation with stakeholders to the Panel on Security in the first half of this year. However, I must reiterate that any review conducted or legislative proposals put forth should in no case undermine the capability of LEAs in combating serious crimes. Otherwise, it will only

make it easier for criminals to avoid the detection of LEAs and escape the long arm of the law, leaving the public in general to suffer in the end.

President, I so submit.

PRESIDENT (in Cantonese): Mr James TO, you may now reply and you have two minutes and 11 seconds.

MR JAMES TO (in Cantonese): President, after listening to the reply of the Secretary for Security, I come to understand why there is the rumour about appointing him to be the next Director of the Office of the Chief Executive, even if it will only be a transitional arrangement. When it comes to conferring monitoring power, he has in actuality been procrastinating as far as possible. President, in empowering Justice WOO to listen to the recordings concerned, if the criterion of reasonable suspect of non-compliance is included, I believe it will be equivalent to hamstringing the Commissioner. After reading the reports of the past few years, we would find that cases arousing reasonable suspect could hardly satisfy this criterion.

President, the second point I would like to raise is that we have confined our discussion on combating crimes, overlooking the scope covered by the vague term of "protecting public security", an area which lacks discussion. President, this point is related to Article 23 of the Basic Law. The authorities have set aside \$100 million each year for undisclosed expenditure, and the expenditure incurred by the police is in fact spent on this area.

President, as the number of interception cases conducted each year for protecting public security cannot be made public, the Government may brag in smug satisfaction about the unavailability of evidence against law-enforcement agency (LAE) officers for non-compliance. In this connection, I cannot but borrow the expression from Justice WOO that, "it is unimaginable, and could only be accepted as proffered". What was he suggesting? He was referring to the practices adopted by LAE officers in adverse situations, that is, they would first destroy all the proofs and clues, so that the Commissioner could not get the evidence. They would not keep anything, so that recordings would not be made available and no evidence could not be seen. The second tactic was to suffer from "collective amnesia", where several officers at the rank of assistant

departmental head lost their memory altogether and did not draft the report. For these reasons, Justice WOO could not find any evidence, yet the Government indulged in smug satisfaction and even said that the efforts of government officials were neglected.

Finally, I would like to remind Members one shocking point, that is, those recordings obtained by interception and be translated into intelligence will be kept forever, without subjecting to any regulation.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr James TO 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): Second motion: Creating a sustainable and open electricity market.

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

I now call upon Ms Audrey EU to speak and move the motion.

CREATING A SUSTAINABLE AND OPEN ELECTRICITY MARKET

MS AUDREY EU (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The electricity market in Hong Kong is absolutely oligopolistic as we only have two power companies, namely CLP Power Hong Kong Limited (CLP) and the Power Assets Holdings Limited (Power Assets) (also known as The Hongkong Electric Company Limited (HEC)). There is no competition from a third party. And since the two power companies supply electricity to different areas, there is no competition between them as well.

Given that the existing Scheme of Control Agreements (SCAs) have provided guaranteed returns for the two power companies, they can produce excess electricity and incessantly expand investments at will, as it is ultimately members of the public who foot the bill. As a result, the electricity market sank into a quagmire of high tariffs and high sewage charges. The electricity transmission facilities, which include transmission grids and substations, are privately owned by Power Assets (that is, HEC) and CLP. The impossibility of access to the transmission grids and substations has effectively barred the entry of any third party competitors.

The Civic Party was established in March 2006 and our first submission was "Towards a Sustainable and Open Electricity Market" published in March 2006, which bears the same title as our motion today. This is our first position paper published in response to the Government's consultation exercise on the future development of the electricity market.

At that time, we advocated a reform of the electricity market and urged the Government to seriously consider introducing competition when or before signing the SCAs with the two power companies in 2008, as well as addressing the issues of high tariff and environmental protection.

In the submission, the Civic Party first of all proposed to "set up an Independent Energy Authority" to overview the Energy Advisory Committee, and regulate or prepare for the opening up of a competitive electricity market.

At that time, we suggested that there should be "a firm timetable for mandatory opening up of the power grid". As we have pointed out, under the prevailing system, the two power companies tend to "overestimate energy demand and keep an exceedingly high level of backup capacity. If there is increased interconnection between the companies, the backup capacity — and the emissions that come with it — can be substantially reduced without compromising service reliability."

We also proposed that "the power companies should be required to make full use of the current HEC-CLP Interconnector for cross-supply and to prepare for full interconnection between Hong Kong Island and Kowloon". Furthermore, the authorities should pre-determine a timetable to enable the two power companies to achieve full interconnection in phases, and mandatorily require them to open up the power grid for access by third parties, thereby creating a situation of "one power grid with many generators" (meaning an open power grid supporting many power generators). We suggested that "the power companies should be required to keep separate accounts for the generation, distribution and transmission of electricity" because "this is essential to enable future opening up of the grid for access by third parties".

Back then, the Civic Party had forewarned that if the Government continued to use the Average Net Fixed Assets (ANFA) as the base for determining return, the two power companies would definitely exploit this loophole by "over-expansion and surplus capacity financed through high debt gearing", and even sell the surplus powers to the Mainland.

We therefore opined that it would be better to set the tariff based on the rate of return on equity. And yet, if the ANFA is actually used as the base for determining return, the rate of return should be set lower. We proposed to "set the rate of return on ANFA at 7%, which is equivalent to over 13% rate of return on equity".

Furthermore, a price-cap mechanism should be established to regulate electricity tariffs so that they could be adjusted largely in line with the change of inflation or deflation rate with future productivity gains shared between the public and the power companies. Unfortunately, in the end, the Government maintained that the rate of return on equity should continue to be used and decided that the permitted returns should be 9.99% of the total ANFA.

The Civic Party considered that the SCAs signed in 2008 were the culprits of two power companies' frantic increase in tariffs. If we do not review or amend the SCAs nor open up the electricity market, the vicious cycle will continue. Although the rate of increase has been slightly lowered this time, it will be more significant next time.

We have therefore held a press conference early this month in response to the tariff increase of the two power companies. We still considered the rate of increase proposed by HEC unacceptable, and special attention should be made in two respects. HEC's increase in Fuel Clause Charge (FCA) is even higher than that of CLP. While the former has increased 6.8 cents per kilowatt, the latter has only increased 3.7 cents per kilowatt, representing a difference of 84%. If HEC adjusted its FCA in line with CLP, it can lower tariff by 3.1 cents per kilowatt.

Furthermore, CLP has stated that the rates and interests recovered from a litigation between CLP and the Government will be refunded to the general public. Yet, HEC did not follow suit. Last June, HEC received a refund of about \$160 million of rates and interests after winning a case. If this sum of money is also included in the computation, the tariff per kilowatt could be further reduced by 1.5 cents. Therefore, the actual net tariff increase should not be 7.8 cents per kilowatt. If these two sums of money are also taken into account using our method of calculation, HEC's net tariff increase should be 3.2 cents and the rate of increase would not be 6.3% but 2.6%.

As for CLP, we have also identified many problems in the process of tariff adjustment. For instance, CLP initially proposed to increase the FCA to 17.8 cents per kilowatt, but it subsequently lowered the proposed increase to 16.1 cents.

However, surprisingly, while everyone expected that CLP would lower the rate of increase when it announced the adjusted increase for the third time (on 30 December), the FCA was adjusted upward again to 17.8 cents per kilowatt.

If rates and interests are also included in the computation, we may find that the rate of increase will be further reduced slightly. According to the results obtained by the Civic Party, after deducting those two items, the increase would become 2.9 cents per kilowatt and the increase rate is only 3.1%. We therefore consider that even though the rate of increase has been reduced, there is still room for further reduction.

The second point is, the Civic Party proposes that the Government should "launch a review of the two power companies' Development Plans" in accordance with section (1)(b) or (d) under part A of Schedule 3 of the SCAs, through which the two power companies can be required to revise their investment plans, revalue their assets, compress costs and rationalize their accounts. The Government also advised that the two power companies still have room for improvement. We hope that the Government will exhaust all means to force the two power companies to make further improvements.

Of course, the third point is that the power companies should exercise better cost control, enhance efficiency and lower tariff increase.

The fourth point is that the Government should request the two power companies to submit information on fuel costs, so that Members can monitor their operation. In my opinion, in discussing the electricity tariff of the two power companies, it is inappropriate to use the general commercial principles by claiming the sensitivity of the commercial information. Rather, as the power companies enjoy guaranteed profits and need not bear the risks of rising costs, they have shifted all the risks to members of the public because the costs is actually "paid" by the community. I therefore consider it inappropriate that only Members are allowed to have access to the relevant information; as members of the public ultimately foot the bill, they should have the right to access to the relevant information.

Certainly, we have also urged the Government to activate the mechanism for interim reviews, so as to pave way for the abovementioned segregation of the generation sector from the network sector and the introduction of competition. Many European countries have encouraged the development of distributed transmission network in recent years. Renewable energy power generation facilities, such as small-scale wind turbines or solar photovoltaic panels, have been installed in individual house, school or building. Surplus power will be sold to the electricity grid for consumption by others. Nonetheless, the Government is still reluctant to conduct such a review and development in this regard can hardly be promoted.

Even if we look back The Government advised us earlier that landfill gas could be sold to the power companies. And yet, it was subsequently sold to the Towngas. Also, we were advised that incinerators and the Organic Waste

Treatment Facilities in Siu Ho Wan can turn waste to energy. However, we have no idea if the Government can work with the two power companies in any respect so as to lower the electricity tariffs.

The Civic Party has all along stressed the need to create a sustainable and open electricity market through legislation, and preparatory work of this kind may take quite some time. Therefore, we hope that colleagues will express views by all means, whereas members of the public will exert pressure to force the Government to get ready for the opening up of the electricity market.

Thank you, President.

Ms Audrey EU moved the following motion: (Translation)

"That, given that the Government's signing of the 10-year Scheme of Control Agreements ('SCAs') with the two power companies in 2008 has extended the monopolization of the electricity market by the two power companies and sowed the seed of misfortune that the two power companies can persistently and significantly increase tariffs to 'maximize profits' regardless of public sentiments, for the well-being of the public, this Council urges the Government to:

- (a) require the two power companies to exhaust all room for tariff reduction, so as to lower the rates of tariff increase this year to the lowest levels;
- (b) immediately activate the mechanism for interim reviews, and make public the relevant information and accounts, so as to facilitate public participation;
- (c) launch a review of the two power companies' development plans in accordance with the provisions of SCAs, increase the transparency of the development plans, and require the two power companies to revise their investment plans, revalue their assets, compress costs and rationalize their accounts;
- (d) expeditiously materialize the interconnection between the networks of the two power companies and segregation of the generation

sector from the network sector, and introduce third parties to bid for the supply of electricity grids;

- (e) encourage the development of distributed renewable energy power generation facilities and networks, and provide technical support and concessions for connection to electricity grids; and
- (f) adopt all measures to create a low-carbon electricity market which promotes sustainable development and operates with greater competition, openness and fairness, so as to break new grounds in the electricity market."

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

PRESIDENT (in Cantonese): Five Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the five amendments.

I will first call upon Mr Fred LI to speak, to be followed by Ms Miriam LAU, Mr IP Wai-ming, Ms Starry LEE and Mr LEE Cheuk-yan respectively; but they may not move the amendments at this stage.

MR FRED LI (in Cantonese): President, I was appointed to the Legislative Council in 1911 — it should be 1991 but not 1911, as the Xinhai Revolution is always on my mind — and during these 20 years, I have followed up on issues relating to electricity, which were previously handled by Stephen IP when he served as Secretary for Economic Development and Labour, and now handled by Secretary Edward YAU.

The expiry of the old Scheme of Control Agreements (SCAs) in 2008 had necessitated the signing a new 10-year SCA, and I recalled that during the consultation, the Democratic Party had expressed many views. The problems anticipated by us then began to emerge now. What are the problems? In the 1970s, the Government saw the need for economic investment and given that

electricity supply was an essential and stable development, it thus allowed the power companies to earn a profit between 13.5% and 15%. Furthermore, return on asset investment was used to induce them to invest more for profits.

However, the conditions at that time has now become history but the Government failed to learn a lesson in 2008. In fact, the linking of the 13.5% rate of return with net asset value was a major problem back then. Secretary, not many places in this world still use such method for computing profits so as to monitor their power companies. Instead, there are different ways of determining the electricity tariffs, such as the abovementioned equity investment and return, return on operating costs and even subtracting X from CPI. Among them, linking net asset value with profits makes it most difficult to monitor the power companies. Worse still, the two power companies are encouraged to incessantly expand their generators and needs by using the best power cables and facilities. The facilities might not be perfect, but they are costly as the power companies are aware that they can secure a 9.99% return from asset investment.

In my amendment, I proposed the setting up of an energy management authority — as mentioned by Ms Audrey EU earlier — we have put forward this proposal for many years because the Energy Advisory Committee failed to promote energy policy. I have no idea what energy policy the Government has put in place, so perhaps Secretary Edward YAU should brief us on its energy policy, vision and long-term goals later on for I can hardly see any. Why would tariff increase cause such a big problem this year? Because CLP Power Hong Kong Limited (CLP) has increased the Basic Tariff from \$0.08 to \$0.085, representing an increase of 6.25% (that is, \$0.05). This rate of increase is stunning and everyone has been taken by surprise.

What is more surprising is that the Government has unprecedentedly issued a two-page press release to highlight its divergence with the two power companies, and its conflicts with CLP in particular. The Government has expressed dissatisfaction and disagreements in many areas. I do not recollect that the Government had issued similar press releases in the past. I believe the Government is aware that the 9.2% increase is unacceptable, but it also knows very well that it cannot stop the power companies from increasing tariff. It is perfectly clear that CLP's increase has not exceeded the ceiling of the Basic Tariff as specified under the five-year Development Plan. Does the Government have

any statutory power to disapprove the 9.2% increase? No, it does not. That is why the Government has resorted to "verbal manoeuvres" by making things public so as to divert public criticisms and attacks towards CLP, thereby placing it under the spotlight. However, Members must not forget that the Government also has a role to play. Why were the present SCAs signed? Why were the two power companies given so much freedom to grab maximum profits by all means? Did the power companies suffer losses every year? No. Whenever I asked CLP and HEC if they were able to secure a 9.99% profit, they would embarrassingly whisper "yes". They answered in the same way year after year. Which kind of business has guaranteed profits? I really do not know. What is more, the profits are high. I can tell the Secretary that these two power companies would not have secured such good returns for their investments in other countries, and losses have been recorded in some cases. Is Hong Kong a paradise to them? This paradise is nonetheless created by our Government.

Many of our colleagues, including Ms Miriam LAU and some others, called on a review of the 9.99% ceiling of permitted returns. I absolutely support the review. And yet, the current SCA has a term of 10 years and it would be extremely difficult to make any changes in the interim period. We must air our grievances anyway. Fortunately, there will be an interim review. The five-year Development Plan has already reached an advanced stage and it is time to discuss another five-year Development Plan, given that the 10-year agreement is comprised of two five-year Development Plans.

The Secretary always says that the Legislative Council had been informed of the five-year Development Plans when the agreements were signed in 2008. I just want to say that the Secretary is very crafty. We have no idea of the projects involved in the \$39.9 billion five-year Development Plans and the costs incurred. He only told us the grand total and some general information of the projects involved. What is the ceiling of the Basic Tariff each year? I do not know indeed. It turns out that the rate of CLP's tariff increase has not exceeded the ceiling. Even though the increase rate is 6.25%, it has not exceeded the ceiling. What actually is the ceiling then? I do not know either. Do our colleagues in the Legislative Council know? No, certainly not. This is precisely why I have suggested to Ms Emily LAU at the Panel on Economic Development to invoke the Legislative Council (Power and Privileges) Ordinance (the P&P Ordinance) to obtain information from the power companies. Chances have also been given to the Government, either through oral questions or in

private, to provide me with the information. Besides, I have also made my request to Mr Richard LANCASTER and he replied that there was no problem. He did not think there is any problem with the Government providing information to us about the five-year Development Plans. What is the problem then? Noting that they are shifting their responsibilities onto others, we have no choice but to do something. This is the last ditch of the Legislative Council. We are invoking our power to defend members of the public and monitor the Government on their behalf.

Electricity tariffs affect all 7 million Hong Kong people and no one can be exempted. Small and medium enterprises are the hardest hit. Although the increase may be pretty slight, the accumulation of many slight increases may generate great "cocktail effect". Therefore, being a representative of the general public, I am very concerned about this situation. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) did not support my proposal to invoke the P&P Ordinance on the ground that it would be very troublesome to obtain information from commercial corporations. But have we ever obtained information from any commercial corporation? I really have no idea. Firstly, I have never proposed to invoke the P&P Ordinance for the purpose of obtaining information from commercial corporations. Secondly, are the two power companies ordinary listed companies? Do they have many competitors? Will our request undermine their commercial interests? Can residents on Hong Kong Island get electricity supply from CLP? Can members of the public live without electricity? Will the DAB please answer me! The DAB has earlier moved a similar motion with no binding effect justly and confidently, and it has even sought our support; yet they have not spoken out when seeing that the Government and the power companies have not taken any actions. Later, when we intended to take action against this undesirable situation, they objected. I really do not understand. Certainly, they will be displeased if I call them deserters; I will also be displeased if I am so called. Yet, they have staged large-scale petitions, collected 30 000 signatures and made so much noise, but at the last moment, they chickened out. Why do we not exercise the power conferred to us by the P&P Ordinance? What purpose does that serve? I do not know.

Hence, I hope that my amendment will be supported. I also support Ms Miriam LAU's amendment. I have discussed the issue with Ms Miriam LAU, and I absolutely respect sensitive commercial information. Nor will I intervene

in business operation. I trust that the Government should be able to monitor the purchase of natural gas and the cost involved. Given that such costs are passed through on the basis of actual spending, it is impossible to earn any profit from it and thus I am not very concerned about this.

President, my gravest concern is that the Secretary has revised the development plans without informing us. How disrespectful this is to the Legislative Council. For instance, while some of the works relating to the West-East Natural Gas Pipeline, which involve billions of dollars, have been endorsed this year to tie in with the supply of natural gas to Hong Kong, some works which also involve billions of dollars have commenced without getting any endorsement. We will come back to this issue later on. What I want to say is that the \$39.9 billion capital cost approved for the next five years has been revised in 2012, and I believe there is an increase of at least \$3 billion. Is the Legislative Council informed of this increase? President, Members of the DAB, the answer is in the negative. It seems that there is no such need. Worse still, there was a loss of billions of dollars. What does that mean? President, it means that our electricity tariff will rise as any increase in capital cost will push up the Basic Tariff. What will be the rate of increase? How would I know when no information is available? This is why we have to investigate into the matter. I do not mean to hinder business operation. Nonetheless, we consider it unacceptable if they operate behind closed doors (*The buzzer sounded*) and increase capital costs.

MS MIRIAM LAU (in Cantonese): President, the current tariff increase of the two power companies has aroused widespread grievances among members of the public. It can be said that there is an explosion of public grievances against the power companies' moves to maximize profits by squeezing every penny from the public. Although the two power companies have made some "compromises" amid public outrage, lessons from the past can guide the future. If we do not conduct a thorough review of the tariff increase but allow the two power companies to do whatever they like, we will eventually be preyed upon and have to taste the bitter fruit.

The so-called "compromises" made by the two power companies is actually a delusive ploy in magic. The Hongkong Electric Company Limited (HEC), for instance, has adopted the tactic of imposing a high tariff to offset the reduction in

rates. HEC has relieved the pressure of tariff increase on residential customers by shifting the burden to commercial customers with high electricity consumption, while maintaining the overall rate of increase at 6.3%. It can still get the ceiling of 9.99% on the permitted returns. Instead of dropping its cleaver, they have merely turned it to someone else.

CLP Power Hong Kong Limited (CLP) was even more reluctant to make compromises, and had once stood firm claiming that there was no room for reduction. Subsequently, amidst intense pressure from the public and the Government, it had significantly lowered the increase rate from 9.2% to 4.7%. Nonetheless, it has not earned one cent less and was still able to maximize profits at 9.99% on the permitted returns. Downward adjustment of tariff increase is made possible on the assumption that the Government will return part of the Government rent and rates, hence there is a special rebate; other factors include payment from the Tariff Stabilization Fund and temporary deferment of some investment projects.

Noting the two power companies' insincerity in making compromises, we can imagine that they will continue to capitalize on the favourable terms in the Scheme of Control Agreements (SCAs) to maximize their profits by all means. Therefore, the Liberal Party opines that the two power companies should exhaust all room for tariff reduction every year and minimize tariff increase by all means. They should not think that the present revision or reduction in tariff increase has cleared all the hurdles, and can therefore play the old trick again in future.

The two power companies have played with numbers in the present incident of tariff increase, and CLP, in particular, has casually revised its Average Net Fixed Assets overnight, as if it is just a trifling matter. Hence, even though the Liberal Party disagrees in principle that either the Government or the Legislative Council should arbitrarily interfere in commercial operation, in view of the fact that the two power companies are regarded as public utilities which enabled them to enjoy special privileges and in consideration of their influential impacts on the economy, community and people's livelihood, the Liberal Party considers it essential to strike a balance between upholding people's right to know and maintaining a free business world. Therefore, under specific circumstances, the Liberal Party supports the use of the "imperial sword" by invoking the Legislative Council (Power and Privileges) Ordinance (the P&P Ordinance) to obtain the relevant information. In other words, actions should be taken on the

premise of keeping in line with public interest, not interfering with normal commercial operation, and not divulging sensitive commercial information. This is exactly the proposals of my amendment today.

President, the current row over the tariff hikes of the two power companies can be attributable to the inherent loopholes found in the SCAs signed between the SAR Government and the two power companies in 2008. Therefore, the Government must grasp the opportunity of the 2013 interim review of the SCAs and expeditiously plan for the review, with a view to striving to lower the ceiling of 9.99% on the permitted returns and enhancing the transparency of the SCAs. Speaking of transparency, the Liberal Party has all along requested the two power companies to enhance their transparency, and we have proposed to invoke the P&P Ordinance to obtain information about the tariff increase in 2012 and the five-year Development Plans. I have discussed with Mr Fred LI and we believe the information requested does not involve much sensitive commercial information. We demand that all information must be provided to the Legislative Council for consideration by members of the relevant committees — probably behind closed doors in some cases — and evaluation or determination would be made, upon consulting the two power companies, to decide what sensitive commercial information is not suitable for disclosure. By so doing, sensitive commercial information would not be divulged, and the free economic principles and the spirit of contract would not be undermined as a result. We think protection can be provided in these respects. Meanwhile, the Legislative Council can, after getting the necessary information, examine how the 2012 tariff adjustment is being determined and study the details of the five-year Development Plans.

Although it is pretty difficult, or almost impossible as Mr Fred LI has just said, to ask the two power companies to lower the ceiling of 9.99% on the permitted returns in the interim review, the Government should understand that the 9.99% permitted rate of return is the root cause of the frantic tariff hikes of the two power companies. Thus, the Government must do its best to force the power companies to compromise.

This incident has also exposed the inadequacies of the Government as a gate-keeper as it has allowed the two power companies, especially CLP, to build various electricity infrastructures on the pretext of environmental protection. As the Secretary for the Environment has pointed out earlier, the Government

suggested that CLP should credit expenses incurred during the preparatory and initial stage of work to accounts at a later time. And yet, according to CLP, the project has already been included in the five-year Development Plan approved by the Government in 2008. This contrasted greatly from the Government's statement that it was only informed of the project this year. This example well illustrates the Government's failure to effectively perform its gate-keeping role, as well as the much-exaggerated financial and operational information supplied by the two power companies. In this connection, the Government and the two power companies must enhance the transparency of the Development Plans, and re-consider if the investment or development plans contained in the next five-year Development Plan are appropriate.

In the long run, we agree to exhaust every means to enhance competition in the electricity market. In my opinion, be it the interconnection between the two power companies, the segregation of the generation sector from the network sector or the introduction of new competitors, the Government is duty-bound to practicably carry out a review to introduce competition into our electricity market, thereby lowering the electricity tariff. To achieve this end, the Government must promptly examine the amount of financial and technical input and assess the economic impact of these three proposals, and consult the public on the findings. This would enable the Government to devise new power supply strategy when the SCAs signed with the two power companies expires in 2018. We certainly agree that in order to promote a low-carbon economy, the Government must actively explore the feasibility of developing renewable energies. Yet, we cannot promote a low-carbon economy or emission reduction to the neglect of costs, as electricity tariff may increase in geometric progressions as a result.

Regarding the various amendments, as Mr Fred LI's proposal to set up an energy management authority to formulate long-term energy policies and monitor the power companies is in line with the Liberal Party's call to strengthen supervision, we therefore support the amendment. And yet, I do not think this is tantamount to relaxing or neglecting the supervision over the two power companies. Ms Starry LEE's proposal is also consistent with the views of the Liberal Party, and we will therefore support it as well. Mr IP Wai-ming, on the other hand, proposes to fully implement progressive block tariff. There is no doubt that the underlying spirit of environmental protection should be emphasized, but restaurants, bakery and laundry shops are high-consumption

customers, and electricity consumption cannot be further reduced in many cases. The implementation of progressive block tariff will not achieve any reduction in electricity consumption. Rather, it is a punishment to these high-consumption customers as they will have to bear a much heavier burden overnight. Worse still, they may either be forced to close down their businesses or transfer the burden to their customers. Thus, we do not support this amendment. Regarding Mr LEE Cheuk-yan's proposal to turn power supply into a utility operated by the public sector, as it runs in stark contrast with the free economic principles advocated by the Liberal Party, we do not support it as well.

Last of all, I advise the two power companies to learn from this lesson, bear in mind their social responsibilities and thus refrain from arbitrarily exploiting their customers.

President, I so submit.

MR IP WAI-MING (in Cantonese): President, after the new Scheme of Control Agreements (SCAs) came into effect in 2008, Hong Kong's two power companies, CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC), have increased electricity tariffs for two consecutive years following a reduction of 3% and 5.9% respectively in the first year. While CLP increased tariff by 2.6% and 2.8% in the past two years, HEC had frozen its tariff in the first year but increased by 2.8% in the following year. This year, however, not only has the rate of tariff increase surpassed that of the previous two years, but it is higher than inflation. Though CLP's initial rate of increase is below the ceiling of the permitted returns under the SCA, it is evident that the two power companies have maximized the permitted returns prescribed in the SCAs to adjust their tariffs. They have maximized profits to the neglect of the hardships faced by members of the public. This is downright unacceptable to Hong Kong people.

Notwithstanding that the two power companies have subsequently lowered the rate of increase, this year's increase rate is still much higher than that of the previous two years. Being public utilities, the two power companies are voracious in seeking a substantial tariff adjustment. What is more, the reasons for the tariff hikes are, once again, higher operating cost and infrastructural investments. There is no way we can find out how the increase rate is

determined. Therefore, we request the two power companies to expeditiously submit the relevant documents for our perusal and consideration.

Given that electricity is a daily necessity, we have no choice but to accept tariff increase year after year. Therefore, in my amendment, I have urged the Government to expeditiously conduct studies and consultation on a new mechanism for setting tariffs. In adjusting tariffs, the two power companies are required to submit information on the justifications for tariff adjustment and how the increased income thus derived would be spent. They must make public the relevant accounts, so that the public can gain a good understanding of the tariff adjustment. It is hoped that by so doing, people will no longer have the feeling that they are forced to accept any tariff increase, whereas the two power companies will have no more excuses to increase tariff at will to the neglect of the community. Instead, they will have to bear the corporate responsibilities as required of a public utility.

President, if the two power companies have to increase tariff due to rising fuel cost or operating expenditure, this is inevitable. Yet, the fact is that the power companies have been using different computation methods to calculate tariffs. This has given rise to inequality in tariff payment between residential and non-residential customers, and this problem is particularly serious for CLP.

According to the information provided by the environmental group Green Peace, residential customers of CLP have all along paid tariffs at a progressive rate, meaning that the customers pay for the exact amount of electricity consumed. Such fee regime is normal and reasonable, and complies with the user-pay principle. However, on the other hand, tariffs paid by non-residential customers are calculated at a regressive rate, under which high-consumption customers can enjoy greater discounts, and the discount can be as high as 10% to 60% for the Basic Tariff. In other words, there is greater discount for higher consumption. This has not only placed the burden of discounts offered to high-consumption consumers on residential customers, but has also encouraged wastage of power by non-residential customers. Green Peace further points out that if the CLP standardizes tariff payments of residential and non-residential customers by charging a progressive rate, a total of 900 million kilowatts to 1.2 billion kilowatts of electricity can be saved, which will mitigate the pressure of tariff increase.

In this row over tariff hikes, CLP has lowered the rate of tariff increase from 9.2% to 4.9%, seemingly to respond to the community's aspirations. And yet, Members must not forget that CLP has originally planned to introduce "a standardized tariff" after the tariff increase. Nonetheless, after lowering the increase rate to 4.9%, it decided to maintain the current method for computing tariffs. In other words, residential customers will continue to pay for the exact amount of electricity consumed whereas commercial customers will pay at a regressive rate, meaning "greater discount for higher consumption". The burden of electricity tariff on the public has not been relieved at all. Therefore, we call on the power companies to expeditiously and fully implement progressive block tariffs to lower the overall electricity consumption in Hong Kong. This would enable the Government to take the lead to promote energy saving among members of the public and business operators on the one hand, and relieve the pressure of tariff increase on the other.

We understand that some business operators may face an immediate increase in tariff, but I nonetheless think that this economic factor can be used to force them to save energy by all means. Nonetheless, we also reckon that the Government and the two power companies should discuss with high-consumption customers on ways to save energy. This will not only promote energy conservation, but also relieve the pressure of tariff increase and even provide tariff rebates to low-consumption customers, thereby inducing more customers to save energy.

When considering the present tariff increase, the two power companies have taken into account the cost-effectiveness of investments in environmental protection and emission reduction measures. The relevant investments, however, have been counted as operating expenses, thereby pushing up the overall tariff increase and subsequently the public have to bear all the expenses. As these expenses are important technical expenses for reducing emissions from generation facilities as undertaken by the two power companies, we consider that such expenses should be partially borne by the two power companies, which have described themselves as public utilities willing to undertake corporate social responsibility. Being power companies, they are obliged to provide a safe and environmental-friendly generation system. Using energy-saving facilities is also beneficial to the power companies as the energy produced can be reduced and the consumption rate of generators can be lowered as well. The two power companies will benefit in the long run.

As the Government has taken the lead to promote emission reduction among members of the public, it should also bear the investment costs incurred in environmental protection and emission reduction measures in order to demonstrate its determination and commitment in improving the environment. I suggest that the Government should review the cost-effectiveness of the two power companies' investments in environmental protection and emission reduction measures, as well as the ratio of relevant investments counted for computing returns and counted as operating expenses; the Government should also set the respective ratios to be undertaken by the Government, the two power companies and the public in respect of environmental protection and emission projects, so as to prevent the two power companies from continuously increasing their operating expenses on the grounds of expanding environmental protection and emission reduction projects and subsequently shifting all expenses to the tariffs paid by the public. Furthermore, the Government should immediately formulate a long-term energy conservation policy and set the relevant indicators to encourage the public as well as the industrial and commercial sectors to consume less power, and such indicators should be used for projecting future power consumption, so as to avoid drastic expansion of investment projects by the two power companies on the ground of continuous increase in power consumption.

For the long-term plans in the future, we consider that the Government should immediately review how the Government can intervene in the mechanism for determining tariff increase under the new SCAs, so as to prevent the two power companies from using various ways to shift all expenses they should pay to the public. Meanwhile, the Administration should also study the options for reforming the electricity market, and re-formulate policies to monitor the market so as to eliminate monopolies by the two power companies. Therefore, we think the Government should examine the segregation of the generation sector from the network sector and invite the public to join in the discussion.

President, I so submit.

MS STARRY LEE (in Cantonese): President, I have originally drafted a speech to discuss Ms Audrey EU's motion on opening up the electricity market; but as Mr Fred LI has just made some untrue accusations against the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), treating us

unjustly and attempting to smear us again in the context of this power and privilege issue, I must respond to him first and make use of this opportunity to tell members of the public the approach adopted by the DAB in the past and our position on invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance).

First of all, let us review the development of the incident. The two power companies announced an increase in tariff on 13 December. The high increase rate of CLP Power Hong Kong Limited (CLP) at 9.2% had, in particular, aroused a public outcry, as we all regard the increase rate unacceptable. The DAB staged a protest at CLP Headquarters on 14 December against its crazy tariff increase in spite of huge profits.

According to my understanding, the DAB was the first political party to meet with CLP management on 19 December and we asked them to respond to public demands and lower the increase rate. On 21 December, I raised an urgent question at the Council meeting and asked for the President's permission to hold an adjournment debate on the substantial tariff increases by the two power companies. We collected the signatures of more than 32 000 people on 22 December and asked CLP to respond to public demands.

At the meeting of the Panel on Economic Development on 23 December, a motion moved by Mr CHAN Kam-lam from the DAB was passed. The wordings of the motion were as follows: "That this Panel strongly demands the two power companies to postpone the tariff increase arrangements on 1 January 2012 for two months, and demands the Government and the two power companies to submit to this Panel before 1 January 2012 the financial information relating to the capital investment of the two power companies in the next five years as well as their operating expenditures, so as to alleviate the concern of society". In this motion, in my urgent question, as well as in our meeting with the senior management of CLP, I have repeatedly clarified and stated the requests of the DAB, that is, the two power companies should agree to submit to the Legislative Council information related to its five-year Development Plans and the tariff increase, so as to facilitate comprehensive monitoring by the Legislative Council and the public.

Obviously, the DAB has always requested the two power companies and the Government to provide this Council with sufficient information to facilitate

the monitoring by Members and the public. After the motion was passed on 23 December, CLP further lowered the increase rate to 4.9% under pressure of the community and public opinion. Even so, we have not given up our request for information. As we all know, Mr CHAN Kam-lam from the DAB and I have repeatedly communicated with Mr Jeffrey LAM, Chairman of the Panel on Economic Development, to learn about the progress in obtaining information. Moreover, the DAB wrote to Mr Edward YAU, Secretary for the Environment, on 11 January 2012, asking him — as it is a lengthy letter, I do not want to spend time reading it out — to provide eight items of information, including the five-year Development Plans and the relevant information on tariff increase.

I knew that the Secretary had sent a written reply to all members of the Panel on Economic Development yesterday, and he had, in particular, given Mr CHAN Kam-lam from the DAB a written reply, responding to our request for obtaining the information. The Government's reply was: "Concerning the information requested in your letter, we have contacted the two power companies and followed up the matter. We understand that the two power companies will provide the following information to the Legislative Council through the Panel, which includes information on a tariff review in 2012". There is a detailed list of information required. Nonetheless, we have not yet received the relevant information. Upon receipt of the information, we will check if sufficient information has been received and whether it is necessary to request for more information from the Bureau and the two power companies to facilitate effective monitoring. The course of events is described above. As always, the DAB has asked the two power companies and the Government to provide the Legislative Council and the public with sufficient information, so as to facilitate our monitoring.

The DAB has always been prudent with regard to invoking the P&P Ordinance and we have likened the P&P Ordinance, as we have just discussed, to the "imperial sword" of the Legislative Council. When should this "imperial sword" be used? It should be used when necessary, that is, it would be necessary for us to use this "imperial sword" when we are unable to obtain information by other means. Similarly, police officers patrolling the streets are required to carry a gun, but will a police officer pull out his gun when he starts questioning a person or when he asks different units for information? I believe the public do not expect police officers to act this way. When should a police

officer use his gun? He only pulls out his gun at the most desperate and critical moment when it is necessary to protect people's life and property.

The DAB is of the view that the P&P Ordinance, being regarded as the "imperial sword" of the Legislative Council, should only be invoked at the most critical moment when sufficient information cannot be obtained through other channels and when the concerns of the public cannot be addressed. At yesterday's meeting of the Panel on Economic Development, we learned from the Secretary's reply to Panel members and Legislative Council Members from the DAB that substantive progress have been made. We still need to find out if the information to be received can meet our requirements. If the information is insufficient, we will continue to ask the Secretary and the two power companies for more information to facilitate the most active monitoring.

Here, I would like to tell the Democratic Party and explain again to the public the position of the DAB on invoking the P&P Ordinance. All along, we have followed up the provision of information by the two power companies and we will continue to get sufficient information by various means in this Council, with a view to monitoring the tariff hikes by the two power companies.

Speaking of my amendment, I have written down a lot of information but I may not be able to mention all these points. I mainly wish to talk about the four main demerits of the Scheme of Control Agreements (SCAs). We have adopted the SCAs for a long time and the Secretary has repeatedly mentioned about their merits. I am not going to talk about those merits; instead I am going to talk about the demerits that make people suffer.

First, the computation mode based on linking permitted returns to net fixed assets will directly and strongly motivate the two power companies to increase investments by all means. Only by continuously increasing investments will the companies be able to get the so-called reasonable permitted returns in their balance sheets. If we continue to adopt this computation mode, the two power companies will keep thinking of ways to increase investments. We have a lot of data indicating that the two power companies currently have a high level of electricity reserves. In 2010, the electricity reserve rate for CLP was 24% while the rate for The Hongkong Electric Company Limited was more than 32%. Owing to this arrangement, the two power companies have continuously expanded their investments. Under the SCAs, the expenses incurred by the two

power companies on expansion would be paid by the public. Even if the two power companies have wrongly estimated the demand for electricity, the public are still required to foot the bill. After the Government has approved the investments of the two power companies, the amounts to be paid by the public would equal to the investment amount multiplied by 9.99. This is the first main demerit.

The second demerit is that the SCAs allow the two power companies to transfer all operating costs, including fuel costs, to customers. Just think, how can there be any enterprises which do not have any risk of deficits? Yet, under the SCAs, when the two power companies spend \$1, the public have to give them back \$1. Under such an arrangement, if I were the two power companies, I would not have any motive or incentive to save costs. President, no matter how much I spend, the public would pay me back in full. This would lead to the continuous expansion of their fixed assets, their operating costs and fuel costs (though calculated on the basis of actual spending) would also increase. There are many ways in which an enterprise can save costs. Many companies under the pressure of rising fuel prices will also think of ways to address the problem; yet, the two power companies may not do so because all their costs are calculated on the basis of actual spending and will be paid by the public.

The third demerit is that the public have not taken part in the discussion and approval process of the five-year Development Plans of the two power companies. Although the Government represents us in the approval process, it has not given us any specific information about the details of the plans in connection with the amount of \$39.9 billion. Without sufficient information, the public have to make payments continuously but they eventually do not have approval rights. If the two power companies comply *(The buzzer sounded)* Thank you, President.

MR LEE CHEUK-YAN (in Cantonese): President, Ms Starry LEE sits far away from me, so I cannot see if she has blushed just now. She has spent seven minutes explaining why the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) does not support invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), as well as what they have done. This proves that the DAB has consistently been "doing great favours for the Government by just making a few criticisms", they reprimand the consortia but

they miss the main point. When we ask the consortia for information, we are just like begging them or like "squeezing toothpaste", yet we cannot squeeze anything out no matter how hard we try. President, the most ridiculous point is that, she compares the right to exercise the powers under the P&P Ordinance to the police shooting civilians with guns. Does she regard the P&P Ordinance as AK-47? Would she feel distressed if we use it to shoot the consortia? How can one compares asking the consortia to disclose their monopolized information as serious as shooting civilians by the police?

Members have described the P&P Ordinance as the "imperial sword" of the Legislative Council. This is the view shared by some Members only. Why is it described as an "imperial sword"? Frankly speaking, in the normal operation of this Council, if we think that certain information has considerable impacts on people's livelihood and well-being, it is no big deal to exercise the powers under the P&P Ordinance to obtain information. The powers should actually be exercised more often. She has just said that we should not exercise the powers indiscriminately. We are not exercising the powers indiscriminately but we should exercise them more often as the Legislative Council will then be genuinely performing its regulatory function. How can it perform its regulatory function if it even fails to obtain information?

President, I would like to go back to our motion debate today rather than just talking about the P&P Ordinance. First, I would like to discuss the overall position of the Labour Party on public utilities. Public utilities such as water, electricity, gas, telephone and transportation are not general business, they are the daily necessities related to people's livelihood. If these necessities are monopolized by consortia, it is really bad as people would be subject to exploitation helplessly. They do not have other options in the market because the market has been monopolized and people have no other alternatives but to accept what is offered.

In that case, we think that public utilities with monopolized operation should be operated by the public sector. This is the basic position of the Labour Party. Before the public utilities are operated by the public sector, their establishment, operation and charges should at least be subject to strict control and public scrutiny. Of course, the Government is duty-bound in this connection as it has the responsibility to regulate these public utilities on behalf of the public. It is a pity that, as we have observed, the Government has not

performed its due regulatory function in the incident involving the two power companies; we may say that it is incapable.

Why do I say so? We note that the two power companies will substantially increase tariff this year. All of us have condemned the two power companies for maximizing profits as their proposed tariff increase aim at getting the ceiling of 9.99% on the permitted returns. We can surely condemn the two power companies for maximizing profits but if we discuss social responsibilities with an enterprise when we questioned if they must maximize profits the other day, they did not answer the question. They just said that they were entitled to the 9.99% permitted rate of returns under the Scheme of Control Agreements (SCAs). In fact, they have been maximizing profits. To discuss social responsibilities with an enterprise is just like asking a tiger for its skin. Hence, the discussions on this topic with the two power companies will simply be in vain.

The Government has the responsibility but how can it shoulder its responsibility? The government officials are at their wit's end and even the Chief Executive has resorted to "verbal manoeuvres" to oppose tariff increases. The Government should have the monitoring power, why then should it resort to the "lowly" means of "verbal manoeuvres"? What problems have been reflected? It reflects the Government's incapability, hypocrisy and dereliction of duty in this incident. The Government's hypocrisy refers to its "verbal manoeuvres". The Government's dereliction of duty refers to its inability and failure to perform its gate-keeper role within the regulatory framework as it has already been bound by the SCAs from the very beginning. Why are such agreements signed? That is the result of collusion between business and the Government. "Big market, small government" has all along been the Government's principle of governance. In this incident, it is truly a "small" government and an "useless" Government.

President, the Government appears powerless within the regulatory framework. Firstly, under the SCAs, an enterprise can continuously increase tariff provided that there is unlimited expansion of assets. Although in theory, asset-building programmes need government approval and the Government has indicated that the two power companies should have fewer such programmes, the assets value is still at a high level of \$39.9 billion. We do not know why

\$39.9 billion have to be spent for we do not have the relevant information. These enterprises have simply adopted the strategy of continuous expansion of assets.

Secondly, the Government cannot disapprove tariff increases. If the asset-building programmes of the two power companies have been approved, they naturally have to increase tariffs and the Government must grant approval. Thus, the SCAs have turned into profit guarantee agreements or guaranteed wastage agreements. Certainly, the enterprises will expand assets continuously so as to earn more. That is the logic and incentive. Since the Government does not have any solution, the Labour Party has made some proposals.

First, we consider that there must be a "sunshine policy" under which all information concerning the two power companies, including the method of computation of assets and the five-year Development Plans, should be made public instead of approving by the Government behind closed doors. All these accounts should be made known to the public. Hence, we support invoking the P&P Ordinance to investigate into the accounts of the two power companies, and asking the two power companies to make public their asset-building programmes.

Ms Miriam LAU remarked that we can only invoke the P&P Ordinance on the premise of not interfering with normal operation and not divulging sensitive information. I do not think we should have such prerequisites. If, in exercising the powers under the P&P Ordinance, sensitive information is involved, the committee concerned will naturally keep the sensitive information confidential after discussions, and we are also ready to abide by the confidentiality rule. Thus, not divulging sensitive information should not be regarded as a prerequisite for exercising the powers under the P&P Ordinance. Therefore, we disagree with Ms Miriam LAU's remark that prerequisites should be set for invoking the P&P Ordinance.

Second, we consider that a task force should be set up to conduct an interim review because the Government is often not so competent and does not have experts. Therefore, a task force should be set up to assist the Government in regulating the two power companies and this implies that we have to recruit professionals. This task force can first conduct an interim review and, in the future, it can become an energy supply monitoring authority (this is another proposal of ours) for the comprehensive implementation of the Government's energy policy. We have made two proposals: one of them is a transitional proposal while the other is a final proposal on the establishment of an energy

supply regulatory committee. Furthermore, we think the interim review should be scrutinized by the Legislative Council rather than conducted behind closed doors as in the present case. We do not know what has been discussed and the consequence is that the public has to bear the responsibilities.

Another proposal is that, we think the Legislative Council should be given the power to decide whether the SCAs of the two power companies, due to expire in 2018, should be extended. At present, there is no law regulating electricity supply by the two power companies. We should eventually legislate for the regulatory framework instead of relying on the agreements signed between the Government and the two power companies. We ask for the enactment of legislation to regulate the operation of the two power companies as this is the best way to protect public interest.

We also ask for an immediate revision of the present regressive rate of tariffs and stop the subsidization of high-consumption customers by residential customers and small and medium enterprises. CLP offers concessionary tariffs to certain customers which account for only 0.1% of the total number of customers but consume 42% of the total electricity consumption. Yet, CLP offers concessionary tariffs to them and requires them to pay lower tariffs, which encourages wastage. That is why we oppose charging at regressive rate and subsidizing high-consumption customers. This is not fair and not environmental-friendly.

Lastly, I would like to talk about operation by the public sector and competition. I would like to discuss competition first. Sometimes, competition sounds pleasant to the ear, but as we have noticed, competition fails to work for many public utilities. For example, is there an element of competition in respect of bus services? The two bus companies have monopolized the operation of bus services in Hong Kong, are there any competitors? Competition is often not easy with regard to the provision of daily necessities. We are not just talking about competition among many bus companies and each of them will eventually have a share of the market. Another example is that, while there are government representatives in the Board of the MTR Corporation Limited (MTRCL), the Government cannot stop the MTRCL from maximizing the number of flats constructed or maximizing profits. The Government cannot perform its gate-keeping role to address monopolization, how can we believe that improvements will really be made under competition?

On the other hand, competition involves grasping the best, as people would compete for things which are good. Everybody wants to compete in Central, who wants to compete on the Lantau Island? Nobody bothers about places like the Lantau Island. Thus, it is unfeasible to introduce competition in the supply of electricity. If operation in a competitive mode is not feasible, operation by the public sector will be the only way out. Hence, the Labour Party proposes buying back the two power companies and operate the utility by the public sector; this is the only way to protect people's livelihood and regulate electricity supply. Thank you, President.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President and Members, electricity is an important infrastructure to support the development of a society and an essential service for the public's daily life. Our energy policy is to strike a balance among the four objectives in electricity supply, which are reliability, environmental-friendliness, safety and reasonable price. All along, we have been adopting the Scheme of Control Agreements (SCAs) signed with the power companies as the regulatory framework while allowing the power companies to gradually increase investments for the provision of stable and reliable electricity and improvement in services. The Government also plays a monitoring and gate-keeping role with justifications under the SCAs, so as to ensure the quality of service and reasonable prices with respect to electricity supply.

The motion moved in the Legislative Council today reflects the concerns of Members about the issues arising from the present tariff review. This issue is not first raised in the Legislative Council and the panels in the past few weeks. The Government's negotiation with the two power companies about tariff adjustment this year is not easy at all. Although there is bargaining every year, the process this year has been rather tough. The original tariff increases proposed by the two power companies were far higher than public expectation and some items of adjustment were considered unreasonable during our preliminary scrutiny. We raised some queries within the regulatory framework of the SCAs. When we submitted the proposed increases to the Executive Council, the Legislative Council and the public for discussion, we expressed our strong concerns to the two power companies. After much efforts made by various parties, the two power companies finally responded to the Government's queries and people's aspirations and have reduced the rates of tariff increase.

The Hongkong Electric Company Limited took the advice of the Executive Council and lowered the increase rate to 6.3% on 13 December 2011. It announced on 16 December that it would further improve the progressive block tariff rate mechanism, so that the actual net tariff increase for 90% of domestic customers would be reduced to 4.97%, slightly lower than the inflation rate.

On 30 December (two days before the tariff increase), CLP Power Hong Kong Limited (CLP) finally revised its rate of tariff increase in response to the concerns of the Government and the Legislative Council. Specifically, CLP has adjusted downward its operating expenses after a review and in response to our request. It has excluded the capital investments to increase its power generation capacity, which were considered by the Government as premature. Here I would especially like to respond to the remark just made by Ms Miriam LAU that some capital expenditures of CLP were approved by the Government in 2008 when we scrutinized the five-year Development Plan. The Government's position is very clear; we have always stated that these expenditures were not approved when we scrutinized the current five-year Development Plan. For this reason, the power company had responded to our queries and it had finally excluded these capital expenditures. I must state this fact, and this is one of the five focuses of our annual monitoring that we have mentioned to the Legislative Council. As we can see, the projected Tariff Stabilization Fund (TSF) balance of CLP had been reduced from the original forecast of \$300 million to about \$100 million. With these measures, the increase in Net Tariff in 2012 can be adjusted downward from 9.2% as proposed in December. The increase of the Basic Tariff is adjusted downward to 4.2 cents per kilowatt, down from the initial proposal of 5 cents per kilowatt. CLP has also handed out a one-off 3.3 cents per kilowatt special rebate on refunds of rent and rates. As a result, CLP has reduced its Net Tariff increase to 4.9%, and the rate of Basic Tariff increase is lowered to 5.3%.

President, many Members have just expressed their concerns about whether the SCAs have provided the Government with sufficient powers or means to monitor the two power companies. As I have explained in the Legislative Council earlier, our scrutiny under the SCAs is conducted at two levels, which include scrutinizing the Development Plans once every five years, and rigorously examining the information provided by the two power companies every year, especially information on investments and operating cost, with a view to avoiding investments or cost that are excessive, premature, unnecessary or unreasonable. In the course of scrutiny, we focus on five main points, including capital

expenditure as we have repeatedly discussed with Members lately, operating cost, Fuel Clause Recovery Account, the TSF and other incomes. During the process, the Government accountants and their teams and the independent energy consultants will analyse and critically examine in detail various data provided by the two power companies.

In our past negotiations with the power companies on tariff increase, certain concessions have been achieved each year. The rate of increase was 2.8% last year, which was relatively low. There is a negotiation process every year, but for the preceding year, we could not reach an agreement regarding the proposals made by the two power companies in early December, the normal time for reaching an agreement according to schedule. We had queries about the five focuses of scrutiny as I have just mentioned, and we expressed our views to the two power companies. Nevertheless, our work did not stop after submitting the proposals of the two power companies to the Legislative Council in early December. We really want to take this opportunity to thank the Panel on Economic Development and Members from various parties and groupings for supporting the queries raised by the Government. Looking back, the parties and groupings made concerted efforts to support the queries raised by the Government. Indeed, we need not be concerned about who have contributed more. After reprimanding the two power companies, the Government is normally the next target under attack. In my opinion, the importance of the scrutiny process this year is that the Legislative Council and the Government have enhanced transparency in respect of the provision of information and discussions. This will be conducive to the annual scrutiny work in the long run.

A number of Members have said that transparency should be enhanced. In the course of monitoring the tariff adjustment of the two power companies, enhancing transparency has always been the Government's stance. As Members may recall, when we attend meetings of the Panel on Economic Development each year to discuss the proposals of the two power companies, we will obtain from the two power companies the information requested by Members. In particular, we have responded to many requests of Members in the course of examining the tariff adjustment this year. Some Members have mentioned the overall development of the five-year Development Plans. In this connection, I have to stress time and again, after we had scrutinized the five-year Development Plans of the two power companies in 2008, we had submitted to the Legislative Council the relevant information, which included capital investment, major

categories of capital projects, forecast growth in local electricity sales and the projected annual increase in Basic Tariff. Certainly, if Members need more information in these areas, we would ask the two power companies and provide such information to Members on appropriate occasions for their analysis.

As in the past, the Government has also provided information to the Legislative Council concerning the current review on tariff adjustment, and we have also provided additional information regarding our queries on certain data provided by the two power companies this year. Furthermore, we have put forward our views, comments and justifications on the information provided by the two power companies. Members will then understand the approach adopted by the Government in examining certain issues, as well as the discrepancies between the Government and the two power companies. Both parties are required to respond to these issues. Some Members have misunderstood certain information provided by the Government, we can take this opportunity to make substantive arguments and explain the situation.

This is also the first time that the two power companies have provided rather sensitive information to all members of the Panel on Economic Development in the form of classified documents, so that they can grasp the relevant data. Even though the relevant information is rather sensitive, it can at least be provided to Members as classified documents. We think this facilitates Members' understanding of the annual tariff adjustment and the Government's scrutiny work.

We would be happy to further enhance the transparency of our scrutiny work and discuss the tariff adjustments of the two power companies at meetings of the Panel on Economic Development. Some Members have suggested exercising the powers under the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), we do not think that is necessary in this case. As Hong Kong is an international commercial city, we must strike a balance between increasing transparency of scrutiny and protecting sensitive commercial information. As the two power companies have reflected to us, invoking the P&P Ordinance involves sensitive commercial information as well as the forecasts on electricity supply and energy market. The disclosure of such information has legal impacts on the future commercial negotiations of the companies in Hong Kong and in other regions, tenders, market trading under the

listing legislation, information disclosure, insider trading, and so on. I believe not only the two power companies will be affected, other listed commercial companies will also share the same concerns. The Government's gate-keeping role in respect of the annual tariff increases of the two power companies will not be affected, but an appropriate platform is required. In addition, the two power companies worry that the disclosure of certain information would affect their competitiveness and bargaining power in the market, which is unfavourable to cost control. All these issues are connected with the commercial operation and business environment in Hong Kong. I trust that we should not ignore these opinions, and an in-depth understanding and discussion are warranted.

The Government considers that the Panel on Economic Development would be an effective platform for co-operation with the Legislative Council. Members can examine and discuss the information provided by the two power companies while taking commercial operation into account. As stated in my letter yesterday in reply to the Chairman of the Panel on Economic Development, the two power companies basically agreed to provide the Panel with information concerning the 2012 tariff review and the five-year Development Plans. I have, in my reply, given the details of the items of information that can be provided, and Ms Starry LEE has just mentioned some of these details.

As stated in my reply, in respect of the 2012 tariff review, the two power companies will provide the breakdown and justifications of the originally proposed 2012 tariff adjustments and final tariff increases (including Basic Tariff increases and the Fuel Clause Charge (FCC) adjustments). The breakdown will be divided into two parts, namely Basic Tariff and FCC. On Basic Tariff, the breakdown covers the increase in the total value of the average net fixed assets, the increase in operating costs, changes in electricity sales, and the increase/decrease in TSF balance, and so on. On the FCC, the breakdown covers the increase in fuel prices, the revised FCC overcharge/undercharge in 2011, and a larger Fuel Clause Account deficit balance to reduce the tariff increase, and so on. The two power companies will also provide information on the value of the average net fixed assets in 2011 and 2012 and the reasons for the increase, as well as the details of operating expenses, and so on.

Regarding the five-year Development Plans, the two power companies will provide the following information: the projected total capital expenditure within

the five-year Development Plan period, and the annual capital expenditure forecast set out by category (such as emission reduction projects, projects put into operation, other power generation systems, transmission and distribution systems, as well as customer and corporate services development, and so on); the annual actual capital expenditure within the five-year Development Plan period; the revisions to the approved total capital expenditure and the effects on tariffs (if applicable) within the five-year Development Plan period; the approved basic tariffs and the projected FCCs and Net Tariffs within the five-year Development Plan period, with a breakdown by year and a comparison with the actual tariffs in that year, and so on.

Some of the information I just listed, particularly the information related to the 2012 tariff review, has been provided to Members in the form of classified documents in December when discussions were held with the Panel on Economic Development. Some information of the two power companies contain sensitive commercial information, and as some Members have just said, even if the P&P Ordinance is invoked, they hope that sensitive commercial information can be protected because interests would be involved. As regards the way in which such information is provided, is it necessary to work out a number of provisions to protect both parties when listed companies are asked to disclose information to Members as some information is sensitive to stock prices? I believe protection should be given to both sides. We would like to discuss with the Panel on Economic Development the way and platform for the provision of information, so as to facilitate more objective and prudent exchanges. In this way, we can do a better job.

Concerning an interim review, after the present tariff review, quite a few Members have suggested that we should make preparations for the interim review on the SCAs and the subsequent reviews up to 2018, I agree with them. Under the SCAs, the two power companies and the Government have the rights to ask for a revision of the SCAs in 2013. I will make reference to the implementation of the SCAs in the past few years, including the special experience in the tariff review this year, and consider how we can take the opportunity of an interim review to further improve the existing practice. I would like to listen to Members' views in a while.

Before signing the SCAs in 2008, the Government had considered if such agreements were the best and the issue was raised for discussion at that time. I

recall that we had repeatedly discussed the matter with Members in the Legislative Council. Before signing the SCAs, we had discussed at several meetings of the Legislative Council the different directions of development and the implementation of the SCAs. We had examined whether we should continue to regulate the electricity market in the form of agreements, and whether the electricity market should be regulated by legislation in case we failed to reach a consensus with the two power companies. As far as I remember, quite a number of Members had reservations at that time and were worried that this would run contrary to the free market principles upheld in Hong Kong. The Government and the two power companies subsequently reached a consensus about the revised SCAs. As we have reported to the Legislative Council, the SCAs have continued to be implemented so far. Anyway, I trust that all agreements will expire some day and there are opportunities for a review. We would like to listen to Members' views on this point.

Just now, some Members have proposed opening up the market, the segregation of the generation sector from the network sector or the introduction of competition, and so on. Actually, these proposals were made when we dealt with the extension of the SCAs in 2008. These are very important issues that required thorough studies and careful considerations. Many Members have asked if the segregation of the generation sector from the network sector or the introduction of competition can directly lower electricity tariffs. Besides electricity tariffs, we also have to take into account other important factors in the formulation of policies, such as the stability and safety of the electricity market, and environmental protection. We must also study overseas experiences to find out if opening up the market will certainly bring about lower tariffs. Furthermore, can opening up the market maintain reliable, safe and environmental-friendly electricity supply? We notice that various places have different experiences. An overview of the experiences of various places around the world in opening up the electricity market shows that the power companies in many places have changed from state-owned or monopolized businesses into private businesses that have entered the competitive market. Examples include the United Kingdom, Ireland, Italy, Australia and New Zealand. In the 1950s to 1960s, quite a number of countries in South America have turned private power companies into public companies, but some companies eventually returned to the private market in the 1990s. In any case, from these overseas experiences we learn that we have to consider many important factors before turning private

power companies into public companies. I believe Members would discuss and study this issue very carefully, and I would like to listen to the views of Members in the upcoming discussions.

Yet, I must reiterate what the most important pillars of the whole electricity policy are. I have made this point at the very beginning of my speech, and Members have just asked questions about these pillars. We usually discuss with power companies about electricity tariffs in December each year. However, we are concerned about the supply of reliable and safe electricity on each day of a year. We are also concerned about the environmental protection issue that is getting increasing public attention. These four pillars are indispensable; hence, we hope that a balance can be struck among these four aspects during all discussions. President, I would like to listen to Members' views and I would respond further to their views in my concluding speech later on.

Thank you, President and Members.

MR CHEUNG KWOK-CHE (in Cantonese): President, all of us may recall that the Chief Executive has invited people to press the "Like" button on Facebook, in support of the Government's view that, in proposing tariff adjustments, the two power companies as public utilities should take into consideration their social responsibilities and the affordability of the public, and consider their positions on the increases again. Although nearly 7 000 people have indicated their support, it turns out that this is all the Government can do in face of the frantic tariff increases of the public utilities in Hong Kong. How does such act different from surrendering? If the Chief Executive considers that the two power companies should take into consideration their social responsibilities and the affordability of the public, why not included these two points in the Scheme of Control Agreements (SCAs) signed in 2008 or why not set up an additional regulatory mechanism? I feel very sad about the decision made by the Government and this incident made me really angry.

Even though the two power companies have unscrupulously increased their tariffs, the approach adopted by CLP Power Hong Kong Limited (CLP) is most shameful. On 13 December, CLP announced a 9.2% tariff increase; by 30 December, it has twice reduced the rate within 10 days or so to 4.9%, that is, the rate has been reduced by almost 50%. CLP said that they were not "asking exorbitant prices to leave room for negotiation", but as a listed blue-chip public

utility, how can it treat the increase or decrease of tariff as if it is a game? This is really incredible. A 9.2% increase almost reaches the ceiling of permitted returns and it evidently has the intention of maximizing profits. CLP is obviously playing with numbers and fooling the public when it suddenly and substantially reduced the rate twice. It has totally disregarded its corporate social responsibilities and this is most annoying. Therefore, I sent an email to the industry players on 24 December, asking them to boycott the participation by the two power companies in the "Caring Company" activities; the appeal was widely supported. Obviously, the public are very unhappy with the two power companies' intent of maximizing the rate of increase.

While the permitted rates of return for the two power companies under the existing SCAs are lower than those under the last SCAs, the profit assurance mechanism remains the same. The ceiling that originally intended to limit profits is still a magical formula for guaranteeing huge profits. Despite a lower tariff increase, the power companies can still make huge profits. So long as the companies continue to increase capital expenditures, they will still have huge profits and efficiency of power generation is not a matter of concern. How come we have such ridiculous SCAs?

Concerning this incident, if the two power companies are to be flogged, the Government should be flogged even harder. Electricity is a public utility and allowing this utility to be operated by the private sector is to lay trouble for the future, as it would be very difficult for the Government to impose strict control and protect people's livelihood. The SCAs were originally tools for limiting corporate profits and protecting people's livelihood; but eventually, the corporate profits cannot be limited and instead, the enterprises are well assured of profits but not losses under the SCAs. The enterprises can bypass the monitoring of the Government and the Legislative Council, and increase tariffs freely and lawfully. The "profit control agreements" have turned into "profit assurance agreements". There have always been voices in the community requesting for the abolition of the link between profits and total asset value, the development of new energy, the interconnection between the two power companies and even the opening up of the electricity grid. These proposals are meant to stop the two power companies from making excessive demands, yet the Government is just too timid. It just made minor patch-ups in the review in 2008 and even claimed that the public could save \$5 billion a year. Today, the Government gets a good slap in the face from the two power companies. What else does it have to say?

At present, the Government must take proactive actions and ask the two power companies to consider if the tariff increase can be maintain at a even lower level this year. Furthermore, the interim review and the relevant mechanism must be transparent, and information should be disclosed to allow monitoring by community groups. The public should also be allowed to join in the discussion.

In the long run, to bring forth fairer and more reasonable tariffs, as well as a low-carbon and low-pollution society, I support establishing an independent energy supply monitoring authority, and conducting studies on turning power supply into a utility operated by the public sector.

With these remarks, President, I support this motion.

MS LI FUNG-YING (in Cantonese): President, at the beginning of 2012, CLP Power Hong Kong Limited (CLP) finally further reduced the rate of tariff increase to 4.9%. Of course, the public welcome CLP's willingness to adjust downward the tariff increase. However, the announcements made by the two power companies about tariff adjustments are as dramatic as television soap operas, with numerous changes made in just a month. CLP announced a 9.2% tariff increase on 13 December which aroused a public outcry; it lowered the rate to 7.4% on 21 December and then to 4.9% on 30 December. It is startling that a public utility which supplies electricity to 80% of Hong Kong people has adjusted tariff in a way similar to hawkers selling vegetables in a market.

We do not know how the rate of increase are set. On 13 December, Richard LANCASTER, Managing Director of CLP, emphasized that CLP had tried its best to minimize the increase when he explained the 9.2% increase at a committee meeting of this Council. When CLP announced on 21 December that the increase would be lowered to 7.4%, Richard LANCASTER said that the adjustment was made in response to the views expressed by the community. On 30 December, CLP announced that the increase was further lowered to 4.9%; this was made possible due to the reduction in operating costs and removal of some capital investments. Even though a 4.9% increase is almost 50% lower than CLP's initial proposed increase of 9.2%, and is close to the expected inflation rate in Hong Kong this year, on what basis can we say that this rate of increase is acceptable?

CLP's tariff adjustment reflects that there are numerous loopholes in the Scheme of Control Agreements (SCAs) signed between the Government and the two power companies and that the overall interests of the community have not been protected. It also reflects that CLP is really greedy and it ignores its social responsibilities as a public utility. In our debate today, Members from different parties and groupings requested for the rationalization of the SCAs and the provision of information relating to tariff increases by the two power companies. This has fully reflected that the two power companies have lost the community's trust. I support asking the two power companies to provide the relevant information; without which we will not be able to learn a lesson from this tariff increase farce of the two power companies, and avoid making the same mistakes when the two power companies propose tariff adjustments in the future.

President, this Council will debate on 8 February whether the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) should be invoked to collect information from the two power companies on tariff adjustments and future development. I know some Members have reservations about invoking the P&P Ordinance because they think that sensitive commercial information is involved. I understand Members' worries but I think that public utilities are monopolistic in nature, and their operations are different from general commercial operations. A lot of sensitive commercial information on public utilities is connected with the overall interests of the community; so we cannot consider the operation of public utilities the same as general commercial practices. The information submitted by the two power companies forms the basis on which the SCAs should be improved. Experience tells me that the Legislative Council has always been very prudent in exercising the powers under the P&P Ordinance, and I do not think that invoking the P&P Ordinance to collect information on the two power companies would have any impact on our business environment.

As a matter of fact, the community has intermittently discussed how to improve our electricity market for quite some time, and more in-depth discussions are needed on issues such as the interconnection between the two power companies, opening up the market and the introduction of competition. At this stage, I do not think that turning power supply into a utility operated by the public sector is a way forward for developing our electricity market, as a utility operated by the public sector requires underwriting by taxpayers, which is definitely not an effective way to spend public money. Turning power supply into a utility

operated by the public sector may only be the final choice when all proposed improvements have been ineffective.

I so submit, President.

MR RONNY TONG (in Cantonese): President, I agree very much with the remarks just made by Ms LI Fung-ying. We all find the development in the past two months since the two power companies have proposed tariff increases very inspiring. Raging public sentiments have led to the retreat of the two power companies. After the power companies have agreed to lower tariff increase, this Council has initially arrived at a consensus to seek information by exercising our privileges. The two power companies tell us today that they will provide information on the five-year Development Plans for our perusal. We are not only asking for information on the five-year Development Plans, we also want to find out how the two power companies compute their profits and if the computation modes are reasonable and consistent with the formulae under the Scheme of Control Agreements (SCAs).

However, some Honourable colleagues have rather different views. For example, Ms Miriam LAU has proposed in her amendment that "on the premise of keeping in line with public interest, not interfering with normal commercial operation, and not divulging sensitive commercial information", the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) can be invoked to collect information. I think this is a very contradictory remark. We believe that there are very often serious contradictions between public interest and normal commercial operation, and it may even be impossible for the two to co-exist.

Ms LI Fung-ying has just rightly said that public utilities that we are now talking about are connected with the interests of all Hong Kong people. Businessmen definitely want to make profits and they will surely reap maximum profits when opportunity arises. Would any businessman state that he does not want to maximize profits? If he does not want to maximize profits or make profits, he should engage in charity work instead of public utilities or business undertakings. Therefore, I think that giving consideration to "normal commercial operation" may not be in the public interest.

As regards "sensitive commercial information", when the companies have monopolized the entire market, it is very difficult for me to accept that their information is sensitive. If there are competitors, it can still be argued that they do not want their competitors to know the methods used to compute costs, as well as information concerning market forecast. Since they have monopolized the market and can get hold of all market information, will there still be any sensitive information? If the information is related to the purchase of resources from the public market, such information is already known to all people and nobody in Hong Kong would compete with them. Thus, I think Ms Miriam LAU's amendment has serious problems.

President, how should we handle the issues of public utilities and public interests? For many people, the answer is rather simple as there are only two possibilities. Excuse me, there should be three possibilities. One other approach is to remain indifferent just like what the SAR Government has done. This is certainly one of the possibilities. As regards whether the public will accept that approach or not, the answer is clear enough. What are the two other possibilities? One of them is operation by the public sector and the other is competition.

Some Honourable colleagues have just discussed about the issue of operation by the public sector. Mr LEE Cheuk-yan has moved an amendment and Mr WONG Yuk-man has expressed similar views. Regarding operation by the public sector, apart from the points just made by Ms LI Fung-ying, it will also lead to the phenomenon of "big government, small market", which is, to a certain extent, contradictory to a commercial or capitalist society. Is there no other alternative besides operation by the public sector? In my view, a competition law is one alternative that can be considered.

Honourable colleagues should remember that not long ago, the local telephone network services were still monopolized by an exclusive operator. Nevertheless, after the monopoly in the telephone network market has been broken, the local telecommunications market has become one of the most competitive markets in the world, which benefited the public. We have not only opened up the mobile telephone market, we have even allowed access by other operators to the fixed line telephone services market, making competition increasingly reasonable and enabling the public to benefit more. Since the fixed line telephone services market can be opened up, why the fixed network

electricity market cannot be opened up? Are there precedents in other countries? There are, President. There are many examples where competition is introduced to enable electricity supply to comply with the public interest. Many civilized countries have created competitive environments to facilitate stable electricity supply and benefit the nationals and the general public.

If we are to choose between the two possibilities, I think the issue of operation by the public sector can be considered later if we fail to introduce competition. If Mr LEE Cheuk-yan's amendment just seeks to consider the proposal of operation by the public sector, this would be acceptable to this Council because proposals for addressing public problems should always be accepted. Why can't the proposal be considered? We can only find out the merits and demerits of the proposal after deliberation. Hence, I believe it is acceptable for this Council to consider if an electricity supply utility can be operated by the public sector.

Back to the introduction of competition, is this proposal really unfeasible? President, I believe you may recall that when we discussed whether these unequal agreements should still be implemented not long ago, we also discussed whether we should take the opportunity of renewing the agreements to introduce the interconnection between the Hong Kong and Kowloon networks. In fact, quite a few experts and academics in Hong Kong have suggested that the interconnection between the two power companies will facilitate stable electricity supply, as it will not be necessary to store large amounts of reserve energy. Furthermore, electricity tariffs can be maintained at reasonable and stable levels. President, why can we not take such a step first? I believe it is extremely easy and technically feasible to do so. In the Secretary's upcoming response, I earnestly hope that he would promise to reconsider the interconnection between the two power companies and explore if it is essential to put the interconnection into effect.

Thank you, President.

MR TOMMY CHEUNG (in Cantonese): President, the catering sector is one of the hardest hit sectors in this tariff increase incident. In particular, restaurants and tea cafes generally pay tens of thousands of dollars for tariffs each month and

quite a number of them have to pay \$200,000 to \$300,000. Based on the rates of increase of the two power companies, they will have to make additional payments ranging from a few thousand to tens of thousands of dollars. In other words, the operators of many restaurants would have to contribute a large part of their monthly profits of \$10,000 to \$20,000 to the two power companies in the future.

The catering sector has lower profits and its costs have considerably increased after the implementation of the statutory minimum wage and paid rest days last year. Moreover, the chain effects of soaring labour insurance premium, rising management fees and rent have weighed down on restaurant owners, and the situation next year will be even more worrying.

As our export sector has experienced downturn, people may have lower spending power, hence restaurants may not be able to transfer the costs of tariff increase to the public again. That is why the catering sector and many small and medium enterprises (SMEs) are perplexed and worried. For this reason, the catering sector and I strongly oppose Mr IP Wai-ming's amendment of implementing progressive block tariffs, which implies abolishing the concession of "lower tariffs for higher consumption", and imposing punishment on users with high consumption by charging them higher tariffs.

As we all know, due to the strong resistance and severe criticisms of SMEs from various sectors, including the retail and catering sectors, CLP has temporarily shelved the proposal of a flat rate charging scheme, and continued to implement regressive tariffs, so as to avoid the impact of double tariff increase on SMEs. Yet, Mr IP Wai-ming has now asked for the implementation of progressive block tariffs, he has completely ignored the survival of SMEs. If restaurants close down, their trade union members would also suffer; thus I really do not understand what is in his mind.

There are serious problems with the progressive block tariffs and it is particularly unfair to commercial customers with high electricity consumption due to business needs, such as lighting shops and laundry shops. The catering sector has been lured by CLP in recent years to change from using gas stoves to using electric stoves, and when all cooking utensils have been replaced, the power company now proposed a high tariff increase. How can the problem be solved? Can these commercial customers reduce electricity consumption? Can the

laundry shops stop using washing machines after they have received orders or can lighting shops switch off the lights? Do restaurants have to turn off all lights and use candles instead at wedding banquets? The banquets would almost be held in total darkness then.

As a matter of fact, commercial customers need not be reminded not to waste electricity, they will try to lower electricity consumption as far as possible because they do not want to become high-consumption customers and have to pay high electricity tariffs. As I have repeatedly pointed out in this Council, the total expenses on water, electricity, gas, trade effluent surcharges and sewage charges account for 12% of the turnover of the catering sector. What are the reasons for asking them to pay more to subsidize others under such a difficult business environment?

Apart from SMEs, many public utilities such as the Hospital Authority and the MTR Corporation Limited (MTRCL) are also customers with high consumption. The implementation of progressive block tariffs will enhance their burden on tariff payment. Will the burdens have to be borne by public money or taxpayers eventually; are MTR passengers going to face higher fares?

To encourage people to reduce electricity consumption, we need not necessarily adopt punitive measures, a head-on blow is not required. SMEs with lower competitiveness have great grievances as they are required to comply with various regulatory laws in recent years. The operation of small business has become increasingly difficult, indirectly causing the continuous tilting of the market towards large consortia with great financial strengths. We should not impose heavier burdens on SMEs; instead, we should, base on the needs of SMEs, consider how to introduce concessionary schemes to support environmental protection, so as to help SMEs explore and introduce modes of operation focusing on environmental protection concepts, and encourage them to reduce electricity consumption by means of financial incentives.

We must understand that a progressive system is merely a pretext to allow the two power companies to play with numbers. The Hongkong Electric Company Limited (HEC) is present manipulating the progressive system to create an unfair phenomenon. On the surface, HEC has responded to public demands, claiming that it will further reduce the tariff increase for most customers. It is

actually a window-dressing tactic to "impose a high tariff to offset the reduction in rates". While maintaining the rate if tariff increase at the original 6.3% level, it puts the pressure of tariff increase on commercial customers with higher consumption.

If we examine carefully the figures provide by HEC, we would find that the tariff increase for customers with higher consumption is much higher than the average rate. For instance, the average increase rate for commercial customers with monthly electricity consumption amount to 42 000 kWh of electricity is 7.3%. Nonetheless, that is only an average rate because there will certainly be higher increases for some users. In other words, HEC has sacrificed SMEs in increasing tariff, so that customers with higher consumption will have to subsidize those with lower consumption. It has caused social division, turning commercial customers to be antagonistic towards residential customers and commercial customers with higher consumption to be antagonistic towards commercial customers with lower consumption. Why should we encourage the implementation of an unfair progressive system?

If we want to encourage energy conservation, it should be implemented territory-wide. Instead of implementing the stringent progressive system, we might as well implement a rebate system, under which the Government or the two power companies will reward customers if they have lowered their monthly electricity consumption. This would really encourage the public to reduce electricity consumption and this is one of the methods that can be considered.

As I have said at the previous adjournment debate, the situation of SMEs has reached a critical point. In fact, from the analysis just made by Ms Miriam LAU, we understand that the two power companies are not really making concessions this time and their intention of maximizing profits have not changed. As a counteract measure, it is crucial to expeditiously consider opening up our electricity market and introducing greater competition.

President, I so submit.

MR ANDREW LEUNG (in Cantonese): Late last year, the two power companies proposed rather astonishing tariff increases which had enraged most people. Given the current high inflation and soaring prices, the tariff increases

of the two power companies would further push up inflation and cause difficulties to enterprises which already have experienced great operation hardships. I agree that the Government must examine the investment projects of the two power companies under the Scheme of Control Agreements (SCAs) to see if they are appropriate or whether they are excessive or premature. It should also ask the two power companies to exhaust all room to lower the cost, so as to avoid higher tariff increases in the future.

The current row over tariff increase has once again aroused our concern about whether a review of the electricity market should be expeditiously conducted, whether more discussions should be conducted on the control of the profits of the two power companies, and whether it is time to change the present situation where there are only two power companies in the market. The Legislative Council, the Government and various political parties should now re-examine, in the context of the SCAs, how the dispute between the Government and the two power companies year after year can be avoided. In 2013, the Government and the two power companies will conduct an interim review on the SCAs. This is a very good opportunity to review the investment plans of the two power companies to make them tie in better with the development needs of Hong Kong. Moreover, we should also take advantage of the interim review to enhance transparency as far as possible, so that the public would understand the details of the investment plans, the costs and the time they would be brought to credit, such that people will be fully prepared for the tariff increases in the next few years.

Hong Kong people should understand that there is no free lunch in the world. If we really want to have better air quality, we have to ask the two power companies to use more natural gas and install more emission reduction devices to improve the air quality, and in turn the two power companies would have to put in additional resources and spend more money on fuels to meet people's expectation. These expenses will eventually be reflected in the electricity bills. I hope the Government would properly perform its gate-keeping role and monitor the relevant expenses of the two power companies, so that tariffs will not become heavy burdens on the public.

Concerning the future development of the electricity market, the Federation of Hong Kong Industries and I have always supported opening up the electricity

market and introducing competition to reduce tariffs. We think it is necessary to establish an independent monitoring organization in Hong Kong to formulate rules regarding the access of new electricity suppliers in the market and electricity suppliers from the Mainland. When all the conditions are ripe, competition can be introduced into our electricity market subject to regulation. Nevertheless, the number of approved electricity suppliers should be restricted, so that the stability of the electricity supply will not be affected due to excessive competition, or insufficient investment in generation capacity.

Some Members have suggested invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to collect information from the two power companies. In fact, the permitted rate of return of the two power companies is subject to regulation under the SCAs signed between the Government and the power companies, and the spirit of contract is the cornerstone of Hong Kong's prosperity and stability. If we arbitrarily invoke the P&P Ordinance to seek commercial information from a company, the reputation of Hong Kong as an economy upholding the rule of law, the protection of property rights and legitimate rights and interests will be significantly affected.

The Panel on Economic Development had written to the two power companies earlier, requesting for information related to tariff adjustments, and the two power companies indicated yesterday that they were willing to disclose some items of information to all Members. These include the rationale for the original 9.2% increase as proposed by CLP, and details for the final adjustment, its five-year Development Plan and the data on its capital expenditure on actual annual investment. I think it would not be necessary to invoke the P&P Ordinance since the two power companies are willing to provide detailed information.

Lastly, I would like to spend some time to talk about the high electricity consumption by the business sector, and Mr Tommy CHEUNG has just stated very clearly. According to a number of green groups, under the arrangement that organizations with high electricity consumption can enjoy regressive rate, the public are indirectly subsidizing these enterprises, hence failing to encourage electricity conservation and protect the environment. I believe the difference between domestic and commercial customers is that the former customers can turn off the air-conditioners or switch off some lights in order to use less

electricity. However, for organizations with high electricity consumption, such as the catering sector, factories, railways, the airport and hospitals, they have discussed with the two power companies or experts long ago on how to save energy, assessments have been made and equipment and machinery that can save maximum energy have been used. There is not much room to reduce electricity consumption, and it can be said that it is impossible to save electricity any further. Hence, higher tariffs will lead to higher costs, which will eventually be transferred to the public.

Apart from electricity consumption, the business sector has created many jobs and we hope that Hong Kong can have stable economic and social development. In addition, many countries around the world offer off-peak electricity concessions and Hong Kong is inferior to many overseas countries in this respect. We hope that the business sector would be charged lower tariffs because this can enhance the operational efficiency and reduce wastage arising from power generation at off-peak hours. We and the industry sector are happy to learn that CLP has accepted good advice, and decided to retain the tariff structure for industrial and commercial customers and maintain the regressive rate in charging electricity tariff. I hope that it would then be easier for organizations with high electricity consumption to accept the present rate of tariff increase.

President, I so submit.

MS EMILY LAU (in Cantonese): President, I speak to support the motion proposed by Ms Audrey EU.

In his speech just now, the Secretary said that while negotiation was invariably required during the annual discussions with the two power companies on tariff adjustments, he also had disagreement and queries about various issues in this year's exercise, and he thanked the Panel for its support. Moreover, the Secretary said that it was difficult to say which party had made the greatest efforts in this matter. Of course, he wanted us to give the biggest credit to the Administration. But as Ms LI Fung-ying pointed out just now, so many twists and turns have happened in just one month, with the tariff increase of CLP Power Hong Kong Limited (CLP) changing from 9.2% on 13 December to 7.4% on 21 December, and finally to 4.9% on 30 December. A magician can do no better than that.

The Secretary may think that people will be grateful for the lower tariff increase. Of course, people are happy. I also relayed the news to Mr Andrew KAM, the Managing Director of Hong Kong Disneyland, when he attended a meeting of the Legislative Council yesterday. When we met last time, it was the day the tariff adjustments were announced, and he told me that the Disneyland had to pay several million dollars more on electricity tariff. President, the crux of the problem is that the Administration can do nothing about the tariff adjustments. Apart from resorting to "verbal manoeuvres" on social networking sites, the Administration can do nothing about the tariff adjustments. As pointed out by many Honourable Members who spoke just now, such as Mr Fred LI, there is nothing we can do if CLP adamantly insisted on a 9.2% tariff increase to maximize profits. I think while riots are unlikely, people are definitely enraged. Hence, they wonder why the Government has put the HKSAR in such a predicament?

Were there any loopholes in the Scheme of Control Agreements (SCAs) formulated by the Administration at that time? Had any serious mistakes been made? Hence, if the Secretary asks people who they want to thank, their answer is probably: "Thanks to you!" I hope the Secretary is clear that people are actually not satisfied with the outcome, and they are still very furious. Why do I say so? President, members of the public are still complaining on radio phone-in programmes that the situation is even worse than haggling over prices in Li Yuen Street East and West. How can the tariff increase change from 9% to 7%, and then to 4%? Ultimately, the power companies can do whatever they want for the sake of maximizing profits.

Why do I say so? At a press conference held by CLP on 30 December, Betty YUEN was asked by reporters whether CLP was seeking to maximize profits. I want to give a word of caution to CLP. I note that many media organizations have complained about her deplorable performance when answering questions from reporters on that occasion as she just ignored their questions. When a reporter asked her an embarrassing question, she simply ignored it, turned to the floor for other questions, and chose the questions she wanted to answer. While I think the Secretary will fare better than that, I want to give a serious word of caution to CLP, the Administration as well as all other big consortia that they should never treat the press this way. They must answer the questions raised by reporters, instead of taking other questions from the floor and choosing the questions to answer.

According to the Secretary, he has written to us and listed out the various items of information to be provided to Members. President, I have yet to see such information as undertaken by the Secretary. In fact, the Secretary's undertakings have not been honoured. As Mr LAU Kong-wah has pointed out just now, notwithstanding the Administration's pledge to review the entire Interception of Communications and Surveillance Ordinance in 2009, no progress has been made to date. Hence, the Administration has always failed to honour its undertakings.

President, the Chairman of the House Committee will move a motion debate on 8 February as to whether the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) should be invoked in relation to this matter. Members will cast their votes on the basis of information provided by the Administration before that time. As the Secretary has thanked the Panel on Economic Development so overwhelmingly, I suggest that he should liaise with Mr Jeffrey LAM, Chairman of the Panel, so that a meeting will be convened on 7 February for presenting all the information to Members. In that case, it may no longer be necessary to invoke the P&P Ordinance. Just now, Ms LI Fung-ying was quite correct in saying that the Legislative Council has always exercised its powers with extreme caution. I seldom hear criticisms from the business sector that the Legislative Council has acted improperly. For example, a lot of information has been sought by the Subcommittee on Lehman Brothers-related Minibonds, and there is no problem at all. Nonetheless, the Government must demonstrate to Members that it will properly honour its undertakings.

President, Ms Starry LEE also said just now that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) would make its decision depending on the progress of the matter. The DAB is awesome in saying that the P&P Ordinance is the "imperial sword". It does not matter because we sometimes do need this "imperial sword" to seek information. In fact, the exercise of such power does not always require the endorsement of the whole Council. For example, the Public Accounts Committee and the Committee on Members' Interests have already been conferred with such power. Ms Starry LEE also said that the situation was like a police officer who held a gun when patrolling the street. For no apparent reason at all, why did she compare our request for information through invoking the P&P Ordinance to a police officer who pointed his gun to a man on the street in questioning him? I think the

analogy is neither fish nor fowl. We consider that the DAB is even worse than the Liberal Party. At least, the Liberal Party cites the need for protecting sensitive commercial information. President, we consider that such information can be properly protected.

In addition, I wish to thank the Clerk for reminding me that under the resolutions passed by the Legislative Council in May 1994 and April 1997, a complete set of procedures had been laid down to allow Members to seek information from outside persons or companies even if they cited the reason of public interest; for example, meetings between the Chairman or Deputy Chairman and the relevant persons could be arranged. Hence, President, there are rules and regulations guiding our work. I would like to tell the DAB, or perhaps they already know quite clearly, if an opinion poll is to be conducted right now, I think the majority of the people will agree that the Administration's handling of this matter is appalling, and that the Legislative Council, as well as the Energy Advisory Committee which Ms Starry LEE serves as member, should get hold of more information and make recommendations accordingly. Therefore, I hope the DAB can stop being indecisive. They are aware that the P&P Ordinance has been invoked on more than one occasion. On each occasion, we have abided by the rules and regulations strictly, and we have the support of the people.

Hence, if the Administration cannot provide such information to our satisfaction before 8 February, I hope Members will support the relevant motion. I hope the DAB will not act against public opinion by insisting that there is no need to use this "imperial sword"; or so to speak, the DAB is unwilling to draw the "gun". But what people want to see now is that the Legislative Council will draw its "gun", not to kill, but to demand all information required, so as to ascertain why the Administration has handled this matter so appallingly and with such adverse consequences, so as to avoid the recurrence of similar incidents in the future.

I so submit.

MR WONG KWOK-HING (in Cantonese): President, when the Administration entered into the new Scheme of Control Agreements (SCAs) with the two power companies in 2008, I have already cautioned the Administration at the special

meeting of the Panel on Economic Development not to be complacent, thinking that its work had been successfully concluded with the signing of the new SCAs; instead, the Administration should monitor the two power companies closely, in particular, to prevent them from maximizing profits by means of financial tactics.

In this incident, the substantial tariff increases originally demanded by the two power companies were subsequently reduced after two weeks. It is a clear indication that the Administration may not have monitored the two companies closely enough. In this incident, the two power companies, particularly CLP Power Hong Kong Limited (CLP), have adopted an abhorrent attitude by repeatedly claiming that there was no room for tariff reduction. This has caused an immense furore among all Hong Kong people. Faced with this situation, I made a public appeal on 16 December that the Government should take the lead and that CLP customers all over the territory should defer payment of their electricity bills as a retort. Through this unco-operative attitude, the two power companies can understand the rage of people. I think this appeal is indeed effective in exerting pressures, such that CLP has finally conceded. I think the effect of this move should not be underestimated. Of course, efforts have also been made by various parties as well as the Government.

On the other hand, why have the two power companies maintained such a definite and strong stance that there was no room for tariff reduction when they first presented their proposals to the Legislative Council? In the case of CLP, while it initially stated that the tariff must increase by 9.2%, the rate was subsequently revised downward to 7.4% on 21 December, and further to 4.9% on 30 December. Given that CLP's profits last year amounted to \$10.3 billion, what is the rationale for its proposed tariff increase? As for The Hongkong Electric Company Limited (HEC), even with a profit of \$7.2 billion last year, it proposed to increase tariff by 6.3%, which was finally reduced to 4.97%. Both CLP and HEC have eventually revised their proposed tariff increases to 4.9% or around 4.9%, which is marginally lower than the general rate of inflation at 5%.

That is quite miraculous. How could such changes happen in just two weeks? According to CLP, the reduced tariff increase of 4.9% is attributed to four factors, which I quote, firstly, savings from the removal of planned capital expenditure on additional generating facilities; secondly, further efforts to reduce operating costs; thirdly, drawing down the Tariff Stabilization Fund to a balance of \$100 million; and fourthly, a rent and rates special rebate for customers.

Having said that, let us consider why CLP had initially insisted that there was absolutely no room for tariff reduction, so much so that it even refused to answer the queries from the media or face the public? Why? Why is there room for tariff reduction all of a sudden? Although the two power companies have eventually reduced their tariff increases, an outcome which we welcome and wish for, I think we should try to understand and examine why the two power companies were induced to lower their tariff increases. Why did the two companies insist that the proposed tariff increases could not be reduced just two weeks ago? I think it is worth our effort to obtain the relevant data so as to gain from the experience by learning the lesson and understanding the methodology.

Hence, I think we should invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to seek detailed information in relation to the 2012 tariff adjustments by the two power companies, as well as their five-year Development Plans, so as to ascertain the reasons for the two power companies' initial insistence and subsequent concession in respect of the rate of tariff increases. I think there must be some reasons worthy of our investigation. Hence, the act of invoking the P&P Ordinance is by no means redundant.

I believe the public wants to know whether the two power companies have expanded their investment and exaggerated the value of additional fixed assets on the grounds of emission reduction and environmental protection, so that the public is made to pick up the tab? Is it really necessary for the two power companies to make every cent of profit under the permitted rate of return of 9.99%? Is it possible that their operation strategies are flawed? Have they employed all sorts of financial tactics to mislead the public? Why has the Government failed to compel the two power companies to reduce the rate of tariff increase during the final stage of negotiation? I think we should identify the problems involved as well as their causes, and this initiative is meaningful from the perspective of formulating further five-year Development Plans of the two power companies that can truly benefit the public, as well as our energy policy in the long run. Hence, I think we should investigate into, study and understand the matter so as to gain useful and constructive experiences and lessons. We support invoking the powers under the P&P Ordinance for this purpose.

DR PAN PEY-CHYOU (in Cantonese): President, electricity is a necessity for each and every modern household, and we can barely survive a day without electricity. Of all the relief measures introduced by the Government, electricity subsidy is by far the most practical and beneficial measure for the general public. Nonetheless, compared to other livelihood necessities, the electricity market in Hong Kong has practically no competition. All along, The Hongkong Electric Company Limited (HEC) has monopolized the market on the Hong Kong Island and Lantau, while CLP Power Hong Kong Limited (CLP) has dominated the market in the Kowloon Peninsula and the New Territories. Separated by the Victoria Harbour, the two power companies operate independently.

Generally, risks are invariably involved in business operation. There is nothing like a sure-win business in the world. However, this is exactly what we can find in Hong Kong: the electricity market. The so-called Scheme of Control Agreements (SCAs) entered into by the Government and the two power companies actually serve to "guarantee" rather than "control" their profits. Irrespective of the economic environment, the two power companies are allowed a permitted return of 9.99%. Hence, the two companies can earn greater profits under the permitted rate of return as their operating costs increase. Even if their profit level falls as a result of mismanagement, over-spending or wrong investment decisions, the two power companies can make up for the shortfall by maximizing tariff increases to maximize profits.

While industrial operation was originally the pillar of Hong Kong's economy, service industry has now become predominant. Coupled with the ageing population, the growth of electricity demand is in fact limited. However, the development of so-called green energy in recent years offers another "golden opportunity" for the two power companies. In order to achieve the goal of increasing the fuel mix of natural gas in power generation from the current level of 25% to 40% in 2020, the power companies have to acquire new generating facilities. Naturally, the users are left to pick up the tab. Hence, it is quite clear that the tariff increases sought by the two power companies are closely related to their mode of operation, as well as the SCAs they entered into with the Government. No wonder the two power companies had proposed tariff increases way above the general rate of inflation in the first place, and they could remain so unperturbed and confident even under criticisms from the public, the business sector as well as the Government. It was only when the public's fury had intensified that they reduced the tariff increases unwillingly.

The two power companies' decision to bow under public pressure and lower tariff increases can be seen as a significant and meaningful victory of the mass against monopolistic enterprises. Some people in the business sector consider that there is no reason why the two power companies, being commercial operations, should not seek to maximize profits so long as their operations are legal; and the two power companies only concede now because of the prevalence of populism and the "lose-hit, win-take" mentality. I absolutely disagree with this view. The present victory of the people serves as a clear reminder for these businessmen: Monopolistic enterprises in Hong Kong should never hold the view that they are given a licence under the laws or government agreements to do whatever they want and extract every cent from members of the public. They should know that we will readily oppose and protest against any agreement which is unreasonable or seriously undermines public interest. Nonetheless, I think the present victory of public opinion should not be regarded as a norm; and we should strive to build a fairer and more reasonable electricity market. The SCAs signed between the Government and the two power companies in 2008 will expire in 2018. We still have ample time to contemplate and study the most suitable mode of electricity supply in Hong Kong in the future.

In my view, there are historical reasons for the monopoly enjoyed by the two power companies, which should be dated back to the colonial era when electricity supply was a utility with sensitive strategic significance. The British Hong Kong Administration at that time must ensure an independent and self-sufficient power supply network for Hong Kong, which is quite understandable. Moreover, given the population of Hong Kong and its scale of economic operations, it was difficult to accommodate more power companies. This naturally created a closed operating environment without any competition.

Later, fundamental changes were brought by the reform and opening up of China, as well as the reunification of Hong Kong. The gulf separating China and Hong Kong during the colonial era has become blurred increasingly, and the power companies of Hong Kong were among the forerunners to expand their businesses in the Mainland. Gradually, the economies of Hong Kong have integrated with those in the Mainland. In respect of power supply, more mature and reliable technology has emerged so that the networks of different power companies can become interconnected and tariffs can be charged independently and respectively by the power companies. At present, people living in many cities around the world are given a choice of electricity power suppliers, which is

similar to the fixed line telephone services in Hong Kong. As it has been proven that competition can be introduced by the segregation of the generation sector from the network sector, I think it is worthy to conduct in-depth studies on the introduction of this system into Hong Kong.

Regarding short and medium-term measures, we consider that the Government should consider how various recommendations made by Members of various political parties and groupings at today's meeting can be taken forward by making the best use of the provisions under the SCAs. The Hong Kong Federation of Trade Unions generally supports all these recommendations. We hope that the Government can put such advice to good use and strive to ensure the cost-effective, clean and stable supply of electricity for the people.

I so submit.

MR FREDERICK FUNG (in Cantonese): President, this is really the last straw for the people! All along, the people of Hong Kong are at the mercy of public utilities, and we must accept all their demands. In the past two months, the greedy nature of public utilities is further illustrated by the "muddled accounts" of the two power companies. We feel sorry that our free market economy has developed to such a rotten stage that enterprises simply ignore their rightful social responsibilities.

We are clueless as to why the management of CLP Power Hong Kong Limited (CLP) came up with a tariff increase of 9.2% which was absolutely unacceptable to the public. They even maintained a strong and adamant stance that there was no room for tariff reduction. Subsequently, faced with strong pressures in society and the unified voice of public opposition from all walks of life, CLP managed to reduce tariff increase to 7.4% by deferred Fuel Clause Charge increase. Thereafter, as public sentiments remained ferocious, CLP conceded further, taking into account a refund due from the Government if the Court ruled in favour of CLP in an ongoing legal case. Like magic, the increase rate which originally has "no room for reduction" can now be substantially reduced to 4.9%.

President, the situation is like haggling over prices between buyers and sellers in grocery stores or street markets. Sometimes, the final price can be

reduced by more than half after negotiation. While this trick of "asking exorbitant prices to leave room for negotiation" is used by some unscrupulous businessmen, I am surprised to find that CLP, a monopolistic power company in a society as affluent and economically advanced as Hong Kong, has likewise used this trick to fool the people.

While CLP could have proposed a much lower rate of tariff increase in the first place, the lower increase rate was considered not appetizing enough as CLP was determined to maximize profits. The company then tried to pull the wool over our eyes, thinking mistakenly that members of the public must accept the tariff increases resignedly. Such a course of action is indeed deplorable. How can CLP merely regard an electric utility a tool for making money when this service is so closely related to people's livelihood? All in all, CLP is determined to maximize profits. It even uses financial tactics to expand fixed assets indefinitely and increase operating costs substantially, so that it can earn each and every cent permitted under the Scheme of Control Agreement (SCA).

Moreover, The Hongkong Electric Company Limited (HEC), which always hide behind CLP, is even more cunning. Although its initial tariff increase of 6.3% was lower than that of CLP, HEC only agreed to revise its tariff structure to bring benefits to customers with low consumption after public queries were raised about its original proposal, and it refused to adjust the average tariff increase per unit of electricity. It is even more ridiculous that tariffs between the New Territories and Kowloon on one side of the harbour, and the Hong Kong Island on the other side, will differ by some 33% after the present tariff adjustments. The situation is very ridiculous indeed.

Apart from exposing the greedy nature of the two power companies, as well as their lack of social responsibilities, this incident is an even greater eye-opener for the public in terms of the Government's handling of the matter. It is crystal clear that the business, the Government and even the prevailing systems are lagging far behind public expectation as well as modern governance. The Government is basically a loser on both sides because it does not only fail to strictly control the crazy tariff increases sought by the two power companies under the system or even the SCAs, it even assumes the role of an opposition party by inciting members of the public to petition against the tariff increases. Is that not an act befitting of an inept sunset government? So, the Government

really has no power at all! So, the Government needs to mobilize the mass to deal with the tariff increases demanded by the two power companies!

The truth is that the Government can neither wash its hands off the matter nor downplay its unshirkable responsibility in signing the SCAs. Today, the two power companies can demand crazy tariff increases because of the SCAs they entered into with the Government. The seeds of bane today were sowed by the current term of Government. By signing these restrictive SCAs with the two power companies, the Government has completely surrendered its gate-keeping role in vetting and approving tariff increases.

President, various demands and questions have been raised by the Hong Kong Association for Democracy and People's Livelihood (ADPL) previously on opening up the electricity network, improving the mechanism for setting tariffs, and so on. But as Members are aware, the Government has all along adopted an indifferent attitude by clinging onto its "market first" philosophy. As a result, with the extension of the SCAs in 2008, the Government has effectively confined itself to a trap of exploitation with no escape.

As a last resort, ADPL considers that the Legislative Council (Powers and Privileges) Ordinance should be invoked to demand the two power companies to produce all detailed records, data and information on the 2012 tariff adjustments as well as their five-year Development Plans, so as to enable public understanding of the number games they play, the rationale for their crazy tariff increases, and their methods for inflating tariff increases through expanding investment on fixed assets as well as operating costs. The public should know the methods used by the two power companies to take advantage of the loopholes under the SCAs for maximizing profits.

More importantly, through the disclosure of documents mentioned above, the public can well and truly understand the current mechanism of tariff adjustments, as well as the validity of the Government's control over the two power companies. This could in turn facilitate better preparation for the interim review in 2013.

As far as the ADPL is concerned, the Administration must impose more stringent terms and conditions through the interim review in 2013, for example, the rate of permitted returns should be drastically reduced to around 5%, as well

as review the existing arrangement of linking permitted returns to fixed assets so as to prevent the two power companies from expanding their investment on fixed assets indefinitely. In addition, the Administration should impose stringent regulation on the operational efficiency of the two power companies, facilitate the connection of small-scale renewable energy power generation facilities to electricity grids, as well as enhance the transparency of their operation so that the public can understand the process and rationale of tariff adjustments made by the two power companies.

In the long run, proper preparations should be made by the Administration, particularly in terms of legislation, to break the monopoly enjoyed by the two power companies. Upon the expiry of the SCAs signed in 2008, I think the public will no longer consider it acceptable to further extend such "unequal treaties". Hence, the Administration should reform its mindset by changing its previous philosophy of "market first" so that the objectives of interconnection between the networks of the two power companies, as well as segregation of the generation sector from the network sector can be realized gradually.

For instance, the ADPL suggests that the Administration should consider putting the electricity grids into the public sector under the direct management of a statutory body or government department, similar to the present situation of the water supply system. For the generation sector, it can remain in the hands of the existing power companies, or new competitors can be introduced. Besides, the people should also be allowed to choose their electricity supplier freely on the basis of tariffs so that a mixed mode of public-private market operation will be created.

President, I so submit.

DR RAYMOND HO (in Cantonese): President, the earlier announcement of substantial tariff increases next year by the two power companies was met with strong opposition in society. Subsequently, The Hongkong Electric Company Limited (HEC) lowered the rate of tariff increase to 6.3%, while CLP Power Hong Kong Limited (CLP) first lowered the rate to 7.4%, and finally to 4.9% (which is marginally lower than the general rate of inflation) on 30 December. At the two meetings I had with senior management of CLP before its decision to lower the increase rate, I called on CLP to consider reducing the rate of tariff

increase, taking into account the plight currently faced by the general public under the unstable external economic environment, as well as the high inflation rate. As the substantial tariff increases would definitely increase the livelihood burden of the people, the community would find it unacceptable. Eventually, CLP has responded to public views with concrete actions.

It is perfectly understandable that various sectors in society have expressed strong dissatisfaction against the tariff increases proposed by the two power companies. However, issues relating to the regulation and future development of the electricity market must be dealt with in a rational and pragmatic manner. Under the Scheme of Control Agreements (SCAs) entered into between the Government and the two power companies, the agreements are valid for 10 years up to 2018. Hence, in respect of the current regulatory arrangements, we can only proceed within the framework laid down under the SCAs by stepping up monitoring efforts. We must absolutely not deviate from the contract spirit of the SCAs.

I think the Government will learn its lessons from this incident and perform its gate-keeping role over the two power companies seriously. For instance, the Government should step up monitoring the two power companies in respect of their cost control measures and capital expenditure, so that the relevant costs and expenditure will not be transferred to the customers. At the same time, the Government must ensure the proper functioning of the Tariff Stabilization Fund. Of course, the Government should examine further measures to improve the existing regulatory mechanism without contravening the provisions under the SCAs.

It goes without saying that this Council will continue to play a proactive monitoring role in this matter. However, I have reservation about the motion recently passed by the Legislative Council House Committee to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to demand the Government to provide all detailed information in relation to the tariff increases of the two power companies, as well as their five-year Development Plans. First of all, some information has already been disclosed to the Panel on Economic Development. An undertaking has also been given to provide the necessary papers to Members of the Legislative Council for perusal. When it comes to invoking the P&P Ordinance, I am particularly worried that some papers, such as fuel transaction contracts or business contracts with other

companies, may contain sensitive commercial information. This will not only affect the two power companies, but also undermine the interest of their minority shareholders. Therefore, I hope Honourable colleagues will think twice before making their decision, so as to avoid any adverse impact on the business environment.

Regarding the future development of the electricity market, I think the Administration can undertake studies to explore various modes of electricity markets, as well as their applicability in Hong Kong. However, the Government must conduct consultation on the relevant proposals to allow adequate participation of stakeholders before making any major decision. While many views have been expressed in society that an open market and the introduction of third-party competition will definitely bring about wider consumer choices and more reasonable electricity tariffs, we know from actual experiences of other countries that various degrees of success have been achieved by opening up the electricity market. There were invariably technical problems relating to interconnection support of electricity grids; and in some serious cases, the stability and reliability of electricity supply might also be affected. Hence, we should neither hold any blind optimism on the results achieved by an open electricity market, nor make any premature conclusions.

President, before a consensus can be forged in society on the future mode of development of the electricity industry, the Government should continue its gate-keeping role under the existing SCAs to ensure a reliable electricity supply at reasonable prices for members of the public and business operators.

I so submit. Thank you, President.

MR ALBERT HO (in Cantonese): President, my speech today will focus on opening up the electricity market as a long-term development strategy.

Interconnection between the networks of the two power companies is the first step towards opening up the electricity market, so that electricity grids all over the territory will become a complete system to pave the way for an open market. According to an earlier consultancy study commissioned by the Government, the estimated construction cost of interconnection facilities was around \$2.1 billion, and the construction period is about five years. Upon the

completion of the works, customers all over the territory would be free to choose their electricity supplier. The Democratic Party suggested that the construction cost of interconnection facilities should be borne by the Government as part of the initiatives to establish an open market. With the merging of electricity grids into a complete transmission system in Hong Kong, the generation sector could then be segregated from the network sector. In other words, the electricity generation business can be separated from the transmission business.

At present, electricity grids are owned by the two power companies respectively. The Government should urge the two power companies to de-bundle their electricity generation business and transmission business. After de-bundling, the Government should be responsible for monitoring the operation of the transmission system and setting grid rentals with transparency, so that the two power companies and other new market entrants can operate electricity transmission business after paying the rental.

Opening up the electricity market is a global trend. In the United States, private companies are mainly responsible for the supply of electricity. In the early 1990s, the United States Government introduced legislative amendments as well as a series of policies to open up the electricity market, such as requiring companies to open the power grids they owned for use by other suppliers.

However, provisions on "stranded cost" have been included under the existing Scheme of Control Agreements (SCAs). When the agreements were signed in 2008, the depreciation period of certain fixed assets had been extended considerably beyond the expiry of the SCAs in 2018, with some lasting for as long as 60 years to 100 years. If the Government decides to open up the market, the two power companies can seek large amount of compensation from the Government under the new SCAs. That is the meaning of "stranded costs". If the Government refuses to pay the compensation, the two power companies shall have the right to activate the arbitration mechanism. Hence, it is unfortunate that the Government's initiative has actually facilitated the two power companies in obstructing the entry of new suppliers in the market to increase competition. This has indirectly buttressed the monopolistic position enjoyed by the two power companies. Hence, the Government should conduct thorough and in-depth study on the relevant questions in the context of the forthcoming interim review, so that Hong Kong will not miss another opportunity for opening up the electricity market.

Regrettably, the public has yet to obtain detailed information from the two power companies in relation to their five-year Development Plans, as well as annual tariff adjustments. Just now, many Members have criticized the two power companies for failing to provide sufficient information, lowering the rates of tariff increase bit by bit in a "toothpaste squeezing" fashion, or even playing with numbers so that while it looks like the rates of increase have been lowered, nothing has been changed in effect. They just juggle with the figures so that the rates of increase have seemingly been lowered; instead, they are paving the way for substantial tariff increases in the future. Therefore, Members belonging to the Democratic Party have repeatedly requested the Government to disclose the operational data of the two power companies, particularly their five-year Development Plans. However, no genuine effort has been made by the Government to compel disclosure by the two companies, or provide relevant data in its control for public information. Hence, without sufficient data for analysis, members of the public can hardly ascertain whether the proposed tariff increases are supported by reasonable grounds or factors of consideration. Then, how can we support their proposals?

According to the motion passed by the House Committee on 6 January, a motion will be moved in the Legislative Council that the Panel on Economic Development be authorized under the Legislative Council (Powers and Privileges) Ordinance to exercise the powers conferred by section 9(1) of the Ordinance to order the Government to produce information on the 2012 tariff adjustments by the two power companies, as well as relevant information on their five-year Development Plans. In my view, this matter is of utmost importance because we can only make our judgment with such information on hand. We must have such information before we can have a clearer picture of the actions required by the Government to better prepare for the opening up of the market. We must have such information just for the sake of properly monitoring the accounts as well as the operation of the two power companies in the next few years, so that they cannot charge unreasonably high tariffs again by making use of the SCAs.

Hence, I implore Honourable colleagues to support today's motion on the consideration of public interest.

MR CHIM PUI-CHUNG (in Cantonese): President, the question of whether a permitted return of 9.9% is on the high or low side will depend on the prevailing interest rate environment. As far as we know, some 10 years ago, interest rates in Australia had gone up to the highest level of 20%. Under the circumstances, if these agreements were to be considered in those days, many banking syndicates would have other considerations on account of the interest rates. However, as we all know, interest rates have been lowered substantially since then, and 9.9% is indeed a very high figure. That is an undeniable fact.

As we consider this issue, we must first of all, as I have just said, adopt the prevailing interest rates as the yardstick. Secondly, we must study the contents of the Scheme of Control Agreements (SCAs). While we trust that the Government will strive the best interest for the people, it is quite natural that people have worries and queries if they have been kept in the dark. Unless the relevant government officials have received either direct or indirect benefits, why should they take the blame for the so-called collusion between the Government and business on behalf of private consortia? I firmly believe that something like this will never happen in an accountable modern government. Of course, there are incidents involving Directors of Bureaux or Secretaries of Departments who received direct or indirect benefits from consortia after leaving the Government, but I think these cases are only isolated incidents, rather than the norm.

Therefore, it is reasonable for people to demand full disclosure of the SCAs by the Government. On the other hand, we must bear in mind that the two power companies are listed companies, and they are duty-bound to safeguard the interests of shareholders. The greater the interests, the higher the share prices. Incidentally, that is also in line with their expectation because the two power companies may have a bonus system for their management personnel. Nonetheless, we must go back to the basics. As the operation of the two power companies involves business decisions, how can a permitted return be attached to business decisions? That is only a practice left over from the colonial era. Given the emphasis of progress and competition in modern societies, an excellent case in point is the competition in the telecommunications market, why does the Government not give the same treatment to different organizations under the principles of fairness and openness?

President, another point I would like to mention is the approach adopted by the two power companies, especially CLP Power Hong Kong Limited (CLP), in the present incident. They seem to think that Hong Kong people are still living in the colonial era. Hence, they try to ease the tension bit by bit, just like squeezing toothpaste out of a tube, and members of the public who remain silent are treated as fools. I think the Government should review the mentality and practice of the two power companies. Of course, we are not encouraging the public to politicize every matter through protests or demonstrations, and they should not hold the wrong belief that these are acts of power. Nonetheless, this phenomenon is a reflection of the sorrow of our society, and caused by our irresponsible Government.

The public is even more concerned about the five-year Development Plans of the two power companies. As all planning initiatives envisaged under the Development Plans are closely related to members of the public, they should not be hidden in the accounts of the two power companies or the pockets of the senior management, so that the relevant persons can decide how much information is to be divulged depending on circumstances. This approach adopted by the two power companies is worthy of censure and admonishment.

President, regarding the exercise of powers conferred under the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), we must bear in mind that these privileges work as an "imperial sword" to draw blood from enemies. Of course, I firmly believe that when such privileges were exercised on the past few occasions, Members of the Legislative Council had always acted in good conscience. But if such privileges are invoked indiscriminately, it will undoubtedly create severe backlash in the entire community, the investment sector as well as the business sector. What we should do is to safeguard the interests of the people and make them understand the overall development of the matter; what we should not do is to create privileges and adversaries. Hence, as I pointed out at the meeting of the House Committee, if the Government accedes to our request and provides all relevant information as requested; or if it can even provide the relevant contracts for our perusal, provided that Members will maintain confidentiality for all sensitive information, such as figures and bank account numbers, or give some kind of undertaking, Members will then be able to perform their role of safeguarding public interest. I think that is how we ought to exercise our privileges. Hence, I think if the Government can accede to the

requests of Members in a timely manner, the present incident can be well handled and there is no need to invoke the P&P Ordinance.

In the meantime, President, I am more anxious to see actions taken by the SAR Government to tackle problems in other areas, especially the problem in the fuel market with oil companies being "quick in raising and slow in reducing prices". Why does the Government condone their *de facto* monopolies in the market? No relief has been provided to address the aspirations, opinions and grievances of the people. I think the Government cannot shirk its responsibility in this matter because it is closely related to the entire community. I firmly believe that for the purpose of achieving fair and open competition, the Government will introduce competition in respect of world-class electricity supply and other areas in due course, so that Hong Kong can tally with the international standards of overseas countries and places, as well as safeguard the overall interest of our community.

President, I so submit.

MISS TANYA CHAN (in Cantonese): President, the Government just sat on its hands while the two power companies were demanding crazy tariff increases. With the two parties — I beg your pardon, it should be three parties — singing in the same tune, what can people do to help themselves? Nothing, they can only suffer in silence and subject to the exploitation of the two "power demons". It is not until criticisms are boiling over in the community — everybody is extremely angry, they are just like "Angry Birds", a popular figure in the digital game — it is only at this point that the two power companies reluctantly lower the rates of tariff increase. It seems that the two power companies have accepted our good advice readily, but on second thought, we may find ourselves deceived by the two power companies. Given that the two power companies still intend to maximize profits, the gloomy shadow of further crazy tariff increases still lingers on.

Let me first talk about how CLP Power Hong Kong Limited (CLP) deceive the public. Initially, the rate of tariff increase proposed by CLP was 9.2%, which was then lowered to 7.4% after negotiation. Finally, on 30 December, the day before New Year's Eve, CLP told us that the rate could even be lowered to 4.9%. CLP's claim that "there is no room for tariff reduction" was still fresh in our minds, yet the statement does not hold water. While CLP could have

proposed a much lower rate of tariff increase in the first place, it chose to deploy the tactic of "asking exorbitant prices to leave room for negotiation". Generally, we dread to see this tactic used by public utilities, but they have developed a liking for it recently, and their intention is plain to see. Ultimately, it is the general public, the meat on the chopping board, who suffer most.

What is even more appalling is that CLP has no real intention of lowering the rate of tariff increase because the adjustments and concessions presently proposed have nothing to do with reductions of the tariff structure. While CLP's proposal to lower fuel clause charge through carrying a bigger Fuel Clause Account (FCA) deficit will surely bring down this year's tariff increase, CLP can demand higher fuel clause charge in future to make up for the negative balance of FCA. As a matter of fact, CLP is only deferring the tariff increase. Regarding the special rebate in basic tariff of 3.3 cents per kilowatt, it is in fact offered upon CLP's expectation of a favourable ruling by the Court in an ongoing litigation with the Government. Given that the sum is an advance payment, what will happen if the Court eventually rules against CLP? Does it mean further tariff increases to recoup the sum from the purse of the general public? Ultimately, it is the general public who foot the bill.

As for The Hongkong Electric Company Limited (HEC), it is very lucky to have CLP as the scapegoat. Why do I say so? It is because HEC can hide behind CLP as the latter has demanded a tariff increase as high as 9.2% in the first place. As Members are aware, the rate of tariff increase proposed by HEC also exceeds 6%, that is, higher than the general rate of inflation. However, as CLP comes under the spotlight in this matter, HEC manages to increase its tariff discreetly. Many people may know that electricity tariff on Hong Kong Island has always been higher than that in Kowloon and the New Territories, but how much higher is that actually? If the tariff in Kowloon and the New Territories is \$1 per kilowatt, it will cost \$1.328 per kilowatt on Hong Kong Island. President, is that not very expensive? You also live on Hong Kong Island, right?

In addition to the high electricity bills for domestic households, the burden of leisure spending has also soared for the general public. In the past few weeks, I had participated in a signature campaign on the street, appealing for public support in this matter. Some young people passed by and said, "My parents pay the electricity bill, not me, how does this issue concern me?" I asked them whether it was more expensive to watch movies on Hong Kong Island

than in the New Territories or Kowloon; and they all agreed that it was indeed so. A ticket for the movie "You Are the Apple of My Eye" in cinemas on Hong Kong Island was indeed more expensive. They then signed our petition right away. In fact, our signature campaign still met with enthusiastic public support in the past few weeks even though the tariff increases have become effective.

As a matter of fact, people do not mind paying more for their electricity supply because they understand that the two power companies are indeed faced with pressures of tariff adjustments, just like wage earners who sometimes aspire for pay hikes, and money does not fall from the sky. But the tariff adjustments must be reasonable and transparent. People are now most dissatisfied with the drastic fluctuations of the increase rates, as well as the lack of transparency in the process. Nonetheless, as the Legislative Council intends to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to demand the relevant papers, the two power companies become frightened and lower the increase rates bit by bit. If the P&P Ordinance is really an "imperial sword", why do we not put it in good use?

In fact, the greatest and the most frightening "imperial sword" is Donald TSANG's comment. How can the Government criticize the two power companies without any obvious reasons? Given that the Scheme of Control Agreements (SCAs) were signed between the Government and the two power companies, how can he appeal for public support on Facebook to admonish the two power companies? Being the head of the Government, the Chief Executive should not spout off his opinions if he truly respects the spirit of contract because his action will definitely create an adverse impact on Hong Kong's image, as well as the inclination of international investors to invest in Hong Kong. More importantly, we know now what the limitations of the Government are. While we used to think that the SCAs would facilitate gate-keeping by the Government, it is now blatantly clear that the agreements have become a tool of tariff increase for the two power companies which invariably demand the maximum increase rate in order to maximize profits. That has really made the public very angry.

Hence, we now have this precious opportunity to invoke the P&P Ordinance and demand the disclosure of additional information and papers so that members of the public can decide for themselves whether reasonable increase rates have been sought by the two power companies. Moreover, although we have no idea whether Secretary Edward YAU would still be the officer

responsible for negotiations with the two power companies at the end of this year, it remains a difficult task for him, or the Government, to conduct these negotiations annually over the exorbitant tariff increases. Hence, members of the public are eager to sign our petition, in the hope of showing some support for the Government. At least, they want the Government to make greater efforts to better safeguard our interests, as well as our rightful benefits.

Further tariff increases by the two power companies are most likely because they have only deferred the increases for the time being. Hence, we are gravely concerned about the tariff adjustments in the future. It is our hope that as transparency is enhanced through the availability of additional information and papers, members of the public, Members of the Legislative Council as well as the Government can all work together to ensure more stringent gate-keeping. We hope that in future, reasonable tariff increases will be sought by the two power companies so that it is no longer necessary for the Government to resort to "verbal manoeuvres", and people need not take part in demonstrations, signature campaigns or protests. We hope that the matter can be dealt with in a better way. Thank you, President.

MR CHAN KIN-POR (in Cantonese): President, the substantial tariff increases announced by the two power companies earlier amidst the high inflation environment have created strong dissatisfaction in the community. Although the incident has died down for the time being with repeated downward adjustments made by CLP Power Hong Kong Limited (CLP) under the intense pressures of public opinion, the Legislative Council is concerned about the Scheme of Control Agreements (SCAs). In the original motion proposed by Ms Audrey EU today, as well as the amendments proposed by Members, many views have been expressed on the operation as well as tariff adjustment mechanism of the two power companies. While many views merit in-depth study by the Legislative Council, some are arguable.

The Legislative Council House Committee has passed a motion earlier to support moving a motion at a meeting of the Council for invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to compel the Government to produce relevant information relating to the tariff increases of the two power companies, including papers and records on their 2012 tariff adjustments, as well as their five-year Development Plans. The amendment

proposed by Ms Miriam LAU today also refers to this proposal. Nonetheless, new developments have emerged as both the Government and the two power companies have already agreed to provide the relevant papers. Hence, I think Honourable Members may have to reconsider the matter.

In fact, the P&P Ordinance is an "imperial sword". Whenever there are issues involving great public interest, the Legislative Council will invoke the P&P Ordinance without hesitation to seek the truth on behalf of the people. However, given the major powers conferred by the P&P Ordinance, the Legislative Council is duty-bound to ensure proper gate-keeping. The P&P Ordinance should only be invoked when duly justified and there is no other recourse.

As we all know, Hong Kong is a business centre. Sensitive commercial information of business organizations should be protected and respected in line with international practices. Even if the P&P Ordinance is to be invoked by the Legislative Council on the ground of great public interest to compel the Government or other organizations to produce the relevant information, such privileges should only be exercised with proper justifications and when there is no other recourse. Otherwise, it will definitely undermine the confidence of international investors on Hong Kong. In fact, unless and until the two power companies are converted into utilities operated by the public sector, they are still listed companies with a large number of shareholders, and their sensitive commercial information should be given proper protection and respect. Hence, even if the two power companies are compelled to hand over their papers, any sensitive commercial information contained therein should be dealt with by the Legislative Council at closed meetings so as to maintain confidentiality.

When the said motion was passed by the House Committee earlier, the Government and the two power companies had yet to agree to disclose the relevant information. But after the passage of the motion, the two power companies obviously came under pressure and eventually agreed to disclose the relevant papers. As the Government and the two power companies have already agreed to provide the relevant papers for necessary follow-up by the Legislative Council, I think it is no longer a matter of urgency for the Legislative Council to invoke the P&P Ordinance. However, I maintain the view that if necessary, Honourable Members will seriously re-consider invoking the P&P Ordinance.

Separately, Mr IP Wai-ming requested in his amendment that the two power companies should expeditiously and fully implement progressive block tariffs, so as to avoid the situation of "lower tariffs for higher consumption". I understand that while Mr IP's suggestion is intended to encourage energy conservation, it has failed to take into account the overall impact on society. As we all know, progressive block tariffs are intended to target business operations with high electricity consumption. Substantial tariff increases will definitely affect the business environment in Hong Kong, especially for small and medium enterprises (SMEs) such as those in the catering industry. As the business environment of SMEs has been deteriorating, any measure which might increase the burden of SMEs should be considered carefully.

Moreover, there is no reason why the power companies should be asked to cancel the existing concessions offered to the business sector. Even if such concessions were cancelled, the general public may not necessarily stand to gain. On the contrary, the affected enterprises may shift the additional electricity charges to consumers. Ultimately, it is the general public who suffer.

President, I so submit.

MR ALBERT CHAN (in Cantonese): President, the new short hairstyle of Miss Tanya CHAN makes her "fighter" image more prominent. Just now, she described the two power companies as "power demons", I think her description is quite vivid. If there are demons, we must wipe them out; it serves no purpose to propose minor patch ups to regulate tariff increase. Demons bring misfortunes to society and cause suffering to people. In many Chinese legends and folk rhymes that we learn in childhood, there are stories describing how heroes kill demons. There are many such stories in the classic *Journey to the West*. As we will be haunted by tariff increase, the two "power demons" must be eradicated; only in this way can people as well as small and medium enterprises in Hong Kong have an easy life.

President, the figures are really astonishing. Over the years, from 2000 onwards, CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) have made very handsome profits each year, ranging from \$5 billion or \$6 billion to as much as more than \$10 billion. Here, we are talking about the net profits in a year. The net tariffs have increased from \$0.8

and \$0.9 to over \$1. The profits of the two power companies have not decreased proportionally after the ceiling of permitted returns under the Scheme of Control Agreements (SCAs) was lowered from 13.5% to 9.9%. Logically speaking, when the ceiling was lowered from the original level of 13.5% to the new level of 9.9% under the SCAs, or the profit protection scheme, the profits should have been reduced by some 30%. However, after the implementation of the new SCAs, CLP and HEC could still earn \$10.3 billion and \$7.3 billion respectively in 2010. Comparatively, the respective profits of CLP and HEC in 2006 were only \$9.9 billion and \$6.8 billion. In other words, the two power companies have earned more than they did in certain periods before the implementation of the new SCAs.

Obviously, the two power companies have manipulated the Government by means of their financial tactics. Eventually, the Government blew up and as it failed to provide any justification or evidence, it claimed that some figures were inappropriate based on some abstract concepts. Yet, the Government did not bring up the issue for public discussion. Instead, the Chief Executive resorted to "verbal manoeuvres" to force the two power companies to adjust the tariffs twice or even three times. Nevertheless, the Government has not explained clearly how it will address the issue of overall profit and the burden borne by the public in the next couple of years.

Very often, figures are products of financial tactics. I often say that Administrative Officers of the Government are most capable of bullying and oppressing ordinary citizens with administrative hegemony. For example, I often criticize the former Secretary for Constitutional and Mainland Affairs for visiting pandas instead of the Hong Kong citizens in jail. These "dog officials" are like Pekingese dogs before bigwigs, putting their tail between the legs. Yet, when they are in front of ordinary citizens, they will become foxes borrowing the awe of tigers, and they excel in suppressing social movement with police power.

When we look back on the case of the two power companies, the best solution is to take these service providers into public ownership, which is exactly how the Government provides water services now. While both water and electricity are our daily necessities, why does the Government allow power companies to make exorbitant profits in power supply but designate a statutory government department to supply water with trading fund? The Government is really schizophrenic, though there may be some historic reasons behind. If we

have to eradicate the demons of private monopoly and profit protection, it is best to take the two power companies into public ownership.

The Government has got a huge surplus at present. The surplus of this year is more than \$50 billion and we have a total reserve of over \$2,000 billion. Financially, the Government can absolutely acquire the two power companies. Of course, this will affect the interests of large consortia and, in particular, the interests of one of the most powerful and influential figures in Hong Kong. The Government always acts like a Pekingese dog before these prominent figures. On the contrary, in the land resumption exercises conducted by the former Land Development Corporation, the Urban Renewal Authority or the Lands Department, the authorities excel in mobilizing one to two hundred people to threaten the ordinary citizens. The Government never dares to challenge the rich and the powerful for the sake of public interest, not to say take back the right of operation.

President, let us take a look at the water supply services of the Water Supplies Department (WSD). The rate of water tariff has remained unchanged since 1995. Over the past 16 or 17 years, water tariff has not been increased at all. Yet, the WSD has actually incurred a loss of at least \$300 million per annum since 2009. In 2004, the loss for the year was as high as \$800 million. Although it is costly to buy water, water tariff has not been adjusted since 1995. This proves that taking private assets into public ownership can benefit the people.

As a matter of fact, in many places, these services are owned by the government. For example, in the provinces of British Columbia and Quebec in Canada, power service is owned and provided by the government. The Taiwan Power Company and the Electricite De France are also government-owned. In Indonesia, all power companies are owned by the government as well. The tariffs in all these places are lower than that in Hong Kong. The tariff rate in Hong Kong is now over \$1 per kilowatt. Even in 2008, it was already close to \$1 per kilowatt. However, many companies mentioned above are supplying electricity at a rate of \$0.6 or even \$0.4 per kilowatt. In other words, power companies owned by the government charge (*The buzzer sounded*)

PRESIDENT (in Cantonese): Speaking time is up.

MR ALBERT CHAN (in Cantonese): a lower tariff than the "power demons".

MR JEFFREY LAM (in Cantonese): President, the entire city is shocked by the tariff increases proposed by the two power companies this year. As the global economic outlook is still very much uncertain and inflation is high, a significant increase in tariff will not only affect people's livelihood but also impact on the local business environment. In this connection, the Economic Synergy had negotiated with the two power companies for several times. At last, they succumbed to public pressure and agreed to lower the tariffs. CLP Power Hong Kong Limited (CLP) has twice lowered the rate of increase from the original 9.2% to 4.9%.

However, CLP has made the adjustment on the assumption that it will receive from the Government a sum of about \$1 billion, which is a refund of rent and rates, hence it can offer a special rebate of 3.3 cents per kilowatt to its customers. In the latest package, while the Basic Tariff has been reduced slightly from 85 cents to 84.2 cents, the fuel charge has again been raised by 26.2% as originally proposed to the level of 17.8 cents, making up an Average Net Tariff of 102 cents.

The overall increase rate will reach 8.4% if the special rebate by CLP is excluded, and it is hardly affordable by the public and the business sector. We also do not think CLP should replace the regressive rate applicable to the 308 000 business customers with a flat rate, because this charging method is unfair to companies which strive to reduce emission as well as to small and medium enterprises with low electricity consumption.

President, there are some lurking worries with the current tariff adjustment. First of all, the litigation on rates and rent between CLP and the Government is still at a preliminary stage of trial. Will CLP provide special rebate as promised in case the litigation develops in an unexpected way? What is more, according to CLP, the latest revised rate was made possible due to savings from the removal of planned capital expenditure on additional generating capacity and the reduction of operating costs. However, as savings are attained by delaying the credit of expenses to account, it implies that CLP may ask for higher tariff increase next year. As for the reduction of operating costs, CLP has not explained how the

original proposed 11.2% increase in operating cost can be reduced. We do not know much about the details.

It is the duty of the Government to review if the financial information provided by the two power companies are reasonable. It must also play a good gate-keeping role in approving their investments in expansion. In our view, as the two power companies are public utilities, they must also consider their social responsibility while making profits. Electricity is a necessity to everyone in Hong Kong. We can skip meals, but we cannot refuse to pay electricity bills.

President, as inflation is soaring, an excessively high tariff will impose extra burden to the business sector. The Government is duty-bound to study the financial justifications and data provided to substantiate tariff adjustments. If the Government thinks that the increases are unreasonable, it should bargain with the two power companies on behalf of Hong Kong people. Therefore, the Economy Synergy does not support invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to force the two power companies to disclose their accounts. The Government should be responsible for dealing with the two power companies on this issue. Furthermore, we should respect the spirit of contract. If some information is listed in the contract as classified information or commercial secrets, should we invoke the P&P Ordinance indiscriminately simply because we are not happy with the tariff increase? Invoking the P&P Ordinance will only do harm to our business environment and frighten foreign investors away. In addition, if we indiscriminately request the two power companies to disclose sensitive commercial information, the interests of their minority shareholders may be affected.

As a matter of fact, the Panel on Economic Development has been asking the Government to obtain information from the two power companies. In this incident, we have obtained more information than before. Yesterday, the Government stated in its reply to my letter that the two power stations had agreed to provide the Panel on Economic Development with additional information, including their operating costs and development plans for the next five years. Therefore, I think the problem lies on how the Government monitors the operation of the two power companies and examines the justifications of tariff increases, and this problem should be solved by the Government.

As the Government will conduct a mid-term review on the Scheme of Control Agreements in 2013, it must take this chance to request the two power stations to lower the electricity tariff as far as possible. It should also enhance the financial transparency of the two power companies, so that the public can have a better picture about the justifications and data of tariff adjustments. In this way, the public can have a stable electricity supply at reasonable price.

President, I so submit.

MR CHAN KAM-LAM (in Cantonese): President, at the end of last year, tariff increases of 9.2% and 6.3% for 2012 were proposed by CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) respectively. The tariff adjustments created an uproar in society among members of the public, and even the Chief Executive had said openly that such increases were unacceptable, especially when the proposed increase rate of CLP was close to 10%, much higher than the general rate of inflation. Although CLP eventually lowered the increase rate to 4.9% under the pressure of public opinion in society, the incident has highlighted the limitations and constraints of the Government in monitoring tariff adjustments of the two power companies.

Since the onset of the row over tariff adjustment, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has taken a series of actions, such as staging demonstrations at the headquarters of CLP, holding meetings with senior management of CLP, submitting petitions to the Secretary for the Environment Edward YAU, and collecting public views in various districts all over the territory. We had also moved a motion on the tariff increases of the two power companies at the meeting of the Panel on Economic Development of the Legislative Council. With Members' support, the motion was carried. It was through our concerted efforts that CLP was finally compelled to lower the tariff increase again to 4.9%.

In the current Scheme of Control Agreements (SCAs) covering the period from 2008 to 2018, the permitted rate of return has already been lowered from 13.5% to 15% in the previous agreements to less than 10%, that is, the existing level of 9.99%. We must bear in mind that the SCAs were not signed after the reunification of Hong Kong; they have been in place since 1993 (that is, 15 years before 2008). At that time, there were views that the British Hong Kong

Administration was trying to strengthen the confidence of investors, while others took it as transfer of benefits between the British Hong Kong Administration and big capitalists.

Under their *de facto* monopoly, the two power companies can practically incur no loss. Moreover, the two power companies have regarded the cap on return as a guarantee by adopting the permitted rate of return as the standard for setting tariffs. Hence, the 10% permitted rate of return has effectively become their guaranteed rate of return. Under the prevailing uncertain economic environment, there is hardly any guaranteed profit for enterprises in general. Yet the two power companies are guaranteed a return of 10%, which is hardly imaginable for other enterprises. As a public utility, CLP will certainly attract public outcry if it refuses to heed public sentiments and undertake its social responsibility by tiding over the difficult times with the people.

Moreover, criticisms have been drawn to linking the permitted rate of return with the average net fixed assets of the two power companies. I have already raised my concern in 2008 that by linking the permitted rate of return with the average net fixed assets, it would only encourage the two power companies to broaden their capital investments continuously in order to increase their return. As emission reduction facilities would also be counted towards fixed assets under the SCAs, this arrangement has given the two power companies another opportunity to increase tariff through additional capital investments. Moreover, a new emission performance mechanism was introduced under the revised SCAs. Subject to good performance on emission control, the two powers companies are entitled to an increased rate of return according to their achieved level of emission reduction. As a result, the two power companies can easily increase their return through initiatives of emission reduction. While all other enterprises must try their best to increase income and reduce expenditure in the midst of the prevailing economic downturn, the two power companies just want to increase income and do nothing about reducing expenditure. This mechanism only serves to encourage the two power companies to broaden their operating capital indefinitely and shift these costs to the customers.

President, in this tariff increase incident, the DAB has been urging the Government and CLP strongly to provide the relevant financial data on the tariff increases to the Legislative Council, including detailed information on the capital

and operating expenditures of the two power companies. To this end, we have contacted the Government time and again to state our request for the Administration to provide the relevant information. Yesterday, we received a formal reply from the Government, indicating that the two power companies had agreed to provide information to Members of the Legislative Council as itemized in its letter. Such information will include: detailed breakdown of the proposed tariff adjustments, the increase in average net fixed assets, information related to fuel costs, capital expenditure under the five-year Development Plans, annual actual capital expenditure under the five-year Development Plans, as well as relevant information pertaining to the Development Plans on Basic Tariff, Fuel Clause Charge and Net Tariff. The list of information to be provided is rather comprehensive.

In our view, Members can first study the information carefully when they receive the relevant papers; and if they still consider such information inadequate, they can demand further information from the Government. Hence, regarding the question of whether the Legislative Council (Powers and Privileges) Ordinance should be invoked to order the Administration and the two power companies to provide all the papers, the DAB considers that we should, for the time being, first study the relevant information and data to be provided by the Government, and proceed to consider whether it is still necessary to use this "imperial sword" afterwards.

All along, the DAB has adopted a pragmatic approach when dealing with matters concerning people's livelihood. In this incident, the two power companies have properly responded to the demands made by the DAB and the general public, and we welcome their decisions. We hope that the two power companies will increase the transparency of their operation in future, so that the public can monitor their operation under the sun. Regarding the vicious attacks made by some political parties in the opposition camp, the DAB would like to respond with the advice that they can only win the support and recognition of the general public by working in a pragmatic manner. Thank you, President.

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

MR PAUL CHAN (in Cantonese): President, the frightening tariff increases proposed by the two power companies this year have really created an uproar in society. A lot of queries and criticisms have been raised by many people (including myself). Even with the concessions made by the two power companies subsequently, we are left with the impression of some patchy and sloppy remedies, not to mention the contradictory stance taken by CLP Power Hong Kong Limited (CLP). I cannot help but question whether the companies have strong justification for their firm stance or whether they are driven by greed?

Judging from the information we have so far, Members of the Legislative Council can hardly make a reasonable judgment. Hence, Members have proposed in an earlier meeting of the House Committee that the two power companies should be requested to provide the relevant information, even to the extent of invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to compel co-operation by the Government and the two power companies.

As a number of Members have mentioned just now, the Legislative Council is extremely cautious when it comes to invoking the P&P Ordinance. We do not invoke the Ordinance to satisfy our curiosity or manifest the powers of the Legislative Council. As far as I am concerned, we are not seeking to revoke the existing Scheme of Control Agreements (SCAs); instead, we are seeking a channel to obtain the relevant information so that we can understand the reasons behind the proposed tariff increases, how reasonable such reasons are, and whether the Government has properly performed its gate-keeping role. As we learn from the experience and obtain additional information in the process, we can better prepare for the next stage of work in ensuring proper regulation in the electricity market and bringing down tariffs.

President, when considering whether I should support invoking the P&P Ordinance, I have, as just mentioned by many Members, taken the position that the powers under the P&P Ordinance must be exercised with extreme caution, particularly so when the business sector is involved. We do so not to protect the business sector, but because we must give overall consideration to the situation of Hong Kong, including our business environment; the impact brought by the disclosure of information on the market as well as investors, given that both CLP and HEC are listed companies in Hong Kong; as well as the likely impact on the bargaining power of the two power companies when purchasing fuel in the

energy market if the relevant information contains projections on the energy market in the future, as mentioned in the Administration's paper. I think all these are valid factors we must consider because if there are any adverse impacts, it is ultimately the people of Hong Kong who pick up the tab as the negative impact will be reflected in the electricity tariff.

I notice that the information provided by the two power companies has been listed out in a paper submitted by the Administration to the Panel on Economic Development on 5 January this year, yet such information is not sufficient. Separately, the Environment Bureau has submitted another paper on 17 January listing out various items of information to be provided by the two power companies. As other Honourable Members have mentioned the items of information just now, I will not repeat anymore. These items of information, including those on the five-year Development Plans, are more detailed and concrete. Under the circumstances, I consider that the Administration should also provide Members with detailed information on the two power companies' policies and mode of computing depreciation, the asset retirement procedures, as well as the capital expenditure, amortization and depreciation charge of emission reduction measures, together with their impact on Basic Tariff. With such information, we can then make a better assessment on whether the proposed tariff increases by the two power companies are justified.

Before such information is available, I will take the following factors into account when considering my stance on invoking the P&P Ordinance. Firstly, whether we can obtain the information through normal channels? If not, we might be compelled to invoke the P&P Ordinance. Secondly, whether the party requested to provide the information is being co-operative or evasive? So far, I can see that we are making progress in this matter. In considering the various factors I have just mentioned about the investment market and energy market, I will not cast my vote on this issue today. I will wait until 8 February. In the meantime, I will keep in view the information provided by the two power companies and the Administration, and consider whether such information can help alleviate my queries before I make a final decision on my voting preference.

President, other matters have been raised in today's motion. Broadly, they include: first, requiring the two power companies to exhaust all room for tariff reduction; second, activating the mechanism for interim reviews so as to lower tariffs or even the ceiling of permitted returns, and facilitating greater public participation in the process; third, introducing competition so as to open up the

electricity market and bring down tariffs. While I generally support the broad principles outlined in the motion, I may not totally agree with some of the specific wordings and contents. But given my support for the broad principles, I will vote for all other amendments, except that I cannot support the amendment proposed by Mr IP Wai-ming, and I will not vote on the amendment proposed by Ms Miriam LAU. Thank you.

MR LEE WING-TAT (in Cantonese): President, I had been listening very carefully when Ms Starry LEE and Mr CHAN Kam-lam spoke. I hope that the public will not get an impression that colleagues of this Council have nothing to do. In this legislative term, I have only participated in the work of the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man. President, I honestly do not think that is an easy task, the work is tough and demanding. We had better not initiate similar inquiry if it is not a must. I echo that Members of this Council have been very prudent in this regard. To begin with, we do not intend to set up a select committee to inquire into this matter, we only ask for the provision of relevant information.

The current situation is that CLP Power Hong Kong Limited (CLP) has been very unco-operative earlier and that the Secretary has been defensive and very lenient in pressurizing CLP. Mr CHAN Kam-lam just said that it is he who has requested for more relevant information. When was the request made? The request was made after the Democratic Party had proposed to invoke the power of the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), enough votes might not be secured, and the Liberal Party gave its consent under certain conditions (we also support their amendment). It was at this juncture that new development was seen on the part of CLP a few days ago. Hence, Mr CHAN Kam-lam had better not blown his own trumpet. It did not take place on the day after his motion was passed Mr CHAN Kam-lam, your motion was passed by the Panel of which you are a Member; and CLP did not release its information after the passage of your motion, it only releases the information at this moment.

This is not a new move. President, Members may remember the incident concerning the development project of "39 Conduit Road". In relation to the irregularities concerning the sales of flats of "39 Conduit Road", I requested the authorities to provide me with the correspondences concerned, but my request was turned down. In the end, I had to invoke the power of the P&P Ordinance

to seek the information. This is what had happened. Ultimately, Secretary Eva CHENG reluctantly provided me with the information when I was about to invoke the P&P Ordinance.

Hence, facts speak louder than words. He had better not describe himself pragmatic. On the contrary, I do not find Mr Paul CHAN unpragmatic. What did Mr Paul CHAN just say? As pointed out by Mr CHAN, we are only given limited information on the issue and we fail to get a full picture, for instance, there is no information on depreciation, and that information on other subjects is incomprehensive. Moreover, we have to wait until 8 February before knowing whether we will be given adequate information. I beg to differ with his remark that Mr Paul CHAN is not pragmatic.

Secondly, I learnt that even those Members who are also members of the Energy Advisory Committee were given the cold shoulder by the Secretary when they asked him for more information. Is this situation desirable, as claimed by Mr CHAN Kam-lam and Ms Starry LEE? The authorities would not be willing to release the information by phases had colleagues not tried to invoke the power of this "imperial sword".

President, the Democratic Party raised some comments during the discussion on the electricity market held in 2008. First, we have all along opposed to using net fixed assets in computing the returns, as this practice will only lead to a dead end after some years. It is a known fact to all capitalists and businessmen that if fixed assets are used as the basis for computing profits, they will try to inflate their fixed assets by all means. The Secretary has also pointed out in the past few months that many assets reported by the two power companies were premature assets. Then, why are such assets reported? It is because net fixed assets are used as the basis for computing profits. It has been proposed that net fixed assets should not be adopted as the only basis for computation, and other bases such as shareholders' input or other factors should also be considered. I hope the Secretary can expeditiously come up with new proposals in the interim review for public discussion.

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

The second point is that we propose the segregation of the network sector from the generation sector. Actually, we have repeatedly put forth this proposal, but to date, I do not think the Government has taken any action in this regard. There is still two to three years' time before the next interim review and seven to eight years' time before the expiry of the Scheme of Control Agreements (SCAs). In fact, opening up the electricity market is not as simple as opening a bakery shop or a wonton-noodle shop. The process is very complicated. I am afraid if the Government does not change its present way of work and is not resolute enough, it will not be able to accomplish this mission in seven or eight years' time. The mission can only be accomplished by a Chief Executive and a Secretary with perseverance and clear determination. I am not that confident if the work is to be undertaken by Secretary Edward YAU who is now sitting opposite to me. I hope the Secretary can tell me that he will open up the electricity market by segregating the network sector from the generation sector. Many places in Europe and the United States have already adopted this practice. How much time does he need to adopt this practice? Can he ascertain that the work can be completed before the expiry of the next SCAs? If he says that this cannot be done, I will be greatly troubled, because it will be difficult to introduce competition under which a power company can set its tariffs at a relatively reasonable level. In this way, the Chief Executive and the Secretary need not jointly put up a show and resort to making "verbal manoeuvres" to force a listed company to lower its tariffs, as what I have said in the previous Question and Answer Session. This approach is, to a certain extent, very disgraceful. Deputy President, for members of the commercial and industrial sector, such as Mr Jeffrey LAM who has just spoken, while he is not happy with the Chief Executive nor the Secretary, he is anxious that confidential information will be leaked. Yet, he is not afraid that the "verbal manoeuvres" made by the Chief Executive or the Secretary may interfere with electricity tariffs. Actually, should such act cause more anxiety?

What we want is a system which needs not resort to "verbal manoeuvres", and under this system, there are competition and reasonable regulation, and the business sector can have reasonable returns. At present, however, this is yet to be achieved. I hope that after this meeting, the Secretary can prepare himself for unravelling this problem in the coming one or two years (if possible, I hope that he can continue to be the Secretary for the next term government). This is not a problem which only happened this year. History is likely to repeat itself. In

this connection, he has to make an early decision so as to rebuild his image that he is determined to open up the electricity market.

Thank you, Deputy President.

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

(Mr CHAN Kam-lam stood up)

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, do you have a point of order?

MR CHAN KAM-LAM (in Cantonese): Yes.

DEPUTY PRESIDENT (in Cantonese): Okay. Please raise your point.

MR CHAN KAM-LAM (in Cantonese): As Mr LEE Wing-tat mentioned my name just now, I wish to seek an elucidation. He said that I requested the Government and the two power companies to provide information after Mr Fred LI had requested to move a motion to invoke the power of the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to seek the information. As a matter of fact, his statement is wrong. On 13 December, I proposed a motion at the meeting of the Panel on Economic Development to request the two power companies to provide the information, and the motion was endorsed. Mr Fred LI also proposed a motion at the same meeting, but the motion was negated. This is the case as it stands. My motion was not proposed after Mr Fred LI's motion on invoking the P&P Ordinance to seek the information. I must clarify this point.

DEPUTY PRESIDENT (in Cantonese): Okay. Thank you for your elucidation.

(Mr LEE Wing-tat stood up)

DEPUTY PRESIDENT (in Cantonese): Mr LEE, we are not having a debate now.

MR LEE WING-TAT (in Cantonese): I wish to seek an elucidation because he

DEPUTY PRESIDENT (in Cantonese): Mr LEE, according to the procedure, as you have mentioned Mr CHAN in your speech, Mr CHAN has the right to make an elucidation in relation to the part which has been misunderstood by you.

MR LEE WING-TAT (in Cantonese): Deputy President, I understand, but he has also mentioned my name and has made some false statement. Please refer to the tape recording. I will be brief in making my elucidation. I need not make a long speech.

DEPUTY PRESIDENT (in Cantonese): Please be brief.

MR LEE WING-TAT (in Cantonese): In brief, I wish to point out that CLP is now willing to provide the information to the Secretary, but it did not do so on the day after Mr CHAN Kam-lam's motion was passed (I know his motion was passed). CLP did not provide the information the next day after Mr CHAN's motion was passed. CLP only provided the information very reluctantly in the past few days after a motion was moved by Mr Fred LI and then amended by the Chairman of the House Committee (that is, the Deputy President now). This is what I have said. Right? This is the fact. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): Fine, please sit down. Does any other Member wish to speak?

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, I have watched a Beijing opera called The Shameless Braggart when I was small. The opera

depicted how people deserted a place in times of crisis and returned only in times of peace and prosperity. This is the story of The Shameless Braggart, depicting that people can be shameless when they try to take the credit for something.

This is not the first time the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has made verbal promises that do not materialize or resort to tricky and deceitful means. It has changed its stance on the incident of The Link Management Limited and the incident of giving cash handouts. Last year, they eagerly pledged their support to the Government in dishing out cash, but now they have backed out from the policy without any reasons.

Today's motion draws my particular attention to the word "open up". I remember we have repeatedly discussed why we should let the two power companies monopolize the market. I hold that if a public utility is monopolistic and a necessity in daily life, it should better be operated by the public sector. This is the stance of the League of Social Democrats and we will not change it up till now.

What do we mean by "opening up"? It means to usher in the "power overlords" from the north. We all know that power companies on the Mainland are rapidly expanding. Just consider the fact that nuclear plants are planned to be built even in the earthquake zone in Guangdong Province and you know what I mean. The only conclusion we can derive from the segregation of the generation sector from the network sector is that the "power overlords" (that is, the family business of LI Peng) in China will be allowed to operate in Hong Kong. Given the fact that a power-grid company is unable to foresee the status of power supply, a power-generation company will progressively take control of the power grid, and in the end take over the operation of the power grid.

Recently, this Council has progressively degraded to become a vanguard for welcoming the mainland business giants, particularly political factions or parties backed by the Communist Party or certain organizations of the Communist Party, to enter the Hong Kong market. Whenever the subject of East-Kowloon development is under discussion, the discussion is dominated by investment activities.

Besides, the most ridiculous of all is the remark that it is wrong to invoke the power of the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to seek the documents. In order to clear our doubts, we wish to seek more information; but Mr CHAN Kin-por said there is something wrong with this approach. Everyone has been saying that they do not know what the Government is doing. We gnash our teeth whenever we talk about the interim review on the Scheme of Control Agreements (SCAs) in 2013, saying that we must make good use of this opportunity. It is now 2012. We know nothing about those documents which have been provided to us bit by bit as if squeezing toothpaste out of a tube. Every time we need to intimidate the power companies by wielding the "imperial sword", that is, the P&P Ordinance before they are willing to provide a little information to us.

I truly do not understand why our colleagues oppose invoking the P&P Ordinance to seek information. We can discuss how to use the information after we have got hold of them. I truly do not see how this Council can lead a constructive discussion if we do not even have the information. We need to have some grounds before we can initiate discussion on turning the two power companies into public utilities, right? We need to have some statistics before we can come up with our justifications.

Some people ask the opposition parties or the opposition groups to be practical. I wish to ask the DAB a humble question. The information is as deep as the sea, which we know nothing about it. Only the Government knows or may not know about it (perhaps, not even the Government knows about it). If so, what is wrong with asking the power companies for further information; and if we find that some information is missing after our initial review, what is wrong if we ask for the missing information?

The DAB says that we have to be more practical, may I ask, on what grounds can they urge the Government to progressively honour its commitment of lowering the tariffs and limiting the returns of the two power companies in the interim review on the SCAs to be conducted in 2013? Do they have any justifications? They have nothing. This is the first point.

Secondly, instead of opening up the electricity market, it is better to turn power supply into a utility operated by the public sector. The debate today has

already proved that it is impossible to ask a Government, which refuses to operate public utilities and provides appropriate public services for the benefit of the people, to monitor the consortia which it connives at. It is as impossible as asking cats not to eat fish or trying to find a fish by climbing up a tree. The two have united into one. They both are irresponsible and profit-making. It is superfluous to ask the Government to monitor the two power companies. Now, only the Legislative Council can monitor the two power companies. How are we going to monitor the two power companies if we chop off our arms?

Members, the debate today is in fact a simple one. I am often criticized for being unreasonable. However, buddies, how can I reason with you if I do not even have the information? May I ask Mr CHAN Kam-lam how much information can he get hold of? May I ask Secretary Edward YAU how much information he has not released to us? Can he provide a detailed list? List them all out. How many documents are there? Moreover, are there any correspondences between the Government and the two power companies? The information is as deep as the sea. If we proactively exercise the power to seek the information and then proceed with the scrutiny step by step, we will be the one to "squeeze the toothpaste" bit by bit. Now, if we chop off our arms, how are we going to regulate the power companies in 2013? Is this what they mean by being practical? What they are trying to do is nothing but bragging and sweet-talking. They are the shameless braggarts.

Deputy President, if a political party, which advocates serving the people and being practical, does not even dare to seek information, the political party can be described as a detective who does not even engage a forensic pathologist in his investigation but jumps to conclude who the murderer is. The DAB is the murderer. They kill the power vested to the Hong Kong Legislative Council to monitor the Government. I hope the DAB can seriously consider invoking the P&P Ordinance to seek information. What harms can there be? Answer me (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): The speaking time is up. Does any other Member wish to speak?

(Mr CHAN Kam-lam stood up)

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, do you wish to seek an elucidation? You can only make an elucidation on the part which has been misunderstood by Mr LEUNG.

MR CHAN KAM-LAM (in Cantonese): Mr LEUNG Kwok-hung asked me just now why we dare not seek information

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, this is not allowed under the Rules of Procedure.

MR CHAN KAM-LAM (in Cantonese): I know, Deputy President. I must tell him that

DEPUTY PRESIDENT (in Cantonese): Please sit down first.

MR CHAN KAM-LAM (in Cantonese): We have many letters here which we can show him

(Mr LEUNG Kwok-hung also stood up)

DEPUTY PRESIDENT (in Cantonese): Will the two Members please sit down.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, this world Mr CHAN

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, please sit down. If a Member raises his hand to speak after another Member has spoken, he may elucidate the part of his previous speech which has been misunderstood by that other Member. However, the situation now is that another Member has spoken.

Mr CHAN, you can only speak in relation to the part which has been misunderstood by Mr LEUNG and you cannot debate with him.

MR CHAN KAM-LAM (in Cantonese): He has totally misunderstood me, saying that we dare not seek information from the Government and the two power companies and asked us what information we have sought I thus have to tell him that we definitely have the evidence. We have letters and documents.

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, please sit down. You are debating with him and not elucidating the part which has been misunderstood. Please sit down. Does any other Member wish to speak?

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, the discussion today mainly centres on the motion moved by Ms Audrey EU. In my view, the first two points in Ms Audrey EU's motion are the crux of the problem. Why do I think they are the crux of the problem? Because she states that "this Council urges the Government to: (a) require the two power companies to exhaust all room for tariff reduction, so as to lower the rates of tariff increase this year to the lowest levels". This is our aspiration. As a matter of fact, since the two power companies have, as we can see, earned a lot of money in the past, what is the justification for them to increase tariff after reaping so much profits? We kept requesting them to lower the rates of tariff increase. Right, they have actually done so, having revised the rates of increase three times in the past several months. However, the problem is whether, after such revisions, all room for tariff reduction has been exhausted as of today. Do Members know? We may probably not know.

The solution of the problem depends on the ultimate result of negotiation between the two power companies and the Government. The two power companies stated each time that all room for tariff reduction had been exhausted and no further reduction was possible. However, shortly after such statement, the rates of increase could be further reduced slightly. Can the rates of increase be further reduced hereafter? We do not know. As such, where does the problem lie? The problem lies in the fact that we have no data, and that we do not know what have been discussed between the power companies and the

Government and under what circumstances there is still room for tariff reduction. Therefore, I think the crux of Ms Audrey EU's discussion is to convey the aspiration of the general public that all room for tariff reduction should be exhausted. However, no one knows whether all room for tariff reduction has been exhausted.

Therefore, Ms Audrey EU proposes urging the Government to "immediately activate the mechanism for interim reviews, and make public the relevant information and accounts, so as to facilitate public participation" in point (b) of her motion. The message behind is to request the power companies to make public all relevant information, so that we know about their so-called profits and losses, as well as details of operation. It is also hoped that the Government can make public all accounting information involved in the discussion between the Government and the two power companies, so that the public can participate in the discussion. Otherwise, we will keep asking the two power companies to reduce tariff. To this day, I still think they should make further reduction. I believe this is also the aspiration of members of the public. However, some people may say, "Don't be so greedy. Since the rates of increase have been reduced several times, all room for tariff reduction has been exhausted. Stop wrangling. What are you wrangling about?" Hence, I think the mechanism for review must be activated, so that we can truly understand the situation and get involved.

As far as public affairs are concerned, transparency is most important. Since our discussion on public utilities in the 1970s, we have been ceaselessly requesting for enhanced transparency. However, it is a pity that until now in this millennium, such aspiration has yet to be addressed, and there is still a lack of transparency for public participation. As such, I think the request made by Ms Audrey EU is very important.

In addition, Ms Audrey EU does not only talk about the current situation, but the future situation as well. While there is presently room for tariff reduction this time, we are worried whether the future tariff can be reasonable and not too high. We really do not know. Why? Deputy President, one of the reasons for tariff reduction this time — I would rather say revision instead of reduction of the increase rates, if the rates of increase were not that high initially, a downward adjustment would not have been possible. Why is a downward adjustment possible? It is actually related to the refund of rates and Government

rent. The two power companies both said that such refund will be used to benefit the public, and hence a downward adjustment is made possible. However, such remark is actually very tricky. As the money belongs to the public in the first place, the saying that tariff can be reduced due to such refund does not make sense, it should not be a real factor for tariff reduction. On the contrary, there are other factors contributing to tariff reduction. Regrettably, under the Scheme of Control Agreements, the two power companies repeatedly say that they are entitled to reasonably raise tariff for getting the maximum profit margin. How can we break through such limits? In this connection, Ms Audrey EU talks about future development.

Future development lies in the adoption of all measures to create a low-carbon electricity market which promotes sustainable development and operates with greater competition, openness and fairness, so as to break new grounds in the electricity market. Actually, it is not as simple as breaking new grounds; the most important concept should be to allow the public to pay a fair price for electricity supply arising from fairer and more reasonable competition.

This point is also a reminder to the Government that it should not be complacent with the established or existing practice. The established or existing practice already lags behind trends and aspirations of the public nowadays. Black box operation was possible in the past, but it is not allowed nowadays. The two power companies dominated the electricity market of Hong Kong in the past, but it should not be the case in the future. We need a more open and bigger market that allows more investors to compete in a fair and reasonable manner, so that the public can benefit from fair and reasonable prices. This should be the trend of the development of the electricity market.

Therefore, I very much support the original motion moved by Ms Audrey EU today. I hope that the Government can consider the aforesaid issues practically and seriously. Deputy President, I so submit.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): Ms Audrey EU, you may now speak on the five amendments. You have up to five minutes to speak.

MS AUDREY EU (in Cantonese): Deputy President, I note that no Members expressed disagreement on the recommendations of my original motion. Instead, most Members talked about the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) in their speech, almost turning the debate today into a rehearsal for that on 8 February. Deputy President, I believe that this is due to your amendment. Nevertheless, let me express my views in sequence of the amendments.

First, the Civic Party fully supports Mr Fred LI's amendment. I mentioned in my speech just now that when we founded our party in March 2006, our first policy document was on the electricity market, and the first recommendation set out therein related to the establishment of an energy management authority. Certainly, we agree to other points in Mr Fred LI's amendment.

However, as I remarked just now, Deputy President, it seems that your amendment is most controversial, particular in respect of the submission of documents, I feel that the debate today is like a rehearsal for the debate on invoking the P&P Ordinance on 8 February. This also prompted me to take a look at the Rules of Procedure, of which Article 31(2) states that if the subject matter of a motion not intended to have legislative effect and notice of which is given is substantially the same as that of a motion intended to have legislative effect, the notice shall be returned to the Member who signed it. Certainly, the President has approved Deputy President's amendment, which supports the disclosure of documents on the premise of keeping in line with public interest, not interfering with normal commercial operation, and not divulging sensitive commercial information.

Deputy President, the Civic Party has reservations in this regard. As a matter of fact, speaking of the two power companies, many Members mentioned in their speech just now that the companies enjoy privileges in that there is no competition between them as they provide electricity to different regions, and they are public utilities. Deputy President, how can this be described as normal commercial operation? There should actually be competition in normal

commercial operation. If a commercial organization faces the pressure of rising costs, it should take the risk and face up to the relevant problems. However, the overall costs are basically transferred to the public due to the Scheme of Control Agreements. Since the costs of the two power companies are borne by members of the public, why are they denied access to documents concerning investments and costs?

We think it is still not appropriate for partial disclosure, meaning that only Members, but not the public, have access to such information. Certainly, we cannot rule out the possibility that certain documents are truly confidential, and Members can actually decide whether such documents contain sensitive commercial information. We shall be considerate while being doubtful; we do not rule out the possibility of such scenario. However, we still do not know what documents are available at present, and even if they are available, we do not know who should determine their confidentiality. I believe it is totally unacceptable to let the two power companies decide which document contain sensitive commercial information and thus deny our access.

Deputy President, as for Mr IP Wai-ming and Ms Starry LEE's amendments, the Civic Party considers that they involve general principles, and we have no objection.

As for Mr LEE Cheuk-yan's amendment, the most crucial point seems to be point (f), but his wording is relatively loose, with a lot of room for discussion. Since he suggests conducting studies on turning power supply into a utility operated by the public sector in the long run, we believe many such studies can be conducted, bearing in mind that the water supply of Hong Kong is also a utility operated by the public sector. If all public utilities were turned into utilities operated by the public sector, the principle of free and open markets would certainly be contravened. Yet, public utilities can be operated partially by the public sector. In the case of power grid, for example, many Members remarked just now that the power grid can be an open one, with different power plants supplying electricity to it. Such form of operation can therefore be considered.

As such, the Civic Party supports this amendment at this stage, and we hope that further studies can be conducted in the long run. However, in the short run, we should (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Time is up.

MS AUDREY EU (in Cantonese): implement the original motion. Thank you, Deputy President.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): Deputy President, Honourable Members, I have to thank Members for expressing views in many respects on the motion "Creating a sustainable and open electricity market". Regarding the views expressed by Members today, after looking at the heading and wordings of the motion, I expect that we would discuss from a broader perspective. As I have said in my opening speech, I understand that members of the public would surely have grave concerns about electricity tariffs when the issue on the electricity market is discussed. And yet, the regulation of the entire electricity market does not only involve tariffs. Therefore, apart from pursuing a reasonable tariff, we must also place emphasis on the stability and safe development of the electricity market, as well as the environmental issues that attract growing public concern.

Nonetheless, I am also aware that this motion is indeed triggered by the tariff hikes in October, and Members' speeches would naturally focus on tariff adjustment. However, after listening to Members' views, I can affirm that Legislative Council Members do not oppose whenever tariff increase is proposed, as I said in my concluding speech on a motion debate held on 21 December. From the present tariff adjustment, we can see that the responses made by the power companies have eroded people's confidence and the Government had also raised queries. We should therefore thoroughly examine the problem to see if it is caused by the system, the power companies themselves or other reasons.

This is why many Members queried whether it is still practicable to regulate on the basis of agreements. It is all too natural for Members to request certain information to facilitate their review.

Therefore, I would like to speak on a number of perspectives and skip the points of broader perspectives which I have prepared. I will respond to Members' proposals to request the two power companies to submit information and increase their transparency, so as to facilitate Members' monitoring.

Members have asked in their speeches of the measures taken in respect of the existing Scheme of Control Agreements (SCAs) or how the 2013 interim review can be optimized. These issues will also be discussed. Apart from the overall rate of tariff increase this year, I have also heard Members highlighting the tariff structure, and there are diverse views among Members of the Legislative Council. Last of all, Members are certainly concerned about the opening up of the electricity market to introduce competition, and the option of the public sector operating the electricity market.

For the first point, in reviewing the scrutiny conducted in respect of the tariff adjustment in 2012, Members may query whether the Environment Bureau would consider that different approaches should be adopted in scrutinizing the tariff adjustment. In fact, the Government has all along been pragmatic. During the scrutiny process, we had examined every item under the tariff adjustment proposal with the two power companies, and in particular, the five focuses which we have briefed the Legislative Council earlier. The scrutiny has been implemented at two levels. The first level is an annual review conducted within the coverage of the five-year Development Plans, and the second level is to examine the five focuses, namely the operating cost, capital expenditure, Tariff Stabilization Fund (TSF), Fuel Clause Recovery Account (FCA) and other revenue. I believe the Environment Bureau, including government accountants and other colleagues sitting next to me, have adopted the same accounting practices and approach in their scrutiny work over the past years.

(THE PRESIDENT resumed the Chair)

The scrutiny is professional and vital, and the work is implemented at two levels and with five focuses. The five-year Development Plans have offered greater room for the power companies to develop, after liaising with the Government and obtaining its consent and approval, in respect of their power units, generation capacity, new development needs and service improvements, within a specified period (that is, five years).

The five-year Development Plans must provide impetus for power companies to make continuous investment. However, this does not mean that the five-year Development Plans can replace the annual review. I believe

Members should know very well by now that the annual review is specific, stringent and justifiable. It is absolutely wrong for any power company to misunderstand that the approval of the five-year Development Plans means that the annual review need not be conducted. The review conducted each year is important.

Many Members in the Legislative Council, including members of the Panel on Economic Development and other committees, eagerly wish to obtain some information from the power companies through the Government, and this is one way of getting it. Yet, the most important thing is how the information obtained will be examined. I opine that when Members put forth their requests for information in their speeches, they should also indicate how the information obtained should be interpreted, as not all Members come from the accounting or professional sectors.

Actually, in the course of this year's scrutiny, the Government has already stated its work on examining the five focuses relating to the tariff adjustment of the two power companies. I also wish to take this opportunity to explain the five focuses to Members because after the relevant information is provided to the Panel on Economic Development, I believe Members will deliberate in this direction. Therefore, it would be better to have a clear description of the tariff structure.

Among the five focuses, capital expenditure is the one that warrants careful examination. In fact, this item should be analysed in two perspectives. While it is certain that capital expenditure not approved under the five-year Development Plan cannot be proposed, there are often grey areas in certain plans. For instance, this year, the power companies, especially CLP Power Hong Kong Limited (CLP), have expressed the wish to increase the generation capacity towards the end of the 10-year period and to carry out some studies as early as possible. We may discuss on this matter, but the Government may oppose the commencement of the initial stage of work that has not been included in the five-year Development Plan. Therefore, management of capital expenditure is implemented through the five-year Development Plan and annual review.

Members may recall that a power company had mentioned that more than 10 meetings had been held with the Government. Reviews of development plans will be conducted at the end of a year as well as in the middle of a year, so

as to ensure that there is a genuine need to implement the plans in the relevant year. Plans which are considered premature and excessive will be rejected.

Regarding operating cost, our concern is whether the cost is reasonable as opposed to capital expenditure. In this connection, we may make reference to the expenditures of a normal company as power companies are commercially operated after all. We may not be able to scrutinize every single item of expenditure, but we will make reference to some objective yardsticks, such as the annual operating cost of other commercially-operated companies. Thus, reasonableness is our concern in this regard.

As for the TSF, I remember that when the Legislative Council discussed the revision of the SCAs in 2007 and 2008, some Members present at the meeting had reminded me to avoid excessive TSF balance. This is because many Members were aware that whether or not a power company can secure the 9.99% permitted returns does not solely hinge on the ceiling of the permitted returns, but also on whether the TSF has an excessive balance. Therefore, following the last revision of the SCAs in 2008, measures have been introduced to reduce the cap of the TFS and during the annual review, such as the annual review in 2012, more stringent requirements are set in this regard.

The FCA balance is nonetheless negotiable between the two sides. If the balance shows that some customers have outstanding tariff payments, this is obviously outstanding receivable fuel charges. Contrarily, if the power companies have overcharged the customers, refunds should eventually be made. However, the SCAs allow the power companies to have the flexibility of ameliorating or mitigating the impact of fuel cost increase of a certain year through the positive or deficit balance in the FCA.

The last focus is other revenue. We are aware that it is very likely for the two power companies to have other revenue item in 2012. We asserted that such revenue is derived from an objective reality, and that is, the power companies would receive a refund of Government rent and rates as a result of the relevant judgment made by the Court of Final Appeal. If this sum of money is credited to this year's account, we hope that the power companies will take this opportunity to fully refund their customers as early as possible.

President, if we look back at what we have done, and especially after Members obtain the necessary information, I believe they would agree that the scrutiny should continue in this direction. Not only the Secretary or the Environment Bureau has participated in the relevant work, but also some professionals from the Bureau. In fact, when energy policy was previously placed under the purview of the Commerce and Economic Development Bureau, the gate-keeping role was also performed by colleagues who are professional accountants, as well as technicians and consultants employed from the community. Therefore, I must ensure that Members accept the direction of scrutiny adopted by the Government, and this is why I wish to brief Members on this occasion.

Furthermore, Members also mentioned the need to increase transparency, and I have already expressed my agreement right at the beginning of my speech. As I have pointed out earlier, in respect of the current tariff adjustment, the Government and the power companies have, as far as possible, provided additional information to the Legislative Council upon request, which include sensitive commercial information. In the light of the sensitivity of the information, special arrangements have been made by the committee concerned to distribute the relevant documents to its members in the form of a confidential document. At meetings of the Panel on Economic Development which I had attended, I learnt that members agreed with such an arrangement, which is unprecedented. As regards whether the same arrangement will be adopted in the future deliberation, I hope that I can explore this with Members and discuss with the Panel on Economic Development to see if there are any viable options.

However, as I have said in the opening speech, the sensitivity of information to be further provided might be different, and might even involve sensitive commercial information. Considering that Members may wish to safeguard their personal interests, shall we proceed by signing a statement? We are ready to discuss the matter with the Panel on Economic Development in the next few days or after the Chinese New Year holidays, with a view to balancing the interests of the two parties.

As I have pointed out in my opening speech, after we relayed the request of the Panel on Economic Development to the two power companies, the latter have agreed to provide information on two major areas. Firstly, they will provide

information about the tariff review in 2012. In fact, some information has been submitted at the last meeting of the Panel on Economic Development and updated after the meeting. Therefore, we consider that the power companies should again provide Members with the relevant data, such as data subsequent to CLP's reduction of tariff to 4.9%, so that Members can know clearly the ultimate figures of the various focuses after the tariff adjustment.

Secondly, Members have mentioned the five-year Development Plans and I have also read out the items of information to be produced, as agreed between the Government and the power companies. Given that the number of items involved is plenty, I am not going to repeat here. As I have said, the Government is ready to accede to Members' requests and obtain more information from the power companies. We would like to get this job done through the Panel on Economic Development. If there is a way in which we can protect the confidentiality of information on the one hand and provide sufficient information for Members' consideration on the other, I hope that it would also achieve the objective of "not interfering with normal commercial operation and not divulging sensitive commercial information" as desired by Ms Miriam LAU, thereby saving the need to invoke any power or privilege. Instead, the Panel on Economic Development will become a platform for discussion and we will follow up on the research in this regard.

Regarding the monitoring of the two power companies, we consider that subject to other views of Members, we will continue to carry out our scrutiny work at the two levels and five focuses mentioned above. Certainly, we will also strive to increase transparency.

Many Members mentioned the interim review, in fact, the Government should grasp this golden opportunity to properly conduct the interim review in 2013. The interim review not only reviews the situation of the past five years, but also examines the development of the next five years. In response to Members' views, I consider that the interim review should at least focus on three major directions. Firstly, it is the approving and vetting mechanism of tariff adjustment. Many Members consider that the Government should have greater power in approving and vetting tariff adjustment, and avoid having diverse views with the power companies as in the case of this year for people may see this as a failure. This is the first thing that we can negotiate with the power companies,

and this is beneficial to both parties. I believe there is no reason for the power companies to evade from such scrutinies.

Secondly, regarding the need for the power companies to increase the transparency of financial information, as I have said earlier, we consider that this year's experience can be used for future reference. Thirdly, in view of fact that a new five-year Development Plan will commence after 2013, we suggest that the study of the new five-year Development Plan can commence in the interim review. Last of all, Members have talked about the preparation to be made for the expiry of the SCAs in 2018, which include studies on the introduction of competition through interconnection of grids and the permitted return. I believe these tasks cannot be easily accomplished, but they can be commenced as early as 2013.

Regarding the opening up of the electricity market, I have already mentioned some basic principles in my opening speech and I notice that Members have two different views. As Mr LEE Cheuk-yan has said earlier, while some people consider it necessary to enhance competition, some prefer to place it in the public sector. I believe these diverse views should be taken into account when we prepare for 2018. I also notice that some Members have advised how preparatory work in this regard can be enhanced, and we have taken note of their views.

For the tariff structure, we are aware that there are two different views within the Legislative Council. As some Members consider it necessary to take care of different customers, it is therefore inappropriate to adopt a broad brush approach and pursue a tariff structure of "higher charge for higher consumption" as suggested by the green groups. In this connection, I remember that in response to the urgent oral questions raised by Members, I have stated the position of the Government, and that is, we will have a good opportunity later this year to see if the issue can be properly dealt with after listening to the opposing views expressed by Mr IP Wai-ming and Mr Tommy CHEUNG earlier.

President, I believe discussion on this issue will go on for some time and Members may probably have in-depth discussions on the issue in the future meetings of the Panel on Economic Development. And yet, I hope that when the policy on electricity is discussed, Members will not merely focus on tariff adjustment, but will also consider several important factors such as the stability of electricity supply, as well as safety and environmental issues. Here, I would like

to thank Members again for expressing views on this issue. I will continue to have discussions with Members in this regard.

Thank you, President.

PRESIDENT (in Cantonese): Mr Fred LI, you may now move your amendment to the motion.

MR FRED LI (in Cantonese): President, I move that Ms Audrey EU's motion be amended.

Mr Fred LI moved the following amendment: (Translation)

"To delete "," after "That" and substitute with "at present, there are only CLP Power Hong Kong Limited and The Hongkong Electric Company Limited supplying power in Hong Kong;"; to delete "has extended" after "2008" and substitute with "is marked by inadequacies, thus extending"; to delete "sowed" after "by the two power companies and" and substitute with "sowing"; to add "(a) establish an energy management authority to explore Hong Kong's long-term energy demand, formulate and execute an energy policy, as well as monitor power companies, gas companies, liquefied petroleum gas companies and fuel supply companies; (b) review the permitted returns of the two power companies; (c) raise the transparency of the processes for the formulation of SCAs and tariff adjustments, so as to facilitate public monitoring and ensure fair and reasonable tariff adjustment rates; (d) consult the Legislative Council first when approving the annual tariff adjustments and before revising the respective five-year Development Plans of the two power companies in the future;" after "the Government to:"; to delete the original "(a)" and substitute with "(e)"; to delete the original "(b)" and substitute with "(f)"; to delete the original "(c)" and substitute with "(g)"; to delete the original "(d)" and substitute with "(h)"; to delete the original "(e)" and substitute with "(i)"; and to delete the original "(f)" and substitute with "(j)"."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Fred LI to Ms Audrey EU's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Ms Miriam LAU, as Mr Fred LI's amendment has been passed, you may now move your revised amendment.

MS MIRIAM LAU (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr Fred LI be further amended by my revised amendment.

Ms Miriam LAU moved the following further amendment to the motion as amended by Mr Fred LI: (Translation)

"To add "; (k) on the premise of keeping in line with public interest, not interfering with normal commercial operation, and not divulging sensitive commercial information, support the relevant motion passed by the Legislative Council House Committee for the Legislative Council to, in accordance with the Legislative Council (Powers and Privileges) Ordinance, demand the two power companies to provide all detailed records and data relating to their 2012 tariff adjustments and the five-year

Development Plans; and (l) strive to lower the existing ceiling of 9.99% on the permitted returns" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Ms Miriam LAU's amendment to Ms Audrey EU's motion as amended by Mr Fred LI be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr CHAN Kam-lam rose to claim a division.

PRESIDENT (in Cantonese): Mr CHAN Kam-lam has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Mr CHEUNG Man-kwong, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Dr LEUNG Ka-lau and Mr IP Wai-ming voted for the amendment.

Mr WONG Yung-kan, Mr LAU Wong-fat, Mr WONG Ting-kwong, Mr CHEUNG Kwok-che and Mr IP Kwok-him voted against the amendment.

Dr Margaret NG, Mrs Sophie LEUNG, Mr Abraham SHEK, Ms LI Fung-ying, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU and Mr CHAN Kin-por abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr KAM Nai-wai, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mr LEUNG Kwok-hung voted for the amendment.

Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan and Mr Albert CHAN voted against the amendment.

Ms Audrey EU, Mr Ronny TONG, Mr Alan LEONG and Miss Tanya CHAN abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, seven were in favour of the amendment, five against it and eight abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 13 were in favour of the amendment, eight against it and four abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Creating a sustainable and open electricity market" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the motion on "Creating a sustainable and open electricity market" or any amendments thereto, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

PRESIDENT (in Cantonese): Mr IP Wai-ming, as Mr Fred LI's amendment has been passed, you may now move your revised amendment.

MR IP WAI-MING (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr Fred LI be further amended by my revised amendment

Mr IP Wai-ming moved the following further amendment to the motion as amended by Mr Fred LI: (Translation)

"To add "; (k) expeditiously conduct studies and consultation on a new mechanism for setting tariffs; (l) require the two power companies to expeditiously and fully implement progressive block tariffs, so as to avoid the situation of 'lower tariffs for higher consumption', thereby encouraging energy conservation; (m) formulate a long-term energy conservation policy and set the relevant indicators, encourage the public as well as the industrial and commercial sector to consume less power, and adopt such indicators for projecting future power consumption, so as to avoid drastic expansion of investment projects by the two power companies on the ground of continuous increase in power consumption; and (n) review the cost-effectiveness of the two power companies' investments in environmental protection and emission reduction measures as well as the ratio of relevant investments counted for computing returns and counted as operating expenses, and to set the respective ratios of commitments for the Government, the two power companies and the public in respect of environmental protection and emission reduction projects, so as to prevent the two power companies from continuously increasing operating expenses on the grounds of expanding environmental protection and emission reduction projects and subsequently shifting all expenses to the tariffs paid by the public" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr IP Wai-ming's amendment to Ms Audrey EU's motion as amended by Mr Fred LI be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Tommy CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG has claimed a division. The division bell will ring for one minute.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr Joseph LEE, Mr WONG Ting-kwong, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Mr IP Kwok-him voted for the amendment.

Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Mr Paul CHAN and Mr CHAN Kin-por voted against the amendment.

Dr LEUNG Ka-lau abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

Dr Priscilla LEUNG voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, eight were in favour of the amendment, 11 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 24 were in favour of the amendment and one against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Ms Starry LEE, as the amendment by Mr Fred LI has been passed, you may now move your revised amendment.

MS STARRY LEE (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr Fred LI be further amended by my revised amendment.

Ms Starry LEE moved the following further amendment to the motion as amended by Mr Fred LI: (Translation)

"To add "; and (k) study the computation mode based on linking permitted returns to fixed assets" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Ms Starry LEE's amendment to Ms Audrey EU's motion as amended by Mr Fred LI be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, as the amendments by Mr Fred LI and Ms Starry LEE have been passed, you may now move your revised amendment.

MR LEE CHEUK-YAN (in Cantonese): President, I move that Ms Audrey EU's motion as amended by Mr Fred LI and Ms Starry LEE be further amended by my revised amendment. I mainly wish to retain the proposal of turning power supply into a public utility. Thank you, President.

Mr LEE Cheuk-yan moved the following further amendment to the motion as amended by Mr Fred LI and Ms Starry LEE: (Translation)

"To add "; and (l) study turning power supply into a utility operated by the public sector in the long run" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr LEE Cheuk-yan's amendment to Ms Audrey EU's motion as amended by Mr Fred LI and Ms Starry LEE be passed.

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

(Members raised their hands)

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

(Members raised their hands)

Mr Tommy CHEUNG rose to claim a division.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG claimed a division. The division bell will ring for one minute.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, what is your question?

DR PRISCILLA LEUNG (in Cantonese): President, I cannot press the button to cast my vote.

(Dr Priscilla LEUNG pressed the button again and cast her vote)

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che and Mr IP Wai-ming voted for the amendment.

Mrs Sophie LEUNG, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG and Prof Patrick LAU voted against the amendment.

Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr Joseph LEE, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por and Mr IP Kwok-him abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr LEUNG Yiu-chung, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr Ronny TONG, Ms Cyd HO, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

Dr Priscilla LEUNG voted against the amendment.

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Starry LEE, Mr CHAN Hak-kan and Mr WONG Sing-chi abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 20 were present, four were in favour of the amendment, nine against it and seven abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 13 were in

favour of the amendment, one against it and 11 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Ms Audrey EU, you may now reply and you have three minutes 19 seconds.

MS AUDREY EU (in Cantonese): President, first of all, I wish to thank Members because so many of them have actively spoken on the original motion today. As I listen, I notice that Members support the six points stated in my original motion. However, to my regret, the Secretary has hijacked the motion in his reply.

In fact, the focus of my original motion is to urge the Government to expeditiously (the word in the original motion is "immediately") commence an interim review, with a view to introducing competition and materializing segregation of the generation sector from the network sector, and so on. Many Members have echoed this view. However, the Secretary has only briefly responded to this point in his reply, saying that he might study the possibility of introducing competition in the five-year Development Plans, but remarked that this could not be accomplished easily.

Why do I have the feeling that the motion has been hijacked? It is because the Secretary has mostly talked about the next relevant meeting, that is, the meeting on 8 February, the focus of which is to discuss whether the Legislative Council (Powers and Privileges) Ordinance should be invoked to demand the disclosure of the relevant documents. The Secretary has even questioned what Members would do after they have sought the information. I have the feeling that he was actually saying that we do not know how to read the information even if it is disclosed, so what is the point of disclosing such information? He did give me such a feeling. He then proceeded to teach us in great detail how to read the information, explaining that they have many experts to examine what should or should not be included in the computation before they arrive at a certain conclusion. In a way, he has totally disregarded the views expressed by colleagues on the reform of the electricity market. I thus have the feeling that the motion has been hijacked.

President, in particular, the Secretary said that if Members wish to have access to the documents, they are required to sign an agreement not to disclose the information. This is why the Civic Party will cast abstention votes on Ms Miriam LAU's amendment. As I have just said, I do not rule out the possibility that some documents or information is sensitive and should not be disclosed. Nevertheless, it should be up to Members to decide and that the disclosure of information should only be allowed on very rare occasions. If a public utility is under scrutiny, particularly if it is an oligopoly or monopoly and enjoys protected returns (it is actually the public who foot the bill of the investments of two power companies), we find it hard to accept that any information about that public utility should only be disclosed to Members but not any other persons. I am therefore very disappointed with the response of the Secretary.

I urge colleagues to support the motion as amended. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Audrey EU, as amended by Mr Fred LI and Ms Starry LEE, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 3 pm tomorrow.

Adjourned accordingly at five minutes to Eight o'clock.