OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 8 February 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 MRS SOPHIE LEUNG LAU YAU-FUN, G.B.S., J.P.

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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:

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

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

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 JUSTINA LAM CHENG BO-LING, 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)

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Rating (Exemption) Order 2012	14/2012
Revenue (Reduction of Business Registration Fees) Order 2012	15/2012
Import and Export (Fees) (Amendment) Regulation 2012	16/2012
Chemical Weapons (Convention) Ordinance (Amendment of Schedule 4) Order 2012	17/2012
Communications Authority Ordinance (Commencement) Notice	18/2012

Other Papers

No. 64 — Report by the Controller, Government Flying Service on the Administration of the Government Flying Service Welfare Fund for the year ended 31 March 2011 and the audited financial statements together with the Director of Audit's report

No. 65 — Employees' Compensation Insurance Levies Management Board Annual Report 2010/11

No. 66 — Employees Compensation Assistance Fund Board Annual Report 2010-2011

No. 67 — Occupational Deafness Compensation Board Annual Report 2010/11

No. 68 — Pneumoconiosis Compensation Fund Board Annual Report 2010

No. 69 — Estimates
for the year ending 31 March 2013
General Revenue Account
- Consolidated Summary of Estimates
- Revenue Analysis by Head

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

Report of the Bills Committee on Adaptation of Laws (Military References) Bill 2010

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): First question.

Long Waiting Time for Public Hospital Services

1. **MR LAU KONG-WAH** (in Cantonese): *President, it has been reported earlier that the public's demand for medical services is keen, the Accident and Emergency (A&E) departments and specialist out-patient clinics of public hospitals are always full, and the waiting time of the patients is too long. It has also been reported that some A&E patients of public hospitals had to wait for three days before they were admitted to the wards, and an unfortunate incident of a patient passing away while awaiting admission to the ward even happened. In this connection, will the Government inform this Council if it knows:*

(a) whether the Hospital Authority (HA) has compiled statistics on the average waiting time at present at the A&E departments of public hospitals in various districts; whether the existing pledged performance targets are achieved; the respective longest waiting times among the cases of patients seeking consultation at the A&E departments in various districts last year; if the HA has not compiled such statistics, the reasons for that;

(b) the average waiting time at present at specialist out-patient clinics of public hospitals in various districts, as well as respective details of the cases with the longest waiting time among the cases of patients seeking consultation at the specialist out-patient clinics in various districts last year; and

(c) during peak seasons of influenza each year when the problem of patients having to wait too long for consultation at the A&E departments and for admission to the wards frequently occurs, whether the HA will flexibly deploy its healthcare manpower to alleviate the problem; the strategies taken by the authorities to solve the problem of long waiting time for consultation at the A&E departments and specialist out-patient clinics of public hospitals in the long run?

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

(a) To ensure that patients in serious conditions will receive timely treatment, patient triage measures have been implemented in the A&E departments under the HA. Healthcare personnel will triage patients into five categories, namely critical, emergency, urgent, semi-urgent and non-urgent, according to their clinical conditions. According to the HA's performance pledges, all patients who are triaged as critical patients will be treated immediately, 95% of patients triaged as emergency patients will be treated within 15 minutes and 90% of patients triaged as urgent patients will be treated within 30 minutes.

In 2010-2011, A&E departments under the HA were able to provide immediate treatment services for all critical patients and the waiting time for emergency patients and urgent patients also met the performance pledges. This shows that the majority of patients with pressing medical needs received timely medical treatment under the triage system. The performance pledges and the actual performance of the A&E departments under the HA are at Annex 1.

As for non-urgent cases, the HA's overall average waiting time in 2011-2012 (April to December) was 101 minutes, which is similar to that in 2010-2011. The average waiting time of A&E departments under each hospital cluster for the past three years is at Annex 2.

(b) The HA has put in place a triage system at its specialist out-patient (SOP) clinics. Healthcare personnel will arrange the date of medical appointment for new patients on the basis of the urgency of their clinical conditions at the time of referral, which is determined with regard to various factors including the patients' clinical history, the presenting symptoms, the findings from physical examination and investigations, as well as information provided by other healthcare personnel at the time of referral.

Under the triage system, new SOP cases are classified into three categories: priority 1 (urgent), priority 2 (semi-urgent) and routine categories. To ensure that patients with urgent conditions are given appropriate medical attention in a timely manner, the HA will arrange doctors to attend to priority 1 and priority 2 cases as soon as possible. The current median waiting time for these two categories of cases is one week and five weeks respectively. The triage system benefits patients with urgent conditions by shortening their waiting time. Nevertheless, the waiting time for patients with non-urgent conditions would be longer.

Referrals of new patients to SOP clinics under the HA are usually first screened by a nurse and then by a specialist doctor of the relevant specialty. To ensure that no urgent medical conditions are overlooked at the initial triage, all new patients that have been classified as routine cases would be reviewed by a senior doctor in

the relevant specialty within seven working days of the initial triage. If a patient's condition deteriorates before the date of appointment, he may contact the SOP clinic concerned and request for an earlier appointment. However, if the condition is acute, the patient can seek treatment from an A&E department. Depending on the patient's needs, the healthcare staff may arrange an earlier appointment for the patient.

The median waiting time and the waiting time at the 90th percentile for new cases in 2011-2012 (April to December) of major SOP clinics under each hospital cluster is set out in Annex 3.

(c) Since Hong Kong has now entered the peak season for influenza, the HA anticipates that there will be a sudden surge in service demand during this period. Various contingency measures have been implemented at the HA hospitals, including provision of additional beds; increase of manpower through provision of special overtime allowances to staff not taking leave; enhanced provision of outreach medical services at Residential Care Homes for the Elderly to reduce hospital admission of elderly people; enhancement of virus testing service; expansion of ambulatory services to facilitate early discharge of more patients; as well as enhanced monitoring of A&E attendances, emergency hospital admissions and occupancy rates so that appropriate manpower can be deployed for providing services. In addition, the HA will also continue to call on the public to maintain personal hygiene, receive influenza vaccination for prevention of infection, and avoid using A&E services under non-emergency situation, which would affect other patients who are in genuine need of A&E services.

For SOP services, the HA has implemented a series of measures to further improve the waiting time at SOP clinics. These measures include setting up of family medicine specialist clinics as gatekeeper for SOP clinics and for follow up on patients triaged as routine cases; updating clinical protocols for referring medically stable patients to receive follow-up primary healthcare services; collaborating with private practitioners and non-governmental organizations (NGOs) to launch shared care programmes for the

private sector and NGOs to follow up on medically stable patients; disseminating referral guidelines to clinicians to reduce unnecessary referrals; and piloting the use of e-platform for SOP referrals to enhance the provision of referral details and facilitate the exchange of information.

Annex 1

Performance Pledges and Actual Performance of A&E Services of Hospital Authority

Triage categories	*Performance targets*		*Actual percentage of A&E patients being treated within target waiting time*		
	Target waiting time	*Percentage of A&E patients being treated within target waiting time*	*2008-2009*	*2009-2010*	*2010-2011*
Critical	Immediate	100%	100%	100%	100%
Emergency	15 minutes	95%	98%	98%	98%
Urgent	30 minutes	90%	89%	90%	90%

Annex 2

Average Waiting Time at A&E Departments of different hospital clusters

2009-2010

Cluster/Triage Category	*Average waiting time (minute) at A&E departments*				
	Critical	*Emergency*	*Urgent*	*Semi-urgent*	*Non-urgent*
Hong Kong East Cluster	0	5	16	68	113
Hong Kong West Cluster	0	5	18	70	119
Kowloon Central Cluster	0	6	18	77	104
Kowloon East Cluster	0	7	15	76	114
Kowloon West Cluster	0	6	18	92	101
New Territories East Cluster	0	8	19	69	68

Cluster/Triage Category	*Average waiting time (minute) at A&E departments*				
	Critical	*Emergency*	*Urgent*	*Semi-urgent*	*Non-urgent*
New Territories West Cluster	0	3	14	61	65
The Hospital Authority Overall	0	6	17	75	95

2010-2011

Cluster/Triage Category	*Average waiting time (minute) at A&E departments*				
	Critical	*Emergency*	*Urgent*	*Semi-urgent*	*Non-urgent*
Hong Kong East Cluster	0	5	15	56	100
Hong Kong West Cluster	0	5	18	69	118
Kowloon Central Cluster	0	6	18	70	106
Kowloon East Cluster	0	6	16	82	145
Kowloon West Cluster	0	6	17	91	110
New Territories East Cluster	0	8	22	73	71
New Territories West Cluster	0	2	13	63	77
The Hospital Authority Overall	0	6	17	74	101

2011-2012 (April to December) (Provisional figures)

Cluster/Triage Category	*Average waiting time (minute) at A&E departments*				
	Critical	*Emergency*	*Urgent*	*Semi-urgent*	*Non-urgent*
Hong Kong East Cluster	0	5	14	52	86
Hong Kong West Cluster	0	6	19	74	132
Kowloon Central Cluster	0	6	18	82	118
Kowloon East Cluster	0	5	15	84	155
Kowloon West Cluster	0	6	16	79	102
New Territories East Cluster	0	9	20	65	60
New Territories West Cluster	0	2	13	72	86
The Hospital Authority Overall	0	6	16	72	101

Annex 3

The median waiting time of new cases of SOP clinics
of major specialties of different hospital clusters
in 2011-2012 (April to December)
(Provisional Figures)

Cluster	*Specialty*	*Priority 1 cases Median (Week)*	*Priority 2 cases Median (Week)*	*Routine cases Median (Week)*	*Overall Median (Week)*
Hong Kong East	Ear, Nose and Throat	<1	4	21	8
	Gynaecology	<1	4	13	9
	Medicine	1	4	14	6
	Ophthalmology	<1	7	27	4
	Orthopaedics	<1	5	30	8
	Paediatrics	1	4	7	4
	Psychiatry	<1	1	2	1
	Surgery	1	6	20	7
Hong Kong West	Ear, Nose and Throat	<1	4	14	8
	Gynaecology	<1	4	13	6
	Medicine	<1	3	17	14
	Ophthalmology	<1	4	13	4
	Orthopaedics	<1	3	15	11
	Paediatrics	<1	6	18	7
	Psychiatry	1	1	5	3
	Surgery	<1	5	15	7
Kowloon Central	Ear, Nose and Throat	<1	1	2	2
	Gynaecology	<1	4	21	8
	Medicine	<1	4	16	13
	Ophthalmology	<1	5	43	4
	Orthopaedics	<1	4	24	18
	Paediatrics	<1	3	10	4
	Psychiatry	<1	5	9	5
	Surgery	<1	3	17	15
Kowloon East	Ear, Nose and Throat	<1	6	30	25
	Gynaecology	1	6	78	15
	Medicine	1	7	41	8
	Ophthalmology	<1	7	33	8
	Orthopaedics	<1	7	101	14
	Paediatrics	<1	6	27	8
	Psychiatry	<1	3	15	7
	Surgery	1	7	98	25

Cluster	*Specialty*	*Priority 1 cases Median (Week)*	*Priority 2 cases Median (Week)*	*Routine cases Median (Week)*	*Overall Median (Week)*
Kowloon West	Ear, Nose and Throat	<1	5	22	7
	Gynaecology	1	5	11	7
	Medicine	<1	5	36	19
	Ophthalmology	<1	4	6	3
	Orthopaedics	<1	5	54	12
	Paediatrics	<1	5	8	3
	Psychiatry	<1	2	8	4
	Surgery	1	5	25	9
New Territories East	Ear, Nose and Throat	<1	4	54	9
	Gynaecology	<1	5	37	26
	Medicine	<1	5	40	34
	Ophthalmology	<1	4	76	11
	Orthopaedics	<1	5	69	20
	Paediatrics	<1	5	16	14
	Psychiatry	1	4	32	9
	Surgery	<1	5	38	20
New Territories West	Ear, Nose and Throat	<1	4	19	12
	Gynaecology	2	4	16	13
	Medicine	1	6	42	8
	Ophthalmology	<1	2	8	2
	Orthopaedics	1	4	42	38
	Paediatrics	1	3	13	13
	Psychiatry	1	6	12	7
	Surgery	<1	5	27	24

The waiting time at the 90th percentile of new cases of SOP clinics of major specialties of different hospital clusters in 2011-2012 (April to December) (Provisional Figures)

Cluster	*Specialty*	*Priority 1 cases 90th percentile (Week)*	*Priority 2 cases 90th percentile (Week)*	*Routine cases 90th percentile (Week)*	*Overall 90th percentile (Week)*
Hong Kong East	Ear, Nose and Throat	<1	8	34	23
	Gynaecology	3	6	22	20
	Medicine	2	7	52	46
	Ophthalmology	1	8	54	41
	Orthopaedics	1	7	45	42
	Paediatrics	2	7	12	7
	Psychiatry	2	6	20	19
	Surgery	2	8	94	50

Cluster	*Specialty*	*Priority 1 cases 90th percentile (Week)*	*Priority 2 cases 90th percentile (Week)*	*Routine cases 90th percentile (Week)*	*Overall 90th percentile (Week)*
Hong Kong West	Ear, Nose and Throat	1	8	29	28
	Gynaecology	1	7	29	21
	Medicine	1	6	33	29
	Ophthalmology	1	6	18	17
	Orthopaedics	1	6	37	36
	Paediatrics	1	8	51	29
	Psychiatry	2	4	64	58
	Surgery	1	7	74	56
Kowloon Central	Ear, Nose and Throat	<1	8	11	11
	Gynaecology	1	7	34	29
	Medicine	1	7	48	36
	Ophthalmology	1	8	45	45
	Orthopaedics	1	7	50	49
	Paediatrics	1	5	12	12
	Psychiatry	1	7	74	24
	Surgery	1	7	48	39
Kowloon East	Ear, Nose and Throat	1	8	121	106
	Gynaecology	1	8	146	144
	Medicine	2	8	51	47
	Ophthalmology	1	8	100	90
	Orthopaedics	1	8	120	113
	Paediatrics	1	8	32	31
	Psychiatry	2	7	66	55
	Surgery	1	8	134	129
Kowloon West	Ear, Nose and Throat	1	8	60	42
	Gynaecology	2	7	33	31
	Medicine	2	7	60	57
	Ophthalmology	<1	6	41	34
	Orthopaedics	1	7	104	101
	Paediatrics	1	7	13	13
	Psychiatry	1	6	34	32
	Surgery	2	7	107	103
New Territories East	Ear, Nose and Throat	2	7	81	80
	Gynaecology	2	8	104	70
	Medicine	2	8	69	64
	Ophthalmology	1	8	105	99
	Orthopaedics	1	8	98	83
	Paediatrics	2	7	34	32
	Psychiatry	2	8	103	76
	Surgery	2	8	78	70

Cluster	*Specialty*	*Priority 1 cases 90th percentile (Week)*	*Priority 2 cases 90th percentile (Week)*	*Routine cases 90th percentile (Week)*	*Overall 90th percentile (Week)*
New Territories West	Ear, Nose and Throat	1	7	53	52
	Gynaecology	3	8	40	39
	Medicine	2	7	50	48
	Ophthalmology	<1	4	46	45
	Orthopaedics	1	7	50	49
	Paediatrics	3	5	15	14
	Psychiatry	2	8	33	29
	Surgery	2	7	34	34

MR LAU KONG-WAH (in Cantonese): *President, we often hear people complain that the waiting time at the A&E departments and SOP clinics are too long. The Government has told us year after year that it has put in lots of resources, and the funding has increased each year. Why then has the waiting time become longer despite the allocation of additional resources and why is it that not much improvement has been made? In what areas have the resources previously allocated been spent? Has the money been properly spent? Why do we not allocate resources to improve the services? Can the Secretary tell the public if there are better ways to shorten the waiting time at the A&E departments and SOP clinics?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, in the public healthcare system, there are naturally many patients waiting for the services as the cost they have to pay is not much. Thus, we must determine the priority of treatment based on the conditions of patients. For many years, the government subvention received by the HA has indeed increased, and most of the additional resources have been spent on employing additional manpower, procuring more drugs and enhancing professional training. The HA has really made much efforts.

However, we also notice that the population in Hong Kong is ageing and there are an increasing number of patients with higher and higher demands. Apart from providing new services in various aspects, we have also made great efforts to enhance the existing services. According to my analysis, we must fully develop our healthcare system, not only public healthcare, primary

healthcare, but also private healthcare as well, so that patients, in particular non-urgent patients, can receive primary healthcare services at an earlier date. As such, they need not seek consultation at SOP clinics or the A&E departments when their conditions suddenly deteriorate.

In regard to the overall services, we have introduced some pilot schemes as trial runs to test the market development, and we have also made efforts to improve the communication between the public and private sectors, including the implementation of electronic medical records. We believe that our work will gradually improve the standard of the overall healthcare services and will enhance the capacity of healthcare services.

Nevertheless, medical costs will certainly increase, and I think Members would understand that doctors and healthcare personnel want to spend more time on each patient, and we also want to introduce more new technologies and drugs. The Government and the community know that additional resources would be needed. How can resources be increased? How can a balance be struck between the public and private sectors? The Government has carried out a series of work and is now studying the issue. Members also know that we have briefed members at meetings of the relevant Panel on the work to be undertaken in the future. I believe that if we develop along this direction, the healthcare standard of Hong Kong can be maintained.

DR LEUNG KA-LAU (in Cantonese): *Among patients who seek consultation at the A&E departments, 70% of them are non-urgent patients whose conditions can be treated in general out-patient clinics or by family doctors. Based on the costs in the coming year, the unit cost for A&E services is $930 per case, which is rather high. Yet, the cases handled are mostly non-urgent cases.*

Around 10 years ago, the HA attempted to co-operate with private doctors in providing 24-hour out-patient services in clinics inside or next to the A&E departments, and patients might choose to receive such services at a charge of $200. Although the hardware is available, this scheme was not very successful for the A&E departments provided free services at the time. Given the large gap in charges, not many patients chose to seek consultation at those clinics which provide 24-hour out-patient services. Yet, at present, the A&E departments charge general patients $100, and the gap of charges has become much

narrower, will the Secretary consider re-activating such an arrangement to triage non-urgent patients to such clinics providing 24-hour out-patient services as far as possible?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I sincerely thank Dr LAU for mentioning this failed attempt. At that time, we failed to understand the choice of patients. Members also know that most people would not choose paid services if free services are provided. If reforms are to be made in this area, we must guide patients in choosing suitable and affordable services.

In the past few years, we have increased funding for healthcare vouchers, especially those for the elderly. We have also encouraged private doctors in various districts to provide primary healthcare services so as to take good care of patients in the district, hence patients need not seek consultation at the A&E departments. We are now at a preliminary stage and we do not rule out the possibility of increasing funding or efforts in this area so as to enhance the services.

Should clinics be set up near the A&E departments simply for solving the problems of the A&E departments? This is definitely an issue to be considered, but I trust that meeting patients' needs is of prime importance. Where is the most convenient place for people if they want to seek consultation? This is the prime concern. We should not focus on hospitals; instead, we should focus on the needs of patients and the districts when making the relevant plans. We will continue to pursue in this matter.

Second, can charges be adjusted to give patients the incentives to seek primary healthcare services instead of A&E services? Of course, we have considered if there is a need to increase charges, but at present, it is not the time to do so as primary healthcare services are still inadequate. If we can do better to enhance quality and transparency in this area, I believe it is possible to deploy the subsidies. We certainly need to make longer-term considerations and the crucial issue is that the public sector can accommodate more patients in need, and at the same time, allow the private market to have more room for development, so as to increase their service capacity.

MR ANDREW CHENG (in Cantonese): *President, my supplementary question mainly focuses on the performance pledges. We learn from Annex 1 that the target waiting time for urgent A&E patients being treated is 30 minutes; and from Annex 2, we learn that the waiting time for most (over 90%) of urgent patients meet the target. For patients whose conditions have changed from urgent to critical, will the Secretary shorten the target waiting time from 30 minutes to 25 minutes or even 20 minutes? I ask this supplementary question because extended waiting time may turn semi-urgent patients to become emergency patients; and emergency patients to become critical patients, and resources would then be tense. Will an increase in resources to reach higher performance targets be a good way to improve A&E services?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, we hope that all patients in life-threatening conditions and require emergency relief would be treated as soon as possible, but each A&E department needs to have certain targets to meet. We will discuss with experts in the HA to examine if higher targets can be set. If the definition of critical and emergency conditions remains unchanged, we need to consider the final medical results; that is, how many patients have been saved and how many patients have received suitable treatment without being affected. I believe we can only determine these numbers after analyses by experts in the relevant field. Yet, the Government's position is to complement their professional judgment as far as possible and provide them with adequate resources.

We have also noticed that the number of doctors in each A&E department differs. For instance, there are more A&E doctors in some hospitals which have to handle more patients. With the exception of St. John Hospital in Cheung Chau which handles fewer patients, other A&E departments in urban areas handle 22 to 31 patients within eight hours. As some hospitals have to handle non-urgent cases, the number of patients handled will be more, similar to out-patient clinics. On the other hand, some hospitals may only be able to handle fewer patients as they have to provide emergency services. Yet, we think the above average number is rather appropriate. Basically, doctors work diligently with no time for rest. Hence, we must provide them with adequate resources and at the same time, they have to duly perform their professional duties. We will provide adequate resources to the HA after it has balanced the needs in various aspects. As we have observed, in the past few years, the

Financial Secretary has been very generous in providing additional resources when medical expenditures were considered. We hope that the high standards of our medical services would be maintained.

MR WONG KWOK-KIN (in Cantonese): *President, the community has always expressed strong views on the abuse of the A&E departments in public hospitals. I believe people have recently been most concerned about Mainland pregnant women rushing to the A&E departments. This will not only affect people who urgently need to seek consultation but also pose hazard for pregnant women themselves.*

However, it appears that the Government cannot do anything. Besides calling upon these women not to go to A&E departments, I cannot see any other strong measures to stop such cases. Hence, people who need A&E services have strong views. There are suggestions to impose strong deterrent penalties on Mainland pregnant women who rush to the A&E departments, such as prohibiting their entry in the next five years. Does the Secretary consider this suggestion feasible?

PRESIDENT (in Cantonese): Mr WONG, the supplementary question you asked may be more closely related to the oral question that we will handle in a short while.

MR WONG KWOK-KIN (in Cantonese): *President, as this oral question is related to measures in the A&E departments, it is thus relevant.*

PRESIDENT (in Cantonese): Your supplementary question is on certain special circumstances.

MR WONG KWOK-KIN (in Cantonese): *As these women have hampered A&E services, I think my supplementary question is more closely related to this oral question.*

PRESIDENT (in Cantonese): I will call upon you to ask this supplementary question when we handle the second oral question in a short while. We have spent more than 20 minutes on this question. Second question.

Review of Measures to Combat Pregnant Mainland Women Giving Birth in Hong Kong

2. **MR CHAN HAK-KAN** (in Cantonese): *President, the Food and Health Bureau announced seven measures in April last year to tackle the problem of continuing influx of pregnant Mainland women giving birth in Hong Kong. Yet the authorities announced earlier that the total number of pregnant Mainland women rushing directly to the Accident and Emergency (A&E) departments for delivery without appointment was 1 656 in the whole year last year, which surged by more than twice the number in the previous year, and quite a number of pregnant women were accompanied to A&E departments by the staff of agents. The Chief Executive indicated at the Question and Answer Session of this Council last month that four new measures to rigorously combat pregnant Mainland women crossing the border to enter Hong Kong will be introduced, including working with the Mainland government to combat agents and vehicles bringing such women to Hong Kong, stepping up efforts to intercept non-local pregnant women at immigration control points, enhancing enforcement against unlicensed guesthouses, and reviewing the fee for non-local pregnant women giving birth at A&E departments. In this connection, will the Government inform this Council:*

(a) of the respective implementation details of the four new measures mentioned by the Chief Executive, including the government department responsible for the implementation, implementation timetable, and additional manpower and resources involved; how it will assess the effectiveness of these new measures in combating pregnant Mainland women giving birth in Hong Kong;

(b) of the enforcement actions taken by the Hong Kong Government to combat the illegal activities of the aforesaid agents in Hong Kong last year, and the number of cases in which prosecutions were instituted, as well as the penalties imposed; and

(c) when it will carry out a comprehensive review on the aforesaid seven measures announced in April last year, together with the relevant details; when it expects to announce the quotas for pregnant Mainland women giving birth in Hong Kong in the coming year; and whether it will consider substantially reducing the quotas to demonstrate the Government's determination to combat pregnant Mainland women giving birth in Hong Kong?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, it is the Government's policy to ensure that Hong Kong residents are given proper and adequate obstetric services. The Administration is very concerned about the surge of demand for obstetric services in Hong Kong by non-local women (including Mainland women) in recent years, which have caused tremendous pressure on the overall obstetric and neonatal care services. Since mid-2011, we have launched further measures to ensure that adequate obstetric and neonatal care services are available in Hong Kong, and local pregnant women are given priority for obstetric services. In 2012, the number of non-local pregnant women giving birth in Hong Kong will be limited to 35 000 (including 3 400 delivery places for non-local women in the Hospital Authority (HA) and around 31 000 planned number of deliveries in private hospitals).

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

(a) During the Question and Answer Session at the Legislative Council on 19 January, the Chief Executive announced four measures to deter pregnant women from seeking emergency deliveries through the A&E departments shortly before labour, thereby posing a higher risk to mothers, babies and healthcare staff. Relevant government departments and the HA are actively implementing these measures. A review is being conducted by the HA on the charge for non-local pregnant women seeking hospital admission through A&E departments to deter the dangerous behaviour of Mainland pregnant women rushing to A&E departments for delivery.

On immigration controls, the Immigration Department (ImmD) will strengthen surveillance of non-local pregnant women; the Department of Health (DH) is also taking measures to enhance

assistance to the ImmD staff by providing additional healthcare manpower at the boundary control points. The ImmD also maintains close liaison with the Mainland authorities to deter non-local pregnant women from seeking entry shortly before labour. Besides, cross-boundary hire cars are not allowed to carry passengers for hire or reward unless the vehicles have been issued the cross-boundary hire car quota by both the Hong Kong and Guangdong authorities. We believe that there are agencies which arrange for non-local pregnant women without booking to enter Hong Kong by means of seven-seater cross-boundary vehicles with no hire car quota. Regarding these cases of non-compliant use of seven-seater cross-boundary vehicles for carrying non-local pregnant women to Hong Kong, the police are collaborating with the Mainland authorities to jointly combat non-compliant vehicles and drivers.

On the other hand, the police have been closely monitoring the *modus operandi* and promotion tactics of agencies in Hong Kong. If any unlawful acts are detected, enforcement actions will be taken in accordance with the relevant legislation. For agencies operating in the Mainland, the police have been conducting joint investigations with the Mainland authorities to combat cross-boundary illegal practices.

To enhance enforcement against unlicensed guesthouses, the Office of the Licensing Authority (OLA) of the Home Affairs Department has stepped up inspection and enforcement efforts, including conducting more frequent inter-departmental joint operations with the police, and collecting evidence proactively by posing as clients (commonly known as "snaking"). Meanwhile, the OLA has worked closely with the Estate Agents Authority and the Office of the Commissioner for Insurance to take enforcement actions against the illegal practices of estate agency practitioners and insurance agency practitioners.

Besides, to encourage public rental housing (PRH) tenants to report suspected abusive use of PRH flats (including letting flats to Mainland pregnant women), the Housing Department has stepped up

publicity and education, and will detect and follow-up any suspected tenancy abuses cases under the established mechanism, such as through routine and surprise flat inspections, to avoid abusive use of PRH resources.

(b) Under the laws of Hong Kong, it is not illegal for non-local pregnant women to receive obstetric services in Hong Kong through arrangements by an agency. However, if any local obstetrician co-operates with an agency in an improper and unprofessional manner with reckless disregard for the safety of pregnant women and their babies for the sake of profit, such as providing false records or proof of antenatal attendance to any non-local pregnant woman, making false statement of the expected date of delivery, unnecessarily arranging early caesareans for the sake of bed availability, and so on, the doctors involved may be subject to disciplinary action for breach of the Code of Professional Conduct for the Guidance of Registered Medical Practitioners as stipulated by the Medical Council of Hong Kong. Private hospitals should also put in place a mechanism to disqualify a doctor from working or practicing in the relevant hospitals when he/she is found to have violated the relevant code of practice. To our understanding, there is no collaborative relationship between local private hospitals and any agencies providing services to Mainland women delivering in Hong Kong.

Besides, the HA has also discovered cases in which non-local pregnant women are suspected to have used false instruments or stand-ins to secure a delivery place in public hospitals. Such false instruments include forged referral letters from private medical practitioners and ultrasound pregnancy images which do not belong to the pregnant women themselves. The HA will refer these cases to the police for follow-up actions. Between July 2011 and end of January 2012, a total of 16 referral cases have been received by the police.

As mentioned in part (a) above, the police will continue to monitor the situation closely and liaise with the Mainland authorities to combat cross-boundary illegal practices of agencies.

(c) The first and foremost priority should be given to the local patients and pregnant women for healthcare resources of both public and private hospitals. The number of deliveries by non-local pregnant women should be limited with regard to the capacity of our healthcare system and arranged in an orderly and planned manner.

To ensure that adequate obstetric and neonatal care services are available in Hong Kong and local pregnant women are given priority for obstetric services, as well as taking into account the possible effects of the "Year of the Dragon", as mentioned above, since mid-2011, we have set a limit for the number of non-local pregnant women giving birth in Hong Kong in 2012, resulting in a nearly 20% decrease in the estimated number of deliveries by non-local women in Hong Kong in 2012 as compared with 2011. There is also a 9% increase in the number of deliveries by local pregnant women at the HA hospitals in 2011.

We have gradually implemented various measures put forward in the middle of last year. Non-local pregnant women who intend to have deliveries in private hospitals in Hong Kong are required to undergo antenatal checkups by obstetricians in Hong Kong at an appropriate stage to assess if they are suitable to give birth in the territory so that the pregnant women and their fetuses are not subject to risks associated with travels or other factors. In this connection, the Hong Kong College of Obstetricians and Gynaecologists has issued professional guidelines on the projection of high-risk pregnancy in September 2011. The DH has also standardized the "Certificate on confirmed antenatal and delivery booking" for issuance by hospitals to pregnant women who are suitable to give birth in Hong Kong. The Certificate also enables the Administration to monitor the utilization of delivery places.

The HA is reviewing the number of delivery places for non-local pregnant women in 2013. Subject to the demand for obstetric services in Hong Kong from local pregnant women, we will further reduce or cancel all the quotas if necessary. The Food and Health Bureau will discuss with private hospitals the number of deliveries by non-local pregnant women for next year. Private hospitals have

also agreed to reserve sufficient places for local pregnant women and give them priority for such services. It is expected that the number of non-local pregnant women giving birth in Hong Kong in 2013 will be announced in April this year. We will review the effectiveness of various measures from time to time, having regard to the circumstances.

MR CHAN HAK-KAN (in Cantonese): *President, the number of "doubly non-permanent resident pregnant women" has not dropped after the introduction of "seven strokes" by Secretary York CHOW last year or the announcement of "four strokes" by the Chief Executive this year. On the contrary, the number has increased instead. This shows that the measures implemented by the Government have failed to achieve any effect. Thus, there are voices in society to amend the Basic Law or seek interpretation by the Central Authorities. However, the Government has been evasive about these proposals. I wish to ask how long the Government is going to wait before coming up with a thorough solution. Will it take action only after the number of "doubly non-permanent resident babies" has increased from some 100 000 to 200 000 or 300 000?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I want to correct one point. The number has not been increasing incessantly; instead we estimate that the number of deliveries in 2012 will be lower than that of 2011, and the number of Mainland pregnant women will also drop significantly. As I have pointed out in the main reply just now, the number of Mainland pregnant women giving birth in Hong Kong has dropped from some 43 000 in 2011 to about 35 000 in 2012. This shows that the quota set in 2011 has achieved certain effects. As regards whether the relevant quota should be further reduced to provide sufficient or additional places for local pregnant women, the question is certainly worth considering.

We project that the fertility rate of local women in 2012 will surpass that of 2011 or 2010. As we can see, more young people are willing to get married and as the economic environment has improved, there is now a greater need to reserve more places for local pregnant women. It is also worth considering if a total ban should be imposed on Mainland pregnant women giving birth in Hong Kong.

There are different voices in society that the issue can be addressed through the Basic Law, and one suggestion is to seek interpretation of the Basic Law. I think the Government has clearly explained that all measures must comply with the existing laws. Regardless of whether we agree with the definitions in the existing laws, we must respect them. We will therefore decide on the ways to address these problems in due course or when a better consensus is reached by the community.

Regarding the four steps proposed by the Chief Executive, which include collaborating with the Mainland, introducing measures relating to immigration control, the HA has put some initiatives in place and the Home Affairs Department has lately taken some actions, we believe they are effective to a certain extent. Therefore, for the time being, we consider it necessary to forge a consensus in this regard before proceeding to resolve the problem by legal means.

PRESIDENT (in Cantonese): There are 16 Members waiting to raise supplementary questions. I would like to ask Members to be as concise as possible in asking questions, and the Secretary should also give concise replies to Members' questions.

MRS SOPHIE LEUNG (in Cantonese): *President, my supplementary question is pretty simple. In the main reply, the Secretary has mentioned a number of irregularities, illegal practices, as well as improper and unprofessional acts. Apparently, the current situation has encouraged many people to explore different malpractices in the grey area by helping those "doubly non-permanent resident pregnant women" to give birth in Hong Kong. Will this turn out to be a blow to the one-child policy of the Mainland in disguise?*

May I ask the Secretary or the Government whether they will explore some viable options to effectively deal with the issue of Mainland pregnant women giving birth in Hong Kong. While it is not the wish of the Government to seek interpretation of the Basic Law, the present situation is nonetheless a continuation of the relevant court judgment, which has forced us to tolerate so many illegal and improper practices. How should we resolve this problem?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I am not going to repeat my previous reply. However, I hope Members would understand that the Government aims to introduce, as far as practicable, a series of measures in compliance with the existing law and policies. We will at least maintain the provision of obstetric services in 2012 at a level within our capacity. This is particularly important as healthcare falls within my purview, and I must therefore get the job done.

Besides, various government departments will liaise with the relevant Mainland authorities. I believe the two sides have already gained a good understanding of the issue and will address it from different perspectives by all means.

DR LEUNG KA-LAU (in Cantonese): *The 1 656 pregnant Mainland women delivering in Hong Kong without appointment as mentioned in the main question has not been classified into "doubly" or "singly" non-permanent resident pregnant women. Despite the fact that there are 6 000 to 7 000 and even a maximum of 9 000 "singly" non-permanent resident pregnant women (meaning pregnant Mainland women whose spouses are residents of Hong Kong) giving birth in Hong Kong each year, the HA has not classified the 3 400 quotas into "doubly" or "singly" non-permanent resident pregnant women. The "four strokes" introduced by the Government are completely ineffective against those "singly" non-permanent resident pregnant women as their husbands are the agents, and they need not stay in unlicensed guesthouses. If the HA does not deal with the "doubly" and "singly" non-permanent resident pregnant women separately, or even remove the relevant quota, I reckon that the number of pregnant women rushing to the A&E departments for delivery will probably rise to 5 000 next year.*

I would like to ask the Secretary two relevant questions: Among these 1 656 pregnant women, how many are married to Hong Kong residents? Can the HA assign a certain quota to Mainland pregnant women whose spouses are Hong Kong residents?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I have said time and again that, legally speaking, it is impossible for the HA to

distinguish if the spouses of the pregnant women are local or foreign people. Thus no special arrangement has been made policy-wise. We are certainly concerned about the deliveries of pregnant women married to Hong Kong residents, and will try by all means to help them receive various services in the private sector.

We think that at present, it is most important to ensure that local pregnant women can receive adequate services from either the public or private sector. Therefore, our existing policy is to restrict the number of non-local pregnant women. Furthermore, pregnant women who have basically stayed in Hong Kong for a long period of time can get the quota more easily than those "doubly" non-permanent resident pregnant women from the Mainland.

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

DR LEUNG KA-LAU (in Cantonese): *President, among the 1 656 pregnant women, what are the respective numbers of "doubly" or "singly" non-permanent resident pregnant women?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I do not have the figure on hand. And yet, we can see that about 6 000 out of the 40 000-odd pregnant Mainland women giving birth in Hong Kong are married to Hong Kong residents.

MR WONG KWOK-KIN (in Cantonese): *President, regarding the problem of pregnant Mainland women rushing to the A&E departments for delivery, I learnt from the news reports this morning that the number of such cases recorded last month is twice that of the corresponding period last year. From the main reply given by the Secretary earlier, I noticed that one direct measure to deter pregnant Mainland women from rushing to the A&E departments for delivery is to raise the fee for delivery. However, I do not consider this measure effective because even if the pregnant women fail to pay the bill, the Government cannot stop them*

from being discharged. Nor can it refuse to issue birth certificates. The only action that can be taken is to persistently claim the outstanding arrears.

Therefore, that are suggestions that the Government should introduce more forceful measures, for instance, refuse to let pregnant Mainland women who had rushed to the A&E departments in Hong Kong for delivery to enter into the territory for some years. May I ask if the Secretary considers this viable?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I am not the responsible officer in this regard, nor am I the enforcement officer of the ImmD. I can only say that detailed consideration is warranted. Given that all policies must comply with the existing law, I have therefore reiterated that the work must be done properly. A policy cannot be put to test if it does not comply with the existing law. We cannot formulate policies that do not comply with the existing law, making it not possible for the responsible officers to enforce the laws. Therefore, careful consideration must be made in this regard.

On the other hand, we opine that this problem cannot be solved by just a single policy. While we should properly implement the local measures, we also have to solicit support from the Mainland. I think I am running out of time, so I would like to summarize Members' concern on this matter. While we will work in conjunction with the Mainland, all government departments would do their best to reduce the blow to Hong Kong people.

MR LAU WONG-FAT (in Cantonese): *President, my supplementary question is similar to that of Mr WONG Kwok-kin. I am aware that the staff of agents who accompanied pregnant Mainland women to rush to the A&E department are mostly Mainlanders. Why did the local enforcement authorities not arrest them for working illegally in Hong Kong in accordance with the law?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, as I have said, all departments have to play their roles with regard to this problem. In case anyone breaks the laws of Hong Kong and enforcement actions can be taken, we will certainly take actions. The case cited by Mr LAU is an example.

Meanwhile, we will also work with the Mainland authorities and take enforcement actions if Mainland laws are contravened.

MR ANDREW CHENG (in Cantonese): *President, I believe that the Secretary, being a doctor, should agree that rushing to the A&E departments for delivery is very dangerous to the pregnant women and their babies, it is even be life threatening. As society advances, there is now an offence for negligence of children, which did not exist 50 years ago and no one would be prosecuted for committing such offence. Given that even a foetus in a mother's womb also has life, will the authorities conduct studies on applying the concept of "negligence of care" for cases in which pregnant women rush to the A&E departments, and initiating criminal prosecution against those pregnant women who have neither received medical check ups nor made appointment, yet rush to the A&E departments for delivery for the sake of getting a birth certificate for their babies, so as to enhance the deterrent effect?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I thank Mr CHENG for his legal advice and we will consider if this is viable. As I have said earlier, all measures and policies must comply with the law.

PRESIDENT (in Cantonese): This Council has spent more than 24 minutes on this question and there are still 13 Members waiting to raise supplementary questions. With regard to this topic, as it is impossible to address Members' concerns in an ordinary Question session, Members are requested to follow up on other occasions. Third question.

Contingency Plans and Response Measures for Railway Incidents

3. **MRS SOPHIE LEUNG** (in Cantonese): *President, the data from the Transport Department (TD) indicate that railway transport is a vital transport system in Hong Kong with 3.9 million passenger trips per day, which account for about 37% of all trips made on public transport each day. In December 2011, the underground railway in Singapore experienced the most serious disruption in 24 years, which resulted in a suspension of train services for more than five hours*

and affected hundreds of thousands of passengers. In this connection, will the Government inform this Council:

(a) whether it knows if the MTR Corporation Limited (MTRCL) has a graded mechanism in place to deal with railway disruptions of different types and different levels of seriousness; if it has, of the details of the graded contingency plan; if not, of the details of the contingency plan of the MTRCL; under what circumstances the authorities will intervene in handling a railway incident; and

(b) whether the Government has any contingency plan to deal with major incidents occurring in Hong Kong (for example, power outages, terrorist attacks and natural disasters, and so on) which may paralyse the whole railway system and render it impossible to resume operation within a short time; if it has, of the specific details of its contingency plan (including, within a short time, how to notify the public of the incident, evacuate passengers from the MTR trains and stations, co-ordinate road traffic to deal with a passenger flow of nearly 1 million passenger trips, and ensure that emergency ambulance services are not affected, and so on); if not, whether the relevant government departments and MTRCL will work together as soon as possible to formulate joint contingency measures; whether the Government will step up publicity on the contingency plan for railway incidents, and publish the information to facilitate public perusal?

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

With regard to the alert system, the MTRCL is required by the TD to issue an Amber or Red Alert message to the TD and other public transport operators in accordance with the seriousness of the railway incident.

"Amber Alert" is defined as an early warning in respect of an incident which could lead to a serious disruption of service. Upon being alerted, other public transport operators should alert their emergency unit, prepare for possible emergency action at short notice and keep in touch with the MTRCL.

"Red Alert" is defined as a signal to indicate that a serious disruption has continued or is expected to continue for over 20 minutes, and emergency transport support services from other public transport operators are required. Upon being alerted, public transport operators should urgently mobilize their resources to provide appropriate supporting services as quickly as possible.

The MTRCL is required to notify the TD within eight minutes on any service disruption incident that has occurred for eight minutes or is expected to last for eight minutes or more. Train service disruption incidents refer to those incidents that lead to a stoppage of service at a railway station or a stop (in respect of Light Rail), or on a section of a railway line.

Besides, according to the Mass Transit Railway Regulations, the MTRCL should report to the Electrical and Mechanical Services Department (EMSD) any incident that occurred at any part of the entire railway premises which has a direct bearing on the safe operation of the railway.

The Emergency Transport Co-ordination Centre (ETCC) of the TD monitors and handles traffic and public transport incidents 24-hour a day. In the light of the seriousness and the extent of the railway incidents, the ETCC will timely notify other public transport service operators, the police, the Fire Services Department (FSD) and other relevant government departments and institutions to co-ordinate and implement emergency plans. The TD will also disseminate relevant messages, such as emergency bus service arrangements and updated traffic information to the public through the media and other channels, so as to facilitate passengers identifying appropriate alternative services or changing their journeys to minimize the impact of the incident on them.

In case of a major incident, the MTRCL will activate the Incident Control Post to deal with the incident together with government departments including the FSD, the police and the TD in accordance with established procedures of contingency plans so as to expedite safe evacuation of passengers.

In case the power supply to the MTRCL is affected, a backup system on board of the trains will be activated to supply electricity to major facilities on trains, including some of the lighting, ventilation and communication systems. Moreover, staff will be swiftly deployed to assist with passenger detrainment.

The power supply system of the MTRCL is supported by The Hongkong Electric Company Limited (HEC) and CLP Power Hong Kong Limited (CLP), together with their various power stations and electrical equipment. The transmission system of HEC and CLP are interconnected to enable the provision of emergency support to each other during generator failure. In fact, the power supply network for the MTRCL is divided into sections. Any power failure will be confined to the respective section areas. Therefore, the risk factor of complete paralysis of the railway system due to significant power outages is minimal.

In face of an early warning of terrorist attack or a major natural disaster, the government security authorities and the TD will, together with the MTRCL, implement effective contingency measures as per the established anti-terrorist contingency plan or natural disaster contingency plan. Every year, the MTRCL conducts a total of 12 regular drills jointly with different government departments such as the Railway Police District, the FSD, the TD and the EMSD in order to ensure that contingency measures can be implemented smoothly when necessary.

In the event of complete paralysis of the railway system due to unpredictable factors such as terrorist attack, earthquake and tsunami, the Administration will handle the incident as a territory-wide crisis of disaster level.

Specifically, the MTRCL has drawn up various contingency measures for all MTR lines and the Light Rail together with the TD and the police in the light of the geographical location and specific environment of all railway lines and stations and different degrees of service disruption that may occur.

Once train service needs to be suspended, the MTRCL will ascertain the situation and make assessment on the impact to train service as soon as possible, and disseminate relevant information to the passengers and the media. In particular, for passengers who have yet entered the railway system, the MTRCL will request the electronic media to disseminate information on the situation of service disruption and alternative public transport. At the same time, the MTRCL will look into the cause of the incident and carry out repair works for early resumption of service.

Drawing on the experiences of past incidents, the MTRCL has made continuous improvement and enhancement to its contingency plans and

implemented a series of new contingency measures. These include the establishment of a 60-member dedicated Customer Service Rapid Response Unit to provide advice and assistance to passengers, maintain order at affected stations and emergency bus boarding/alighting points, and make timely reports to the Operations Control Centre so as to ensure more effective co-ordination and crowd management with the departments concerned such as the police.

Regarding dissemination of information to passengers, the MTRCL has formulated measures to strengthen its communication with passengers during service suspension with a view to assisting them to make appropriate arrangements. These measures include: (a) broadcasting details of the service situation at stations and in trains; (b) providing alternative public transport information such as franchised bus routes, bus stop locations and emergency bus boarding/alighting points on large information displays installed at stations; and (c) displaying signs from concourse ceilings and at street level to mark routes to emergency bus boarding/alighting points.

Moreover, the MTRCL has installed LCD screens at conspicuous locations of station entry gates at 20 interchange stations to provide train service information and other important notices during service suspensions or major disruptions. All stations will have LCD screens installed by the end of 2013.

In addition, the MTRCL has devised emergency bus deployment plans for railway incidents and agreements were signed with bus operators for the provision of such services during railway incidents to take affected passengers to the nearest MTR station still under normal operation to continue their journeys.

Since the carrying capacity of emergency buses is far below that of the railway, they could only serve as a support service rather than a replacement of the entire railway service. Therefore, most passengers may have to change to other unaffected MTR lines or alternative public transport services to travel to their destinations.

Experienced staff who have undergone sufficient training and drills are on duty at each MTR station to carry out crowd management, make public announcements, issue station notices and help passengers handle fare matters according to established procedures in times of incidents. The number of station staff will be increased as needed. In addition, the MTRCL will deploy staff to

monitor and report the street-level situation to Operations Control Centre and Station Control Rooms during incidents, to facilitate more effective co-ordination with relevant departments such as the police for better crowd management.

The MTRCL understands the concern of passengers and the general public with regard to the contingency measures in case of railway incidents. It is also understood that more relevant information made available to affected passengers during an incident will not only facilitate evacuation, but also enable passengers to make timely adjustment to their journeys and reduce any inconvenience that might be caused.

The MTRCL has published the contingency information which is of concern to public and passengers, including the types and locations of alternative road-based public transport services in the vicinity of the MTR stations, as well as the estimated arrival time, locations of and routes to boarding and alighting points of emergency buses on its Rail Service Suspension Passenger Guide (the Guide) tailor-made for each station for distribution. The Guide has also been uploaded to the MTRCL's website for easy reference of the general public.

MRS SOPHIE LEUNG (in Cantonese): *President, I would like to follow up on the third point regarding the Secretary's reply about the dissemination of information. While major air traffic incidents rarely occur, passengers would invariably be informed in the aircraft of the escape routes in case of emergency. I would like to ask the Government whether consideration will be given to formulating an evacuation route for each MTR station as early as possible, rather than taking no actions until an emergency actually occurs? The formulation of evacuation routes will not only allow station staff to get familiarized with the contingency arrangements, but can also help increase the awareness of members of the public of the actions to be taken in case of emergencies.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, Mrs Sophie LEUNG is correct in pointing out that all kinds of preparation should be made as early as possible. In fact, the MTRCL has drawn up evacuation routes for all railway lines together with the TD and the police in the light of the individual geographical location, entrances/exits and specific environment of each station, as well as the different degrees of service disruption

that may occur. Such information has been set out in the Guide for reference by the public.

At present, display signs for evacuation routes have been installed on station ceilings so that the dedicated staff can assist the evacuation of passengers along specific routes marked by colour-coded signage leading to various station exits or emergency bus boarding/alighting points. Adequate contingency arrangements have been put in place and well tested in drills. Moreover, good results have been observed with the implementation of the new contingency scheme, including the operation of the Customer Service Rapid Response Unit.

MR ANDREW LEUNG (in Cantonese): *President, in the aftermath of the great chaos caused as a result of the breakage in the overhead line at Yau Ma Tei Station in 2010, the Government had introduced a series of contingency measures for similar incidents. Notwithstanding, Hong Kong people have been relying more heavily on the railway systems with the successive commissioning of new MTR lines.*

As mentioned in the main reply, emergency bus service can hardly perform a replacement role in case disruption of railway service lasts for hours (such as the incident of the underground railway in Singapore) or even a whole day. In this connection, I would like to ask the Government whether it will consider adopting other measures, such as flexible working hours and suspension of schools, to minimize the impact of major railway incidents?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, Mr LEUNG just cited the recent incident of Singapore as an example. As the relevant investigation is still ongoing, we will follow up on the lessons to be learnt when the investigation findings become available. However, our system is different from that in Singapore. The service disruption of the Singapore system was apparently caused by a failure in its power supply system, a system called the third rail system with power supply through a conductor rail. As for the system in Hong Kong, it is powered by overhead power lines through pantographs. In case of faults, the affected section as well as the cause can be more readily identified, such as in the case of breakage in the overhead line, so that remedial actions can be taken immediately.

Besides, there were complaints about passengers suffering from asphyxiation during the service disruption in Singapore as they remained trapped inside the train compartment for more than one hour. However, as ventilation windows are installed in our train compartments, we may not have similar problem as that in Singapore. Moreover, we will strive to evacuate the passengers within a certain period of time, and contingency measures have been stipulated in this regard.

Mr LEUNG asked whether contingency measures such as flexible working hours and suspension of schools would be implemented in case of extended service disruption, this will depend on the time when such disruption happens. While such measures are of course practicable, we note from past experience that it would be most important to provide members of the public with updated information, so that they can make their own decisions depending on varying circumstances, such as their current location, whether they are already en route to work or to school, or whether they are still at home. We consider that the best solution is to ensure timely dissemination of information, so that members of the public can make flexible arrangements by not travelling on the railway section with suspended services. This is the best approach.

As Members will understand, unlike the mass transit system of railways which can handle a high volume of passengers, emergency buses can only serve as a support service rather than a replacement of the entire railway service. Hence, the Administration hopes that train service should be resumed as soon as possible, and timely information should be disseminated to the public, so that they can make necessary adjustments. However, should a territory-wide incident occur, we will not rule out the possibility of implementing the proposed measure.

DR SAMSON TAM (in Cantonese): *President, I notice that in previous train service disruptions, the most common problem is that passengers are stranded and they have no idea how long they have to wait. In the event of extended service disruptions, passengers may even have to be evacuated.*

My supplementary question is about ticket refund. What is the existing policy on ticket refund? For example, if a passenger who has been stranded for 30 minutes after entering into the paid area no longer wants to continue with his

journey, how much refund can he get? Can he get a full refund? If not, whether the process of partial refund can be automated so that the queue can be shortened as much as possible? Does the MTRCL have any performance pledge in this regard?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the MTRCL of course has stipulated a general mechanism of ticket refund. But in case of incidents, the greatest wish of passengers who have waited for a long time is not queuing up for refund, but the early resumption of train service so that they can continue with their journeys. This aspiration is well understood by the MTRCL. Hence, it is most important for the MTRCL to formulate comprehensive contingency plans and carry out its routine repair and maintenance works properly. Therefore, generally speaking, no specific ticket refund mechanism for service disruptions has been formulated.

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

DR SAMSON TAM (in Cantonese): *Does the MTRCL have a passenger-friendly ticket refund mechanism? The Secretary has not answered this part of my question. She just said that there was a general mechanism, but I am asking whether a specific mechanism is in place.*

PRESIDENT (in Cantonese): Secretary, has a refund mechanism been put in place?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I have already answered the question. The MTRCL of course has a general mechanism of ticket refund in place. But regarding a specific mechanism for railway incidents, there is no such mechanism in place because whenever incidents of service disruption occur, thousands of commuters would be affected and it is unlikely that the ticketing system can be adjusted immediately to handle the requests for refund.

MR JEFFREY LAM (in Cantonese): *Just now, the Secretary has explained to us how information is disseminated in case of incidents. I notice that some staff members of the MTRCL have taken the initiative to set up a non-official homepage in Twitter called "MTR Service Update" to disseminate news to the public about railway incidents as well as the latest updates based on the information provided by passengers or the information they can get hold of at work. For example, the homepage will disseminate news about the closure of specific MTR entrances/exits during the period when specific functions are held in the Victoria Park, or if train service is disrupted as a result of track trespass incident. Given the increasing prevalence of smart phones, consideration can be given to using similar means of communication to enhance the right to know of passengers so that they can choose other means of public transport.*

I would like to ask the Secretary whether the Government will request the MTRCL to make greater use of smart phones as a means of communication with passengers to disseminate information on service disruptions and make the Guide available through smart phone applications? I ask this question because even though channels of information dissemination are now available, the travelling public often complain about not knowing the details ……

PRESIDENT (in Cantonese): Mr LAM, your supplementary question has been very clear. Please let the Secretary reply.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I think the MTRCL would be willing to consider any new methods, including smart phones or other channels, which can facilitate the dissemination of information on railway incidents. However, in respect of handling the incidents, I think what the public want is "fast and accurate" information because the situation can change rapidly over a matter of minutes. Service suspended this minute can be resumed in the next. Hence, the broadcasting of on-board messages and the installation of additional information displays at the stations can serve the function of disseminating accurate and timely information to the affected passengers as well as the general public.

Moreover, the public can also obtain information about the overall railway network through the media, websites or smart phones, as Mr LAM has just said.

I think the MTRCL is certainly willing to examine whether other channels are available, including the use of smart phones or making the Guide available through smart phone apps, to allow public access to fast and accurate information, so long as no adverse impact or confusion is created. I think the MTRCL is most willing to consider the suggestion.

MR LAU WONG-FAT (in Cantonese): *It seems that not much has been mentioned in the Secretary's main reply about notifications given to passengers stranded in train compartments and on platforms. Given that messages broadcast to passengers are most likely statements of apologies for service disruption without any information about the cause, likely period of delay or other specific arrangements, hence causing great dissatisfaction from passengers. Can the Secretary take us through in greater detail the measures taken to maintain communication with passengers, the arrangements for their evacuation, as well as the relevant arrangements of ticketing?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I think Mr LAU is concerned about the situation of passengers stranded on platforms or in train compartments during service disruptions. We understand that these passengers are most eager to find out what has happened. But we must also understand that at that very moment, the MTRCL would be trying to ascertain the cause of disruption so that service can be resumed as soon as possible. I trust that if the MTRCL can ascertain the cause, it will be obliged to inform the passengers accordingly. But before the actual cause can be ascertained, it can only broadcast messages of service disruptions to call on the passengers to remain patient, or other messages to facilitate crowd management.

Regarding ways to improve the dissemination of information inside stations, I have also mentioned just now that apart from the broadcast of live messages, the MTRCL has specially installed LCD screens at interchange stations, so that even if passengers cannot hear the broadcasts due to the noisy environment, they can also obtain information about the service disruption as well as contingency arrangements from the LCD screens, such as the boarding points of emergency bus services if provided.

As I have just mentioned, the Customer Service Rapid Response Unit has been set up. The Unit is a dedicated team of staff members wearing special uniform to provide immediate assistance and advice to passengers, such as the alternative routes passengers can take to reach their destinations. Overall speaking, the level of information dissemination has been enhanced, and the public can get hold of information in a timely manner.

MR WONG SING-CHI (in Cantonese): *President, I hope the answers to this question today are not part of the MTRCL's public relations strategy to prepare for fare increases. In the main question, it was mentioned that hundreds of thousands of passengers were affected in the most serious disruption of the underground railway in Singapore in 24 years. Nonetheless, a service disruption of the MTR system last year caused by a breakage in the overhead line has resulted in the grave consequence of affecting 300 000 passengers. Whenever railway incidents occurs, the MTRCL will invariably respond by saying that improvement measures will be put in place. That is indeed gravely disappointing to the public.*

President, I would like to ask the Secretary that in view of the above incident, whether the Government and the MTRCL will formulate a demerit point system on service disruptions or breakdowns so as to provide a clear and objective standard on the performance of the railway corporation? In addition, whether a penalty mechanism will be established by the Administration? This suggestion is made because many people are affected whenever disruption of train service occurs, and some may even lose their jobs because they are late for work, but the MTRCL will only compensate the affected passengers with one train ticket. Therefore, will the Administration introduce a penalty mechanism, for example, by deducting payment of bonuses to the Chief Executive Officer and relevant staff at managerial level of the MTRCL?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, regarding the service disruptions of the underground system in Singapore which Mr WONG cited as a comparison, we are aware that incidents of the same nature have been repeated in Singapore within a spate of several days, with train service being suspended for about five hours in one incident. In the last major incident of the Tsuen Wan Line, train service had been disrupted

for almost three hours. We agree that every effort should be made to avoid the recurrence of similar incidents. After investigation into the cause of the said service disruption of the Tsuen Wan Line, it was found that both mechanical failure and human factor were involved because problems were also identified in the train captain's handling of the incident. These issues have already been followed up by the Subcommittee on Matters Relating to Railways. We will deal with each and every incident seriously.

Regarding Mr WONG's question on the introduction of a penalty system, it has already been provided under the existing Railway Ordinance that penalty may be imposed for continuous contravention of provisions under the Ordinance or the operating agreement, which can ultimately result in the revocation of franchise. Nonetheless, it remains a matter of prime importance for the MTRCL to expeditiously identify the cause and make proper arrangements whenever incidents occur.

Regarding the question of whether a demerit point system should be put in place, I think the matter must be considered carefully. While it is proper to duly mete out rewards and punishments, we must understand that whenever an incident happens, the greatest pressure will invariably fall on front-line staff responsible for repairs and maintenance. We have concerns about the introduction of a penalty system which applies to the entire corporation. Experiences from overseas railway corporations have also shown that such a system may impact on their safety inspections, particularly when the possibility of having demerit points may impact on the responsible staff during the recovery process. Hence, pressures would be created for the front-line staff, the mechanical engineers, and so on. Do we really want to have such a system in place? I think this matter must be considered carefully. Of course, our greatest concern is always about maintaining public safety, ensuring rapid recovery of service after disruption and providing good railway service.

MR WONG SING-CHI (in Cantonese): *President, the Secretary has not answered my question. In addition to the demerit point system, I also asked whether penalty would be imposed by deducting the bonuses of senior management staff such as the Chief Executive Officer?*

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

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, there is already an established mechanism to formulate the overall remuneration policy of the MTRCL, as well as the remuneration of its senior management. Moreover, a Remuneration Committee has been set up under the Board of MTRCL, with the responsibility of scrutinizing the relevant matters. The performance of the relevant personnel will of course be one of the factors to be considered by the Remuneration Committee.

PRESIDENT (in Cantonese): This Council has already spent more than 25 minutes on this question. Fourth question.

Arrangement Between the Mainland and Hong Kong for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Income Taxes

4. **MS MIRIAM LAU** (in Cantonese): *President, since the signing of the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income" (the Arrangement) by the Mainland and Hong Kong on 21 August 2006, quite a number of Hong Kong residents who work and stay on the Mainland for more than 183 days during a year of assessment, though having paid their income tax on the Mainland, have to pay taxes in Hong Kong as they also stay for more than 60 days and exercise employment in Hong Kong, thereby suffer under double taxation. In this connection, will the Government inform this Council:*

(a) whether it knows the respective numbers of Hong Kong residents on the Mainland working inside and outside the Pearl River Delta (PRD) Region each year since the Arrangement was signed in 2006, and their average number of working days on the Mainland each year;

(b) whether it has compiled statistics on the current number of Hong Kong people who have to pay taxes both on the Mainland and in

Hong Kong for the same year of assessment and the industries to which they belong; if it has, of the details; if not, whether it will conduct relevant surveys; and

(c) since the signing of the Arrangement, whether the SAR Government and the Mainland authorities have discussed simplifying the method of calculating the 183 days for improvement (for example, excluding non-working days, weekends and public holidays of the Mainland from the length of stay); if they have, of the outcome of such discussion; if not, the reasons for that; whether the SAR Government will take the initiative to put forward any proposal for simplification?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, my reply to the three parts of the question is set out below.

(a) The Census and Statistics Department (C&SD) conducts surveys on the topic of "Hong Kong residents working in the Mainland of China" from time to time. Since the signing of the Arrangement in 2006, according to the surveys conducted by the C&SD during the period of July to September in 2008, 2009 and 2010 respectively, some 218 200, 196 500 and 175 100 Hong Kong residents had worked in the Mainland during the 12 months before enumeration in the three years respectively. Almost 90% of them (that is, 191 600 in 2008, 170 500 in 2009 and 155 700 in 2010) usually worked in the Guangdong Province while working in the Mainland. Shenzhen and Dongguan were the most commonly cited usual places of work within the Guangdong Province.

Taking the survey conducted in July to September in 2010 as an example, most of the above persons were engaged in the manufacturing sector and import/export trade and wholesale sector. Overall, for these persons, the median frequency of travel to work in the Mainland during the 12 months before enumeration was 48 times, and the median of their average duration of each stay in the Mainland was five days.

(b) The Inland Revenue Department (IRD) has started to collect information since 2009 on the number of claims made by taxpayers who rendered services outside Hong Kong (including the Mainland) and have paid tax there which is similar to the Hong Kong Salaries Tax for exemption of income from Hong Kong Salaries Tax under section 8(1A)(c) of the Inland Revenue Ordinance. The numbers of claims for 2009-2010 and 2010-2011 are 6 243 and 10 731 respectively. There is no further breakdown into the industries and locations involved.

(c) The 183-day threshold is used to determine a person's tax liabilities in the other contracting party. For the purpose of computing the 183-day period, both the IRD and the State Administration of Taxation (SAT) follow the international norm by adopting the "days of physical presence" method. This method is not complicated. A day during any part of which, however brief, the taxpayer is present in a tax jurisdiction will count as a day of presence in that jurisdiction.

The above interpretation is the international standard commonly adopted by other tax jurisdictions. It is also consistent with the standard used by the Hong Kong Board of Review in determining the tax liabilities of a person.

In response to views expressed by members of the trade, the IRD has raised with the SAT the suggestion of relaxing the 183-day threshold. After discussions, both parties consider that the 183-day threshold should not be changed as it is an international standard which has been effectively applied. It has also taken into account and balanced the tax interests of the resident and the source jurisdictions.

MS MIRIAM LAU (in Cantonese): *President, the relationship between Hong Kong and the Mainland has grown closer, and the number of Hong Kong residents working on the Mainland has been on the increase, as indicated by the figures provided by the authorities. Moreover, with the construction of the Hong Kong-Zhuhai-Macao Bridge and the setting up of new boundary control*

points, the air and land transport between the two places will become more convenient in the future.

At present, a large number of Hong Kong residents travel between Hong Kong and the Mainland, yet their duration of stay may be very short. For instance, they may travel to the Mainland for a meal and then return to Hong Kong, or they may attend a meeting on the Mainland and then return to Hong Kong. Hence, they are making really frequent trips between the two places. However, under the computation method of the 183-day threshold, a resident who go to the Mainland during any part of a day, however short the duration, will count as a day of presence. As far as we know, at present, due to the 183-day threshold, many Hong Kong residents who have also stayed for more than 60 days in Hong Kong have fallen into the tax net for double taxation, and this has aroused many complaints. In fact, not only members from the industries mentioned by the Secretary in his main reply have lodged such complaints, many people, such as those in the media industries, who have to travel frequently between the two places will easily fall into the tax net and are required to pay double taxation. They are greatly disturbed by this problem.

I put forth this question to point out the very unique circumstance in Hong Kong and the Mainland, particularly the PRD Region, for if the international standard …… Are there other places in the world that are similar to the situation in Hong Kong, where residents make such frequent trips to and from the Mainland, in particular the PRD Region and Shenzhen? I do not think there are other places like Hong Kong. Hence, for Hong Kong residents travelling between Hong Kong and the Mainland, Shenzhen and the PRD in particular, their cases are special and should be handled specially. Given the special circumstance, will the Secretary discuss further with the Mainland authorities about the computation method, particularly on the period of stay under the 183-day threshold, and urge them to relax the threshold, hoping that Hong Kong people will be more willing to work on the Mainland?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, certainly, not every resident going to the Mainland as a tourist or participating in exhibitions is obliged to pay tax on the Mainland. It depends on whether he is required to pay tax on the Mainland in his capacity. This is the first point I would like to point out.

Second, Ms LAU mentioned the possibility of relaxing the 183-day threshold. As I pointed out in the main reply, in response to views expressed by members of the trade as well as the views voiced by Members, we have attempted to discuss the issue with the SAT, even though the 183-day period is the international norm, where contracting parties of all tax jurisdictions adopt this threshold. However, as I have said, after discussions, both parties consider that it is important to understand the difference between resident and source jurisdictions, that is, if the income of a person comes from the source jurisdiction, the two jurisdictions are obliged to make arrangement for tax payment in the two places for the persons concerned. Regarding the line of division to be drawn, it must be examined by both parties concerned. After discussions, both parties consider that the 183-day threshold is an international standard which has been effectively applied, and as I have said, it has also taken into account and balanced the tax interests of the resident and the source jurisdictions. Hence, it is undesirable to change the requirement at present.

MR ANDREW LEUNG (in Cantonese): *President, as the Secretary has pointed out, the 183-day period is an international norm and many places adopt this threshold. However, another international norm is the tax provisions for frontier workers, which is adopted particularly in many European countries. For instance, a person who resides in Hong Kong and works in Guangdong Province will pay tax in Hong Kong, and a citizen from Guangdong Province who works in Hong Kong will pay tax on the Mainland. This is the practice adopted in countries like France, Belgium, Germany, and so on.*

Actually, the Federation of Hong Kong Industries has provided a lot of information to the Secretary. Last year, at the Chinese People's Political Consultative Conference, I put forth a proposal on the issue, and I got the reply that the Central Government would discuss the issue with the Hong Kong Government. I would like to ask if we wish for greater integration between Hong Kong and Guangdong Province and provide more opportunities for the service industries …… Many people go to the Mainland in the morning to attend meetings for an hour and then return to Hong Kong in the afternoon, and if such visits are counted as one day presence on the Mainland, it is impracticable.

Hence, may I ask the Secretary whether he has considered adopting the tax provisions for frontier workers, whether he has conducted any studies on this

issue and whether he has discussed this issue with the Central Government and taken follow-up actions? The above tax provisions will offer considerable convenience to Hong Kong citizens who require to work on the Mainland.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, regarding this question from the Member, I have heard it in the past and have conducted studies and follow-up. We are eager to reflect the views of the industries and will conduct studies on our taxation policies. However, I would like to point out that the arrangement for frontier workers adopted by certain European countries, as mentioned by the Member earlier, is implemented under special circumstances. In general, these countries levy income tax on a worldwide basis on their residents, while Hong Kong levies tax on the principle of source jurisdictions. What is the difference between the two approaches? If the arrangement on tax provisions for frontier workers is adopted, the income earned by Hong Kong taxpayers on the Mainland will not be regarded as taxable income in Hong Kong. Under this arrangement, they may not be required to pay tax on the Mainland, in other words, they do not have to pay tax in Hong Kong and on the Mainland. According to the principle on taxation arrangement, we and the SAT both consider it inappropriate to introduce the special tax provisions for frontier workers at the present stage.

MR JEFFREY LAM (in Cantonese): *President, this issue is not a new topic. In the past decade or so, members in the business and industrial sectors had had numerous meetings with the authorities of Guangdong Province, the Central Government and the Secretary, but to no avail. That is because the taxation issues of both parties actually involve profit taxes, as well as tax arising from processing from imported materials.*

Mr Andrew LEUNG mentioned earlier the tax provisions for frontier workers adopted overseas, particularly in Europe. I have had many exchanges with the Secretary in this respect, and I do not understand why the Government does not make efforts to communicate with the Central Authorities on this issue to come up with a feasible proposal, particularly on the development of Qianhai, which will bring great benefit to the business and industrial services of Hong Kong. In the Secretary's earlier reply to the supplementary question of Mr Andrew LEUNG, he said that this approach was impracticable. May I ask him

to explain the reasons for the impracticability and ways to make the approach practicable? Since it is implemented among countries in Europe, why this will be impracticable under "one country, two systems"?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): In fact, I have just stated that the main reason is that tax in Hong Kong is levied on the principle of source jurisdiction, and if the special tax provisions for frontier workers are implemented, it will very likely result in the scenario where the Hong Kong residents concerned are not required to pay Hong Kong tax, neither will they be required to pay Mainland tax under the above arrangement, which means they are not required to pay tax in both places. In view of this, Hong Kong and the SAT have, upon examination, both consider that the conditions in Europe can hardly be applied to Hong Kong.

Regarding the situation of certain European countries, according to our studies on those European countries which have adopted the taxation provisions for frontier workers, such as France, Germany, Italy, Belgium and Switzerland, they all adopt the criterion of levying tax on a worldwide basis. Under this arrangement, apart from defining the regions of work, sometimes agreements have to be entered into by various regions in respect of financial allocation, say if one party has received the tax, the financial allocation will depend on whether arrangement on compensation for financial co-ordination has been made with the other parties. Frankly speaking, in the present case of Hong Kong where tax is levied on the principle of source jurisdiction, such arrangement is not quite suitable for Hong Kong and the Mainland. Regarding the arrangement for the avoidance of double taxation, the Mainland and Hong Kong have laid down provisions to prevent Hong Kong taxpayers from paying tax in both places for the same income item. In other words, they are not subject to double taxation. This arrangement is in compliance with the principle of fairness, international norm and all established taxation practices.

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

MR JEFFREY LAM (in Cantonese): *President, the Secretary said that the arrangement might result in the scenario where the persons concerned were not required to pay tax in both places. I would like him to clarify, since a resident of a certain place has already registered in the place he lives, he must pay the tax of the resident place.*

PRESIDENT (in Cantonese): Mr LAM, the Secretary has already given a clear answer. If you disagree with certain positions or views of the Secretary, you may follow up through other channels.

DR LAM TAI-FAI (in Cantonese): *President, regarding this 183-day taxation arrangement, I have brought up the issue a number of times at the legislature. In view of the close relationship between Hong Kong and the Mainland at present, this taxation arrangement has completely stifled the desire and deprived the opportunities for Hong Kong people to go north to the Mainland to seek employment, and burdened Hong Kong people or Hong Kong entrepreneurs with taxation risk. As such, I have brought up the issue repeatedly.*

President, regarding the replies given by the Secretary to the questions raised by Ms Miriam LAU and a number of colleagues, I think there is some problem with his mindset. When the Secretary adopts a certain taxation criterion, the premise must be that it is favourable to the overall development and economic development of Hong Kong or in the interest of the public. If he adopts this international standard, it will completely deprive Hong Kong people of the opportunities to go north to the Mainland for employment and hinder the economic and trading exchanges between Hong Kong and the Mainland. I think he should not adopt this criterion, for there is no good ……

PRESIDENT (in Cantonese): Mr LAM, please stop giving your views.

DR LAM TAI-FAI (in Cantonese): *My supplementary question is about the "early and pilot implementation" frequently mentioned by us. Recently, the boundary area in Sha Tau Kok has been opened up. Shenzhen is so close to Hong Kong. Every day, many people go to work in Shenzhen and Lo Wu. Will*

the authorities discuss with the Mainland Government about adopting the "early and pilot implementation" approach in relaxing the arrangement first in Shenzhen? For instance, the authorities may examine the possibilities of relaxing the 183-day threshold to 260 days or any number of days, based on the principle of the "early and pilot implementation" approach.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I have to thank the Member for his supplementary question. In fact, we are not holding fast to this principle and refuse to make any changes. Had that been the case, we would not have examined the issue with the SAT. Had we considered that this arrangement would not be accepted anyway, we would not have proposed this subject to the SAT for examination. Actually, we had put forth this issue for discussion not only once but a number of times. Regarding the views of Members, we will definitely keep on considering them to see whether there is still room for further examination. We definitely will not rule out this possibility and say that this cannot be done. However, I would like to point out that it is more than a taxation arrangement. As you mention the "early and pilot implementation" approach, it may be a matter of strategy, and this is beyond the scope of taxation arrangements. Yet, I have to reiterate that we had examined the issue on the 183-day threshold and I have already explained the difficulties involved, so I do not want to repeat them. Certainly, I have heard the views expressed by Members, and when the appropriate time comes, we will examine how to follow up the issue again.

MR PAUL CHAN (in Cantonese): *President, I would like to raise a similar question. According to international norm, a person travelling from one country to another will seldom make the return trip on the same day, and the situation in Hong Kong is relatively special. Colleagues have cited examples earlier that a Hong Kong resident may attend a meeting on the Mainland and return to Hong Kong on the same day, and he has handled business involving both places. In the present circumstance, he has to pay tax in Hong Kong and in the Mainland. Some members in the business or professional industries may spend one night on the Mainland after a meeting and return to Hong Kong the following day, and that will be counted as two-day presence on the Mainland. On the other hand, the hometowns of many Hong Kong people are in Guangdong, they may have relatives on the Mainland, they may visit the Mainland for*

sightseeing, and the elderly may go to the Mainland upon retirement, so the situation of the trips made ……

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

MR PAUL CHAN (in Cantonese): *…… is quite different from the case in overseas countries. I think the "early and pilot implementation" approach should not only be implemented in Shenzhen, for Guangdong Province is also ……*

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

MR PAUL CHAN (in Cantonese): *…… is it possible to muster support at the provincial level, and after that, we should go to the Mainland to lobby the Central Authorities together?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, my answer to this question is the same as the one I gave to Mr LAM earlier. I have to point out the complexity of this issue to let Members have a better understanding. From the perspective of the State on tax revenue, they consider it their rights to receive the tax receivable and both parties should handle taxation on the principle of fairness. We had brought up the issue on the 183-day threshold and hoped to examine the possibility of relaxing the threshold to meet with the demand of the industries and Members. We will examine the issue again. I only want to point out the difficulties we encounter, yet we will certainly consider how to follow up the views expressed by Members.

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

Preventive Health Screening for Early Detection of Cancer

5. **MR CHAN KIN-POR** (in Cantonese): *President, while the number of new cancer cases in Hong Kong surged by about 22% in the decade since 2000, the number of radiological imaging scan, which is a crucial tool for diagnosing cancer and assessment of cancer stages, performed in Hong Kong was much lower than those in other places. Studies conducted by the Columbia University of the United States reveal that the breakthrough in cancer imaging technologies resulted in a drop in the number of cancer-related deaths in the United States by 40% in a period of 10 years. Based on the figures of the Hospital Authority (HA) and the ratio of around nine to one for the number of people using public medical services to those using private medical services, it is projected that in 2010-2011, the average number of Magnetic Resonance Imaging (MRI) scans performed in Hong Kong per 1 000 population was about 18.3, which was two to four times lower than those in most member countries of the Organization for Economic Co-operation and Development (OECD) in 2009 (for example, 75.5 in Iceland, 55.2 in France and 43 in Canada). Similarly, the average number of Computed Tomography (CT) scans performed in that year was about 77.5 per 1 000 population, which was much lower than the numbers of 156.2 in Iceland, 138.7 in France and 125.4 in Canada. In this connection, will the Government inform this Council:*

(a) given the significant increase in new cancer cases in Hong Kong in recent years, and that compared to the numbers five years ago, the numbers of MRI and CT scans performed in 2010-2011 at the hospitals under the HA had already increased by about one fifth and one third respectively, why such numbers still lagged far behind those in the aforesaid countries;

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

(b) given that according to the information of the OECD, in 2010, there were 22.6 MRI machines per 1 million population in Greece and 42.5 CT machines per 1 million population in Australia, whether it knows the respective numbers of MRI and CT machines per 1 million

population in Hong Kong at present; as it has been reported that last year, Tuen Mun Hospital admitted that some non-urgent patients had to wait for eight years before they could use the MRI scanning service, whether this was caused by insufficient equipment or manpower; and

(c) *given that of the aforesaid rate of increase in new cancer cases, the rate of increase in the two age groups of 45 to 64 and 65 or above was 44% and 17% respectively, whether the authorities have put forward any targeted measure to reduce the cancer risks of people in these two age groups; in addition, given that according to the statistics of the American Cancer Society, the rate of increase in the number of new cancer cases in Hong Kong in the five years since 2005 almost doubled the corresponding rate of increase in the United States, whether the authorities have analysed the numbers and recent trends of cancer cases in Hong Kong and in other places, and compared in depth the environmental, lifestyle and genetic differences so as to identify the causes of the higher rate of increase in Hong Kong as compared to other places, and reduce the incidence of cancers at the macro policy level?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, cancer is a major public health concern in Hong Kong. In 2009, there were nearly 26 000 newly diagnosed cancer cases. To fight against cancer with the public in an effective manner, the measures adopted by the Government and the HA must be scientifically justified and accord with the actual situation. Before I respond to the question, I would like to clarify on a few points here:

(i) Firstly, the preamble of the question refers to a study from the Columbia University of the United States. The information that we have gathered shows that a doctor from the Columbia Business School published a study in April 2010, holding the conclusion that between 1996 and 2006, the age-adjusted cancer mortality rates in the United States declined by 13.4%, with about 40% of the decline (that is 5.4%) attributable to imaging innovation. The study did not

conclude that imaging technologies resulted in a drop in the number of cancer-related deaths by 40%.

(ii) Secondly, the question draws reference to some data provided by the OECD. According to the relevant report, the data provided by various countries did not share a common basis. For instance, some excluded private sector services; some only covered organizations eligible for reimbursement under their health protection system; while some excluded the public sector. With regards the data of the United States, the OECD pointed out that there seemed to be an overuse of CT and MRI examinations, possibly because of payment incentives that allowed doctors to benefit from exam referrals.

There are also differences between Hong Kong and countries mentioned in the question in terms of social infrastructures and healthcare systems. For example, in Europe and America, the total health expenditure in some countries forms a steep double-digit percentage of gross domestic product, bringing immense pressure to the Government's finances and healthcare system. On the other hand, the figure for Hong Kong is at 4.8%, yet our health statistics still compare favourably with other developed countries.

Moreover, the demographics, health circumstances, disease incidence and geographical settings of Hong Kong are also different to the countries mentioned in the question. In using medical technology, healthcare personnel of different places may also have received different training, adopted different practices and face different incentives. In this connection, it is not appropriate to use OECD data for direct comparison on the number of CT and MRI scanners or the number of scans performed each year.

(iii) Thirdly, the question assumes a 9:1 ratio for the use of radiological imaging facilities and services between the public and private sectors. This estimation is only valid for in-patient services in the public and private healthcare sectors. There is a substantial number of out-patients in Hong Kong who receive CT or MRI scan services in the private sector.

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

(a) As mentioned above, the numbers of MRI and CT scans performed in public hospitals cannot be compared with the figures provided by the OECD. As far as public hospitals are concerned, doctors will arrange for CT or MRI scans based on patients' clinical needs. All new cancer cases will be included in the priority category if such services are needed for assessment of cancer stages.

(b) According to the Irradiating Apparatus Licensing Service of the Department of Health (DH), as at 1 February 2012, there are 83 units of licensed medical CT systems across the territory. As MRI scanners are not irradiating apparatuses and not subject to statutory licensing control, we do not have statistics on the number of scanners in Hong Kong. As regards the HA, it will have 28 CT scanners and 14 MRI scanners in 2011-2012. The HA plans to procure an additional CT scanner in Princess Margaret Hospital and an additional MRI scanner in Caritas Medical Centre in 2012-2013. Hospitals will also continue to implement flexible measures to improve radiological diagnostic services, such as employment and retention of staff, recruitment of radiographers from overseas or provision of additional service sessions.

(c) Generally speaking, ageing is a risk factor for common cancers. With a growing and ageing population in Hong Kong, the actual number of new cancer cases will continue to rise. On the other hand, it should be noted that the age composition and other demographic characteristics of places can vary. Between 2000 and 2009, Hong Kong's population in the "45 to 64" and "65 or above" age groups grew at almost double the rate of the United States. For this reason, a direct comparison in the number of new cancer cases or the rate of increase between two places cannot reflect the risk of cancers or the actual impact of the disease.

In statistics or epidemiology, we refer to the age-standardized incidence and mortality rates calculated using the same standard population, in order to make a meaningful assessment of the figures.

Hong Kong has seen declining trends in both age-standardized incidence and mortality risk of cancers.

In 2001, the Government established a high-level multi-disciplinary Cancer Co-ordinating Committee (the Committee), overseeing and advising on prevention and control of cancer in Hong Kong. The Committee is chaired by me and comprises of cancer experts from the public and private sectors.

The Cancer Expert Working Group on Cancer Prevention and Screening under the Committee reviews the scientific evidence and provides recommendations on preventive measures of major cancers and the need of screening. For example, according to scientific evidence, we have implemented a cross-territorial cervical screening programme with a view to achieving early diagnosis of cervical cancer. We have also implemented Hepatitis B vaccination for prevention of liver cancer.

In addition, the Hong Kong Cancer Registry of the HA serves as a well-established surveillance system. It captures and analyses statistical cancer data of the population, and provides predictions on major cancers facilitating healthcare service planning. On the other hand, the DH regularly captures risk-related behavioural risk factors of the Hong Kong adult population through the Behavioural Risk Factor Surveillance System. It collects information such as smoking habits, vegetable consumption, physical activities, use of alcohol, cervical screening practices. This provides evidence that helps us evaluate our health promotion and cancer prevention programmes.

According to the World Health Organization's estimation, 40% of the cancer deaths could be avoided by leading a healthy lifestyle, such as not smoking, pursuing a healthy diet and regular physical exercise. Although the percentage of cigarette smokers in Hong Kong has dropped from 23% in early 1980s to 11% at present, there is no room for complacency. We will continue our efforts in tobacco control. The DH will continue to launch health education initiatives to promote healthy lifestyles.

The Government also places emphasis on effective treatment in order to stop the progression of disease after its occurrence. The HA has been committed to radiological treatment services which provide timely and adequate treatment for suitable patients. On the other hand, while the HA has been expanding the coverage of the Drug Formulary in recent years, more cancer treatment drugs have been included on a gradual basis and are provided to patients at standard fees and charges. The Government has also provided additional resources to the HA to meet increasing drug expenditures. From 1 August, 2011, eligible patients can apply to the medical assistance projects under the Community Care Fund, for financial assistance in using cancer drugs that are not yet included in the Safety Net supported by the Samaritan Fund.

The HA has also launched a pilot scheme at a number of its clusters for case management of cancer patients. Under the scheme, a consolidated cancer treatment plan is jointly devised by a team of multi-disciplinary professionals. Preliminary evidence suggests that patients are generally content with the cancer case management services.

Under the joint efforts of the Government, the healthcare sector and the community, Hong Kong's cancer incidence, mortality and survival rates are comparable to developed countries and regions.

MR CHAN KIN-POR (in Cantonese): *Here is my supplementary question: as patients in Tuen Mun Hospital have to wait for eight years for non-urgent imaging services, whether the Government will set a target to shorten the waiting time for non-urgent patients to a more reasonable level, such as half a year?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, first of all, I believe most people will not accept a waiting time of eight years. We shall find out the reason and I will ask the HA to follow up. Generally speaking, even if we are unable to immediately provide imaging services for non-urgent patients, we will strive to provide such services as soon as feasible. As we are restrained by the availability of equipment and manpower resources, we are unable to provide these services within a short time, but we will also

inform patients that they can seek similar diagnostic services in the private sector if necessary.

There are some public-private-partnership schemes implemented by the HA, under which images taken in the private sector can be transferred back to public hospitals by electronic means. Hence, different efforts have been made in this regard. It is hoped that through co-operating with different sectors, patients can receive diagnostic services at appropriate time as far as feasible.

DR PAN PEY-CHYOU (in Cantonese): *Deputy President, I had come across a case in my daily clinical practices. A patient came to me and told me his symptoms, which were typical symptoms of colon cancer, and I referred him to the relevant surgical department. However, the waiting time was very long, and as I recall, he had to wait for almost one year before he could receive diagnosis and treatment. Regrettably, the patient died. May I ask the Government whether it will consider stepping up its services to facilitate early diagnosis and treatment of cancer patients, so that they need not wait for a long time?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, in my reply to the first question today, I have already said that if a patient who had been diagnosed of having a serious disease came to seek HA medical services, he would be arranged an early appointment for diagnosis and treatment. Certainly, I do not know the details of the patient mentioned by Dr PAN. In our view, without the triage system, patients in urgent need of medical treatment may lose the chance to save their lives. Hence, we will definitely maintain the triage system.

However, we also attach great importance to communication among members of the sector, including communication of information in the event of case referrals. In referring patients to specialist clinics, we have to ascertain that sufficient information has been provided on the seriousness and urgency of the patients' conditions, so as to facilitate decision making. In this regard, we will strive to assist the sector in communication. I believe that with the provision of the Electronic Health Record and other means of communication, this problem will gradually be unravelled.

DEPUTY PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered? Please clearly state the part which has not been answered in your follow-up question.

DR PAN PEY-CHYOU (in Cantonese): *Yes. You are right. You are right.*

DEPUTY PRESIDENT (in Cantonese): Please state the part which has not been answered.

DR PAN PEY-CHYOU (in Cantonese): *I wish to point out that cancer is often treated as a non-urgent case. May I ask ……*

DEPUTY PRESIDENT (in Cantonese): Dr PAN, you cannot raise a new question.

DR PAN PEY-CHYOU (in Cantonese): *I am not raising a new question*.

DEPUTY PRESIDENT (in Cantonese): Which part of your supplementary question has not been answered? You only need to repeat that part.

DR PAN PEY-CHYOU (in Cantonese): *I am about to ask the authorities: given that cancer patients need to be treated early, whether the Government will assist the HA in establishing a system to arrange early treatment for such patients, so that they will not die due to delay treatment?*

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

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Let me add that under the present triage system of the HA specialist clinics, patients suspected of having cancer will be given priority treatment.

MR LEE CHEUK-YAN (in Cantonese): *Deputy President, in his reply just now, the Secretary admitted that a waiting time of eight years was undesirable and unacceptable, but in reply to Mr CHAN Kin-por's supplementary question, he did not commit on a half-year waiting time. After listening to his reply, I am confused about what he has actually said. Does the Secretary have a target? Is he willing to make a performance pledge to be target-oriented? If he does not even have a target, it is difficult for us to monitor the Government. If that is the case, they can say whatever they like. He said that it was unacceptable for patients to wait for eight years for treatment, yet he did not commit that patients can get treatment after waiting for half a year. He only said that services would be provided as soon as possible. However, we do not know how "soon" that will be.*

Can the Secretary make a performance pledge to be target-oriented? This is the only way to put people's mind at ease. I truly hope that public healthcare services can give people the impression that they will be well looked after to regain health, and they need not wait indefinitely, which is what is happening now. Very often in the course of waiting, non-acute illnesses would turn into acute illness and minor ailment would turn critical. Do the authorities really wish to delay treatment until such cases turned critical? However, by that time, will the medical cost be higher? Can the Secretary make a service pledge to be target-oriented? How long do patients have to wait before they can get a CT or MRI scan?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, I cannot take the place of doctors in deciding when a patient should be given such services. Given that when patients are referred to us for scanning services, their conditions differ individually in terms of seriousness and urgency, and they are thus prioritized through a triage system. Hence, as I have just said, if a doctor suspects that a patient may have cancer or suffers from a rapidly-deteriorating disease, the patient will be given diagnosis and examination as soon as possible;

if the patient is diagnosed as stable or having non-deteriorating chronic disease, he will be handled as a regular case.

The problem cannot be solved by making a simple commitment, no matter in what respects you are talking about. For example, in the past, such cases were handled by the method of "first come first serve" instead of a triage system, but this approach was proved undesirable.

At present, the HA has an assessment mechanism on treatment results, so as to evaluate the effectiveness of disease treatment. In our opinion, for Hong Kong as a whole, cancer treatments rendered by the HA are of a relatively high international standard. As the situation stands, we hold that the present system is of quality. Nevertheless, we certainly agree that if sufficient resources and training capacity are available, more services and additional facilities should be provided to places with such needs, including the provision of equipments or more training capacity. We are now working on these areas.

DEPUTY PRESIDENT (in Cantonese): Mr Paul TSE ……

(Mr LEE Cheuk-yan stood up)

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

MR LEE CHEUK-YAN (in Cantonese): *In any case, the Secretary should have a target.*

DEPUTY PRESIDENT (in Cantonese): Mr LEE, you asked the Secretary just now whether he was willing to make a service pledge and he has already answered.

MR PAUL TSE (in Cantonese): *Deputy President, part (c) of the main question is related to a comparison between our cancer incidence and that of the United States. Of course, the Secretary has said in the main reply that we should not*

make a direct comparison, but rather, we should consider the age groups of the two places. This is understandable. May I ask the Secretary whether an extensive study has been conducted on cancer incidence in relation to two factors, that is, firstly, anti-smoking campaigns in Hong Kong, and secondly, the problem of air pollution in Hong Kong?

The substantial increase in tobacco levy in recent years has resulted in a drop in the number of smokers. The Secretary also mentioned in the main reply that the percentage of cigarette smokers in Hong Kong had dropped from 23% in the 1980s to 11% at present. In respect of air pollution, although we do not have the exact figures, we feel that air quality is deteriorating. Can a conclusion be drawn in relation to the combining effect of the two factors on the cancer incidence in Hong Kong?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, this is a very good question. Let me first say something about how Hong Kong's cancer incidence compares to those of other places in terms of an age-standardized comparison. As a whole, Hong Kong …… As far as malignant tumor (that is, cancer) is concerned and in terms of a 100 000-people standard population, Hong Kong's cancer incidence is 211; the United States is 300; Singapore is 196 (which is similar to the figure of Hong Kong); Europe and America …… Australia's figure is even higher, which is 314, and Canada is 296. These European and American countries have a higher incidence than Hong Kong.

Which type of cancer is more common in Hong Kong? From the trend we note that among different types of cancer in Hong Kong, lung cancer is directly related to the air we breathe in, and in particular, to cigarette smoking. The figure in this regard has been dropping and the rate of decrease is rather prominent. I do not have the figures on hand, but I can provide the relevant information later.

However, I am more concerned about some rising figures, including the rise in the number of colon cancer cases in Hong Kong. Lung cancer remains the type of cancer with the highest incidence, which is followed by colon cancer and liver cancer. For women, apart from lung cancer, breast cancer is also very common and such cases are on the increase.

As the population ages, it is understandable that more people will get cancer. However, the number has actually decreased rather than increased in terms of age-standardized calculation. From this we can see that people's health has actually improved.

Secondly, I wish to say a few words on the standard of cancer treatment in Hong Kong. We usually adopt a five-year survival rate in computing the effectiveness of cancer treatments. In other words, we assess whether a patient is still alive after five years. Hong Kong's figures on treatment of lung cancer, colon cancer and liver cancer in Hong Kong are better than those of other countries, showing that our treatment methods comparable favourably to other advanced places in the world.

DEPUTY PRESIDENT (in Cantonese): This Council has spent more than 24 minutes on this question. Last question seeking an oral reply.

Implementation of a Five-day Work Week

6. **DR PAN PEY-CHYOU** (in Cantonese): *Deputy President, the Government has implemented five-day work week in phases since 2006 to reduce the work pressure of staff and to improve the quality of their family life, and it has also promoted the message of a five-day work week in the community since then. Yet some front-line civil servants and those who have to work shifts have reflected to me that while the five-day work week has been implemented for more than five years, the departments they serve still do not have any plan to arrange them to follow a five-day week work mode. In this connection, will the Government inform this Council:*

(a) of the number of government employees (including civil servants, non-civil service contract (NCSC) staff, those employed under outsourced service contracts and agency workers) who are not on a five-day week work mode at present, and the percentage of such number in the total number of government employees, together with a breakdown of the staff number and percentage by upper, middle and lower salary band on the Master Pay Scale or equivalent salary band;

(b) in various government departments, of the number of grades of which the employees are still not on a five-day week work mode at present; whether the Civil Service Bureau and the departments to which such employees belong had conducted any study or consulted the staff in the past to explore possible ways (for example, a rotational duty roster) to enable all government employees to ultimately follow a five-day week work mode; if they had, of the progress and outcome of the study and consultation; if not, whether the authorities will comprehensively conduct study and consultation as soon as possible; and

(c) whether the authorities have since 2007 conducted any survey and study on the implementation of a five-day work week in government-funded public organizations; if they have, of the findings of the survey; if not, the reasons for that; whether the authorities will consider afresh the introduction of policies on implementing a five-day work week in government-funded public organizations in the future, to assist more employees in maintaining a balance between work and family responsibilities; if they will, of the details; if not, what specific measures the Government has in place to encourage public organizations to respond to its appeal and arrange a five-day work week for their employees on their own initiative?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, the Administration decided to implement the five-day week initiative in the Government in 2006 with the objective of improving the quality of civil servants' family life but without affecting the overall level and efficiency of public services or incurring additional costs to the taxpayer. Under this parameter, bureaux and departments (B/Ds) have to abide by four basic principles in the implementation of this initiative: namely no additional staffing resources, no reduction in staff's conditioned hours of service, no reduction in emergency services, and continued provision of essential counter services on Saturdays/Sundays. Five-day week work pattern includes working on a "Monday-to-Friday basis", or a "five days on, two days off roster in every seven days", or "fewer than five days/shifts in every seven days".

With respect to parts (a) and (b) of the question, the Civil Service Bureau conducted a survey on the implementation of five-day week in B/Ds last year.

As at 31 December 2010, around 104 500 civil servants (that is, around 70% of the civil service strength) were working on five-day week. This figure did not include civil servants working in government schools, the Judiciary, the Independent Commission Against Corruption, the Hospital Authority (HA), the Vocational Training Council, the Hong Kong Monetary Authority, and so on. There were around 44 500 civil servants who could not work on a five-day week work pattern, mainly because of the need to maintain the overall level and efficiency of public services, for example, services provided by the Police Force; or other services that were provided on Saturdays/Sundays such as social welfare services, some immigration counter services, cultural services, postal services, environmental hygiene services, law-enforcement, passenger/cargo clearance, and management of penal institutions, and so on.

The working hours of NCSC staff are determined by the relevant heads of B/Ds and according to operational needs. As clearly set out in the guidelines issued by the Civil Service Bureau, B/Ds should extend the five-day week initiative to NCSC staff wherever practicable and appropriate. According to the abovementioned survey, as at 31 December 2010, about 9 300 full-time NCSC staff (around 70% of the total number of full-time NCSC staff) were working on a five-day week work pattern.

Whether or not five-day week may be implemented is based on the operational needs of different departments, the job nature of different posts, and occupational safety consideration, and so on, and not on the basis of pay or civil service grade. Accordingly, the abovementioned survey did not include a breakdown by pay scale or grade of the number of civil servants and NCSC staff on five-day week and non-five-day week work pattern. We are therefore unable to provide such information. We understand that a few departments, such as the Immigration Department, the Hong Kong Police Force, the Customs and Excise Department, the Correctional Services Department, the Leisure and Cultural Services Department, the Food and Environmental Hygiene Department, and the Post Office, and so on, have a higher number of civil servants who are not working on a five-day week work pattern.

We will continue to encourage B/Ds to explore possible ways to migrate more staff to five-day week, subject to the four basic principles stated above and after conducting staff consultation. We will also continue to encourage them to arrange staff to work in five-day week posts by rotation, where operational and

other circumstances permit. In fact, individual departments have continued to implement five-day week pilot schemes by, for example, adjusting roster arrangements or offering other modes of service provision, and so on, to enable more staff to migrate to five-day week. For example, around 190 civil servants of the Employment and Visit Visas Section, the Certificate of Entitlement Section and the Right of Abode Section of the Immigration Department formally adopted a five-day week work pattern last year after completing a trial scheme.

We do not have data on the implementation of five-day week for staff employed by contractors or employment agencies providing services to the Government.

As regards part (c) of the question, the Government has not conducted any survey or study specifically on the implementation of a five-day week work pattern in government-funded public organizations. Nonetheless, a special topic enquiry on "Patterns of hours of work of employees" was conducted by the Census and Statistics Department between January and June 2008 which covered, among other things, the extent of five-day week work pattern by employees working in the non-government sector (including private sector entities, subvented organizations and statutory bodies). According to the findings, of the 2 558 800 persons working in the non-government sector who were contractually required to work a fixed number of days per week for their employers, some 849 100 (around 33%) were required to work five days or less.

Subvented organizations operate independently according to their respective service nature, management structure and established protocol. We welcome their implementation of five-day week having regard to their respective operational arrangements, clients' needs and staff views, and so on. As one of the facilitators of family-friendly employment practices, the Labour Department will continue to publicize such practices, including a five-day week work pattern to employers (including subvented organizations), human resources personnel and the general public through various publicity channels and promotional activities. Employers are encouraged to adopt work arrangements that can meet both operational and employees' needs, while having due regard to relevant trade characteristics.

DR PAN PEY-CHYOU (in Cantonese): *Today, I ask this question not only for civil servants, but also for many people working in public organizations, including the HA, who have to work shifts. Tens of thousands of people, particularly shift workers, may be involved. As early as 2006, my colleagues in the HA had started to conduct studies on how a five-day week could be implemented, but they found that most of the colleagues who worked shifts were unable to enjoy a five-day week.*

Five-day week is a family-friendly policy which gives employees more family time. It also allows employees to have more time for further studies since many professional upgrading courses are now held on Saturdays. However, this well-received policy is subject to a restriction, that is, its implementation must not involve any additional resources. I would like to ask the Government why it has imposed such a restriction. The economy of Hong Kong is now comparatively strong, why can we not put in some more resources? In many cases, only a slight increase in manpower is needed to implement the five-day week. I would like to ask the Secretary if the Government will consider relaxing this restriction. Only a slight relaxation is needed.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, I have stated four basic principles in my main reply, and one of them is that the implementation of the five-day week initiative must not involve additional financial and staffing resources. The reason behind is that, while we recognize that five-day week is a family-friendly initiative, we have to ensure that public money is well spent, hence, these principles are established to strike a balance.

DEPUTY PRESIDENT (in Cantonese): Dr PAN Pey-chyou, which part of your supplementary question has not been answered?

DR PAN PEY-CHYOU (in Cantonese): *Deputy President, the Secretary has not answered if she will consider relaxing the restriction.*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, we have got justifiable reasons to establish the four basic principles, as mentioned in my main reply. Hence, we do not have any plan to review them at present.

MR CHEUNG KWOK-CHE (in Cantonese): *I believe the five-day week initiative is beneficial to employees and their families. Yet, the Secretary has stated the "Three-Nos" policy. In my view, this policy should have a smaller impact on the Civil Service as the large number of civil servants facilitates staff deployment. However, the public sector has to face greater difficulties. There are now many subvented projects in the social welfare sector. How will the Government ensure that non-governmental organizations (NGOs) can also benefit from this initiative? In fact, so long as there is the "Three-Nos" policy, the problem cannot be solved. Will the Secretary give more support to NGOs in order to encourage them to implement a five-day week?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, I notice that Mr CHEUNG has mentioned the "Three-Nos" policy twice. As I have pointed out in the main reply, the Government must abide by four basic principles in the implementation of a five-day week. We hold that these four basic principles also apply to government-funded public organizations. Therefore, provided that these organizations will adhere to the four basic principles, and that they have considered all the relevant factors to make sure that their operation and clients will not be affected, we will encourage them to adopt a five-day week for their employees.

When I answered the supplementary question of Dr PAN Pey-chyou just now, I clearly stated that we must make sure that public money would be well spent when implementing this family-friendly initiative. Hence, these four basic principles must be upheld in both government departments and government-funded organizations.

MR LEUNG KWOK-HUNG (in Cantonese): *Deputy President, no wonder people talk about pollution, this kind of pollution does exist. When I heard the Secretary talk about "the four basic principles", I was scared out of my wits. I thought that she was talking about the four basic principles in the Constitution of*

the People's Republic of China or the four basic principles advocated by the leaders of the Communist Party. Please do not use this term again to avoid pollution.

I do not only speak for the HA's employees and civil servants, I also speak for workers who are at the lowest echelon of our society. The "Four-Nos" principles stated by the Secretary are likened to Zhuangzi's story of feeding monkeys with "three nuts in the morning and four at night" versus "four nuts in the morning and three at night". While the weekly working hours remain unchanged, the Government simply repackages the working hours to effect a change in the number of working days. No incentives are provided whatsoever.

If the Government allows civil servants and NCSC staff to have more leisure for pursuing further studies, the expenditure incurred will have an indirect bearing on staff employed by contractors and employees in the private sector. If the Secretary really wants to reduce the standard working hours to 48 hours a week, she should consider the issue along this line. If the standard working hours is 48 hours, how should a five-day week be implemented? At present, an ordinary worker who works 60 hours a week will have to work 10 hours a day if he works on a six-day week. If he only works five days a week, he will have to work 12 hours a day. That will be killing him!

I would like to ask the Secretary: when you consider this issue, have you given any thought to the strong request of this Council and the labour sector in setting a ceiling for working hours? What I want to say is that how can some organizations implement the five-day week initiative if the number of working hours has not been reduced? Are you trying to kill those who work 65 hours a week by introducing this initiative? Have you considered this point? Has the Government considered giving up the "Four-Nos" principle and making use of public money to take the lead in shortening the working hours, so that the working class in Hong Kong can have more time to spend with their families and pursue further studies? Being the Secretary responsible for implementing this policy, have you considered this issue?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, I think Mr LEUNG is well aware that another Secretary, that is, Secretary for Labour and Welfare Matthew CHEUNG, is now studying whether we should

have standard working hours in Hong Kong. Being the Secretary for the Civil Service, I am responsible for managing the Civil Service and we have set the respective conditioned hours of service per week for civil servants of different grades. Even within the Civil Service, we do not have standard working hours. I agree to Mr LEUNG's view to a certain extent that the number of conditioned hours of service is somehow related to the feasibility of the five-day week initiative. However, this relationship is not always positive. For example, civil servants in a grade called Fireman/Firewoman (Operational/Marine) are now able to work on a five-day week even though their conditioned hours of service is 54 hours a week.

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

MR LEUNG KWOK-HUNG (in Cantonese): *There is only one government …… she said that Secretary Matthew CHEUNG was studying if we should have standard working hours ……*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, please think of the supplementary question that you have just asked. Which part of your supplementary question has not been answered? Please repeat that part and let the Secretary answer.

MR LEUNG KWOK-HUNG (in Cantonese): *Yes. In her reply, she said that ……*

DEPUTY PRESIDENT (in Cantonese): You do not have to repeat her reply, you only have to repeat the part of your supplementary question which has not been answered.

MR LEUNG KWOK-HUNG (in Cantonese): *I want to ask her if there is any government policy to reduce the number of working hours so as to facilitate the introduction of standard working hours, making the five-day week initiative feasible?*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, the Secretary has already answered this question.

MR LEUNG KWOK-HUNG (in Cantonese): *She has not answered this question. She said that Secretary Matthew CHEUNG was studying ……*

DEPUTY PRESIDENT (in Cantonese): Is that not the answer given?

MR LEUNG KWOK-HUNG (in Cantonese): *No. The point is that there is only one government …… and the Chief Executive said that he would study this issue in his remaining term, both the Secretary and Secretary Matthew CHEUNG, who are under the Chief Executive, should have known about this issue.*

DEPUTY PRESIDENT (in Cantonese): Mr LEUNG, please sit down. I will ask the Secretary if she has anything to add.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, as I have just said that Secretary Matthew CHEUNG is now studying if we should have standard working hours in Hong Kong, I think it is premature to answer Mr LEUNG's question right now.

MS LI FUNG-YING (in Cantonese): *Deputy President, inequality is worse than deficiency. The five-day week initiative has been introduced in the Civil Service for over five years, and now two thirds of civil servants are on a five-day week work mode. However, there are still more than 40 000 civil servants who cannot work on a five-day week. While the Secretary said that she*

"encouraged" the relevant departments to implement the five-day week initiative, I think they would have done so if it was possible. As they do not have the prerequisite for implementing this initiative, any further encouragement from the Secretary is not going to bring any change in eight to 10 years. Will the Secretary introduce any specific and feasible measures to help these departments, with over 40 000 employees, to adopt a five-day week?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Deputy President, Ms LI has just said that "inequality is worse than deficiency", and I would like to clarify this point to the Council. It is wrong to think that we have shortened the conditioned hours of service of civil servants after introducing the five-day week initiative. We have not done so for the sake of introducing the new work mode. However, we do have different work modes in the Civil Service, even before the implementation of a five-day week. For example, before we introduced the five-day week work mode, most civil servants used to work regularly from Mondays to Fridays and on alternate Saturdays; a small number of civil servants had to work on irregular hours and shifts; some were even required to work on Sundays. From this example, we can see that there were different work modes before the introduction of a five-day week.

Therefore, I do not agree to Ms LI's view that the introduction of a five-day week has created inequalities in the Civil Service. Yet, I understand why Ms LI said so. After all, there are still a small number of civil servants who cannot benefit from the five-day week because of the restrictions in their work requirements. However, we do not want to introduce the five-day week initiative to the entire Civil Service at the expense of the provision of public services. We also do not want the full implementation in the Civil Service to cost taxpayers more money.

Nevertheless, it will be wrong for Ms LI to think that the five-day week work mode will not be extended to benefit more civil servants. To my knowledge, several departments are adopting this work mode on a trial basis, in the hope that more civil servants can later work on a five-day week.

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

WRITTEN ANSWERS TO QUESTIONS

Development of E-citizen Engagement and E-government in Hong Kong

7. **DR SAMSON TAM** (in Chinese): *President, regarding e-citizen engagement and e-government, will the Government inform this Council:*

(a) given that "politics on the Internet" has become a trend, how the authorities, through information and communication technology, make use of tools on the Internet such as social media websites, and so on, to enhance communication with members of the public, in particular young people;

(b) whether it has made reference to the advance experience of overseas or neighbouring cities (for example, increasing the transparency of governance by means of technologies such as Web 2.0, and so on) to build a more open e-government and e-community which allow more citizen engagement;

(c) given that the Government launched an 18-month pilot scheme in March last year to make available geo-referenced public facilities data and real time traffic data of major routes at the "Data.One" portal, of the utilization of the service at present; when it will conduct a review; whether it will consider opening up more public sector information for development and use by the market; if it will, of the details; if not, the reasons for that; and

(d) how the authorities will enhance the use of mobile telecommunication channels to improve service quality; of the government services for which mobile versions are available at present, and whether they will consider offering mobile versions for more government services?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the reply to the four-part question is as follows:

(a) The Administration communicates with the public through various channels and tools, including traditional media and the Internet. In view of the growing popularity of online social media, government departments are actively making use of electronic platforms to communicate with the public. At present, 12 government departments and 14 Government officials are using social media (including Facebook, Twitter, microblog, YouTube, and blog) to connect with the public. Last year, the Chief Executive's Office conducted five live online question-and-answer sessions through its Facebook Page, enabling dialogue between politically appointed officials and the public on topical issues.

During 2010 and 2011, the Office of the Government Chief Information Officer (OGCIO) organized a number of seminars and workshops for different levels of Government staff to equip them with the skills as well as knowledge on overseas experience for designing and using online platforms to communicate with the public and listen to their views. The OGCIO has also developed three Facebook applications, namely, a live video-streaming application, a questionnaire tool and an application for e-leaflet promotions.

(b) In late 2010, the OGCIO commissioned a study on the e-engagement initiatives adopted by overseas governments. The report highlighted the key success factors, challenges, and means of measuring the effectiveness of e-engagement initiatives adopted by the Governments of the United States, the United Kingdom, Australia and Singapore. We provided the report to the Panel on Information Technology and Broadcasting of the Legislative Council in September 2011, and have circulated it to government departments for reference.

(c) Response to the public sector information pilot scheme has been encouraging. The number of downloads of real-time traffic data of main roads has been increasing significantly, with the daily average downloads of traffic snapshot images increasing from 1 900 in April 2011 to 387 000 in December 2011. The daily downloads of the traffic speed map, journey time indicator and special traffic news also each averaged from 8 000 to 16 000. Besides, at least nine

mobile applications using these real-time traffic data are now available, most of which can be downloaded free of charge. As geo-referenced public facilities data are static information, frequent downloading is unnecessary. There are on average over 300 downloads every month. The pilot scheme will be completed in September this year. We are now reviewing the effectiveness of the scheme, and will consider the way forward in the light of its outcome.

(d) Riding on the rising popularity of mobile devices, government departments are making wider use of this channel to deliver public services. Up to early February 2012, government departments have launched a total of 26 mobile applications and 28 mobile websites (details at Annex). The Government will continue to develop more mobile services to enhance access to public services and information in line with technology advancement and the public's aspirations and needs.

Annex

Government Mobile Applications and Mobile Websites
(As at early February 2012)

A. Mobile Applications

Name	*Departments*
Tell me@1823	Efficiency Unit
Where is Dr Sun?	Efficiency Unit (youth.gov.hk)
Youth.gov.hk	Efficiency Unit (youth.gov.hk)
news.gov.hk	Information Services Department
Hong Kong 2010	Information Services Department
This is Hong Kong	Information Services Department
Nutrition Calculator	Food and Environmental Hygiene Department
Snack Nutritional Classification Wizard	Department of Health
MyObservatory	Hong Kong Observatory
MyWorldWeather	Hong Kong Observatory
Hongkong Post	Hongkong Post

Name	*Departments*
RTHK On The Go	Radio Television Hong Kong
Cat's World	Radio Television Hong Kong
Applied Learning (ApL)	Education Bureau
HKeTransport	Transport Department
OFTA Broadband Performance Test	Office of the Telecommunications Authority
Enjoy Hiking	Agriculture, Fisheries and Conservation Department
Hong Kong Geopark	Agriculture, Fisheries and Conservation Department
Hong Kong Wetland Park	Agriculture, Fisheries and Conservation Department
Reef Check Hong Kong	Agriculture, Fisheries and Conservation Department
Quit Smoking App	Department of Health
Build Up Programme	Development Bureau
18 Handy Tips for Family Education	Home Affairs Bureau
Interactive Employment Service	Labour Department
Senior Citizen Card Scheme	Social Welfare Department
The Basic Law	Constitutional and Mainland Affairs Bureau

B. Mobile Websites

Name	*Departments*
Tell me@1823 Website <http://mf.one.gov.hk/1823mform_en.html>	Efficiency Unit
Youth.gov.hk <http://m.youth.gov.hk/>	Efficiency Unit
Water Supplies Department Website <http://www.wsd.gov.hk/pda/default.htm>	Water Supplies Department
Geodetic Survey of Hong Kong <http://www.geodetic.gov.hk/smo/gsi/programs/text/index_en.html>	Lands Department
GeoMobile Map HK (Beta) <http://www.map.gov.hk/mobile>	Lands Department
Map Products and Map Sales Outlets (Lands Department) <http://www.landsd.gov.hk/mapping/enpda/default.htm>	Lands Department

Name	*Departments*
Mobile Version of Means Test Calculator <http://laesp.lad.gov.hk/FES020_en.html>	Legal Aid Department
An Architectural Services Department Website on Tender Notices <http://www.archsd.gov.hk/mobile/main.asp>	Architectural Services Department
Bilingual Laws Information System <http://www.legislation.gov.hk/eng.m/home.htm>	Department of Justice
Information Services Department Website <http://www.news.gov.hk/en/index.lin.shtml>	Information Services Department
OGCIO Website <http://m.www.ogcio.gov.hk/en/index.shtml>	OGCIO
Food and Environmental Hygiene Department Website <http://m.fehd.gov.hk/english/>	Food and Environmental Hygiene Department
Centre for Food Safety <http://m.cfs.gov.hk/english/index.html>	Food and Environmental Hygiene Department
memorial.gov.hk <http://m.memorial.gov.hk>	Food and Environmental Hygiene Department
Hong Kong Observatory Website <http://m.weather.gov.hk/report.htm> <http://www.weather.gov.hk/hkowap.htm>	Hong Kong Observatory
GovHK <http://m.www.gov.hk/en>	OGCIO
Hong Kong Customs and Excise Department Website <http://www.customs.gov.hk/pda/en/home/index.html>	Hong Kong Customs and Excise Department
Radio Television Hong Kong Website <http://m.rthk.hk/>	Radio Television Hong Kong
Virtual Heritage Explorer <http://vhe.lcsd.gov.hk/vhe/FEPDA?langNo=1>	Leisure and Cultural Services Department
Hong Kong Traditional Chinese Architectural Information System <http://hktais.lcsd.gov.hk/hktais/pda/index.jsp?localename=US>	Leisure and Cultural Services Department
Planning Department Website <http://www.pland.gov.hk/mobile/pland_en/index.html>	Planning Department
The Hong Kong Planning and Infrastructure Exhibition Gallery <http://www.infrastructuregallery.gov.hk/mobile/gallery_en/index.html>	Planning Department

Name	*Departments*
Environmental Protection Department Website <http://www.epd.gov.hk/epd/pda/eindex.html>	Environmental Protection Department
Marine Department Website <http://m.mardep.gov.hk/mrs/htdocs/md_list.jsp?language=en>	Marine Department
Transport Department Website <http://pda.td.gov.hk/en/home/index.html>	Transport Department
Hong Kong eTransport <http://m.hketransport.gov.hk/routeSearch.aspx?lang=0>	Transport Department
Office of the Telecommunications Authority Website <http://www.ofta.gov.hk/en/wap.html>	Office of the Telecommunications Authority
Hong Kong Wetland Park <http://www.wetlandpark.com/wap/index_en.html>	Agriculture, Fisheries and Conservation Department

Sale of Illicit Cigarettes on a Mainland Shopping Website

8. **MR WONG TING-KWONG** (in Chinese): *President, it has been reported that quite a number of traders are suspected of selling duty-not-paid cigarettes (hereinafter referred as "illicit cigarettes") through a major shopping website on the Mainland; as the retail price of these illicit cigarettes is 60% lower than that of genuine duty-paid cigarettes, and traders can deliver the illicit cigarettes through courier companies to the buyers' residences in three days, thus quite a number of young people in Hong Kong are attracted to place orders. In this connection, will the Government inform this Council:*

(a) whether it knows the details of the aforesaid online selling of illicit cigarettes (including the operation of online selling of illicit cigarettes, the monthly average sales volume, the number of local buyers and their main age groups, and so on); if not, of the reasons for that;

(b) whether it had seized any illicit cigarettes smuggled to Hong Kong through courier service last year; if it had, of the quantity of illicit cigarettes seized, and the number of cases in which prosecutions were instituted; and

(c) what measures are in place to combat shopping websites selling illicit cigarettes to Hong Kong people, and how enforcement will be stepped up to combat the smuggling of illicit cigarettes by couriers?

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

(a) The Customs and Excise Department (C&ED) has been closely monitoring illicit cigarette activities. Intelligence reveals that the sale of illicit cigarettes via Internet is not common. Last year, the C&ED received only a single complaint regarding such activities in the local market. The C&ED will continue to monitor the situation so as to prevent such illegal activities.

(b) In 2011, the C&ED effected one case on the sale of illicit cigarettes via Internet. One male offender was prosecuted with 600 sticks of illicit cigarettes seized. There is so far no case on the sale of illicit cigarettes via Mainland shopping website and delivered to Hong Kong by couriers.

(c) The C&ED will take stringent enforcement actions against illicit cigarette activities. If the illicit cigarette activities involve Mainland websites, as these websites are operated outside Hong Kong, the C&ED would refer such cases to the Mainland authorities for follow-up actions or appropriate preventive measures. Having regard to the mode of delivery adopted by such activities, the C&ED will also step up inspection on import cargoes to prevent the smuggling of illegal commodities into Hong Kong.

Services of Court Interpreters

9. **DR RAYMOND HO** (in Chinese): *President, last year, a murder case in which the defendant had been convicted was ordered to be re-tried due to an error in interpretation made by the court interpreter concerned. Regarding court interpretation service, will the Government inform this Council:*

(a) of the entry qualifications and the tests required to be passed for appointment of court interpreters; whether such standards are also applicable to court interpreters in languages other than Chinese and English or dialects other than Cantonese;

(b) whether a fallback mechanism is in place in the existing trial process to rectify errors in interpretation that are not immediately noted in the trials so as to prevent the impartiality of trials from being prejudiced; and

(c) how it ensures that when court interpreters in non-mainstream languages or dialects are required in court proceedings but no eligible interpreter is available, the trials are conducted in an impartial manner?

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, the Administration has consulted the Judiciary on the question and has received the following information:

(a) There are currently two broad categories of court interpreters providing interpretation service in court. They include full-time Court Interpreters providing interpretation in Chinese and English, and part-time interpreters providing interpretation in foreign languages (other than Chinese and English) and Chinese dialects (other than Cantonese). The qualifications for court interpreters are as follows:

Full-time Court Interpreters

The entry requirements of the basic rank of the Court Interpreter Grade, that is, Court Interpreter II, include the following:

(i) holding a degree from a university in Hong Kong, or equivalent;

(ii) attaining "Level 2" results in the two language papers (Use of Chinese and Use of English) in the Common Recruitment Examination, or equivalent;

(iii) attaining a pass in the Aptitude Test in the Common Recruitment Examination; and

(iv) being fluent in spoken Chinese (Cantonese and preferably in Putonghua as well) and spoken English.

Candidates are also required to pass a translation test and an interpreting test.

Part-time interpreters

(i) to qualify as a part-time interpreter for a foreign language, in addition to proficiency in the foreign language concerned, an applicant should possess a recognized university degree or an equivalent academic qualification and be proficient in either English or Chinese;

(ii) as for Chinese dialects, an applicant for a part-time interpreter is required to have attained a secondary level education and be proficient in the dialect required and in Cantonese; and

(iii) all suitable applicants for appointment as part-time interpreters are required to take written and oral entrance tests.

(b) When the accuracy of any translation made during a trial is disputed, it can be drawn to the attention of the trial judge during that trial. If the trial is over, an application can be made to the Court for a transcript or an audio record of proceedings to make the necessary checking. To uphold the principle of judicial independence, any judicial decision can only be subject to review or appeal under the judicial system in accordance with the law.

(c) As a matter of practice, the Court will normally stand down that part of the proceedings requiring the interpretation service in question and proceed with the rest of the trial first pending the availability of a qualified interpreter. Where that course is impossible or cannot be done without causing injustice to either party, the Court will adjourn the trial until a qualified interpreter is available. The

Judiciary Administration would do its utmost to find, within the time available, a suitable interpreter, including approaching the Consulate concerned, the tertiary institutions and other relevant organizations.

Parole for Hong Kong People Serving Imprisonment Sentences on the Mainland

10. **MR PAUL CHAN** (in Chinese): *President, in reply to my question on 25 May 2011 concerning Hong Kong people serving imprisonment sentences on the Mainland (imprisoned Hong Kong people), the authorities indicated that it had not received requests for parole from imprisoned Hong Kong people, and it also refused to disclose the progress of negotiation with the Mainland authorities on the mutual arrangement for the transfer of sentenced persons. Some members of the public have since relayed to me that the Mainland authorities have in recent years set out the conditions for granting parole to imprisoned Hong Kong people, and in a prison in Nanjing, there was the first case of a person from Hong Kong, Macao or Taiwan serving imprisonment sentence on the Mainland successfully applying for parole. In this connection, will the Government inform this Council:*

(a) whether it knows the details of the aforesaid first case of parole granted to the person from Hong Kong, Macao or Taiwan (including the conditions for granting parole); if it does not know, whether it will take the initiative to enquire with the Mainland authorities, so as to obtain more exact information to facilitate its negotiation with the Mainland authorities on the mutual arrangement for the transfer of sentenced persons and reach an agreement as early as possible; if it will not, of the reasons for that;

(b) given that I have learnt that one of the aforesaid conditions for granting parole is that the relatives of the imprisoned Hong Kong people on the Mainland shall be the guarantors, but quite a number of Hong Kong people can hardly meet this condition as they do not have immediate family members who are mainlanders, whether the authorities will, during the process of negotiation with the Mainland authorities, request for a review of that condition, so that those Hong Kong people in need can meet the conditions for granting parole;

(c) whether the authorities will, in response to the conditions for granting parole set out by the Mainland, consider assigning a relevant Policy Bureau or government department dedicated to handling the requests for assistance from Hong Kong people; whether they will, through the offices of the SAR Government on the Mainland, inform Hong Kong people who live and work on the Mainland of the conditions for granting parole, so that they are aware of their right to be granted parole if they are sentenced to imprisonment on the Mainland, and the Hong Kong people in need will know where to seek help; and

(d) of the latest progress of its negotiation with the Mainland authorities on the mutual arrangement for the transfer of sentenced persons, and whether there is a target timetable for reaching an agreement?

SECRETARY FOR SECURITY (in Chinese): President, according to the information available, there is no provision in the Mainland law that excludes Hong Kong residents from applying for parole. The conditions of applying for parole are set under the relevant Mainland laws and regulations: a prisoner sentenced to a fixed-term imprisonment must have served more than half of his/her term, or a prisoner sentenced to life imprisonment must have actually served not less than 13 years, show repentance and has no risk of re-offending, and so on. No parole shall be granted to recidivists or criminals who are sentenced to more than 10 years of fixed-term imprisonment for certain serious offences. The Mainland authorities will consider applications for parole in accordance with relevant laws and regulations.

The SAR Government is concerned about the legal rights of Hong Kong residents who are detained or sentenced in the Mainland. Upon receiving requests for assistance from Hong Kong residents in the Mainland and their case information, the Beijing Office (BJO)/the Guangdong Economic and Trade Office (GDETO) of the SAR Government and the Assistance to Hong Kong Residents Unit of the Immigration Department (the Unit) will provide appropriate assistance, having regard to the nature and circumstances of the cases and the requests of the assistance seekers. In general, on cases of persons detained in the Mainland, officers of the BJO/GDETO or the Unit will explain to the assistance seekers the relevant Mainland legislation and criminal proceedings.

Depending on the volition of the assistance seekers, our officers will provide the contact information of Mainland lawyers' associations for their consideration of appointment. If the assistance seekers wish to apply for parole, the BJO/GDETO will relay such requests to the Mainland authorities.

Under the principle of "one country, two systems", the SAR Government will not interfere with the law enforcement, judiciary and punitive systems of the Mainland. Neither will the Government make public comment on or disclose the circumstances of individual cases. Within this context, we have attempted to verify with the relevant Mainland authorities regarding the parole policies and arrangements specifically for Hong Kong residents as mentioned in the question. The information concerned is yet to be confirmed so far. Nevertheless, we will keep in view any new parole arrangements that may affect Hong Kong people serving imprisonment sentences, and will continue to communicate and liaise with the Mainland authorities to convey and reflect the requests of individual assistance seekers.

The SAR Government and the Mainland authorities are still discussing the arrangements for transfer of sentenced persons between the two places. Once a mutual agreement is reached, the Legislative Council will be consulted. Through the enactment of local legislation, Hong Kong residents serving sentences in the Mainland may then choose to serve their remaining sentences in Hong Kong, or be released under supervision in accordance with local legislation. In the meantime, we will continue to exchange views with the Mainland on providing assistance to Hong Kong people serving sentences in the Mainland.

Vetting and Approval of Applications for Airport Restricted Area Permits

11. **MR LEUNG KWOK-HUNG** (in Chinese): *President, a member of the public sought assistance from me, indicating that he was successful in being employed as a flight attendant, but as he was convicted of possession of dangerous drug three years ago, his application for an Airport Restricted Area Permit (ARAP) was rejected, thus causing him to eventually lose this job opportunity. The member of the public said that, according to his understanding, as a period of three years has elapsed since his aforesaid conviction and he has not been convicted again, his criminal record shall not be disclosed unless so permitted by him under the Rehabilitation of Offenders*

Ordinance (Cap. 297) (the Ordinance), but as the Ordinance is not applicable to the vetting and approval of applications for ARAP, he lost the job as a result. In this connection, will the Government inform this Council:

(a) other than the aforesaid vetting and approval procedures of ARAP, what permits the vetting and approval procedures of which are also not covered by the Ordinance; further, whether there is any existing channel to notify the relevant persons that the Ordinance is not applicable to such procedures;

(b) given that my Member's Office made an enquiry to the Civil Aviation Department (CAD) about the time when an ARAP could be issued to the aforesaid member of the public, but CAD replied that this was an official secret and could not be disclosed, whether the Government has assessed if this will cause any unnecessary distress to that member of the public, and violate the original intent of the Ordinance; and

(c) whether the Government will consider publishing an explicit set of criteria for vetting and approving ARAP applications (particularly the specific criteria adopted for "security vetting"), for the reference of those members of the public preparing to work for the relevant organizations; if so, of the implementation time frame; if not, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): President, the Ordinance aims at facilitating the rehabilitation of persons who are convicted the first time and whose offences are minor in nature. Generally speaking, section 2 of the Ordinance provides that where a person, on a first conviction, is sentenced to imprisonment not exceeding three months or to a fine not exceeding $10,000, and has not been convicted of an offence for the second time within a period of three years, he/she shall be deemed to have no conviction record. Section 2 of the Ordinance also sets out similar arrangements on triad-related offences under the Societies Ordinance (Cap. 151).

However, section 4 of the Ordinance also sets out a list of proceedings-related and further exceptions, specifying the circumstances to which

the above arrangements do not apply. Such exceptions cover the admission, employment and authorization-related proceedings of a wide range of professionals, vocational drivers and prescribed offices, or related disciplinary proceedings. They also include proceedings relating to a person's suitability to be granted or to continue to hold any licence, permit or dispensation under any law, and so on.

As an air transportation hub of Hong Kong and in the region, the Hong Kong International Airport handles a large volume of air traffic and a large number of passengers every day. We must ensure that a high level of aviation security is maintained. According to the Aviation Security Regulation (Cap. 494A), the Airport Authority is responsible for devising the ARAP scheme and implementing related procedures to ensure the strict control and management of persons entering and leaving the airport restricted areas.

Under sections 4 and 5 of the Aviation Security Regulation, any person who enters an airport restricted area shall have a valid permit unless he/she is an air-crew member, a passenger entering the area for the purpose of embarking on/disembarking an aircraft, or being escorted by a person authorized by the Airport Authority. The ARAP is issued by the Airport Authority under the Aviation Security Regulation. The vetting criteria are set by the CAD in consultation with concerned departments. The major considerations include whether the applicant has committed any offences relating to aviation security, dangerous drugs, violence, dishonesty or fraud, unlawful society and criminal damage, and so on, and the seriousness of the concerned offence.

In the light of the updated position of global and local aviation security, we will review the criteria for vetting applications for ARAPs from time to time with a view to striking an appropriate balance between aviation security and rehabilitation of offenders.

SWD Staff Being Assaulted While at Work

12. **MR TAM YIU-CHUNG** (in Chinese): *President, it has been reported that an incident of social workers being assaulted occurred recently at the Tuen Mun Children and Juvenile Home (TMCJH), and two female social workers were injured, and after the girl involved was brought under control, someone from TMCJH management indicated that action not be taken to avoid trouble, and the*

social workers being assaulted had no choice but to report the case to the police on their own. Regarding the handling of assaults on staff members of the Social Welfare Department (SWD), will the Government inform this Council:

(a) of the number of cases in the past three years of the SWD staff being assaulted while discharging official duties; the number of staff who were thus injured or even killed; and the degree of the injuries sustained by them;

(b) whether the authorities have formulated guidelines and preventive measures in respect of assault on the SWD staff; if they have, of the details; if not, the justifications for that;

(c) whether, as a general practice, the SWD management refers cases of assault on staff to the police for follow-up; if it does, of the number of cases referred to the police for follow-up in the past three years; the number of prosecutions instituted by the police after investigation; and, if it does not refer cases to the police for follow-up, the justifications for that; and

(d) whether the authorities' policies or guidelines encourage not taking action to avoid trouble and dissuade the SWD staff being assaulted from reporting to the police for assistance; if they do, of the justifications for that; if not, whether any disciplinary action has been taken against those who dissuaded staff from reporting to the police for assistance; if disciplinary actions have been taken, of the number of cases and forms of punishment?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr TAM Yiu-chung's question is as follows:

(a) In the past three years (that is, 2009, 2010 and 2011), the number of assault and injury cases involving staff of the SWD while they were discharging official duties was four, nine and seven respectively, while the number of staff injured was five, 10 and 10 respectively. In all these cases, only minor injuries were involved and hospitalization was not required. There was no fatal case.

(b) Personal safety of the staff while providing services has always been the SWD's primary concern. In view of this, the SWD has formulated the "Combating Violence Against Staff at Work" guidelines (the guidelines) to provide various preventive, supportive and remedial measures against assaults on staff at work. The measures include ways to identify risks of violence, methods on handling violent situations or potential violent situations, as well as office security measures, and so on. According to the guidelines, staff members should seek help from the police at an early stage in the event of severe harassment, assaults, potential violence or threats to staff safety.

Apart from the guidelines, the SWD also organizes relevant training courses and sharing sessions on a regular basis for its staff to enhance awareness of violent acts and handling skills. In the past three years, the SWD has organized a total of 17 training courses covering methods of handling violent acts, specific skills for handling violent acts of young people in correctional institutions, and methods of tackling workplace violence, and so on. Besides, the SWD's District Social Welfare Offices often remind heads of service units to take measures to safeguard staff safety at work. Unforeseen incidents would be reviewed and staff would be reminded of the salient points so as to ensure their safety and effective handling of similar incidents.

(c) If staff are concerned about their personal safety at work, or if a service user has an emotional outburst, staff may seek their supervisors' advice or directly call the police for assistance. Generally, if any staff member was assaulted, the service unit concerned would make a report to the police for follow-up. If it has been confirmed that a criminal offence is involved upon investigation, appropriate action would be taken by the police having regard to the facts and evidence of the case. Among the 20 cases of assaults and injuries involving the SWD staff in the past three years, 11 cases were handed over to the police among which prosecution was instituted on six upon investigation. The remaining nine cases involved emotional outburst of clients/inmates rather than intentional assault. Moreover, since these were minor cases and the staff

concerned did not wish to take the cases further, they were not handed over to the police for follow-up action.

(d) The SWD would not prohibit staff from reporting to the police to avoid trouble. With regard to the recent incident at the TMCJH, the allegation that the victims had to take the case to the police themselves as the TMCJH management refused to do so is simply untrue. In fact, the social workers concerned immediately reported the case to their supervisor and the police in the same evening of the incident. There had never been any attempt by the TMCJH management to prohibit them from reporting to the police.

Review of Rural Land Uses in the New Territories

13. **MR CHEUNG HOK-MING** (in Chinese): *President, the Planning Department (PlanD) completed the Review of Rural Land Uses in Northern New Territories (the Review) in 2001, proposing to relax the plot ratio (PR) control of "Residential (Group D)" ("R(D)") zone from 0.2 to 0.4 and to examine the "Agriculture" ("AGR") and "Recreation" ("REC") zones of which the functions are not in line with their respective stated planning intentions, as well as to clarify the functions and planning intentions of these areas through zoning amendment. In this connection, will the Government inform this Council:*

(a) of the total area of land in the New Territories which is zoned as "R(D)" and "AGR" zones at present; and among such area, the respective areas which are Government-owned and privately-owned;

(b) whether the authorities have implemented the proposal of relaxing the PR control of "R(D)" zone put forward in the Review; if they have, of the total area of land of which the PR control has been relaxed; and among such area, the respective areas which are Government-owned and privately-owned; if not, the reasons for that; and

(c) of the total area of "AGR" zone which the authorities have proactively examined since the completion of the Review; and among such area, the area of agricultural land of which the use has been changed (with a breakdown by area and amended land use)?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the Government has all along strived to provide sufficient land to meet the needs of housing and socio-economic development in Hong Kong. Under such premises, we conduct timely land use reviews in all districts, including those for rural land, with a view to achieving optimal land use.

The Review, completed by the PlanD in 2001, was primarily on the "AGR" zone and three development-related zones used in the rural statutory plans for northern New Territories, namely "R(D)", "Industrial (Group D)" and "REC". The Review aimed to preserve high-quality agricultural land systematically for the sustainable development of the local agriculture industry. It also took into account the capacity of local infrastructure in considering the relaxation of development intensity of "R(D)" zones and rezoning of some low quality agricultural land with low ecological value into other land-use zones, such as the "Other Specified Uses" annotated "Rural Use" ("OU(Rural Use)") zone with a view to fully optimizing the use of rural land. For the agricultural land within "OU(Rural Use)" zone, applications could be made to the Town Planning Board for a selected range of rural and recreational uses which could improve the environment of the area concerned, preserve the character of the rural area and achieve an effective use of land resources.

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

(a) There is currently a total of 465 ha of land zoned "R(D)" in the New Territories. Among them, about 185 ha (40%) is Government land and about 280 ha (60%) is privately owned. There is also a total of 3 280 ha of land zoned "AGR" in the New Territories. Among them, about 1 100 ha (34%) is Government land and about 2 180 ha (66%) is privately owned.

(b) The Review was completed in the early 2000s. It recommended that the PlanD should consider reviewing individual "R(D)" zones and assess the suitability of increasing their PR from 0.2 to 0.4 taking account of the local infrastructure capacity. Given the relatively poor access and the general constraints in infrastructure provision in the rural areas, it also proposed that planning approval should be required for new residential development on "R(D)" sites.

In accordance with the recommendations of the review report, the PlanD conducted a study on "R(D)" sites. The PlanD relaxed the PR of the "R(D)" zone of four Outline Zoning Plans (OZPs) (namely Kam Tin North, Tai Tong, Tai Po and Nam Sang Wai[(1)]) from 0.2 to 0.4 where infrastructure capacity could cope. The PlanD also imposed a maximum PR of 0.4 for the "R(D)" sites of 4.35 ha under the new Yim Tin Tsai and Ma Shi Chau Development Permission Area Plan. The "R(D)" zones with a maximum PR of 0.4 in those five statutory plans involve about 40 ha of land, with about 13 ha (33%) being Government land and about 27 ha (67%) being privately owned.

(c) The Review also recommended the Government to preserve good quality agricultural land for the sustainable development of the local agriculture industry and rezone the other low quality agricultural land for other uses such as "OU(Rural Use)" to support rural development. The PlanD consulted relevant government departments, including the Agriculture, Fisheries and Conservation Department, on such proposal. Sixty-three ha of land zoned "AGR" has subsequently been rezoned for other uses such as "OU(Rural Use)", "Village Type Development", "Open Storage", "Drainage Channel" and "Road", "Comprehensive Development and Wetland Enhancement Area", "Residential (Group C)", "Government, Institution or Community", "Conservation Area" and "Green Belt", and so on. Relevant information is detailed at Annex.

Annex

Area rezoned from "AGR" to other uses

Rezoned from "AGR" to other uses	*Area (ha)*	*Percentage*
"Other Specified Uses" annotated "Rural Use"	25.07	39.5%
"Drainage Channel" and "Road"	13.18	20.7%
"Village Type Development"	11.96	18.9%
"Open Storage"	5.89	9.3%

(1) Under the Nam Sang Wai OZP, 16.12 ha of land is zoned "R(D)". Among them, about 4 ha of land is zoned "R(D)1" with a maximum PR of 0.4 while the remaining land maintains a PR of 0.2.

Rezoned from "AGR" to other uses	*Area (ha)*	*Percentage*
"Conservation Area (1)"	3.64	5.7%
"Comprehensive Development and Wetland Enhancement Area"	2.41	3.8%
"Government, Institution or Community"	0.43	0.7%
"Green Belt"	0.43	0.7%
"Residential (Group C)"	0.4	0.7%
Total	63.41	100%

Shortage of International School Places for Non-Chinese Speaking Students

14. **MR ABRAHAM SHEK**: *President, it has been reported that a four-year-old non-Chinese speaking (NCS) child of a Native-speaking English Teacher (NET) who settled in Hong Kong two years ago under the Government's NET Scheme has been schooled at home as there has been difficulty in finding a school place for the child in a kindergarten (KG) that uses English as the medium of instruction, despite efforts in contacting more than 50 international and direct subsidy scheme schools. It has been reported that according to one of the international KGs that the NET approached, the child has to wait for two to three years on the waiting list for admission to that KG. It has also been reported that the American Chamber of Commerce in Hong Kong (AmCham) has expressed concern that the shortage of international school places has reached a "crisis point", and it has urged the Government to set up a committee to ensure that schooling would be available for children of foreign investors and professionals. In this connection, will the Government inform this Council:*

(a) whether it has assessed if the aforesaid situation constitutes indirect discrimination against the NCS child; if the assessment result is in the affirmative, of the details; if the assessment result is negative, the reasons for that; of the measures the Government has taken in promoting and publicizing messages against racial discrimination in schools, and whether it has evaluated the effectiveness of the measures; if it has, of the details of the evaluation;

(b) whether it knows the number of NCS children who were schooled at home, as well as the total number of international school places for NCS students in the past three years; whether it has assessed if there is a shortage of international school places for NCS students; if the

assessment result is in the affirmative, whether it has taken any measure including but not limited to setting a limit on the percentage of local students attending non-profit-making international schools applying for government assistance in the form of land grant or vacant school premises; if it has, of the details; if not, the reasons for that;

(c) given that the NET Scheme has been implemented by the Government in improving English learning and teaching in primary and secondary schools, whether it has evaluated the education needs of the children of NETs, who will settle in Hong Kong with their parents in the coming year; if it has, of the details including whether there will be sufficient number of international school places in accommodating their education needs; if there may not be sufficient school places, whether it has considered any measure to address their education needs; if it has, of the details;

(d) given that it has been reported that the waiting time for international school places is long, whether the Government has assessed if such a circumstance will discourage NETs to come to Hong Kong to teach; if it has, of the assessment result, and if the assessment result is in the affirmative, whether it will review the current policy of the provision of education by international schools; if it will, of the details; if not, the reasons for that; and

(e) whether it has considered the possibility of adopting AmCham's proposal of setting up a committee to address the shortage problem of international school places, as well as the feasibility of such proposal; if it has, of the details; if not, the reasons for that?

SECRETARY FOR EDUCATION: President, our reply to the Member's question concerning the provision of international school places for NCS children is as follows:

(a) In the context of race discrimination, indirect discrimination may occur when a same requirement or condition is applied to a person and all other persons irrespective of their racial groups but (i) which is such that the proportion of persons of the same racial group of the

first-mentioned person who can comply with the requirement or condition is considerably smaller than the proportion of persons not of the same racial group of that person who can comply with it; (ii) the requirement or condition cannot be shown to be justifiable irrespective of the race of the person to whom it is applied; (iii) that person suffers a detriment because he or she cannot comply with the requirement or condition.

International schools provide students with a choice of non-local curricula, regardless of whether they are NCS or not. There is no requirement or condition specially applied to NCS students and there is no requirement or condition which NCS students have considerably greater difficulty than other students to comply with. There are seven KGs operating non-local curriculum or non-local classes in New Territories West where the NET's family resides and 14 such KGs in New Territories East. Territory-wide, there are surplus KG places and the vacancy rate is about 18%. As such, we do not see any ground for the case to constitute indirect discrimination against the NCS child.

With the enactment of the Race Discrimination Ordinance, the Education Bureau has issued a circular to schools and, in collaboration with the Equal Opportunities Commission (EOC), conducted briefings for schools and our staff, in which educational establishments were reminded of their responsibilities to make their best endeavours in supporting the teaching and learning of all their students irrespective of race, to create an accommodating environment for ethnic diversity in schools, to respect cultural and religious differences and to maintain communication with parents.

On the other hand, the EOC promotes anti-discrimination, including those on the ground of race, in schools through various programmes. These include organizing talks and youth mentorship programmes for students as well as producing training modules targeting teachers and students. Schools also participate in EOC's Community Participating Funding Programme to develop projects promoting equal opportunities. These programmes have been implemented smoothly and largely achieved their objectives with positive feedbacks from participants. The EOC will continue to monitor the

effectiveness of its promotional efforts in schools and through other channels.

(b) To address the demand for international school places from overseas families living in Hong Kong, and families coming to Hong Kong for work or investment, the Administration has implemented various facilitation measures including allocating vacant school premises and greenfield sites for development of international schools, as well as facilitating *in-situ* expansion of existing international schools, in supporting the development of the international school sector.

We have allocated four vacant school premises and four greenfield sites between 2007 and 2009 for the expansion or development of international schools. Over the past two years, we have approved applications from seven international schools for using vacant school premises as temporary campuses. Recently, we have given in-principle support for the *in-situ* redevelopment of two existing international schools. The above measures will provide a total of over 4 500 international school places progressively in the coming few years.

To ensure that the increase in international school places in the schools mentioned above could catch up with the increasing demand from non-local families, including those from children of NETs, we have imposed a requirement for successful operators being allocated greenfield sites and vacant premises to admit non-local students at no less than 70% of their overall student population.

According to the student enrolment survey conducted in September 2011, the 47 international schools in Hong Kong provided about 37 000 places and the overall utilization rate is about 89%. These places are open to all children including NCS children. We do not have information on NCS children being schooled at home.

(c) Guided by the principle of equal opportunities, we do not require applicants for NET posts to disclose their family status in the recruitment exercise, nor should the applicants' chance of appointment be affected by their need to bring along their school-age children to Hong Kong. Moreover, NETs who choose to accept an

appointment under the NET Scheme should be fully aware of the pay and benefits under the Scheme as well as the living situation of Hong Kong. To our knowledge, NETs who come to Hong Kong with their children do not necessarily opt for international schools for their children. In fact, some NETs do send their children to English-medium schools in the public sector (including schools under the Direct Subsidy Scheme). We provide NETs with information on local education for NCS children through various channels, including the Education Bureau's webpage as well as liaison meetings between the Education Bureau and the Native English Speaking Teachers' Association. The Education Bureau will provide placement and support services to NETs who choose public sector schools for their children.

(d) It is the choice of individual NETs to send their children to international schools and the Education Bureau cannot guarantee their admission to these schools. Since its introduction in 1998, the NET Scheme has successfully attracted quite a number of NETs of different nationalities to teach in Hong Kong. Since the 2005-2006 school year, we have introduced a Retention Incentive for eligible NETs to encourage them to continue their service in Hong Kong. Recent statistics show that the wastage of NETs has stabilized.

(e) We have been maintaining dialogue with the chambers of commerce, international schools and other concerned parties to keep track of the supply and demand of international school places and to support the development of the international school sector. Issues relating to the provision of international school places have been raised at a number of forums including the International Business Committee chaired by the Chief Secretary for Administration with representation from various chambers of commerce, as well as the Business Advisory Facilitation Committee set up by the Financial Secretary and chaired by a non-official member from the business community with members including businessmen, academics, professionals and Legislative Council Members. We consider that these channels are effective in reflecting community views on the provision of international school.

We have commissioned a consultancy study to stocktake the existing provision of international school places and project future demand and supply. We will assess the long-term provision of international school places taking into account views gauged from the abovementioned channels and the outcome of the study. Pending our assessment of the projected demand for international school places in the long run, we would consider the need for further facilitation measures to meet the more immediate development needs of international schools. We would identify and plan for allocation of a few suitable vacant premises to facilitate school operators which seek to improve or expand their existing premises as far as possible. We would launch an Expression of Interest exercise among international schools for vacant premises to ascertain their development needs and interests in the premises before conducting a school allocation exercise. We will announce the timing of the exercise when we have confirmed the availability of the premises concerned.

Curriculum for Special Schools

15. **MISS TANYA CHAN** (in Chinese): *President, it has been reported that under the current system, government-aided secondary and primary schools (including schools for the physically handicapped) can apply to the Education Bureau for joining the Native-speaking English Teacher (NET) Scheme, but a special school admitting students with intellectual disabilities (ID) has been denied participation in the Scheme by the Education Bureau. There have been comments that with changes in society and the employment environment, persons with ID might work in the service industry, hence the special education system for students with ID should be reviewed. Regarding the policy on the curriculum for special schools, will the Government inform this Council:*

(a) of the number of students with ID studying in government-aided special schools at present; whether it knows among these students, the number of those who take the subject of English language, and the number of those who benefit from NET services in schools for the physically handicapped;

(b) given that at present, some students with ID studying in special schools and students in mainstream schools study under the same curriculum framework, and the only difference lies in the depth of content and the progress of learning, of the reason and justification for denying schools for students with ID from participating in NET Scheme;

(c) whether it knows if NETs who teach in special schools at present have received training in special education; whether the authorities will take measures to attract more NETs who have received training in special education to teach in Hong Kong; if they will, of the relevant details; if not, the reasons for that; and

(d) given that the nature of the curriculum for students with ID is increasingly similar to that of the curriculum adopted by mainstream schools, and that the career prospects for students with ID are different from those in earlier years, whether the authorities will consider conducting a comprehensive review of the policy on the curriculum for students with ID; if they will, of the relevant details; if not, the reasons for that?

SECRETARY FOR EDUCATION (in Chinese): President, my reply to Mr CHAN's question is as follows:

(a) It is the established practice of the Education Bureau to refer students to special schools according to their major disability. Special schools will provide appropriate education for their students having regard to their major disability, and make necessary adaptation and support in teaching and learning to cater for the students' with multiple disabilities. In the 2011-2012 school year (as at 15 September 2011), a total of 5 618 students whose major disability is ID attend aided schools for children with intellectual disability (ID schools). As for other types of special schools which admit students whose major disability is not ID, we do not have statistics on the number of students with ID in these schools.

English language is not a formal subject in ID schools. However, some ID schools provide different types of school-based English

learning activities for their students, such as vocational English and practical English activities. As for schools for children with physical disability, schools for children with visual impairment and schools for children with hearing impairment which offer the mainstream curriculum, NETs may be employed. These schools may decide on how to optimize the use of NET resources in accordance with the Education Bureau's guidelines for deployment of NETs. As these schools will adjust the learning contents and flexibly arrange group teaching for their students based on their individualized education programme and learning progress, some students, including those with ID apart from their major disability, may not be taught directly by NETs. Therefore, we do not have statistics on the number of students in these schools who benefit from the NET Scheme.

(b) Under the principle of "one curriculum framework for all", ID schools will adapt the central curriculum recommended by the Curriculum Development Council to cater for the special learning needs of their students. Although some ID schools will arrange practical English activities for their students, such activities are conducted as part of their school-based English learning programme or activities. Under the existing policy, the NET Scheme does not cover ID schools in view of the different learning needs of their students. Nevertheless, the NET Section of the Education Bureau will provide school-based peripatetic support for ID schools as required on a case by case basis to directly support their English activities. In fact, not every mainstream primary school can employ a full-time NET. Primary schools with fewer than six classes are also provided with school-based peripatetic support through the NET Section.

(c) Under the NET Scheme, a qualification in special education training is not an appointment requirement. However, the Education Bureau has always encouraged teachers, including NETs, to pursue continuing professional development according to their own and their schools' development needs. The Education Bureau organizes various training programmes for serving teachers to strengthen their professional competence in supporting students with special educational needs (SEN). In general, teachers who have received

teacher training should have basic knowledge about how to cater for learner diversity. With in-service training on SEN, they should be able to teach in special schools. At present, individual NETs teaching in special schools have received training in special education. The Education Bureau also organizes training programmes, workshops, professional support network activities and school-based professional development activities for serving NETs. Topics on SEN are covered in these activities.

(d) When formulating the policy on the curriculum for students with ID, the Education Bureau has maintained close contact with the school sector, and gave due consideration to the views collected from the sector through extensive consultation. We have also taken into consideration overseas experience and suggestions from academics. Therefore, the existing curriculum policy is widely accepted by the sector. The document entitled "Action for the Future ― Career-oriented Studies and the New Senior Secondary Academic Structure for Special Schools" released in August 2006 further affirmed the existing curriculum policy, based on which we have developed the senior secondary curriculum for students with ID.

Operation of Ngong Ping 360

16. **DR LAM TAI-FAI** (in Chinese): *President, since the commissioning of the cable car system of Ngong Ping 360 (Ngong Ping 360) on 18 September 2006, various kinds of incidents and suspension of services have occurred frequently, and the situation remains the same after its management has been changed. It has been reported that the cable car service was suspended again suddenly on the 25th of last month, causing 800 passengers to be stranded in the cabins for around two hours in extremely cold weather. There have been comments that the incident reflects the poor management of the Ngong Ping 360 Limited (the Company) which has seriously affected the reputation of Hong Kong's tourism industry. In this connection, will the Government inform this Council:*

(a) given that the Company has announced that it would conduct a detailed investigation into the incident which occurred on the 25th of last month, whether the authorities will release the investigation

report; if they will, when they will do so; if not, of the reasons for that;

(b) whether it knows the dates, causes, duration of stoppages and the number of passengers being affected by the service suspension incidents which have occurred since the commissioning of Ngong Ping 360; and among such incidents, the number of those involving negligence and whether any person should be held responsible, as well as the respective numbers, types and results of the complaints received, together with a breakdown in table form;

(c) given that some of the passengers stranded in the aforesaid incident have openly complained to the media that the passengers were anxious as the Company failed to explain the cause of the incident to them through public announcement during the incident, whether the Government knows if the Company has any mechanism in place to ensure that it can maintain proper communication with the passengers during an incident and inform the passengers clearly and accurately of the relevant details as soon as possible; and whether the Company will review the mechanism for providing compensation to the stranded passengers (including offering multiple free rides on the cable cars again to local passengers and compensation for air tickets or hotel accommodation to overseas and mainland visitors); if so, the details; if not, the reasons for that;

(d) given that there have been complaints that the Company did not stop the sale of tickets immediately after the occurrence of the aforesaid incident, whether the Government knows the reason for that, and if the Company has put in place a set of contingency measures and notification arrangement for suspension of services in respect of unexpected incidents to facilitate comprehensive and proper co-ordination; if it has, the details; if not, the reasons for that;

(e) whether it knows if the Company has conducted regular reviews of and assessments on the daily operation and management of Ngong Ping 360, as well as on the technical support for the system, so as to ensure that its service standard is acceptable to the public; if it has, the details; if not, the reasons for that;

(f) whether it knows if the Company will provide any form of compensation for the suspension of services to all shop tenants in the Ngong Ping Village, including the provision of concession in the form of "rent-free day during service suspension"; and whether it will reduce the fares or provide different forms of concessions in view of the frequent occurrence of incidents, so as to attract more visitors and improve the business environment for the shop tenants in the Ngong Ping Village;

(g) whether it has assessed the impact of the various incidents on the image of Ngong Ping 360, the tourism industry of Hong Kong as well as the shop tenants in the Ngong Ping Village; and whether it has formulated any proposal to restore the image of Ngong Ping 360;

(h) whether it knows if the Board of the Company will introduce an "adjustment mechanism" to provide for both upward and downward adjustments for the remunerations of the management which are linked with the frequency of incidents (for example, if incidents occur frequently, the entire management will be subject to pay reduction); if it will, the details concerned; if not, the reasons for that;

(i) whether it knows the various fare levels, rates of fare increase as well as the dates and justifications for fare increase since the commissioning of Ngong Ping 360, with a breakdown set out in table form; and whether the Government has assessed the reasons for the continuous lack of improvement in the service standard of Ngong Ping 360 despite the continuous increase in its fares; if it has, of such reasons;

(j) whether the MTR Corporation Limited or the authorities have assessed if the performance of the management of the Company is satisfactory, and under what situation in the operation of Ngong Ping 360 the authorities will consider changing the management;

(k) as quite a number of serious incidents which could endanger the safety of the passengers of Ngong Ping 360 (including the aforesaid incident and the cabin dislodgement incident in 2007, and so on) had occurred, whether the authorities have assessed if Ngong Ping 360

complies with the required safety standard; and how its safety standard compares with those of the cable cars in other places; and

(l) whether it knows if the Company has taken out insurance for the passengers; and the maximum amount of compensation to be paid by the Company or the relevant insurance companies in respect of casualties in incidents resulting in death or injury of the passengers of Ngong Ping 360?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the Government is very concerned about the recent spate of service suspension of Ngong Ping 360, particularly the latest incident of 25 January this year that led to visitors being stranded in car cabins for nearly two hours. The Government has asked the Ngong Ping 360 to maintain high safety standards, reliable services and give due regard for visitors' needs.

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

(a) On 3 February, the Company announced the preliminary investigation results of the incident that occurred on 25 January. Together with cable car system experts, the Company has investigated the faulty bullwheel bearing, and found irregular scratches on the inside surface of the bearing. While the scratches will not impact on ropeway safety, it may affect the smooth operation of the cable car system and cause service interruptions. In view of this, the Company decided to extend the service suspension period for two months in order to replace the bearings of all seven sets of bullwheels and advance the annual examination for 2012. The Electrical and Mechanical Services Department (EMSD) will monitor closely the progress of repair works and tests of the Ngong Ping 360 during the suspension period. Approval for the resumption of cable car service will be contingent on satisfactory test results.

The Company has arranged the bearings manufacturer to further probe into the cause of the bearing erosion. An in-depth investigation into the breakdown of Ngong Ping 360 on 25 January by the EMSD is also underway. The results will be announced as soon as possible on conclusion of the investigation.

(b) Details of operation-related stoppages that occurred between the commencement of the Ngong Ping 360 in September 2006 and 25 January 2012 (when the above-mentioned incident occurred) are set out at Annex I.

Of these incidents, the Skyrail-ITM (Hong Kong) Limited (Skyrail-ITM), the then operating company, was held responsible for the incident that occurred on 11 June 2007 when a car cabin plunged to the ground. The Skyrail-ITM admitted that it had been negligent in performing the annual examination in breach of section 23A of the Aerial Ropeways (Safety) Ordinance.

The number and types of complaints received since the Ngong Ping 360 resumed service on 31 December 2007 are set out at Annex 2. The Company has handled these complaints properly and replied to the complainants.

(c) The current emergency response mechanism of Ngong Ping 360 covers the arrangement for the dissemination of information to passengers. When the service halts for three minutes, the Company will broadcast the information to both passengers in cabins and guests waiting at Tung Chung and Ngong Ping termini.

At 2.49 pm on 25 January, after the cable car service had stopped for three minutes, a pre-recorded message about the stoppage was broadcast to both the passengers in cabins and the waiting guests. The Ngong Ping 360 also presented "appreciation packs" to affected guests at the Tung Chung Terminal as a token of apology for disrupting their itineraries. Each pack contained a written apology from the Company, a gift ticket for a round trip cable car ride and gift shop coupons. The Company also distributed bottled water and heat packs to the affected guests. The guests could also opt for a refund.

We considered the above arrangements not satisfactory and have instructed the Ngong Ping 360 to make improvements, including substituting the broadcast of recorded messages with live broadcasts. The Company management has also been asked to disseminate news of incidents expeditiously to the media and visitors; and to ensure

that notification to alert visitors heading for the cable car ride of suspension of service would not be delivered through print alone.

(d) According to the Company's report, its ticketing office had stopped selling tickets immediately when the ropeway service was suspended after the incident on 25 January. But the transactions that were already underway when the ticketing system halted would continue to be completed with tickets issued. Cable car tickets are issued for time slots of 15 minutes. As such, when the ropeway service was suspended at 2.49 pm on 25 January, the service time slot affected was 3 pm. Therefore, the "3 pm" printed on the tickets referred to the ropeway service time slot instead of the time of ticket purchase.

The Company is reviewing ways to enhance internal communication and foster effective co-ordination in handling emergencies.

(e) The Company regularly reviews and assesses its daily operations, which cover the following:

(i) maintenance of daily records of events and activities by the Cable Car Operations Department and the Guest Services and Village Operations Department;

(ii) monthly performance review on cable car operations in respect of safety and service quality by the management committee, which comprises the Managing Director and department heads; and

(iii) bi-annual provision of technical support by ropeway experts.

In the light of the incident on 25 January, the Company is reviewing its current maintenance programme and actively exploring ways to increase the frequency for regular maintenance and improve the maintenance practices.

(f) The Company stated that it had maintained close liaison with its shop tenants and discussed with them various assistance measures and joint promotions to draw people to visit and spend at the Ngong

Ping Village during the suspension of ropeway service. A visitor who spends $60 at the Ngong Ping Village will be entitled to a single journey MTR ticket for use on the same day.

(g) The thorough investigation and tests, complete replacement of all related parts, and improvements to contingency and communication arrangements implemented in the aftermath of the incident on 25 January, all demonstrated the management company's commitment to maintaining service safety and reliability. It is doing all it can to ensure the reliability of the cable car system before the resumption of operation. We consider that the Ngong Ping 360 incident will not cause any long-term impact on tourism.

(h) and (j)

At present, our priority is to devote all energy to work on investigation, repair and tests to facilitate resumption of service of the ropeway system.

(i) The ticket prices of Ngong Ping 360 and rates of price increase since September 2006 are set out at Annex 3. The price adjustments are mainly due to rising operating costs caused by price increases for spare parts purchased from Europe over the past several years.

(k) According to the EMSD's assessment, the design of Ngong Ping ropeway conforms to international safety standards and practices. It is also in compliance with the safety standards as stipulated in the Code of Practice on the Design, Manufacture and Installation of Aerial Ropeways compiled by the EMSD. The design of the Ngong Ping 360 ropeway is safe.

(l) The Company has taken out insurance for its operations. The insurance policy covers passenger injuries and casualties caused by ropeway incidents. The insurance company concerned will make appropriate arrangements according to individual cases and circumstances.

Annex 1

Ngong Ping Ropeway Stoppage Record
(From September 2006 to January 2012)

Under the management of Skyrail-ITM (From September 2006 to June 2007)

Date	*Stoppage Duration*	*Reason*
2006		
30 September	10:35 to 11:26 (51 minutes)	An incorrect plug was used at Tung Chung Terminal, leading to improper functioning of the system.
8 October	16:48 to 17:46 (58 minutes)	Inadequate clearance between the hauling rope and the shaft of the rope catcher at the tower, ground fault alarm was activated.
15 October	10:00 to 10:59 (59 minutes)	Delay in pre-operational arrangement
15 October	18:05 to 19:00 (55 minutes)	Inadequate cabin separation at Nei Lak Shan Angle Station
27 October	10:00 to 14:20 (Four hours 20 minutes)	Fault occurred at a conveyor inside the Cabin Storage Area
2007		
1 January	16:14 to 17:26 (One hour 12 minutes)	A friction tire in Ngong Ping Terminal deflated
3 January	18:20 to 19:38 (One hour 18 minutes)	Fault occurred at a speed encoder in Airport Island Angle Station
17 January	12:05 to 18:25 (Six hours 20 minutes)	Not taking required procedures corresponding to humid weather
9 April	18:05 to 18:56 (51 minutes)	Insufficient tension in a friction belt in Airport Island Angle Station
11 May	11:06 to 13:06 (Two hours)	Fault occurred at a damping roller in Tung Chung Terminal during operation
11 June	12 June to 30 December	During the annual examination, a cabin was plunged to the ground due to negligence in the process.

Notes:

(1) In accordance with the current notification mechanism, Ngong Ping 360 will inform the public through electronic media if the cable car service is expected to be delayed or suspended for 30 minutes or more. Details of operation-related stoppages which required activation of the notification mechanism are shown in this Annex.

(2) The Company does not have the number of passengers affected by the service suspension under the management of Skyrail-ITM.

Under the management of the Company
(From 31 December 2007 to 25 January 2012)

Date	*Stoppage Duration*	*Reason*	*Number of affected passengers*
2008			
19 March	15:39 to 16:34 (55 minutes)	One of the friction belts in Ngong Ping Terminal dislodged.	N.A.[#]
29 March	14:59 to 15:29 (30 minutes)	One of the friction belts in Ngong Ping Terminal dislodged.	- ditto -
11 April	12:20 to 13:48 (One hour 28 minutes) Note: 14:17 close of service (service resumed on 12 April)	One of the friction belts in Nei Lak Shan Angle Station dislodged.	- ditto -
15 May	10:38 to 11:38 (One hour)	Fault occurred at a speed encoder assembly in Nei Lak Shan Angle Station.	- ditto -
26 June	14:05 to 14:40 (35 minutes)	Fault occurred at an electronic measurement device assembly in Nei Lak Shan Angle Station.	- ditto -
2009			
12 May	10:00 to 14:00 (Four hours)	Ropes were overlapped, causing delay in the pre-operation preparation work.	- ditto -
9 October	11:40 to 12:00 (20 minutes) (cable car stopped boarding during 11:10 to 11:40, while the ropeway continued to operate to alight passengers)	Repaired an overheated pulley assembly at Airport Island Angle Station.	- ditto -
2011			
2 January	09:00 to 09:59 (59 minutes)	Delay in the pre-operational works. Adjustment of the transmission belt tension was required at the Ngong Ping Terminal.	0

Date	*Stoppage Duration*	*Reason*	*Number of affected passengers*
8 December	16:35 to 16:51 (16 minutes) Cable car operation was stopped to carry out maintenance and testing. 16:51 to 17:21 (30 minutes) Passenger boarding was stopped. However, the ropeway still continued to operate until alighting of all passengers.	Partial wear on the haul rope sheave lining in the Ngong Ping Terminal.	300
18 December	14:22 to 15:16 (54 minutes) Passenger boarding was stopped. However, the ropeway still continued to operate until alighting of all passengers. 15:16 to 16:15 (59 minutes) Cable car operation was stopped to carry out maintenance and testing. 16:15 Cable car service resumed to normal.	Fault occurred at a roller bearing of the cabin transportation system in Tung Chung Terminal.	300
22 December	16:40 to 16:53 (13 minutes) Cable car operation was stopped to carry out checking and maintenance. 16:53 to 18:07 (One hour 14 minutes) Passenger boarding was stopped. However, the ropeway still continued to operate until alighting of all passengers.	Fault occurred at the cabin spacer of the Ngong Ping Terminal.	400

Date	*Stoppage Duration*	*Reason*	*Number of affected passengers*
2012			
25 January*	14:49 to 15:22 (33 minutes) Cable car operation was stopped to carry out checking and maintenance. 15:22 to 16:53 (One hour 31 minutes) Passenger boarding was stopped. However, the ropeway still continued to operate until alighting of all passengers.	Noise originated from the bearing of a haul rope sheave at the Airport Island Angle Station, requiring a detailed checking and repair.	800

Notes:

\# The Company does not have the records on the number of passengers affected by the service suspension before 2011.

* Ngong Ping 360 cable car service has been suspended since then.

Annex 2

Number and types of complaints received by Ngong Ping 360 (From 1 January 2008 to present)

Types of complaints	*2008*	*2009*	*2010*	*2011*	*January 2012*	*Total*
Marketing	3	1	1	1	0	6
Website Information	3	1	0	0	1	5
Retail Services at Ngong Ping 360	6	1	1	2	0	10
Shop Tenants of Ngong Ping Village	5	2	0	4	0	11
Queuing and Boarding Arrangements	33	12	12	11	4	72
Guest Services	4	5	2	10	7	28
Ticketing Service	39	33	9	7	0	88
Ngong Ping 360 Hotline	2	0	1	1	1	5
Operation of the Ngong Ping Village	3	0	1	1	0	5
360 Holidays Guided Tour	0	0	0	1	0	1
Staff Performance	11	3	7	4	1	26
Others	11	6	7	7	2	33
Total:	120	64	41	49	16	290

Annex 3

Ticket Prices of Ngong Ping 360
(From 18 September 2006 to present)

Effective Date of Ticket Price	*Standard Cabin* $				*Crystal Cabin*# $	
	Round Trip		*Single Trip*		*Round Trip*	*Single Trip*
18 September 2006	Regular days 88	Special days 98	Regular days 58	Special days 68	-	
1 December 2008	Regular days 96 (+9%)	Special days 107 (+9%)	Regular days 63 (+9%)	Special days 74 (+9%)	157	109
1 December 2009*	107 (+11% △)		74 (+17% △)		157 (+0%)	109 (+0%)
1 December 2010	115 (+7%)		80 (+8%)		169 (+8%)	118 (+8%)
1 December 2011	125 (+9%)		86 (+8%)		188 (+11%)	130 (+10%)

Notes:

* Ngong Ping 360 has set the same ticket price for both regular and special days since 1 December 2009.

\# The Crystal Cabin service has commenced since 4 April 2009.

() The bracketed figures represent the rate of ticket price increase as compared with last year.

△ The change in ticket price for regular days as compared with last year.

Measures to Combat Pregnant Mainland Women Renting and Staying in Unlicensed Guesthouses in Hong Kong

17. **MR PAUL TSE** (in Chinese): *President, it has been reported that some pregnant Mainland women rent and stay in the units in a private housing estate near Kwong Wah Hospital in recent months, in order to rush to the Accident and Emergency (A&E) Department for last-minute delivery; the property management office of the housing estate concerned found that some people even brought with them more than 10 pregnant Mainland women to stay in such units, and suspected that some owners or tenants are operating unlicensed guesthouses to lease out units illegally to pregnant Mainland women on a daily or "sublease" basis. It has also been reported that the property management office lodged*

complaints to the Home Affairs Department (HAD) in writing many times, but this did not help solve the problem. In this connection, will the Government inform this Council:

(a) of the total number of complaints received by the HAD from the aforesaid property management office, and how the HAD followed up the complaints; of the reasons for failing to assist in solving the problem;

(b) whether it has assessed the current number of private housing estates throughout the territory in which units are leased out on a short-term or "sublease" basis to pregnant Mainland women giving birth in Hong Kong, and the number of pregnant Mainland women involved;

(c) given that the Court of Final Appeal handed down the judgment on Chong Fung-yuen's case that children of Chinese nationality born in Hong Kong to Chinese nationals have the right of abode (ROA) in Hong Kong, irrespective of whether or not their parents have settled or have ROA in Hong Kong, and the problem of those pregnant Mainland women whose husbands and they themselves are both not permanent residents of Hong Kong (doubly non-permanent resident pregnant women) giving birth in Hong Kong is becoming more and more serious at present, of the authorities' stance on addressing such problem by seeking interpretation of the Basic Law and the justifications; further, whether it has assessed if the policy of the authorities to combat "doubly non-permanent resident pregnant women" giving birth in Hong Kong through administrative measures has been effective in practice; if the outcome of the assessment is in the affirmative, of the reasons why there are still pregnant Mainland women renting and staying in units in a private housing estate in order to rush to A&E Department for last-minute delivery as mentioned above; if the outcome of the assessment is that it is impossible or difficult to combat the relevant cases through administrative measures, whether it has studied to completely solve the problem at source through other means, such as interpretation of the Basic Law; if it has, of the outcome of the study; if not, the reasons for that; whether the Government has planned to assess the effectiveness of the measures regularly (for example, at an interval

of every three to six months), and to assess the confidence of the members of the public of Hong Kong in such measures, with a view to understanding public view; if it has, of the plan; if not, the reasons for that; and

(d) given that around 1 000 members of the public of Hong Kong (including pregnant women and children) staged a march despite the rain on 15 January this year, requesting the Government to deal with the problem of "doubly non-permanent resident pregnant women" giving birth in Hong Kong through interpretation of the Basic Law, of the response of the Government to their aspirations expressed in the march?

SECRETARY FOR HOME AFFAIRS (in Chinese): President, the operation of hotels and guesthouses in Hong Kong is regulated by the Hotel and Guesthouse Accommodation Ordinance (Cap. 349) (the Ordinance), which stipulates that any premises providing sleeping accommodation at a fee with a tenancy term of less than 28 consecutive days shall obtain a licence before commencing operation. The Office of the Licensing Authority (OLA) under the HAD is responsible for the enforcement of the Ordinance. It is tasked with the issue of licences and enforcement work. Operating an unlicensed guesthouse is a criminal offence. Any person who is convicted for operating an unlicensed guesthouse is liable to imprisonment. The maximum penalty upon conviction is a $200,000 fine and imprisonment for two years, and a fine of $20,000 for each day during which the offence continues.

The OLA has spared no efforts in combating unlicensed guesthouses operation. Upon receipt of a complaint, it will conduct an inspection within eight working days, and, having regard to the circumstances of each case, will also collect evidence through various means, including conducting surprise inspections during and outside office hours and posing as clients (commonly known as "snaking") to collect evidence when necessary. Upon investigation, if it shows that there is sufficient evidence indicating operation of unlicensed guesthouses in the premises, prosecution shall be instituted. Moreover, the OLA will conduct large-scale inter-departmental surprise and raiding operations with other departments concerned.

My reply to Mr Paul TSE's question is as follows:

(a) and (b)

Upon receipt of reports on suspected operations of unlicensed guesthouses in a private housing estate near Kwong Wah Hospital, the OLA conducted a series of targeted enforcement actions, including repeated inspections of the premises during different periods of time, inquiring persons staying in suspected unlicensed guesthouses at the lobby of the housing estate and conducting "snaking" operations to collect evidence. Investigation revealed that a premises was suspected of offering short-term rental accommodation to pregnant Mainland women and that a Mainland visitor had been in breach of conditions of stay. The Administration has instituted prosecution under the Ordinance and the Immigration Ordinance. Some of the premises involved fell beyond the purview of the Ordinance as they were leased on a monthly basis. As for the remaining premises, the OLA will continue to follow up in a vigorous manner. If there is sufficient evidence for unlicensed operation of guesthouses in the premises, the OLA will institute prosecution actions.

The OLA has in the past received reports on premises suspected of offering short-term rental accommodation to pregnant Mainland women and they are classified and handled as cases of "suspected unlicensed operation of guesthouses". The OLA does not have a breakdown of the number of reports on leasing premises in private housing estates to pregnant Mainland women as short-term accommodation.

(c) and (d)

The Food and Health Bureau is very concerned about the surge of demand for Hong Kong's obstetric services by non-local women (including Mainland women) in recent years, which has caused tremendous pressure on the overall obstetric and neonatal care services. To ensure that proper and adequate obstetric and neonatal care services are available for Hong Kong residents, and that local

pregnant women are given priority for obstetric services, the number of non-local pregnant women giving birth in Hong Kong in 2012 will be limited by the Government to 35 000, among which 3 400 delivery places are for non-local women in the Hospital Authority (HA) and around 31 000 planned number of deliveries are in private hospitals.

In addition, the Administration has introduced and gradually implemented various other measures. Non-local pregnant women who are planning delivery in private hospitals in Hong Kong will be required to undergo antenatal check-ups by obstetricians in Hong Kong at an appropriate stage for assessment on whether they are suitable to give birth in Hong Kong, so that the safety of such pregnant women and their babies shall not be compromised due to travelling or other factors. To this end, the Hong Kong College of Obstetricians and Gynaecologists has issued professional guidelines on projected high-risk pregnancies in September 2011. The Department of Health (DH) has also co-ordinated and standardized the "Certificate on confirmed antenatal and delivery booking", which will be issued by hospitals to pregnant women suitable to give birth in Hong Kong and will be used by the Administration to keep track of the utilization of the delivery quota.

To deter non-local pregnant women from seeking emergency deliveries through A&E Departments shortly before labour, which will trigger increased risks to the women themselves, their babies and the medical staff, the HA is reviewing the charges on non-local pregnant women seeking admission to hospitals for delivery through A&E Departments. The DH is also taking steps to deploy additional medical personnel to various control points, assisting the immigration officers to conduct arrival clearance checks of non-local women.

The HA is reviewing the delivery quota for non-local pregnant women in the coming year, that is, 2013. Subject to local women's demand for obstetric services, the Administration will further reduce or even remove the above quota entirely when necessary, and will discuss with private hospitals to determine the number of non-local women to be allowed to give birth in Hong Kong in the following

year. Private hospitals are required to set aside sufficient places and to give service priority to local pregnant women.

On immigration controls, the Immigration Department (ImmD) will strengthen surveillance of non-local pregnant women. The ImmD also maintains close liaison with the Mainland authorities to deter non-local pregnant women from seeking entry shortly before labour. Besides, cross-boundary hire cars are not allowed to carry passengers for hire or reward unless the vehicles have been issued the official quota by both the Guangdong and Hong Kong authorities. The Administration believes that there are agencies which arrange for non-local pregnant women without booking to enter Hong Kong by means of cross-boundary vehicles with no official quota. Regarding these cases of non-compliant use of cross-boundary vehicles for carrying non-local pregnant women to Hong Kong, the police are collaborating with the Mainland authorities to jointly combat non-compliant vehicles and drivers.

On the other hand, the police have been closely monitoring the *modus operandi* and promotion tactics of agencies in Hong Kong. If any unlawful acts are detected, enforcement actions will be taken in accordance with the relevant legislation. For agencies operating in the Mainland, the police have been conducting joint investigations with the Mainland authorities to combat cross-boundary illegal practices.

On the necessity of asking for interpretation of the Basic Law, social consensus is yet to be reached and a comprehensive study is required. The Administration will continue to take heed of the views of the community. All departments concerned will be closely monitoring the effectiveness of the above administrative measures. At this point, there is no specific timetable for reviewing the measures. We may introduce further administrative measures or maintain the existing measures in the light of the circumstances. The Government will co-operate with the Mainland and discuss the issue of "doubly non-permanent resident pregnant women" giving birth in Hong Kong with the Mainland authorities concerned through established mechanisms.

New Air Quality Objectives to be Introduced in Hong Kong

18. **MR FREDERICK FUNG** (in Chinese): *President, the Government announced on 17th of last month that it will commence work on the amendment of the Air Pollution Control Ordinance (Cap. 311) to update the existing Air Quality Objectives (AQOs), and it expects to introduce a bill in the 2012-2013 Legislative Session, and officially implement the new AQOs in 2014. In this connection, will the Government inform this Council:*

(a) given that while the authorities launched a four-month public consultation on updating the existing AQOs in mid-2009, of the reasons why the outcome is only announced until now and the decision of adopting the new AQOs is made after a lapse of as long as two and a half years; of the actual work and procedures to be involved from now on up to the date of formal introduction of the bill; whether it can expedite the related work, and consider advancing the date of official implementation of the new AQOs; in addition, whether it can advance the updating of the existing method of compiling the Air Pollution Index (API), or simultaneously release on a daily basis the APIs compiled according to the existing AQOs and the new AQOs respectively; if not, of the reasons for that;

(b) given that the new AQOs have not fully adopted the ultimate objectives set out by the World Health Organization (WHO) (for example, the average 24-hour AQO for sulphur dioxide will be tightened from 350 µg per cu m to 125 µg per cu m, which is significantly different from the WHO's ultimate objective of 20 µg per cu m; the average 24-hour AQO for respirable suspended particulates will be tightened from 180 µg per cu m to 100 µg per cu m, and a gap still exists between this and the WHO's ultimate objective of 50 µg per cu m; regarding the newly added average 24-hour AQO of 75 µg per cu m and annual AQO of 35 µg per cu m for fine suspended particulates, an obvious gap exists respectively between the two AQOs and the WHO's corresponding ultimate objectives of 25 µg per cu m and 10 µg per cu m), of the specific reasons for the authorities not adopting the WHO's ultimate objectives for such pollutants (including whether it is because it is impossible for Hong Kong to achieve the WHO's ultimate objectives for such pollutants at present,

together with the reasons why it is impossible to achieve the objectives for various pollutants); whether the authorities will draw up a timetable for achieving the WHO's ultimate objectives eventually;

(c) whether it has assessed the price the community has to pay upon the implementation of the new AQOs; if it has, of the specific details (including the specific impact of the new AQOs on electricity tariffs and travelling expenses in future); of the expected time when such impact will be reflected in the levels of relevant charges and fees; whether the authorities have assessed the impact on the livelihood of the grassroots, and what measures they have in place to alleviate such impact; and

(d) given that the Government has expressly stated that prior to the official implementation of the new AQOs, it will endeavour to adopt the proposed new AQOs as the benchmark in conducting environmental impact assessment (EIA) for government projects for which EIA has not yet commenced, whether the authorities will consider encouraging and facilitating other private projects to adopt the proposed new AQOs in conducting air quality assessment under EIA as well before the official implementation of the new AQOs; if not, of the reasons for that?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

(a) Implementation of the new AQOs and related transitional arrangements require amendment of the Air Pollution Control Ordinance. We shall table the Amendment Bill to the Legislative Council in the 2012-2013 Legislative Session. Taking into account the time needed for drafting, submission and scrutiny of the Bill and other preparatory work, we expect the new AQOs to take effect in 2014. To tie in with the update of the AQOs, we will review and improve the existing API system accordingly.

(b) The new AQOs have all been set in accordance to the target levels of the WHO. Among the seven criteria pollutants, four (that is, nitrogen dioxide, carbon monoxide, lead and sulphur dioxide) are

fully or partially adopting the ultimate WHO Air Quality Guidelines (AQGs). As for suspended particulates, the emissions originated from Hong Kong and from the Pearl River Delta Region are in the ratio of 1:99. As a result, the particulate concentrations of Hong Kong are subject to strong regional influence. We and the Guangdong Provincial Government have committed to implementing a number of measures to improve the regional air quality. Taking into account the regional influence, the air quality objectives for suspended particulates cannot be updated in one go. Instead, we have to draw up a practicable proposal. We propose to update the respirable suspended particulate (PM10) objectives to WHO Interim Target-2 (IT-2). For fine suspended particulates (PM2.5), which account for about 70% of the PM10 in Hong Kong, we propose to set them at WHO IT-1 level. As for sulphur dioxide, we propose to update the 24-hour objective to WHO IT-1 (that is, 125 μg per cu m), which is already 60% more stringent than the existing objective, and on a par with the level of the European Union.

Achieving the WHO AQGs is our ultimate target. We shall review the feasibility of further tightening the AQOs every five years, and draw up corresponding air quality management plans.

(c) Implementation of the proposed new AQOs and air quality improvement measures will help alleviate air pollution problems and bring about health benefits which include reducing the number of hospital admissions due to asthma or other respiratory conditions. According to the Consultant's study report, implementation of the recommended Phase 1 emission control measures would lead to an anticipated benefit of about $1,228 million annually due to improvement in public health, which is significantly higher than the estimated annualized cost of about $596 million to be incurred by the society. The Consultant also estimated that some 4 200 hospital admissions could be avoided because of the improvement measures. In addition, the average life expectancy of the population would be increased by about one month or around 7 400 life years saved each year.

During the public consultation in 2009, we initially estimated that with the increase in percentage of natural gas for local electricity generation to 50%, electricity tariff would probably increase from the current level by at least 20% in phases. However, as the adjustment of electricity tariff will be implemented in phases, it is difficult to ascertain the eventual increase at the moment. For instance, with the capital cost of the desulphurization equipment previously installed by the power companies spreading over a period of time, the impact on tariff is lower than originally expected. To reduce vehicle emissions, it was estimated previously that if the franchised bus companies were to replace all the Euro I and Euro II franchised buses by the end of 2014, the bus fare would increase by about 15% in a single year. However, Government introduced in recent years a number of measures, including funding the retrofitting of Euro II and Euro III franchised buses with selective catalytic reduction devices and subsidizing bus companies to test environment-friendly products and devices, such as hybrid and electric buses. These measures, which are funded by Government, will help alleviate the pressure for bus fare increase. Therefore, it is difficult to conclude at this moment if implementation of the air quality improvement measures would eventually result in an increase in the charges of public services to the previously estimated levels.

(d) Before the relevant legislative amendment becomes effective, Government will take the lead to adopt the proposed new AQOs as the benchmark for conducting air quality impact assessment under the EIA for those government projects that have not yet started their EIA studies. Individual major infrastructure projects, such as the construction of a third runway for the airport, the Airport Authority has indicated they will adopt the new AQOs for the EIA study. For other private projects, the project proponents may consider whether or not to adopt the new objectives for air quality impact assessment according to their own circumstances.

Default on Payment of Medical Fees by Non-eligible Persons

19. **DR RAYMOND HO** (in Chinese): *President, the public healthcare services (healthcare services) in Hong Kong are heavily subsidized by the*

Government, and only "Eligible Persons", that is, holders of Hong Kong Identity Card or children under 11 years of age who are Hong Kong residents, are entitled to use healthcare services at heavily subsidized rates, whereas other users are "Non-eligible Persons" (NEPs). In this connection, will the Government inform this Council whether it knows:

(a) the numbers of NEPs who received healthcare services in the past five years, with a breakdown by year and type of services received (that is, emergency and non-emergency services);

(b) the respective total amounts of medical fees payable by NEPs and the payments in default in the past five years, with a breakdown by year; and

(c) the details and effectiveness of the actions taken by the Hospital Authority (HA) to recover the outstanding medical fees from NEPs who defaulted on payments; whether the HA will take further action against those who have not yet settled the outstanding amounts, so as to ensure that there is no abuse of the healthcare services in Hong Kong?

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

(a) The numbers of NEPs who received public healthcare services in the past five years are as follows:

Year	*Emergency services*[(Note)] *(Number of cases)*	*Non-emergency services (Number of cases)*	*Total*
2007-2008	25 922	45 260	71 182
2008-2009	25 638	47 609	73 247
2009-2010	27 031	47 092	74 123
2010-2011	29 144	57 159	86 303
April to December 2011	25 757	30 667	56 424

Note:

For emergency services, the number of cases includes attendances at Accident and Emergency (A&E) Departments and hospital admissions via A&E Departments.

(b) The respective total amounts of medical fees payable and the payments in default by NEPs in the past five years are as follows:

Year	*Amounts of medical fees payable ($m)*	*Payments in default ($m)*
2007-2008	452.7	54.2
2008-2009	506.2	29.4
2009-2010	493.8	31.3
2010-2011	583.6	24.2
April to December 2011	382.8	23.9

(c) The HA has put in place a series of measures to minimize default on payment of medical fees. The measures include requiring NEPs in public wards to pay a deposit of $33,000 upon admission (except for emergency cases). The HA will issue interim bills to the patients on a weekly basis during their hospitalization and issue final bills upon their discharge. Before and after patients' discharge, the hospital will also call the patients or their family members to remind them to settle the fees timely.

Reminders will be sent to the patients if bills remain outstanding after 14 days from issuance of the bills. An administrative charge will be imposed on outstanding fees overdue for 60 days from issuance of the bills, subject to a cap of $11,000 for each bill. In addition, the HA will suspend the provision of non-emergency medical services to NEPs with outstanding fees.

After considering various factors, including the amount of payments in default and the chance of recovery, the HA will take legal actions wherever appropriate, such as lodging a claim through the Small Claims Tribunal or the District Court. Over the past five years, about $7.8 million of payments in default have been successfully recovered from NEPs through legal actions.

Review on Adjustment Mechanism of Levy Rate of Business Registration Certificate

20. **MR PAUL CHAN** (in Chinese): *President, the Protection of Wages on Insolvency Fund (PWIF) is mainly financed by an annual levy on each Business*

Registration Certificate (BRC). It has been reported that as PWIF has persistently recorded surpluses in recent years, the Protection of Wages on Insolvency Fund Board (PWIF Board) will lower the levy rate of BRC. Regarding the income of PWIF and the use of its reserve, will the Government inform this Council:

(a) whether any review on the adjustment mechanism of the levy rate has been conducted since the establishment of PWIF; if so, when such review was conducted and the details of the review, and whether any upper/lower limit in respect of the levy rate was set; if no review was conducted, whether there is any plan or requirement regarding when such a review will be conducted; and

(b) given that according to the requirements of the Protection of Wages on Insolvency Ordinance (Cap. 380) (PWIO), the reserve of PWIF may only be deposited on fixed term in Hong Kong dollars, and with the prior approval of the Financial Secretary, its moneys can be invested in such other investments as the PWIF Board thinks fit, whether any application for investing the moneys of PWIF in other investments has been submitted to the Financial Secretary since the establishment of PWIF and obtained approval; if so, when such investments were made and the details of their returns; if not, of the reasons for that; whether it will, in response to the economic situation in society, review the existing requirement that moneys of PWIF may normally be deposited on fixed term in Hong Kong dollars only, so as to increase flexibility of investments under the fund and yield higher returns?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to Mr Paul CHAN's question is as follows:

(a) According to section 4 of the PWIO, the functions of the PWIF Board include making recommendations to the Chief Executive on the rate of levy on BRC.

The PWIF Board has all along kept the levy rate under constant review, and made proposals or decisions to adjust the levy rate

upwards or downwards or to keep it unchanged having regard to the financial position of the PWIF and the payout as required for claims. Since the establishment of the PWIF, the rate of levy on BRC has been adjusted upwards twice and downwards once, including:

(i) raising the levy rate from the original $100 to $250 in July 1991 to meet the additional payout for claims arising from the increase of payment ceiling on the ex gratia payment for severance payment;

(ii) raising the levy rate to $600 in May 2002 to cope with the upsurge in business closures and redundancies as a result of the Asian financial crisis; and

(iii) reducing the levy rate to $450 in March 2008 when the accumulated surplus of the PWIF had steadily maintained at a healthy level.

In April 2008, the PWIF Board established a mechanism for triggering the reviews of the levy rate so as to strengthen its discharge of the statutory function of making recommendations on the rate of levy. In accordance with the mechanism, where the accumulated surplus falls below $800 million by 20% or more for four consecutive quarters or where it exceeds $1.2 billion by 20% or more for four consecutive quarters, the PWIF Board would consider whether to review the rate of levy to recommend a levy increase or reduction. When making use of the mechanism, the PWIF Board would at the same time consider all the relevant factors that would impinge on the PWIF and, in accordance with the mechanism, make adjustment proposal on the levy rate at an appropriate time. To maintain flexibility to meet economic changes and the needs of the PWIF, no upper or lower limit in respect of the levy rate is set.

(b) According to section 4 of the PWIO, the functions of the PWIF Board include administering the PWIF. Section 10 of the PWIO stipulates that all moneys of the PWIF which are not immediately required by the Board may be deposited on fixed term or call deposit or in a savings account in any bank within the meaning of section 2

of the Banking Ordinance (Cap. 155). With the prior approval of the Financial Secretary, the moneys may also be invested in such other investments as the PWIF Board thinks fit.

The PWIF is set up to act as a safety net for employees affected by the insolvency of their employers upon business cessation by providing timely financial relief to them in the form of ex gratia payment to cover the outstanding wages and other specified entitlements. The PWIF Board has all along adopted a prudent approach in managing the PWIF to ensure its sustainability and to maintain sufficient cash flow to cope with any economic downturn and sudden outbreak of large insolvency cases.

In the past, with the prior approval of the Financial Secretary, the PWIF Board had made other investments apart from fixed-term deposits, including the purchase of a commercial property in 1990 mainly for accommodating the secretariat of the PWIF Board and the office for processing applications for PWIF, renting out part of the property which yielded rental income of about $6 million during the period of 1990-1991 to 2000-2001, and the appointment of two fund managers during the period of 1990-1991 to 2001-2002 to make investment for the PWIF resulting in a total gain of about $39 million.

The PWIF Board will continue to closely monitor the financial position of the PWIF to ensure its financial stability and consider suitable investment strategies in the light of the socio-economic conditions and other relevant factors impinging on the PWIF.

BILLS

First Reading of Bills

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

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2012

ELECTORAL LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012

CLERK (in Cantonese): Legislative Council (Amendment) Bill 2012
Electoral Legislation (Miscellaneous Amendments) Bill 2012.

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

Second Reading of Bills

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

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2012

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I move the Second Reading of the Legislative Council (Amendment) Bill 2012 (the Bill).

In January 2010, five Legislative Council Members returned by geographical constituencies (GCs) resigned and stood in the by-elections. The incident led to considerable concern in the community. Although some expressed the view that there was nothing inappropriate for Members to resign in order to trigger by-elections in which they stood, such act was considered by many members of the public and political parties as an abuse of the electoral process and a significant drain on public resources. Moreover, it was of greater concern that if similar abuses continued to occur, the operation of the Legislative Council and the credibility of the electoral process would be adversely affected.

Following that incident, there was a large body of public opinion that the Government should examine ways to plug the loophole in order to prevent Members from resigning to trigger by-elections in which they seek to stand and be re-elected.

Against the above background, in May 2011 the Special Administrative Region Government proposed a replacement arrangement to fill any vacancy of a Legislative Council GC and the new District Council (second) functional constituency (DC (second) FC), and subsequently introduced the Legislative Council (Amendment) Bill 2011.

In examining that Bill, there was a large body of opinion that the Government should conduct a comprehensive public consultation on this important issue. The Bills Committee was also of the view that the Administration should provide more time to consider suggestions of the Members. In response to the above, the Government published the Consultation Paper on Arrangements for Filling Vacancies in the Legislative Council (the Consultation Paper) on 22 July 2011 and conducted a public consultation for two months. The Consultation Paper reviewed the arrangements for filling vacancies in the Legislative Council, set out four options to fill mid-term vacancies in the Legislative Council, and invited public views.

During the public consultation period, we received about 31 120 written submissions, organized two public forums, and attended 11 forums and discussion sessions organized by different organizations.

The Government published the consultation report on 20 January 2012, which provides a summary of the views received during the public consultation period. In brief, the results of the various polls indicate that over 50% or close to 50% of the respondents consider that the Government needs to plug the loophole in the existing legislation by way of legislative amendments. The loophole is that Members may resign at will to trigger by-elections in which they seek to stand and be re-elected.

Besides, around 70% of the written submissions received support plugging the loophole by way of legislative amendments and Option 1 set out in the Consultation Paper (that is, restricting resigning Members from participating in any by-election within the same term of the Legislative Council) commands more support than the other options.

In short, the written submissions received and various opinion polls indicate that relatively more members of the public consider that the Government should plug the loophole by way of legislation, although some organizations and

individuals hold different views. At the same time, many members of the public and organizations have, through different channels and means, expressed their views that by-elections should continue to be held as a means to fill a mid-term vacancy.

Having considered the views above, we propose to put forth a latest proposal. A vacancy arising mid-term in a GC, the DC (second) FC or any other functional constituency (FC) under section 15 or section 72 of the Legislative Council Ordinance (LCO) or Article 79 of the Basic Law would continue to be filled by a by-election. Electors could continue to exercise their right to vote.

A Member returned by a GC, the DC (second) FC or any other FC who has voluntarily resigned from office under section 13 or section 14 of the LCO would be prohibited from standing in any by-elections in all GCs, the DC (second) FC and other FCs in the same term of the Legislative Council within six months of his resignation. The restriction would not apply to general elections. If the six-month prohibition spans over a current term of the Legislative Council and the following term of the Legislative Council, the prohibition will not be applicable to the by-elections in the following term of the Legislative Council.

This is a comparatively more focused approach to address the mischief arising from Members resigning at will in order to trigger by-elections, as the only persons affected are the resigning Members. The change to the existing electoral system will also be kept to the minimum. We have sought legal advice on the proposal from the Department of Justice and Lord PANNICK QC and they confirm that the proposal is constitutional.

We now introduce into the Legislative Council the Bill to implement the above latest proposal. The Bill amends section 39 of the LCO to impose a restriction on the nomination of candidates at a by-election of the Legislative Council to prohibit a Member who has resigned from office from standing in any by-elections in the same term of the Legislative Council within six months of his resignation.

We recommend the Bill to commence operation from the fifth term of office of the Legislative Council. Therefore, I hope that the Legislative Council could examine the Bill as soon as possible and complete the legislative process within the current term so that electors and candidates could be aware of the new restriction as early as possible. As we have a new proposal for addressing the

issue of filling a mid-term vacancy in the Legislative Council, we will withdraw the original Legislative Council (Amendment) Bill 2011 in accordance with the relevant procedures.

I hope the community could understand that the proposal has taken into account the views received during the public consultation, and is put forth after considering the following important principles and their balance: upholding the electors' right to vote and the public's right to stand for election, and safeguarding the dignity and credibility of the electoral system. It is the most moderate, least restrictive, and the most targeted proposal. It fully protects the public's right to vote while the restriction on the right to stand for election is necessary, reasonable, and proportionate. It is also a focused response to the mischief. Our policy objective is to prevent a similar incident from recurring.

Therefore, I hope that the Bill could gain the support of Members, and the understanding and acceptance of the members of the public.

Deputy President, I so submit.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is ……

(Mr Albert CHAN stood up)

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, what is your point?

MR ALBERT CHAN (in Cantonese): Would the Secretary please clarify, since he has just mentioned that "Member resigning at will", does he consider that Members may, as he said, "resign at will"? This saying can actually be described as ridiculous and ignorant.

DEPUTY PRESIDENT (in Cantonese): This is not a question and answer session, and the matter raised is not a request for clarification.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Legislative Council (Amendment) Bill 2012 be read the Second time.

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

ELECTORAL LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Deputy President, I move the Second Reading of the Electoral Legislation (Miscellaneous Amendments) Bill 2012 (the Bill).

The Bill amends various pieces of legislation to introduce amendments to the regulatory regime of election advertisements; to introduce amendments relating to organizations which are constituents of several functional constituencies (FCs) of the Legislative Council or subsectors of the Election Committee (EC); to improve the electoral procedures for various elections; to provide for the counting arrangements for the District Council (second) functional constituency (DC (second) FC); to make technical amendments to the Elections (Corrupt and Illegal Conduct) Ordinance (ECICO); and to make related and incidental amendments.

Under the proposed arrangements for election advertisements, a candidate can post his election advertisements onto a central portal maintained by the Registration and Electoral Office or an election website maintained by the candidate for public inspection within one working day after the publication of the election advertisements. Compared with the existing arrangements which require a candidate to make a declaration and submission of election advertisements to the Returning Officer before publishing the election advertisements, the proposal will as a result greatly simplify the arrangements for regulating election advertisements.

In addition, the proposal set out in the Bill simplifies the arrangements for handling the consent of support in election advertisements. Under the proposed arrangements, a candidate or a person is not required to obtain prior written consent from those who provide support in the election advertisements if the

candidate or person has neither requested or directed nor authorized any other person to request or direct the inclusion of such support in election advertisements.

This proposed arrangement seeks to protect a candidate or person from being inadvertently caught under the relevant provision of the ECICO in circumstances under which it is difficult to obtain prior written consent from third parties indicating support for the candidate out of their own volition. We trust that the proposed arrangements mentioned above can facilitate candidates to conduct electioneering activities and simplify the procedures for handling election advertisements while maintaining the integrity, fairness and openness of elections.

For the constituents of traditional FCs, we have conducted a comprehensive review when preparing the Legislative Council (Amendment) Bill 2010, and the Legislative Council (Amendment) Bill 2010 was enacted in March 2011. However, as a regular exercise before each Legislative Council election, we have reviewed whether there is a need to propose technical amendments to the constituents of the traditional FCs to reflect the latest developments.

Therefore, the Bill contains technical amendments to some FCs, which include updating the names of certain bodies which are registered or are eligible to be registered as electors. This is because these bodies are no longer operating under their old names. The updating does not change the composition of the FCs concerned. The Bill also deletes those bodies that have ceased operation. These bodies have not been included in the final register.

The above technical amendments will also be applicable to the bodies in those EC subsectors with the same name as the corresponding FCs.

To prepare for the Legislative Council election this year, and to fine-tune electoral procedures and make electoral procedures of various elections consistent with each other, the Bill contains operational or technical amendments to the relevant Electoral Affairs Commission regulations, including amendments providing for the counting arrangements for the DC (second) FC.

Deputy President, we have been working closely with the Electoral Affairs Commission on the relevant electoral practical arrangements to ensure that the Legislative Council election in September 2012 can be conducted smoothly.

The proposed Bill seeks to amend the related electoral arrangements for the elections. I hope that Members will support the passage of the Bill as soon as possible so that the revised electoral arrangements can be implemented for the 2012 Legislative Council election in September.

I so submit. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Electoral Legislation (Miscellaneous Amendments) Bill 2012 be read the Second time.

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

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Adaptation of Laws (Military References) Bill 2010.

ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010

Resumption of debate on Second Reading which was moved on 14 July 2010

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

MR IP KWOK-HIM (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Adaptation of Laws (Military References) Bill 2010 (the Bills Committee), I will now report the major deliberations of the Bills Committee.

The Bill seeks to adapt certain military references in, and other related provisions of, the laws of Hong Kong. The current adaptation proposals involve

85 pieces of legislation across different policy areas. The Bills Committee has held a total of 11 meetings to deliberate the adaptation proposals of each piece of legislation.

Some members have expressed grave concern that the Adaptation of Laws (Military References) Bill 2010 (the Bill) also covers other amendments that may involve policy changes. In this connection, the Bills Committee has agreed that the Bill should contain only adaptation proposals. Should members consider that any proposal is beyond the scope of adaptation of laws in the process, the Administration should delete the proposal from the Bill by way of Committee stage amendment (CSA).

The Administration proposed to add a definition respectively for "Commander of the Hong Kong Garrison", "Hong Kong Garrison", "members of the Hong Kong Garrison" and "military hospital", to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1). Members have expressed concern that the proposal would have an impact not only on the Ordinances covered in the Bill, but also on other Ordinances in which such terms appears. Members considered that the addition of the four definitions is beyond the scope of adaptation of laws.

The Administration explained that the new definitions are proposed with a view to providing clarity of drafting to the proposed adaptations, thereby obviating the need to repeat the same definitions in various Ordinances covered in the Bill. However, members still considered that the proposed addition of four definitions to Cap. 1 should be deleted. Having considered members' views, the Administration agreed to introduce CSA to delete the proposed four definitions.

Some members have queried whether the adaptation of the reference "court-martial held outside Hong Kong under the Naval Discipline Act, the Army Act or the Air Force Act" to "court-martial of the Chinese People's Liberation Army held outside Hong Kong" to the Schedule to the Defamation Ordinance should be included in the current adaptation of laws exercise as it would not be invoked in reality. Members opined that the application of the existing provision is confined to places within the Commonwealth and the holding of court-martials is subject to certain Acts, but the proposed adaptation fails to adhere to the original intent of the provision which is considered unacceptable.

After listening to members' views, the Administration has stated that there is no such equivalent legislation under the laws of the Mainland, and understands that there are no specific laws or regulations defining the jurisdiction of "court-martials" in the Mainland. In the Administration's view, it is necessary to retain the adaptation proposal in the current exercise to ensure that the original scope of statutory defence which might be put forward under the provision concerned would not be affected after the reunification.

(THE PRESIDENT resumed the Chair)

Some members have great reservations about the retention of the expression "any part of the Commonwealth" in the Schedule to the Defamation Ordinance. The Administration explained that as the scope of the current exercise only includes adaptation proposals of military-related references in the laws of Hong Kong, the Administration has not proposed to adapt the non-military reference, "any part of the Commonwealth outside Hong Kong", in the Bill.

Members have expressed concern about the Administration's proposal to adapt the reference to "ships belonging to Her Majesty" in section 10D of the Pilotage Ordinance to "ships belonging to the Chinese People's Liberation Army or ships belonging to the Central People's Government and used only on non-commercial service". Members have queried why the term "the Chinese People's Liberation Army" but not "the Hong Kong Garrison" is used, and the rationale for the proposed addition of the reference to "and used only on non-commercial service".

The Administration has explained that the Pilotage Ordinance, under section 10, has all along been offering exemption from pilotage requirements only to ships on official duties and providing non-commercial service. This principle had applied to ships belonging to Her Majesty, regardless of whether the ships were military or not, prior to the reunification. In adapting the term, "the Chinese People's Liberation Army" is proposed instead of "the Hong Kong Garrison" as there is a need to cater for visiting warships (which are based outside Hong Kong) from the Chinese People's Liberation Army. Furthermore, as ships belonging to Her Majesty also included ships of the United Kingdom

Government, a second limb making reference to "the Central People's Government" has been included as part of the adaptation. The adaptation proposal reflects the intent and application of the provision. Regarding the proposed addition of the expression "and used only on non-commercial service", it aims to provide clarity to the provisions to accurately reflect the intent and the actual implementation before and after the reunification.

Members are of the view that given there is no such reference as "and used only on non-commercial service" in the original provisions, even though the purpose of its addition is to further clarify the legislative intent, the adaptation proposal may not be in compliance with the principle of adaptation of laws. Members noticed that similar adaptation proposals were made to the Merchant Shipping (Prevention and Control of Pollution) Ordinance and the Merchant Shipping (Seafarers) Ordinance. Members suggested that the expression "and used only on non-commercial service" should be deleted. The Administration accepted members' suggestion in the end and will introduce the relevant CSA at a later stage.

President, regarding the proposed adaptation of the reference "Secretary of State" ("國務大臣"/"工貿大臣" in the Chinese text) in the Civil Aviation Ordinance, Air Navigation (Hong Kong) Order 1995, Aviation Security Ordinance and Registered Designs Ordinance, members suggested that it should be uniformly adapted as "the Central People's Government", so as to replace the adaptations such as "the Central People's Government", "by or on behalf of the Central People's Government" and "competent authority" in the Bill. Members considered that the reference "the Central People's Government" has already encompassed the meaning of "by or on behalf of the Central People's Government" or "competent authority".

Having considered members' views, the Administration has agreed to uniformly adapt the reference "Secretary of State" ("國務大臣"/"工貿大臣" in the Chinese text) as "Central People's Government", and delete references such as "by or on behalf of" and "competent authority" in the Bill.

However, the Administration has pointed out that the uniform approach to adapt the reference to "Secretary of State" cannot apply to the reference to "Secretary of State" in section 2A(8) of the Civil Aviation Ordinance. The provision concerned involves the power to declare a state of emergency and such

power is vested with Standing Committee of the National People's Congress as stipulated in Article 18(4) of the Basic Law. It is necessary to adapt the reference "Secretary of State" to "the Standing Committee of the National People's Congress" to ensure compliance with the Basic Law.

For the commencement date, members noted that under clause 2(1) of the Bill, the Bill, if enacted, is deemed to have come into operation on 1 July 1997 except as provided in subclauses (3), (4) and (5). Members have expressed concern about the negative impact of taking retrospective effect of the 47 provisions covered in clause 2(1) of the Bill.

In view of members' comments, the Administration has carefully studied the 47 provisions and provided the reasons for having those provisions coming into effect on 1 July 1997. In gist, the concerned provisions mainly involved rights, privileges and exemption of the Hong Kong Garrison and such provisions have been construed in accordance with Cap. 1 since 1 July 1997. Members accepted the explanations provided by the Administration.

Members have raised concern about the need to single out five pieces of legislation in clause 5 of the Bill (that is, savings and transitional provisions), and whether there would be any omission of relevant provisions. Members considered that the provision has not provided additional safeguards to the validity of those five pieces of legislation. Having considered members' views, the Administration agreed to delete the provision.

The Administration has also accepted members' other proposals and put forth a number of CSAs, which include amendments to "正在執行職務" and "服務" in the Chinese text.

Last of all, I would like to take this opportunity to thank all members who have participated in the deliberation of the Bills Committee, and the Government for willing to accept the various proposals of members.

President, I will then speak on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Although the Bills Committee has only held 11 meetings, from its formation to the conclusion of its deliberation, it took us more than a year. This is because certain parts of the Bill

are sensitive and controversial, and the Administration has to handle cautiously after carefully listening to members' views.

The Bill has only one single objective, and that is, to adapt certain military references in, and other related provisions of, the laws of Hong Kong, with a view to ensuring the legal certainty of the relevant laws. Given that the adaptation proposals set out in the Bill involve 85 pieces of legislation across different policy areas, they have a pretty extensive coverage and thus require more time for deliberation. During the deliberation, members of the Bills Committee insisted that the Bill should only include adaptation proposals, which should have no impact on the legal effect of the existing provisions and must be consistent with the Guiding Principles adopted in other adaptation of laws exercises. In other words, they should conform to the Basic Law and Hong Kong's status as a Special Administrative Region (SAR) of the People's Republic of China. Therefore, any proposal that is beyond the scope of adaptation of laws should be deleted. The DAB agreed with this principle because if the Bill has no intention to change the policy intent, it should not include adaptation proposals that go beyond the scope of adaptation of laws. The DAB is supportive to the fact that the Government has accepted of the views of the Bills Committee and introduced many relevant amendments or deletions.

Another issue which has been thoroughly discussed is the commencement date of the Bill. Provisions other than those specified are deemed to have come into operation on 1 July 1997. Colleagues have expressed concern that this arrangement may bring unnecessary negative impact, but given that the concerned provisions mainly involved rights, privileges and exemption of the Hong Kong Garrison and such provisions have actually been construed in accordance with Cap. 1 since 1 July 1997, it should not be objectionable to specify 1 July 1997 as the date of commencement.

Hong Kong has been reunified for 15 years and the adaptation of laws should therefore be expeditiously completed. This is necessary and essential in avoiding the emergence of unnecessary legal problems. This is not only a protection for members of the public, but also a duty to be performed by the Legislative Council.

With these remarks, President, I support the Bill on behalf of the DAB.

DR MARGARET NG (in Cantonese): President, although this important bill involves many major legislative principles and legal foundations, regrettably, only a few Members are interested in it and only a handful of Members remain in the Chamber now.

President, the Adaptation of Laws (Military References) Bill 2010 (the Bill) seeks to adapt terms or expressions relating to "Her Majesty's forces" or "Her Majesty" in the existing laws as names and wordings like the "Chinese People's Liberation Army" (PLA) or "Central People's Government" in accordance with the definitions as set out in Cap. 1 of the laws of Hong Kong (the Interpretation and General Clauses Ordinance). It aims to reflect the new constitutional position of Hong Kong upon resuming sovereignty in 1997, and involves a total of 85 pieces of local legislation.

President, I have highlighted time and again in the Bills Committee that it is completely inappropriate to deal with the matter by way of adaptation of laws. Earlier, Mr IP Kwok-him has already pointed out that "adaptation" actually means the use of certain nouns or nouns with similar meaning to replace other nouns, and this does not involve any other parts of the law. However, "Her Majesty's forces" stationed in Hong Kong during the colonial period is totally different from the Hong Kong Garrison deployed by the PLA to station in the HKSAR, both in terms of their nature and constitutional status.

The legal status enjoyed by and legal principles applicable to Her Majesty's forces in the United Kingdom are based on the monarchy system. Since the British Forces are the forces of Her Majesty, they are thus called Her Majesty's forces, whose status is completely from that of the PLA of People's Republic of China (PRC). It is these differences and the various historical principles and facts that affect our understanding of the meanings of the laws of Hong Kong prior to the reunification.

"Adaptation of law" means the use of new terms in old legislation while the other parts remain unchanged. This practice is not only costly, but also unnecessary. As Mr IP Kwok-him has explained just now, the Schedule to Cap. 1 has clearly provided the meaning of the references to "Her Majesty's force" and "Her Majesty" upon the reunification, there is thus no need for adaptation. The reason for saying that this exercise is costly is because the authorities have spent years — it has been 10-odd years after the reunification —

to deal with this legislation. Worse still, such adaptation is not only unnecessary, but has done nothing to improve the law. After the adaptation, many absurd provisions would be added to the ordinances which might undermine their solemnity. Perhaps I should go into greater detail in the Committee stage later on.

Now, let me quote a very simple example where clause 50 of the Bill proposed to adapt the Crimes Ordinance (Cap. 200). Members must be very familiar with Part I of the Crimes Ordinance concerning treason and subversion …… Sorry, it is not about subversion …… but offences such as treason and incitement. This time, amendment (or adaptation) is be made to the part concerning the forces (the PLA).

When dealing with the part on the PLA, the Bill proposes to adapt the reference "Her Majesty's forces from his duty and allegiance to Her Majesty" under "Incitement to mutiny" (clause 6) to "the Chinese People's Liberation Army from his duty and allegiance to the People's Republic of China". "Incitement to disaffection" (clause 7), on the other hand, is also concerned with seduction. The expression "seduce any member of Her Majesty's forces from his duty or allegiance to Her Majesty" in the original provision will be adapted as "seduce any member of the Chinese People's Liberation Army from his duty or allegiance to the People's Republic of China". These are the adaptation proposals on clauses 6 and 7.

"Treason" in section 2 is nonetheless concerned with "killing, wounding or causing bodily harm to Her Majesty, or imprisoning or restraining Her Majesty", whereas "treasonable offences" in section 3 is concerned with deposing Her Majesty from the royal name of any other of Her Majesty's dominions. Section 4 is also concerned with Her Majesty. President, I do not find it necessary to read out the clauses one-by-one. I just want to highlight the offence of doing harm to a country (that is, treason) as provided in Cap. 200. While the first five provisions are concerned with Her Majesty, the sixth and seventh ones suddenly switch to references to the PLA. What kind of law is this?

Another major contravention to the legislative principle is that the law is not playing with words. Rather, it is the imposition of concrete restrictions on certain situations, events or people. The 85 pieces of legislation do have an extensive coverage, which include — let me casually name a few — the Pilotage

Ordinance, Pensions Regulations, Public Order Ordinance, Crimes Ordinance and even "Star" Ferry Company, Limited, Bylaws. Nonetheless, before we have a good grasp of the background and outcome of the subject to be regulated, no legislation should be enacted, or amended, unless the amendment concerned is uncontroversial. For instance, replacing "the Governor" with "the Chief Executive" is not at all controversial. Notwithstanding that, the adaptation of "the Governor in Council" has been dealt with great care.

When we examined the adaptation proposals in the past, officials from the relevant departments would be asked to brief us on the situation or events to be put under regulation, so that we would understand that the relevant law would not be affected after the so-called "adaptation"; and no irregularities and irrationalities would arise in the course of implementation. However, during the deliberation of the Bill, members have very little knowledge about the concrete meaning of the British Forces, the Hong Kong Garrison belonging to the PLA and the provisions under the 85 pieces of legislation. We have no idea of the size of the Hong Kong Garrison, its composition and classification, nor do we know what members of the Hong Kong Garrison stand for. The British Forces originally referred to "officers". However, as Members may aware, the word "officer" carries a special meaning in the British Forces. Yet, there is no way we can obtain the relevant information, or information about the British Forces stationed in Hong Kong, as well as other legislative provisions concerning pilotage and probate. As these are very complicated issues, it is therefore pretty dangerous to make adaptations arbitrarily without much knowledge.

President, the proper approach is to abolish the outdated provisions concerning the British Forces through normal legislative amendments, and amend the existing legislation, when necessary, in accordance with the provisions set out in Article 14 of the Basic Law and the Law of the People's Republic of China on Garrisoning the HK Special Administrative Region (the Garrison Law) contained in Schedule 3 to the Basic Law. Only by so doing can HKSAR's constitutional status be officially reflected in the laws of Hong Kong.

Members may take a look at Article 14 of the Basic Law and the Garrison Law, which give us a full picture of Hong Kong after the reunification. President, Article 14 of the Basic Law stipulates that: "The Central People's Government shall be responsible for the defence of the Hong Kong Special Administrative Region. The Government of the Hong Kong Special Administrative Region shall be responsible for the maintenance of public order in

the Region." The division of work is very clear. Also, "Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in the local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief. In addition to abiding by national laws, members of the garrison shall abide by the laws of the Hong Kong Special Administrative Region. Expenditure for the garrison shall be borne by the Central People's Government." The Garrison Law is so comprehensive that the mission, rights, obligations of the garrison, the decisions to be made by the SAR Government, the relationship between the SAR and the garrison, as well as when negotiation and compromise is necessary, have all been clearly provided.

President, I wish to briefly introduce Article 7 of the Garrison Law. (I quote) "No weapon and equipment, such as aircraft and vessels, and no material of the Hong Kong Garrison, and no member or vehicle of the Garrison that bears a certificate or a document of certification issued by the Hong Kong Garrison showing that the bearer is on official duty, shall be inspected, searched, seized or detained by any law-enforcing officer of the Hong Kong Special Administrative Region. The Hong Kong Garrison and its members shall also enjoy other rights and immunities prescribed by the laws in force in the Hong Kong Special Administrative Region." In other words, while there are provisions requiring us not to meddle or interfere in certain affairs, other affairs are subject to the implementation of the laws of Hong Kong.

While laws implemented in Hong Kong will be amended from time to time, members of the Hong Kong Garrison should enjoy exemption in the SAR under the laws of Hong Kong. Other provisions also provide that if any future legislative amendment or law enactment involves the Hong Kong Garrison, we should liaise with the garrison. Therefore, President, provisions have been clearly laid down. So, why did our officials insist on retaining all the privileges and exemptions previously enjoyed by the British Forces and applying them rigidly to the Hong Kong Garrison?

President, another more serious mistake is that the Bill has mechanically retained the privileges and immunities conferred by "Her Majesty" and "the Crown" during the colonial era (the so-called "Crown immunity") by way of Cap. 1. And yet, the so-called Crown immunity has been outdated. In the

ancient United Kingdom when the emperor was a God-like figure, immunities were granted on the presumption that the emperor was infallible. We should not spend any more time talking on this issue. And yet, as a country advances, so are their laws, and many new laws have been enacted, such as the Crown Proceedings Act. According to this Act, Her Majesty is infallible but all ministers are subject to prosecution. They had made use of these provisions to prevent the executive authority from overriding the law. Unfortunately, we have focused on retaining the immunities previously enjoyed by them without noticing that they were already excluded from such immunities and are now subject to the law.

In fact, Cap. 1 is wrong from the start. What is wrong with Cap. 1? Regarding the Crown immunity under discussion, the word "Crown" was not defined in Cap. 1 before the reunification, but it was hastily changed to "state" after the reunification. We can find the definition of "state" in section 3 of Cap. 1, which includes the President of the People's Republic of China, the Central People's Government, the Government of the Hong Kong Special Administrative Region, and so on.

Schedule 8, on the other hand, provides that any reference to Her Majesty, the Crown or the British Government in any provision shall be construed as — simply speaking — the Central People's Government. In other words, the immunities granted to Her Majesty (that is, the Crown) would in turn be granted to the Central People's Government. Yet, this change would cause serious problem in reality. President, owing to the time constraint, I cannot go into great detail.

In the Hua Tian Long case, the barge Hua Tian Long of the Guangzhou Salvage Bureau was sued by another party while it performed its business contract. In response to a request to detain the barge, the Court of Hong Kong ruled that as the Central People's Government enjoys immunities, which still subsist, so Hong Kong does not have the right to detain the barge. This case has aroused strong reaction from the legal sector and law academics.

President, I have to stop right here.

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

MS CYD HO (in Cantonese): President, in fact, I have not followed through the adaptation of laws as I believe it might involve many problems relating to the constitutional system, which should best be dealt with by colleagues familiar with the constitutional framework. Unfortunately, only a handful of colleagues participated in the deliberation of this Bill. I joined the Bills Committee mainly because I have been following through issues relating to military land, which is also a topic covered under the current adaptation exercise. Nonetheless, after joining the deliberation, I found that the military references involved in this adaptation exercise have a very extensive coverage. As Members have said earlier, the Bill involves a total of 85 pieces of legislation. While some are more fundamental, like the Crimes Ordinance, some are rather piecemeal in nature, such as the Hong Kong Cemetery, Happy Valley, Rules.

During the deliberation, I noticed that the mechanical process of law adaptation has many inherent deficiencies. Following the handover of sovereignty, there are indeed a number of terms requiring adaptation under our system. Firstly, there are no more "British Forces" in Hong Kong following a change in the sovereign state, thus we should consider changing the term to "Hong Kong Garrison". Yet, given the extensive coverage of the 85 pieces of legislation, different scenarios may arise. While some did exist in 1997, many have changed after 1997. Certain types of people may no longer exist nowadays. Therefore, it would be unrealistic to either grant or withdraw power to or from these people. As a result, we have reiterated in the course of deliberation that, instead of making mechanically adaptations to a changed system, it would be better for us to review and amend the entire laws of Hong Kong on the basis of the Law of the People's Republic of China on Garrisoning the Hong Kong Special Administrative Region (the Garrison Law).

President, let me quote the Hong Kong Cemetery, Happy Valley, Rules mentioned earlier as an example. The rules provide that no band, other than a band of Her Majesty's armed forces, may enter or play within the cemetery. We may wonder why a band of Her Majesty's forces would play in the cemetery in Happy Valley. As many colonial officials were buried there in those days, thus memorial services of a certain kind might be held in the cemetery. One of the colonial officials was Lord NAPIER, who died before the Opium War. His graveyard is found in the Hong Kong Cemetery in Happy Valley. While we fully understand why the colonial military band had to play in memorial services held in the cemetery in the past, we can hardly imagine why there is a need for

the band of the Hong Kong Garrison to take part in memorial services in the Hong Kong Cemetery in Happy Valley where only colonial officials in the early days or ordinary Hong Kong residents were buried.

We have therefore requested the authorities to delete the relevant provision during the deliberation on the ground that such scenarios no longer exist. It has been decided that this provision would be removed in the end. And yet, I would like to use this absurd case to illustrate that the mechanical law adaptation process is not viable.

The systems might be different in some cases. In the past, different officials might be held accountable for the British Forces under the national system of the United Kingdom and the colonial system, or different persons might be asked to hold the same rank. Therefore, problems may arise if we simply replace the "British Forces" with the "Hong Kong Garrison". Another example is that while the Governor was the Commander-in-Chief of the British Forces in a ceremony in the colonial era, it is now different as the highest commander of the Hong Kong Garrison has changed. As a result, problem may arise. If the law only specifies "the highest commander of the Hong Kong Garrison", it may happen that a different person is being referred to when HU Jintao comes to attend Hong Kong's military parade ceremony in the capacity of the Chairman of the Central Military Commission. Therefore, if we mechanically replace "A" with "B" in all the relevant provisions, we may neglect the genuine needs of the actual situation. What is more, the translation of the literal meaning of the provisions may also give rise to unnecessary problems.

President, this reminds me of the Jewish businessman SHYLOCK in SHAKESPEARE's famous story *The Merchant of Venice*. A person borrowed some money from SHYLOCK but was unable to repay, so SHYLOCK asked the person to cut a pound of flesh as compensation. The borrower's defence counsel later agreed to cut a pound of flesh as compensation, but reminded SHYLOCK that the pound of flesh should be cut precisely with no more, no less, or else SHYLOCK would be deemed nullifying the agreement. President, the question is "no more, no less". Even if the exact wordings are quoted, it may still give rise to serious problems as such broad-brush approach is extremely damaging.

I therefore very much agree with Dr Margaret NG's earlier remarks that a review of the provisions with military references in the entire laws of Hong Kong should be conducted on the basis of the Garrison Law. In the Garrison Law,

there are provisions on the Hong Kong Garrison and the laws of Hong Kong, including the laws governing the garrison and the immunities enjoyed by them. Jurisdiction is also mentioned in the provisions. For instance, Article 8 of the Garrison Law provides that, "Members of the Hong Kong Garrison may, in accordance with the provisions of the laws in force in the Hong Kong Special Administrative Region, take measures to stop any act which obstructs their performance of official duties." This provision is an evidence of the relationship between the laws of Hong Kong and the garrison. Members of the garrison may take measures to stop any act in accordance with the existing law. However, there are also provisions stating that, once we are in a state of war or in a state of emergency that is beyond control, the garrison may perform its duties in accordance with the provisions of the national laws that the Central People's Government decides to apply in the Region. We need to rationalize and clarify the relationship among the national laws, the laws of Hong Kong and the garrison. And yet, this is only a principle set out in the Garrison Law, local legislation has failed to genuinely realize such relationship, not to mention provisions designed to specify the circumstances under which individual organizations will give play to the check-and-balance function.

Article 19, on the other hand, provides that, "Any member of the Hong Kong Garrison who contravenes any national law or law of the Hong Kong Special Administrative Region shall be investigated for legal responsibility according to law." According to this provision, members of the Hong Kong Garrison must also abide by the laws of Hong Kong and will be held legally liable for any offence. However, for no reason, we have granted certain immunities or rights previously enjoyed by the British Forces to the Hong Kong Garrison in the course of law adaptation.

Can we actually put Articles 6, 8 and 19 of the Garrison Law into practice? In fact, according to the Garrison Law, any member of the Hong Kong Garrison commits an offence will be subject to different jurisdictional arrangements. This is because according to Article 20, the military judicial organ and the HKSAR Government "may transfer to the other party the criminal cases of members of the Hong Kong Garrison under their respective jurisdiction if they consider it to be more appropriate for the other party to exercise jurisdiction, provided that consensus is reached through consultation." There should be thorough discussions on these parts to see how these principle arrangements can be put into practice through local legislation. However, the current adaptation exercise has put the cart before the horse without tackling these important agendas. Instead,

amendments have been made to military hospitals, maternity homes and even the Massage Establishments Ordinance. And yet, these may lead to ridiculous outcome.

Another issue which warrants special attention is whether the garrison is involved in commercial activities. As a number of colleagues have highlighted in their speeches, the Hua Tian Long case is indeed an alarm to Members: How should Hong Kong deal with the commercial activities between the Central Government and state-owned enterprises, units or even military judicial organs. This is also worth our detailed investigation. Yet, I think the present law adaptation exercise has failed to properly address this issue.

Military land is another issue of my concern. I will give an account on the absurdities relating to military land in due course. According to the Garrison Law, military land should be used for defence purposes. And yet, as we have pointed out in the past, the United Services Recreation Club (USRC) in King's Park near Hung Hom is not used for defence purpose at all. Adopting the established practice of the British Forces, the garrison has allowed ordinary citizens to enjoy the recreational activities in the USRC by charging an annual membership fee of tens of thousand dollars. While most of its members do not have any relationship with the military, some are family members of the former British Forces.

During the deliberation, we have asked if any member of the Hong Kong Garrison has joined the USRC and the answer was in the negative. The USRC is now run by a Chinese-owned organization. Under this circumstance, why do we not carry out a proper review and turn over any military land no longer use for defence purposes "without compensation to the Government of the Hong Kong Special Administrative Region for disposal" in pursuant to Article 13 of the Garrison Law? The land where the abovementioned USRC is situated, in particular, should be redeployed for use by The Hong Kong Polytechnic University as it has long been plagued by its overcrowded campus. Furthermore, the barrack site on Renfrew Road, Kowloon Tong, where families of the former British Forces previously lived, should also be turned over to the City University of Hong Kong and the Hong Kong Baptist University as student halls of residence. By so doing, these two universities will not have to build their students halls of residence in places as far as Tseung Kwan O.

Instead of carrying out reviews for the sake of public interests, we have tackled situations that might no longer exist through mechanical processes. President, I wish to express my deepest regrets for this law adaptation process and state my opposition to this Bill.

MR JAMES TO (in Cantonese): President, this Bill concerns the adaptation of law. This Council had discussed and endorsed similar adaptation bills before, and the one under discussion today is particularly concerned with the military forces, military installations or military-related terms.

President, the Government said that the current adaptation exercise has adopted a few approaches. Firstly, mechanical adaptation will be made if an accurate replacement can be identified, such as adapting the "British Forces" as the "People's Liberation Army" (PLA). Secondly, for terms which no longer exist under the existing PLA establishment or structure, like descriptions of the former British Forces, substitutes having the same or closest meaning would be used instead. Thirdly, military-related terms, such as pensions previously granted to former British Forces, which no longer exist after the establishment of the PLA but corresponding arrangement has not been made for the PLA under the current establishment in accordance with the laws of Hong Kong, will be deleted.

President, I support the first and second points, namely the mechanical adaptation and the use of terms having the closest meaning. For the third point, that is, the deletion of outdated references, I think that the Government should first conduct a review. As no review of the relevant legislation has ever been conducted in the past 15 years since the reunification, I think that the Government does owe the general public. Why? Does the military really need privileges, immunities or special installations? The military might find them unnecessary or need more subject to geographical reasons, thus I consider it necessary for the Government to conduct a review in this regard.

Noting that 15 years have passed since the reunification but the Government has yet to conduct a review, I consider this a dereliction of duty on the part of the Government. Today, 15 years later, an adaptation exercise is being carried out, which involves a number of legislation, and the adaptation of military references will first be dealt with. I wonder if we will have to wait for another three or five decades before a genuine review will be conducted. This is

because the Secretary for Security, be it the former or incumbent Secretary, did not consider this the most urgent task to be solved during their terms of office, given that the garrison can at least perform their basic defence duty. What is more, it so happened that no inadequacies or absurdities have been identified under the various legal framework. This is why the Security Bureau has shelved the relevant review. I even have reason to doubt that the Security Bureau or the People's Liberation Army (PLA) does not have any incentive to do so.

If you ask me, I would say that this has turned into a joke. If Hong Kong's defence is now in the hands of the PLA, which has secured so many lands, installations, privileges and immunities over the past decade or so, then in our present society, will they be …… As society advances, the former British Force …… sovereignty aside, just the issues regarding clubs, lands and immunities in our society, as mentioned by colleagues, must be reviewed due to various reasons and establishments.

As the Government has proposed the adaptation of military references only 15 years later, I certainly have reasons to worry how long we will have to wait before a genuine review will be conducted. It is likely that the Government is unwilling or unable to do so, so whatever left behind by the United Kingdom should remain unchanged. You may ask what if people find them insufficient. It should not be a problem if the shortfall is not too significant. I therefore have every reason to believe that the Government is not interested in, and has not accorded any priority or has any intention of conducting a review in this regard.

However, President, coming back to the subject, I think that the Democratic Party does not have any reason to oppose the adaptation of terms from the viewpoint of the scrutiny of law. This is because the Government has actually identified terms having similar, the closest or same meaning with the terms being adapted. Certainly, some Members may think that if they vote against the motion such that the law adaptation fails to get passed, the Government may be forced to conduct a review.

For me, such pressure is not immense. Why? Because with the presence of the Hong Kong Reunification Ordinance and Cap. 1, the Government may not feel much pressure to speed up the pace of review even if this adaptation bill fails to get passed. I do not consider this a possible outcome. Perhaps the Government may feel embarrassed if the Bill fails to get passed as the term

"British Forces" can still be found in the statute book. This term does not sound good to me as well. Although the enactment of the Hong Kong Reunification Ordinance is tantamount to making adaptations, it is not so good to see such terms emerge in searches on the Internet.

Worse still, 15 years have passed and it would be highly undesirable if legally speaking, it is still impossible to identify a substitute having the closest or most accurate meaning that can remove the colonial colour. Of course, the current adaptation is completely different from the naming of streets after former Governors. While adaptation is concerned with legislation, the naming of streets is probably related to monuments. I will not look at legislation in the same way as I appreciate monuments or cultural heritage, nor consider this a good deed.

To conclude, the Democratic Party supports the adaptation proposals as contained in the Bill. I nonetheless consider that the Government has owed the community and the Central Authorities for failing to review military references or legal references related to the military and make corresponding amendments.

In case the SAR Government refuses to take action, should we ask the Central Authorities to table a bill for follow-up by the SAR Government? If the SAR Government has neglected its duty, and consequently, provisions which should be eliminated still persist, or undue privileges still prevail, I would say it has done injustice to both the Central Authorities and the PLA.

Therefore, I just hope that the Government will expedite the review of the concrete meanings of the military references. The Government should not think that the current adaptation of military references is the end of the story and shelve the exercise or accord an extremely low priority to it.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, I now call upon the Secretary for Security to reply.

SECRETARY FOR SECURITY (in Cantonese): President, first of all, I have to thank Mr IP Kwok-him, Chairman of the Bills Committee on Adaptation of Laws (Military References) Bill 2010 (the Bills Committee), and other members for holding a total of 11 meetings in the past year or so to scrutinize the 137 adaptation proposals and three corresponding amendments set out in the Adaptation of Laws (Military References) Bill 2010 (the Bill) and its two schedules, which as members have said earlier, involve 85 pieces of legislation across different policy areas. Also, they have thoroughly discussed the coverage of the Bill, the principles of adaptation, various adaptation proposals and the commencement dates. Upon request by the Bills Committee, we have, during the deliberation, discussed the views expressed by the Hong Kong Bar Association, the Hong Kong Human Rights Monitor and members of the public concerning the Bill. To dovetail with the deliberation, representatives from the Security Bureau, Department of Justice and the relevant government departments were invited to the meetings to brief Bills Committee members on the general implementation of the relevant provisions before the reunification and answer their enquiries.

After gaining a good understanding of the operation of the various ordinances before and after the reunification, the Bills Committee has provided valuable views about the adaptation of certain terms. We have taken heed of the major recommendations of the Bills Committee after careful consideration and seeking legal advices, such that the Bill can better reflect the principles of adaptation. Later, I will propose the relevant amendments in the Committee stage.

President, the Bill seeks to adapt certain military references in, and other related provisions of, the laws of Hong Kong to bring them into conformity with the Basic Law and Hong Kong's status as a Special Administrative Region (SAR) of the People's Republic of China (PRC). Although military-related provisions in the laws of Hong Kong previously in force have been construed in accordance with the interpretative principles set out in the Interpretation and General Clauses Ordinance since 1 July 1997, it is still necessary for us to adapt these

military-related provisions in the interest of legal certainty in the laws of Hong Kong.

As usual, when the Government made adaptation to the military references in the relevant ordinances, it will follow the decision made by the Standing Committee of the National People's Congress, provisions of the Basic Law, the major interpretative principles of section 2A(2)(c) and sections 1 and 2 of Schedule 8 to the Interpretation and General Clauses Ordinance, as well as the guiding principles formulated by the Department of Justice for the adaptation of laws programme in 1998.

During the deliberation, the Bills Committee has thoroughly discussed these principles, and agreed that the adaptation proposals of the Bill should only be straight forward and technical amendments, and must not include proposals that may involve law reform or non-military-related references. The Bills Committee also understands that all adaptation proposals must take into account the context of the relevant ordinances.

During the deliberation, the Bills Committee has suggested that the authorities should delete the definitions of four common military references proposed to be added to the Interpretation and General Clauses Ordinance, namely "Commander of the Hong Kong Garrison", "Hong Kong Garrison", "members of the Hong Kong Garrison" and "military hospital". As we have explained in the paper submitted to the Bills Committee and at its meetings, the purpose of adding these four definitions is to provide clarity to the draft of the proposed adaptations and the legislative provisions after the adaptations. However, after considering the position and views of the Bills Committee, we agreed that the existing rights and exemptions conferred on the Chinese People's Liberation Army (PLA) and the Hong Kong Garrison will not be affected under the existing laws even if the four definitions presently proposed are not added to Cap. 1. Therefore, we have taken heed of the Bills Committee's views to delete the four definitions from the Interpretation and General Clauses Ordinance, and will move the relevant Committee stage amendments (CSAs).

Members have raised no objection to the proposed adaptation of reference to "ships belonging to Her Majesty" in the Pilotage Ordinance, Merchant Shipping (Prevention and Control of Pollution) Ordinance and the Merchant

Shipping (Seafarers) Ordinance so as to cover ships belonging to the PLA or the Central People's Government (CPG). However, there are views that given that there is no such reference as "and used only on non-commercial service" in the original provisions, even though the purpose of its addition is to further clarify the legislative intent and to accurately reflect how the provisions concerned are implemented before and after the reunification, the adaptation proposal may not be in compliance with the principle of adaptation of laws. Having carefully considered the views of the Bills Committee, we have accepted that without prejudice to the legal effect of the relevant provisions, the reference should be deleted to better reflect the principles of strict adaptation. We will move CSAs to delete the expression "used only on non-commercial service" from the relevant provisions of the abovementioned three ordinances.

The Bills Committee has proposed that the adaptation proposals for the reference "Secretary of State" ("國務大臣"/"工貿大臣" in the Chinese text) in the Bill should be uniformly adapted as "the Central People's Government", so as to replace the adaptations such as "the Central People's Government", "by or on behalf of the Central People's Government" and "competent authority" in the Bill. We agreed with the Bills Committee that either "by or on behalf of the Central People's Government" or "competent authority" can actually be encompassed by the reference "the Central People's Government". After carefully considering the views of the Bills Committee, we will uniformly adapt the reference "Secretary of State" ("國務大臣"/"工貿大臣" in the Chinese text) in the Registered Designs Ordinance as "the Central People's Government", whereas the references to "or on behalf of" and "competent authority" in the Air Navigation (Hong Kong) Order 1995 and Aviation Security Ordinance will be deleted. We will move CSAs to this effect.

Here, I wish to highlight that the abovementioned uniform approach do not apply to the reference to "Secretary of State" in section 2A(8) of the Civil Aviation Ordinance (Cap. 448), that is, section 120(3) of Schedule 1 to the Bill. As this provision involves the power to declare a state of emergency and such power is vested with the Standing Committee of the National People's Congress as stipulated in Article 18(4) of the Basic Law, it is therefore necessary to adapt the reference "Secretary of State" to "the Standing Committee of the National People's Congress" to ensure compliance with the Basic Law. The Bills Committee has accepted such an arrangement.

Furthermore, the Bills Committee considers that the existing reference to "服役" in the Chinese version of the Immigration Ordinance, Registration of Persons Regulations and Public Bus Services Regulations should be retained and should not be adapted as "服務". The Bill Committee also suggests to retain the reference to "當值中" in the original provision in the "Star" Ferry Company, Limited, Bylaws instead of adapting it as "正在執行職務". We accept the Bills Committee's proposal and will move CSAs to delete references to "服務" and "正在執行職務" in the Chinese text, and retain the references "服役" and "當值中" in the original provisions.

The Bills Committee has suggested that the reference to "a member of Her Majesty's naval forces" in section 29(2) of the Summary Offences Ordinance should be directly adapted as "a member of the Chinese People's Liberation Army's naval forces" so as to better reflect the principles of strict adaptation. We agree to the Bills Committee's suggestion and the relevant reference will be revised as "a member of the naval forces of the Chinese People's Liberation Army". We will move CSAs to this effect.

The Bills Committee advises that there is no need to add references to "the Hong Kong Garrison" in the adaptation proposals concerning section 31(6)(m) of the Public Security Ordinance. The Bills proposes to adapt the reference "an employee of the Ministry of Defence in possession of a valid Army Department Pass" to "a member of the Ministry of National Defence in the Central People's Government in possession of a valid pass of the Ministry of National Defence or the Hong Kong Garrison". The Bills Committee considers that the exemption enjoyed by the Hong Kong Garrison has already been included in the reference to "a member of the Chinese People's Liberation Army" in section 31(6)(f) of the Public Security Ordinance. There is no need to include the reference to "the Hong Kong Garrison" in the adaptation proposal for members of the Ministry of National Defence in section 31(6)(m). Furthermore, the Bills Committee also suggests to simplify the adapted term so as to improve the clarity of the context of the relevant provisions.

After carefully considering the views of the Bills Committee, we accept that the adaptation proposals can be further refined. We also agree to replace the reference "Army Department" (that is "軍部" in the Chinese text) by "Ministry of National Defence in the Central People's Government" (that is "中央人民政府國防部" in the Chinese text), and delete the reference to "or the Hong Kong

Garrison" from the original adaptation proposal. In other words, the reference to "an employee of the Ministry of Defence in possession of a valid Army Department Pass" (that is, "持有有效軍部通行證的國防部僱員" in the Chinese text) in section 31(6)(m) will be adapted as "a member of the Ministry of National Defence in the Central People's Government in possession of a valid pass of the Ministry of National Defence" (that is, "持有有效中央人民政府國防部通行證的國防部人員" in the Chinese text).

I wish to thank the Bills Committee again for supporting the resumption of the Second Reading debate of the Bill. The efforts made by the Chairman and members of the Bills Committee have enabled the laws of Hong Kong to remain clear and specific, as well as in conformity with the Basic Law and Hong Kong's status as a SAR of the People's Republic of China.

Last of all, I implore Members to support the relevant CSAs of the Bill to be proposed by me later on.

Thank you, President.

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

(Members raised their hands)

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

(Members raised their hands)

Dr Margaret NG rose to claim a division.

PRESIDENT (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for 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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Kwok-him and Mrs Regina IP voted for the motion.

Mr LEE Cheuk-yan, Dr Margaret NG, Mr LEUNG Yiu-chung, Ms Audrey EU, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 46 Members present, 34 were in favour of the motion and 11 against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Adaptation of Laws (Military References) Bill 2010.

Council went into Committee.

Committee Stage

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

ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Adaptation of Laws (Military References) Bill 2010.

CLERK (in Cantonese): Clauses 1 to 4.

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

DR MARGARET NG (in Cantonese): Chairman, sorry, I have wrongly pressed the adjacent button.

Chairman, during the Second Reading debate, I have stated, in principle, my opposition to the Bill. The reason is that revision in military references necessitated by a change in Hong Kong's constitutional status should not be done through adaptation exercise. It is wrong to adopt such an approach. Neither is it correct to revise the references in accordance with the Schedule to Cap. 1. Chairman, in fact, all we need to do is to carefully revisit Cap. 1 with legal experts. Therefore, I will neither support nor oppose the mechanical adaptation in accordance with Cap. 1, regardless of whether it is a pure revision of terms with no implication or with significant implications.

Chairman, just now I mentioned a principle when I raised the Hua Tian Long case during my speech on the resumption of the Second Reading debate. It concerns with the immunity enjoyed by the British Crown. According to an academic who is a critic of court judgments, the Crown immunity applicable to the British Crown under the common law is inconsistent with the Basic Law, and thus should not be deemed as part of the law. It can thus be inferred that the

existence of fundamental problems may affect the partial revisions made to certain provisions.

Chairman, although the Administration has not proposed any amendment to clauses 1 to 4, these four provisions nonetheless have many problems. Firstly, how will section 2 which concerns the Jury Ordinance be adapted? The answer is that "the exemption from service as jurors provided for officers employed on full pay in the naval, military or air services of Her Majesty and their spouses" will be adapted to make the exemption from service as jurors also applicable to members of Chinese's People's Liberation Army (PLA) and their spouses. This adaptation is made because, as I have pointed out during the resumption of the Second Reading debate, things have changed. In the past, the British Forces might be accompanied by family members in Hong Kong and participated in social activities when they were not on duty. I think many people still remember, and Ms Cyd HO has also mentioned earlier that family members of the British Forces had participated in many activities in Hong Kong. So, why could they not serve as jurors? This is attributable to constitutional factor. At present, their spouses still enjoy exemptions.

Nowadays, however, members of the Hong Kong Garrison from the PLA are not accompanied by family members. Thus, they will not participate in any other activities in Hong Kong after work either subject to the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region (the Garrison Law) or in reality, not to mention their service as jurors. Thus, there is absolutely no need to exempt their service as jurors under the Jury Ordinance. Simple amendments should instead be made to delete the part on Her Majesty's Forces. Nonetheless, the authorities have insisted to adapt the relevant provisions regardless of the actual situation, which is inappropriate.

The Hong Kong Bar Association has, in its submission, highlighted that this is only one of the provisions in question. Both the Basic Law and the Garrison Law convey a clear message to us that the Hong Kong Garrison will not participate in …… They will only perform defence or other designated duties, but refrain from interfering in Hong Kong's social and other affairs. And yet, the present adaptation proposal has assumed that they will participate in these activities and therefore exemptions have to be granted accordingly. This issue is relatively more serious.

Chairman, to become a juror, one must ordinarily reside in Hong Kong. While they need not be permanent residents of Hong Kong, they must live in Hong Kong and are not visitors. Apparently, having regard to the nature of the Hong Kong Garrison, they are not ordinarily resided in Hong Kong and therefore are not eligible to serve as jurors. Nor are their spouses living in Hong Kong. So, what is the point of adding this exemption to the relevant provisions? This is completely senseless. Furthermore, it is extremely inappropriate to make adaptations in fear of the existence of the relevant provisions.

Chairman, section 3 is concerned with estates. Which part of the Probate and Administration Ordinance requires adaptation? Section 17 of Cap. 10 has provided for the Official Administrator, who may not necessarily be deemed as having the right to administer the estate of the British Forces. Chairman, what I said is not totally correct.

What I want to say is: what is the purpose of section 17? We have invented the so-called "Official Administrator" for certain scenarios under the Probate and Administration Ordinance, providing that the estate of a person who dies intestate shall temporarily vest with the Official Administrator until someone is appointed to take possession of it. And yet, this does not necessarily apply to a member of the British Forces who dies intestate. This is because section 10 stipulates that he may take possession only if he thinks fit.

Thus, the Administration proposed to delete the reference to "Her Majesty's Forces" from section 17. This will not have any implication on the Hong Kong Garrison, and the situation will not arise as well. In fact, Mainland laws on estates and properties have nothing to do with the need to provide these provisions. Thus, this adaptation proposal concerned is absolutely bizarre. Yet, given that the provision has been laid down, corresponding adaptations are therefore warranted. I had urged the Administration not to do so at the Bills Committee meetings. All it needs to do is to delete all references to the "Her Majesty's Forces" to remove all provisions containing references to "Her Majesty's Forces".

Chairman, the adaptation to section 4 is also very inappropriate. Section 4 is concerned with the Defamation Ordinance. First of all, there is actually no court-martial in the Mainland. Therefore, it is baffling to say that it is not libel if PLA's court-martial has accurate report of any proceedings.

Chairman, another point I wish to make also falls on the same provision, and that is paragraph 4 of the Schedule to the Defamation Ordinance proposed to be adapted. It says that, "A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of the Commonwealth outside Hong Kong or of any proceedings before a court-martial held outside Hong Kong under the Naval Discipline Act, the Army Act or the Air Force Act." The navy, army and air force contained in the original provision would be removed and replaced by "court-martial of the Chinese People's Liberation Army held outside Hong Kong". Chairman, this provision still contains references to the "Commonwealth". After adaptation, we will find "any proceedings before a court-martial held outside any part of the Commonwealth outside Hong Kong" and "any proceedings before a court-martial of the Chinese People's Liberation Army held outside Hong Kong" in the same provision.

Worse still, the reference to the "Commonwealth" also appears in the following paragraph. Chairman, if we amend the Defamation Ordinance according to the actual constitutional status of Hong Kong after the reunification, references to the "Commonwealth" should also be deleted as they are no longer applicable and are outdated. However, as this is an adaptation of law, our officials have followed strict adaptation rules and retained the references to the "Commonwealth". Chairman, I am not saying that they should not make adaptations beyond the scope of the adaptation exercise, but this has demonstrated why I said revisions to the relevant provisions should not be made by way of law adaptation right at the beginning. What we really need to do is to conduct a review, be it the Defamation Ordinance (Cap. 21) or the Jury Ordinance (Cap. 3), and deleted the obsolete parts to provide clarity to these ordinances.

Chairman, this explains why I said, during the resumption of the Second Reading debate, that the Government should not adopt this approach. Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR SECURITY (in Cantonese): Chairman, I would like to take this opportunity to explain to Members again the principles underpinning the adaptation of law. As I have said during the resumption of the Second Reading debate, the Bills Committee has thoroughly discussed the relevant principles and agreed that the adaptation proposals in the Bill are straight forward and technical amendments.

Firstly, according to the decision made by the Standing Committee of the National People's Congress (NPCSC) on 23 February 1997, except for 14 Ordinances and subsidiary legislation, and certain provisions in 10 ordinances and subsidiary legislation which are in contravention of the Basic Law, the laws previously in force in Hong Kong are adopted as the laws of the Hong Kong Special Administrative Region (HKSAR) in accordance with Articles 8 and 160 of the Basic Law.

Secondly, the NPCSC's decision has also spelt out the interpretative principles for provisions relating to the rights, exemptions and obligations of military forces stationed in Hong Kong by the United Kingdom and Her Majesty, the Crown, the British Government and the Secretary of State. The interpretative principles promulgated by the NPCSC have been enacted as part of Hong Kong law through the Hong Kong Reunification Ordinance (No. 110 of 1997) and incorporated as section 2A of and Schedule 8 to the Interpretation and General Clauses Ordinance.

Thirdly, according to section 2A(2)(c) of the Interpretation and General Clauses Ordinance, provisions relating to the rights, exemptions and obligations of the military forces stationed in Hong Kong by the United Kingdom shall, subject to the provisions of the Law of the People's Republic of China (PRC) on the Garrisoning of the Hong Kong Special Administrative Region (the Garrison Law), continue to have effect and apply to the military forces stationed in the HKSAR by the Central People's Government (CPG) of the PRC.

Fourthly, according to section 1 of Schedule 8 to the Interpretation and General Clauses Ordinance, any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) where the content of the provision relates to title to land in the HKSAR, involves affairs for which the CPG of the PRC has responsibility, as well as involves the relationship between the Central Authorities and the

HKSAR, shall be construed as a reference to the CPG or other competent authorities of the PRC.

Fifthly, according to section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance, any reference in any provision to Her Majesty, the Crown, the British Government or the Secretary of State (or to similar names, terms or expressions) in contexts other than those specified in section 1 of Schedule 8 above shall be construed as a reference to the Government of the HKSAR.

Chairman, the present adaptation of the Bill has been dealt with in strict compliance with the established principle.

Thank you, Chairman.

DR MARGARET NG (in Cantonese): Chairman, even if you play music to a cow, it will at least take a look at you. And yet, it seems that the Secretary for Security has turned a deaf ear to our discussions and no response has been made.

When I spoke for the first time during the resumption of the Second Reading debate, I said that the fundamental problem is the erroneous definitions in Cap. 1, and a review should be conducted in this regard. Just now the Secretary has read out the provisions of Cap. 1, I do not consider this necessary as it is too boring for Members. Yet, he read on and on and on. He has not given any thought to the issue in question.

Chairman, while the Special Administrative Region is duty-bound to enact laws, we are duty-bound to review the laws from time to time to see if there are mistakes, deficiencies or problems unidentified in the past, so that refinements can be made. The Hong Kong Reunification Ordinance is a local legislation, not a law drafted by the National People's Congress. We should not treat it as if it is carved on stones or metal plates, and therefore not subject to revision. We drafted this Ordinance by ourselves, which was subsequently amended and partially included into Cap. 1. Therefore, this Ordinance has never been the golden rule; it is merely a local legislation which can be revised when necessary.

Therefore, Chairman, as I have said right at the beginning, the biggest and most fundamental mistake made by the Secretary is that the adaptations proposed

are too mechanical without having into consideration the consequences. What is said will be done. Just now you publicly criticized me for not spelling out the details, so let me see how you are going to give an account of your mistakes.

Chairman, another reason why I oppose this Bill originated from the Secretary. The Interpretation and General Clauses Ordinance (Cap. 1) contains many definitions and section 2 is about application. Members should understand very well that unless the provisions have contrary intention, otherwise all provisions must be interpreted in accordance with the Interpretation and General Clauses Ordinance. In other words, this is the general direction. On the question of whether all provisions must be interpreted according to the definitions of the Ordinance, it is subject to the actual context of the provisions the real situation, and so on. It is therefore not so rigid.

Chairman, if this adaptation bill is passed, the laws will become even worse. This is because without this adaptation bill, the Court will look for the most accurate interpretation of the relevant provisions, in consideration of the new constitutional status granted to Hong Kong by the Basic Law when interpretation of the Jury Ordinance or Pilotage Ordinance, for instance, is required. Yet, once this adaptation bill is passed, the provisions will become rigid and unchangeable. Therefore, Chairman, I think the Secretary has completely failed to give a reasonable explanation to the examples quoted by me. I am nonetheless not surprised. Rather, I feel pretty sad. Laws are very important and clarity of paramount importance. Clarity is particularly important when it comes to laws involves the interfaces between Hong Kong and the Central Authorities. Our officials have nonetheless adopted such an attitude towards this issue. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Chairman, I think my stance is different from that of Dr Margaret NG. She held that proposals in the Bill should be implemented by way of legislative amendment rather than adaptation of law. I nonetheless do not agree with her.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendment of clause 5. The proposed Committee stage amendments (CSAs) have been sent to Members earlier.

We originally proposed to include the savings and transitional provisions in the Adaptation of Laws (Military References) Bill 2010 (the Bill) to provide additional safeguards, before it takes effect upon gazettal, and to remove doubts as to the validity of the actions or proceedings initiated under the Defamation Ordinance, the right accrued or accruing under the Pensions Regulations, the Pension Benefits Regulations and the Pension Benefits (Judicial Officers) Regulations and the documents or declarations executed or attested outside Hong Kong under the Adoption Rules.

Considering the views of the Bills Committee on the Adaptation of Laws (Military References) Bill 2010 (the Bills Committee), we agree that even if no such savings and transitional clause is included in the Bill, it should not have actual impact on the proceedings under the relevant legislation and the interest accrued before the reunification, as well as the validity of such documents or declarations.

Therefore, we accept the proposal to delete the savings and transitional provisions from the Bill and move a CSA to remove clause 5 from the Bill.

This CSA has obtained the support of the Bills Committee and I implore Members to support and endorse this CSA.

Proposed amendment

Clause 5 (see Annex I)

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

DR MARGARET NG (in Cantonese): Chairman, the Secretary said earlier that an inclusion of the savings and transitional provisions was proposed at the initial stage because of the Pensions Regulations (Cap. 89 sub. leg. A).

One of the provisions of the Regulations is concerned with the counting of war service for pension purposes. If a person had served in the British Forces at war, such service should be counted for pension purposes. This provision has precisely provided the basis of the Government's method of calculation. As Members may aware, a law-abiding Government must provide for the method of calculation for pensions.

And yet, the relevant adaptation proposal has suggested that the provision concerned be deleted, which is not in any way an adaptation of law. Even if the relevant provision is obsolete (because even the last person concerned has died), the retention of the provision can still serve as reference in case any problem arises in future. In that case, what is the point of adopting the approach of law

adaptation? Even if there is a need to provide saving provisions, it should be done by way of law adaptation.

Chairman, I have examined the Regulations for a period of time. Why did I do so? Because certain provisions, though obsolete, still have implications on subsequent events. Thus, a deletion of the relevant provisions may give rise to problems in future.

I am not saying that even obsolete provisions cannot be deleted. And yet, before deciding to delete any provision, it is necessary to ascertain if it is safe to do so and whether this will have any implication on anyone or anything. Therefore, it is inappropriate to adopt the approach of law adaptation.

Chairman, I wish to remind Members again that the Bill has many problems. Thank you.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary to speak again.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I do not need to speak.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to delete clause 5 has been passed by the committee of the whole Council, clause 5 is therefore deleted from the Bill.

CLERK (in Cantonese): Schedule 2.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedule 2 stands part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 1.

SECRETARY FOR SECURITY (in Cantonese): Chairman, I move the amendments to Schedule 1 of the Adaptation of Laws (Military References) Bill 2010 (the Bill), and the relevant Committee stage amendments (CSAs) have previously been issued to Members.

When I earlier spoke on the proposed CSAs during the resumption of the Second Reading debate, I have given a detailed account of the justifications of the CSAs. I will now introduce the individual amendment, but I am not going to repeat the previous justifications.

Firstly, the amendment to section 1(a) of Schedule 1 is made in response to the suggestion of the Bills Committee on the Adaptation of Laws (Military References) Bill 2010 (the Bills Committee) to take away the corresponding amendment in clause 5 of the Bill. The amendments proposed in (b) and (c), on the other hand, seek to delete the proposed four common military references in the Bill from the Interpretation and General Clauses Ordinance.

The amendments to sections 8, 119 and 132 of Schedule 1 seek to take away the reference "used only on non-commercial service" from the proposed adaptation of reference to "ships belonging to Her Majesty" in the Pilotage Ordinance, Merchant Shipping (Prevention and Control of Pollution) Ordinance and Merchant Shipping (Seafarers) Ordinance.

The amendments to sections 14, 20, 45 and 65 of Schedule 1 seek to retain the reference "服役" in the original provisions of the Immigration Ordinance, Registration of Persons Regulations and Public Bus Services Regulations, as well as the reference "當值中" in the original provisions of the "Star" Ferry Company, Limited, Bylaws.

The amendment to section 60 of Schedule 1 seeks to revise the proposed adaptation of the reference "a member of Her Majesty's naval forces" in section 29(2) of the Summary Offences Ordinance to "a member of the naval forces of the Chinese People's Liberation Army" in the relevant provision of the Bill by adding the reference "the naval forces".

The amendment to section 71(2) of Schedule 1 is concerned with the adaptation proposal of "Army Department Pass", that is, to take away the reference "or the Hong Kong Garrison" from the adaptation proposal regarding section 31(6)(m) of the Public Security Ordinance.

The amendments to sections 128(3), 135, 137(1), 137(2), 137(3)(a), 137(4), 137(5)(a), 137(6) and 137 of Schedule 1 seek to uniformly adapt the reference "Secretary of State" ("國務大臣"/"工貿大臣" in the Chinese text) in the Air Navigation (Hong Kong) Order 1995, Aviation Security Ordinance and Registered Designs Ordinance in the Bill, and delete references "by or on behalf of" or "competent authority" by uniformly adapting as "Central People's Government".

The abovementioned 18 CSAs relating to the adaptation proposals of references have been supported by the Bills Committee. I implore Members to support and endorse the CSAs.

Proposed amendment

Schedule 1 (see Annex I)

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

DR MARGARET NG (in Cantonese): Chairman, clause 8 of the Bill is concerned with the compulsory pilotage in the Pilotage Ordinance (Cap. 84). It means that once a ship enters the Victoria Harbour, it will be subject to compulsory pilotage in accordance with the law, with the exception of specific ships which enjoy exemption. One example is "ships belonging to Her Majesty". This is why adaptation proposals have to be made. I do not know the justifications of granting such an exemption at that time. Was it granted on the basis of the exemption statutes of the British Crown? If exemption was actually granted on the basis of such statutes, then according to the academics whom I mentioned earlier, this exemption should no longer be deemed as part of the law as it is inconsistent with the Basic Law. Simple enough, how can we have Crown immunity when the Crown no longer exists? Given that the

People's Republic of China is a republican country rather than a monarchy country, these statutes are no longer in force. We are not sure why such immunity was granted in the first place, therefore we better leave it aside.

Chairman, I want to say that if revisions are made by way of mechanical adaptations, just like the present revisions demanded by the Secretary, sometimes the outcome may be adverse and even run counter to the law. Why? Because the proposed revision was to, firstly, adapt the reference as "ships belonging to the Chinese People's Liberation Army or ships belonging to the Central People's Government and used only on non-commercial service". Since the term "Her Majesty" — as the Secretary has read out — will be adapted as "Central People's Government" (CPG) whenever it appears in accordance with section 1 of Schedule 8 to Cap. 1, the ships will therefore belong to the CPG, right? As a result, we have two types of ships: one belonging to the garrison, and the other belonging to the CPG.

Yet, it is rare to see Her Majesty's ships entering the Hong Kong harbour without pilotage by exercising the exemption from compulsory pilotage. Contrarily, as evident from the Hua Tian Long case, the CPG has plenty of ships for commercial purpose. As Members may recall, Hua Tian Long belongs to the Guangzhou Salvage Bureau. After a Ukrainian ship wrecked after a crash, Hua Tian Long was invited to come for salvage by the plaintiff, who has contractual relationship with its owner. However, Hua Tian Long did not come as it was engaged in another business elsewhere. The plaintiff then applied to the Marine Court for an order to detain the ship. The owner of Hua Tian Long thus raised opposition on the ground that the ship belongs to the CPG and thus enjoys Crown immunity, whereas the Court of Hong Kong does not have jurisdiction over it. In this case, the ship still belongs to the CPG though it is used only on commercial service. Is this acceptable to us? While the retention of the original expression "any ship belonging to the Central People's Government and used only on non-commercial service" may bring positive effect, the underlying principle is wrong. And yet, it is appropriate to follow the principle of adaptation. Strictly speaking, it is theoretically correct but will lead to adverse outcome. So, Chairman, this again shows that we should not blindly adapt the laws.

Chairman, the Pilotage Ordinance is only one example. Mechanical adaptations were also proposed to a number of other provisions in the Bill affecting ordinances which contain references to "Her Majesty's ships".

Chairman, why did I say right at the beginning that the Garrison Law is more reliable? If Members take a good look at Article 7 of the Garrison Law, which I have read out earlier, it clearly provides that no aircraft or vessels of the garrison shall be detained, inspected or intervened by any law-enforcing officer of the HKSAR. Besides, Article 18 of the Garrison Law also provides that "the Hong Kong Garrison or its members shall not engage in any form of profit-making business activities." From this, we can be sure that vessels of the Hong Kong Garrison will not be used for commercial use. Thus, insofar as the garrison is concerned, it is appropriate to act in accordance with the Garrison Law. But for the amendments, which they think are smart, serious problems may arise, Chairman, this is the case in respect of clause 8 of the Bill.

Section 50 of Schedule 1 to the Bill is concerned with the offences on treason as provided in the Crimes Ordinance mentioned by me earlier.

Chairman, I am just trying to explain that if our laws are so adapted, they will lose their dignity and become inexplicable, absurd and even an eyesore. All I want to say is that the authorities should look at the adaptations as an entity. As we all know, Article 23 of the Basic Law deals with the provisions in Part I of Cap. 200. If the Government deals with it as an entity, we would not have come to this stage. Why would this bizarre language cause trouble? Chairman, although there are so many papers on the table, I can still find …… What did the authorities intend to change it to? They intend to change it to "seduce any member of the Chinese People's Liberation Army from his duty"; this is related to section 6 of the Crimes Ordinance, as previously mentioned by me. The word "seduce" is not uncommon to Members who study English Literature. It is a common word in classical English. As for the laws of Hong Kong, let me read out the original English text of section 6: "Any person who knowingly attempts to seduce any member of Her Majesty's forces from his duty and allegiance to Her Majesty; or to incite any such person …… shall be guilty of an offence", whereas under section 7 (Incitement to disaffection), "Any person who knowingly attempts to seduce any member of Her Majesty's forces …… from his duty or allegiance to Her Majesty shall be guilty of an offence." These are ancient words.

Nonetheless, these ancient words do carry some meanings. Why such words were used when Cap. 200 was enacted during the colonial era? Because they represent the relationship between Her Majesty and her forces — that is, the

forces' allegiance to their monarchs. I wonder if there is any difference between their allegiance and the relationship of allegiance of the Chinese People's Liberation Army to the People's Republic of China. But are those wordings appropriate? Will clarity be further enhanced by using other expressions?

Chairman, our officials have not even thought about this. Regardless of how I think about Article 23 of the Basic Law or the enactment of legislation to implement this provision, I will respect the law. To respect the law, one must think about what the law represents, what the underlying concept is and whether it is right, and whether the words chosen can truly reflect the underlying concept. However, in the present adaptation exercise, it is so messy that words are mechanically substituted, with new terms replacing the obsolete ones. What is the purpose of such substitution? Assuming that no revision or adaptation will be made and someone stirs up a rebellion among the Hong Kong Garrison — the terms I used are not legal terms — say, I stir up a rebellion among the Hong Kong Garrison, do you think Margaret NG can escape from prosecution because no adaptation has been made? This is impossible. It is perfectly fine for you to report me. Thus, the proposed adaptation is indeed meaningless. Apart from turning our laws into an eyesore, it has done nothing to strengthen national defence in practice. Therefore, Chairman, as I have said in the Bills Committee, no matter how piecemeal or bizarre other provisions will become, please leave the provisions of Cap. 200 intact.

Chairman, I think I have made myself very clear with the above examples, so I am not going to make any more comment on the parts of Schedule 1 which have or have not been revised. All in all, I wish to highlight the above examples to convince Members why I think this Bill should not be passed. It is indeed an insult to the dignity of law. All I can say is that I am very, very regretful about this. Thank you.

MS CYD HO (in Cantonese): Chairman, the Adaptation of Laws (Military References) Bill 2010 (the Bill) does contain some commercial elements. Take the "ships belonging to Her Majesty" (like Lady Maurine in the past) mentioned by Dr Margaret NG just now as an example, not a single barge belonged to Her Majesty. And yet, after adapting the term as the "Central People's Government", its coverage will be expanded to include vessels belonging to a Guangdong salvage company. As such, an amendment to a military reference originally

construed to be made for defence purposes will suddenly be imbued with commercial elements as a result of the mechanical adaptation process.

Regarding the Pilotage Ordinance mentioned previously, as the actual effect is merely to grant exemptions, this will neither open the door for the garrison to do business nor add any commercial element to the provisions. However, Chairman, instead of proposing direct adaptations, sometimes the Government may delete the original wordings, thereby opening the door for the People's Liberation Army to do business. I notice that though the case of the Pilotage Ordinance and the Rating Ordinance is similar, no revision has been made to the latter. This is why I have to highlight this point here.

Regarding the interpretation of military land, the Rating Ordinance originally provides that military land is "any land and any building thereon occupied by Her Majesty's forces, or by any body or organization established primarily for defence proposes and designated by the Governor for the purposes of this section, but not any land or building thereon rented for public purposes by any such force, body or organization unless such land or building is rented directly from the Government". While the term "defence purposes" can be found, there is no reference to either the "British Forces" or the "garrison". How did the Government revise this provision? It has deleted the term "defence purposes" from the definition of military land and replaced with "any land and any building thereon occupied by the Hong Kong Garrison". Using the arguments that I have raised during the resumption of Second Reading debate, this will open the door for bizarre cases where land owned by the Hong Kong Garrison or the United Services Recreation Club but currently not used for defence purposes can be leased.

Chairman, I must respond to the remarks made by Mr James TO earlier. While I agree with him that the passage of the Bill could erase the colonial colour of certain terms, will we also create certain loopholes or new problems in the course of it? If we vote in favour of this motion and endorse the Bill, the newly-created loopholes will become future problems. Chairman, I really do not want to get involved. I think the present adaptation of military references will create new problems in many respects. Therefore, Chairman, I reiterate that I do not endorse the passage of this Bill.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary to speak again.

SECRETARY FOR SECURITY (in Cantonese): Chairman, Dr Margaret NG has just now highlighted some ordinances which she thought have problems both before and after the adaptation exercise, and she suggested that the approach of legislative amendment should be adopted.

As I have pointed out in my earlier speech, the adaptation proposals are purely straight forward and technical amendments that comply with various principles for adaptation, and do not involve any law reform. This is the objective of proposing amendments to the Adaptation of Laws (Military References) Bill 2010 (the Bill).

As reiterated by me during the resumption of the Second Reading debate, provisions revised under the Bill have the same effect as before the reunification. Therefore, we consider the adaptation proposals and terms appropriate.

Dr Margaret NG highlights the adaptation proposals of the provisions on "incitement to mutiny" and "incitement to disaffection" in the Crimes Ordinance. She considers that as the provisions involve very serious offences, it is inappropriate to revise by way of adaptation, but should be dealt with together with the legislative proposals of Article 23 of the Basic Law in the same exercise.

I must point out that, in the Bill, the proposal to adapt the reference "Her Majesty's forces from his duty and allegiance to Her Majesty" to "the Chinese People's Liberation Army from his duty and allegiance to the People's Republic of China" is completely in line with the principles on adaptation of laws and that is a straight-forward adaptation. This proposal will neither enhance nor undermine the original or existing legal effect of the relevant Ordinance, and is therefore completely in line with the principles of strict adaptation. Thus, I do not agree to abandon the adaptation made to the relevant Ordinance or put the

relevant adaptation process on hold. The majority of Bills Committee members also agree to include these two adaptation proposals into the Bills.

As for the military land mentioned by Ms Cyd HO, responses have been given on various occasions in the Legislative Council. According to the Sino-British negotiations, military land in Hong Kong should be used for military purposes by the Chinese People's Liberation Army. The United Services Recreation Club (USRC) highlighted by Ms Cyd HO is nonetheless related to another agreement, which is an international agreement entered between the Chinese and British Governments before the reunification to retain the USRC. Therefore, apart from the military land, this issue also involves the diplomatic documents of the two countries. Thus, we cannot resume the land at will.

Thank you, Chairman.

DR MARGARET NG (in Cantonese): Chairman, just now Ms Cyd HO quoted Mr James TO's remarks that amendments are acceptable if the number of colonial terms can be reduced, as said by the Secretary, without changing their meaning or attracting controversy.

Chairman, it is in fact unnecessary to adopt the approach of law adaptation in dealing with these problems. We can actually deal with such simple amendments by way of another bill called the Statute Law Bill, which seeks to make simple technical amendments to ordinances and can be expeditiously passed. In fact, amendments as simple as these can be easily dealt with.

When the Secretary responded to my speech, he stated that the adaptation of Cap. 200 will not be put on hold because I have highlighted the significance of Article 23 of the Basic Law. In my opinion, his saying is seriously wrong. In his earlier speech, Mr James TO said that the number of colonial terms should be reduced. And yet, colonial terms like "Her Majesty" can still be found in Cap. 200 after the adaptation. Do you feel comfortable to see the term "People's Liberation Army" appearing twice among the numerous colonial terms? Can adaptation reduce the number of colonial terms? If the entire part remains intact, we can still argue that amendments to this part will be made in one-go at a later time. This sounds reasonable. However, it is indeed incomprehensible to adapt only two terms as "People's Liberation Army" in the entire ordinance.

Chairman, I do not understand why officials are so afraid of their boss and will only do what they are told. They should at least use their brain to think of the best way to get things done. Should there be a need to enact legislation to implement Article 23 of the Basic Law, I hope they can do it properly so as not to bring disgrace to national prestige. Thank you, Chairman.

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

MR IP KWOK-HIM (in Cantonese): Chairman, many Members have expressed their views on the content of the Bill. Being the Chairman of the Bills Committee, I wish to point out clearly that the Bills Committee has discussed all the abovementioned issues right from the beginning.

A Member (that is, Dr Margaret NG) has clearly stated her stance right at the beginning that she did not agree to adopting the approach of law adaptation. Instead, amendments should be made. Similar issues should be addressed by way of amendments. And yet, other Bills Committee members mostly considered that adaptation should be made by way of adaptation of laws. In fact, this is not the first time law adaptation exercise has been carried out. Similar exercises have been carried out time and again after the reunification. The problem is that the pace is considered too low during the process.

The present Bill mainly deals with military references, and just now Members have highlighted some unsatisfactory cases. This is attributable to the adaptation of the parts having military references alone, while other terms in the same ordinance remain unchanged. Terms like "Commonwealth" or "Her Majesty", as we have previously mentioned, still exist. Why amendments have yet to be made to these terms? Because they are not military references, so they are not being dealt with this time. Discussions have actually been held in this regard.

Here, I just want to point out that the majority of Bills Committee members have actually discussed how military references like "Her Majesty's Forces" or "Her Majesty" can be appropriately amended in a straight forward manner without prejudicing the existing laws, and just now I heard some Members say that these terms should be deleted. The provision on the cemetery is a very good

example. While there is not the slightest chance that the People's Liberation Army will perform in the Hong Kong Cemetery in Happy Valley, but since the relevant ordinance is still in force, we can only make the corresponding adaptations. Plenty of similar discussions have been held.

I want to reiterate that, after the deliberation, the Bills Committee has basically accepted and endorsed the entire set of legislative amendments for submission to this Council. We mainly adhered to one clear principle, and that is, adaptation of law is necessary.

Thank you, Chairman.

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

DR MARGARET NG (in Cantonese): Chairman, I thank Mr IP Kwok-him for his earlier speech. Mr IP was the Chairman of the Bills Committee and he did give me ample time to raise my complicated viewpoints. However, Chairman, being Members, if we think that the Council is heading towards a wrong direction or the Government has done something wrong, we are duty-bound to point it out by all means and urge the Government to make changes. Unfortunately, the Government has not listened to us. But this does not mean that we should refrain from pointing out its mistakes. Even though this is a waste of Members' time, I insist to repeat my arguments today simply because this is too important.

Chairman, just now Mr IP Kwok-him mentioned other law adaptation bills. In fact, I had participated in the deliberation of a large number of adaptation bills. Of the previous 50-odd adaptation bills, I had scrutinized almost every single one of them. When Andrew WONG was still a Member of this Council, either he or I would chair these bills committees and we had done a lot of work in this regard. What is more, we were pretty serious in dealing with these issues, even though they might involve medical terms. Also representatives from various government departments were invited to our meetings to brief us on the content of the bills.

Chairman, we have not encountered great difficulties in the past as the adaptation proposals are mostly straight forward. All we need to do is to avoid

overlooking. There were cases where certain proposals were considered to be beyond the scope of adaptation, and the authorities did take heed of our advice. Work seemed pretty smooth in those days and rules have been laid down for the deliberation of various law adaptation bills. The consensus which Members have reached has been set out in the papers prepared by the Bills Committee examining this Bill.

Chairman, this Council did achieve some progresses in some cases. There was once a law adaptation bill which sought to adapt the names of a few Hong Kong-stationed organizations, and highlight the ordinances which were applicable to these organizations. Although they were called law adaptation bills, the proposals set out in the Bill did not involve the adaptation of laws in practice. Given that the Bill did not live up to its name, I did not vote for it. Even though I did not vote for it in the end, I did support the Government and had encouraged it to explore new ways to further refine the relevant ordinances. In this way, our ordinances can be refined.

And yet, today's case is very special. The Bill is not only sensitive in nature, but also involves a large number of ordinances and has an extensive coverage. The Government, on the other hand, has become more stubborn. Not only did we fail to achieve any progress — as I have pointed out right at the beginning — many serious problems have also arisen. Therefore, Chairman, I hope that Members will think twice and do not support this Bill. Although the Bill will eventually make its way through, we have to perform our duty as a Member after all. What is right or wrong, and how the law should be formulated, Members should have an answer. Thank you.

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

MS CYD HO (in Cantonese): The "Request to speak" button did not work when I pressed it just now.

Honestly speaking, during the deliberation, I did not consider the proposals based on the principle of law adaptation. This is because, if they are strict adaptation as claimed by the Government and only involve mechanical adaptations, many proposals should not have been put forward. During the

deliberation with the Government, my major consideration is the prevailing situation and the need for adaptation.

The same consideration was applied in the discussion concerning the Hong Kong Cemetery, Happy Valley, Rules. I am so grateful that the Government agreed to make deletions to eliminate certain absurdities. However, regarding military land, I do not accept the Secretary's remarks that in view of an agreement exchanged between the United Kingdom and China, the definition of "military land" in the local legislation should be revised accordingly. The reason is that Article 13 of the Law of the People's Republic of China on Garrisoning the Hong Kong Special Administrative Region (the Garrison Law) has not only mentioned "defence purposes", it has also specified that if the Government of the Hong Kong Special Administrative Region needs for public use any part of the land used for military purposes by the Hong Kong Garrison, it shall seek approval of the Central People's Government; where approval is obtained, the Government of the Hong Kong Special Administrative Region shall make reprovision of land and military facilities for the Hong Kong Garrison at such sites as agreed to by the Central People's Government. The procedures have been clearly laid down. Despite a certain piece of land had been designated as military land in the agreement entered between the United Kingdom and China, in case such a need arises — there is certainly such a need in view of the shortage of land in various universities, coupled with the fact that the sites concerned are so close to the universities — the SAR Government can claim back the land concerned from the Central People's Government in accordance with Article 13 of the Garrison Law. Or, we can surrender other sites as compensation. And yet, our SAR officials dare not do so.

Instead, the authorities have deleted the term "defence purposes" from the definition of "military land" in the local legislation. The objective outcome is crystal clear. After deleting "defence purposes" from the definition of "military land" in the local legislation, the land where the United Services Recreation Club is situated will officially be removed from the lists of military land in our law after going through the process of law adaptation — the so-called adaptation process. This saves the Government from actually asking the Central Government to return the land that no longer serves defence purposes. However, the interests of Hong Kong's general public will be undermined as a result.

Therefore, Chairman, let me state again that the mechanical adaptation process itself has serious inherent problems. Yet, the worst is the unpredictability of the Government as adaptation was not mechanically conducted in some cases. In the example cited by me earlier, the Government has proposed numerous additions and deletions simply to amend the law to achieve another objective. It has nonetheless done so under the banner of adaptation of laws. This is one of the reasons why I oppose this Bill.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Chairman, as I have said earlier, Dr Margaret NG and I have taken a completely different stance on this Bill. Yet, I do respect Dr NG's views as she has participated in many previous law adaptation exercises. I am nonetheless afraid that we will not be able to reach a consensus given our different stance.

Regarding the military land mentioned by Ms Cyd HO, Chairman, I do not think it has any direct bearing on this Bill. Perhaps we should discuss it on other occasions.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 1 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010

SECRETARY FOR SECURITY (in Cantonese): President, the

Adaptation of Laws (Military References) Bill 2010

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

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Adaptation of Laws (Military References) Bill 2010 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Dr Margaret NG rose to claim a division.

PRESIDENT (in Cantonese): Dr Margaret NG has claimed a division. The division bell will ring for 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.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP and Dr Samson TAM voted for the motion.

Mr LEE Cheuk-yan, Dr Margaret NG, Mr LEUNG Yiu-chung, Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO, Mr Alan LEONG, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

Mr LEUNG Kwok-hung abstained.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that there were 47 Members present, 35 were in favour of the motion, 10 against it and one abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Adaptation of Law (Military References) Bill 2010.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): There are a total of four Members' motions today. The third and fourth ones are motions with no legislative effect.

PRESIDENT (in Cantonese): First Member's motion: Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Places of Public Entertainment (Exemption) (Amendment) Order 2011.

I now call upon Ms Cyd HO to speak and move the motion.

PROPOSED RESOLUTION UNDER SECTION 34(4) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MS CYD HO (in Cantonese): President, at the House Committee meeting on 6 January 2012, Members agreed that a subcommittee be formed to study the Places of Public Entertainment (Exemption) tabled in the Council on 11 January 2012.

To give the subcommittee sufficient time to scrutinize this subsidiary legislation, members agreed that I shall move a motion in my capacity as Chairman of the subcommittee that the period for scrutinizing this subsidiary legislation be extended to 29 February 2012.

The content of the motion is as printed on the Agenda. I implore Members to support the motion.

Ms Cyd HO moved the following motion: (Translation)

"RESOLVED that in relation to the Places of Public Entertainment (Exemption) (Amendment) Order 2011, published in the Gazette as Legal Notice No. 183 of 2011, and laid on the table of the Legislative Council on 11 January 2012, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended

under section 34(4) of that Ordinance to the meeting of 29 February 2012."

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

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Cyd HO 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 Member's motion: Seeking papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited and The Hongkong Electric Company Limited.

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

SEEKING PAPERS, BOOKS, RECORDS OR DOCUMENTS IN RELATION TO THE 2012 TARIFF ADJUSTMENTS BY CLP POWER HONG KONG LIMITED AND THE HONGKONG ELECTRIC COMPANY LIMITED

MS MIRIAM LAU (in Cantonese): President, in my capacity as Chairman of the House Committee, I move that the motion, as printed on the Agenda, be passed.

At the House Committee meeting on 6 January 2012, Members discussed Mr Fred LI's proposal for moving the motion that the Panel on Economic Development be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to exercise the powers conferred by section 9(1) of the P&P Ordinance to order the Secretary for the Environment to produce all papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) respectively. Different views were expressed by Members at the meeting. While some supported the motion, others opposed the motion, and the proposal was finally put to vote and approved at the meeting.

According to past practice, motions on invoking the P&P Ordinance discussed and approved by the House Committee will be moved by Chairman of the House Committee if Members consider it appropriate. As Members agreed to adopt the same practice at the House Committee meeting on 6 January, I will move this motion today.

President, I am going to talk about the views of the Liberal Party on exercising such powers.

The current substantial tariff increases by the two power companies have generally caused great discontent among the public and the business sector. It is because the two power companies, despite making huge profits, had ignored the possibility of an economic downturn this year and the extra burden on the public owing to rising inflation, and demanded initially for high rates of tariff increase of 9.2% and 6.3% respectively. Although the two power companies had finally yielded to the pressure of public opinion and had lowered or adjusted the charging items so as to lower the increase rate for domestic customers, they still inclined to maximize profits, that is, striving to get the maximum rate of permitted return at 9.99% under the Scheme of Control Agreements (SCAs).

I think the public are eager to know the data and rationale behind the cover-up tricks played by the two power companies. Has the SAR Government performed a good role in gate-keeping from the perspective of safeguarding public interest?

Undeniably, the Liberal Party has to undergo certain ideological struggle when considering whether or not the "imperial sword" should be used; that is, to authorize the Panel on Economic Development to exercise the powers conferred by section 9(1) of the P&P Ordinance to order the Secretary for the Environment to produce all relevant information and documents in relation to the tariff adjustments by the two power companies this year and their five-year Development Plans.

The Liberal Party strongly opposes the substantial tariff increases by the two power companies. While we think that the two power companies should present all the facts to the public in connection with the tariff increases, we also understand the concern of the business sector about the casual involvement of the Government or the Legislative Council in commercial operation and demand for information on operational arrangement. They also worry that the disclosure of sensitive commercial information may affect their competitiveness or normal business; or the incident or the information disclosed may be politicized. Listed companies worry that their share prices may be affected. Furthermore, the core values that have always been pursued in Hong Kong, such as free economy, market operation and the spirit of the rule of law, may be impacted. The consequences can be far reaching indeed. The Liberal Party certainly understands the views of our friends in the business sector.

However, the Liberal Party is also of the view that, as the two power companies are public utilities providing electricity supply and entitling to patent rights in disguised form, every move they make has pivotal impact on our economy and society, as well as people's livelihood, and that involves major public interest. Furthermore, the current tariff increase incident has exposed the three sins of the SAR Government in handling the tariff increases by the two power companies: it is haphazard in entering into agreement, weak in monitoring and incompetent in vetting, hence leading to some mysterious "X-files" in connection with the applications for tariff increases by the two power companies. Under the lesser of the two evils principle, though we do not agree to the unconditional invoking of the P&P Ordinance, we agree to the amendment

proposed by Mr Vincent FANG that "it must be ensured that the exercise of this power is in the public interest, does not interfere with normal commercial operation, and does not lead to divulging sensitive commercial information". Under such conditions, we should seek information in relation to the 2012 tariff adjustments by the two power companies and details of their five-year Development Plans.

In our view, if we want to crack the cover-up tricks of the two power companies, we must ask the two power companies to provide sufficient information, so that the public and the commercial customers can understand the causes leading to the tariff increases and the future trends of electricity tariffs. Nevertheless, we should avoid causing undue effects on the normal operation of the business community or giving wrong messages to the business community, leading to concerns about the abuse of power by the Legislative Council.

The Government and the two power companies should seriously review why the present situation has arisen. Let me briefly recap the roles played by CLP and the Government in this row over tariff increase and the course of development of the incident.

On 13 December last year, the Government and the two power companies briefed the Legislative Council on the tariff increase proposals. At that time, CLP submitted a PowerPoint presentation material of around 20 pages and the highlight was the proposed increase rate of 9.2%. President, the reasons for the increase were vague, as CLP only mentioned about cost pressure resulted from the need to construct emission reduction facilities, the need to use natural gas, as well as the soaring prices for new gas, which would be two or three times more than current prices. Hence, there was a need to increase tariff. Nonetheless, no other data were provided in that document; and many pages of the document were devoted to some public relations issues, such as the good services provided to customers, and a comparison of tariff increases in other regions around the world. The intention was to illustrate that CLP was not too bad as the charges were not too high and the rate of tariff increase throughout the years had not been excessively high. There was no data illustrating to us how the rate of 9.2% was arrived at, or whether the rate of return should be 9.99% of the net fixed assets.

HEC is no better. It also submitted a PowerPoint presentation material of around 20 pages. HEC proposed an increase rate of 6.3%, and like CLP, the

reasons given for supporting the increase were rising coal prices and natural gas prices. HEC also compared their tariffs to those of other regions, so as to point out that its tariff was not excessive and the increase rate was not very high. Similarly, no data had been given. We could hardly understand why such high rate of increase was proposed based on the information provided. The Government could not offer any insight. It only mentioned in its papers that it had reduced the capital expenditure proposed by the two power companies by 30% to $39.9 billion for CLP and $12.3 billion for HEC. We did not know what items of expenditure were included in the amount of $39.9 billion and $12.3 billion. In addition, in the government paper, it was mentioned that the Government had three reservations about CLP, namely high operating expenditure, inclusion of premature capital expenditure in tariff adjustment — CLP seemed to be collecting money in advance, which was opposed by the Government, but CLP disagreed; the last reservation was the anticipated rent and rates refund. CLP was unwilling to handle the issue and include the refund in the computation of tariff. As detailed information has not been provided, we doubt whether the Government intends to tell us, through such information, that it fails to control the tariff increases by the two power companies. Is the Government totally powerless in handling the tariff increases of the two power companies, or does it have the intention but not the power to handle the issue?

Before 13 December, the two power companies took the initiative to inform the public through the media that the rates of tariff increase this year would be higher than inflation. It seemed that they were testing the reactions of the public and attempting to create a public view that substantial tariff increases were "extenuating". On the other hand, the SAR Government and the two power companies ganged up; with the Government playing the role as victim as it was ignored by CLP and could not "get its monitoring work done". It tried to downplay its regulatory role and shirk responsibilities onto the two power companies so as to muddle through.

In the face of strong public reaction, the two power companies had quickly adjusted their strategy, and during the whole process of dramatic concession, they had repeatedly applied the "36 stratagems" as negotiation skills. HEC had emphasized rising energy prices time and again, attempting to use the fifth stratagem of "looting a burning house" and the 12th stratagem of "seizing the opportunity to lead a sheep away" on the pretext of rising energy prices, so that

the public might think that it had no other alternative but to increase tariff. Finally, it used the 11th stratagem of "sacrificing the plum tree to preserve the peach tree", pointing the knife at customers with high electricity consumption, while the overall rate of tariff increase remained unchanged.

CLP did not pale in comparison. At first, it held firm to its way and did not make any compromise, but later, it had to yield to pressure and on 17 December, it applied the first stratagem of "crossing the sea by different tricks". It had nominally reduced the increase rate to 7.4%, but in reality, it played some tricks in respect of deficit balances of the Fuel Clause Account (FCA). It had increased the FCA deficit balance to $1.4 billion, and customers would still have to bear the relevant expenses in the future. As an ultimate compromise, CLP agreed to remove the capital expenditure on additional generating capacity — after prolonged arguments with the Government — the removal did not imply that the relevant amounts would never be collected; they would not be collected now but would be collected later. CLP also gave rent and rates special rebate and made transfers from the Tariff Stabilization Fund. CLP just moved the amounts from the left pocket to the right pocket, and it had actually used the eighth stratagem of "acting before others are aware" and the sixth stratagem of "clamour in the East, attack in the West" under the concession scheme. After playing so many tricks, CLP can still reap the maximum 9.99% permitted rate of return and has not suffered any losses.

After a series of wrestling involving wisdom and strategies, HEC can still maximize profits and high-consumption commercial customers are still at its mercy. While the tariff increase for 90% of residential customers is restricted to the 4.97% level, the overall increase remains at the original 6.3% level. Actually, the Basic Tariff of CLP has not been reduced by even one cent.

The two power companies had completely taken the initiative throughout the negotiation process and they had continuously given different reasons and data to confuse the public. Owing to its dereliction of duty and ineffective supervision, the Government had no choice but to stand by the public and made its best effort to pressurize the two power companies, in the hope of making amends for its faults and covering up for its dereliction of duty.

The two power companies had taken advantage of the public's inability to fully understand the data and information to play around with data, such as the

total investment in fixed assets and the operating revenues and expenditures, and constant changes were made. We have the impression that the process has turned into a farce, and hence we are more determined to demand for more data, so as to get to the root of the problem.

We support invoking the P&P Ordinance under certain conditions to urge the Government and the two power companies to provide all information related to the tariff increases. We want to issue the most severe "warning" to the Government and the two power companies that nowadays, public service providers can no longer adopt such attitudes for the public will no longer allow others to trample on them.

Furthermore, we also hope to convey the following message to the two power companies: regardless of the loopholes under the SCAs that allow them to get whatever they want, and the incompetence of the Government in gate-keeping which allow them to take advantage of certain opportunities, the Legislative Council has the responsibilities to actively defend the interests of the public and monitor whether the Government has tried its best to ensure that the two power companies would not play dirty trick or engage in match-fixing.

The objective of this motion on invoking the P&P Ordinance has basically been achieved as the two power companies have changed their attitudes. On 3 February, they agreed to provide information in a confidential manner. At the special meeting of the Panel on Economic Development held yesterday (on 7 February), the two power companies responded to the request of the Panel and made the best efforts to provide information for Members' deliberation. They would also narrow the scope of information to be kept confidential as far as possible. Hence, the public would be better informed. If the two power companies were co-operative and provided the relevant information earlier, it would not have been necessary for me to move the motion today. Since the deliberations are still in progress, I call upon Members to support Mr Vincent FANG's amendment today. Yet, if the amendment is not passed, the Liberal Party would not support the original motion and we would abstain from voting.

Thank you, President.

Ms Miriam LAU moved the following motion: (Translation)

"That, since the data and information behind the 2012 tariff adjustments by the two power companies have not been fully disclosed, and the details of their five-year Development Plans approved in 2008 have also not been publicized, the Panel on Economic Development be authorized under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of the Ordinance to order the Secretary for the Environment of the Government of the Hong Kong Special Administrative Region to produce all papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited and The Hongkong Electric Company Limited respectively, including:

(a) detailed information on the 2012 tariff adjustments by the two power companies; and

(b) detailed information on the five-year Development Plans of the two power companies."

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): Mr Vincent FANG will move an amendment to this motion. This Council will now proceed to a joint debate on the motion and the amendment.

I now call upon Mr Vincent FANG to speak and move the amendment to the motion.

MR VINCENT FANG (in Cantonese): President, I move that Ms Miriam LAU's motion be amended.

President, it can be said that I am caught in a dilemma in moving this amendment. First, although I frequently oppose some government policies and

legislation, the Liberal Party has always been considered as belonging to the pro-establishment camp which supports the Government. In other words, we will not support invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance). Since the Liberal Party is a political party that represents the business sector, people think that we will not support the Legislative Council in seeking documents from business enterprises under the P&P Ordinance.

That being the case, I can simply oppose this motion and it seems that I need not move this amendment to add the words "but it must be ensured that the exercise of this power is in the public interest, does not interfere with normal commercial operation, and does not lead to divulging sensitive commercial information". Am I making an unnecessary move?

Why do I move this amendment? It is because the Liberal Party supports that the Legislative Council may exercise the powers conferred by the P&P Ordinance when necessary and appropriate, especially in connection with issues not regulated or monitored under the existing legislation, such as the transparency of government information.

The Liberal Party has two specific concerns about invoking the P&P Ordinance. First, for cases in which the disclosure of certain information (such as information on business registration and listed companies) has been made mandatory by the existing legislation, do we still need to invoke the P&P Ordinance to force the party concerned to disclose all information?

We frequently criticize that the Government only cares about enacting legislation without considering whether stakeholders covered by the legislation will be subject to over-regulation, which would impact on their survival. For instance, the two power companies in question are listed companies, and they are regulated by the strict Listing Rules in Hong Kong.

Chapter 13 of the Main Board Listing Rules of the Hong Kong Exchanges and Clearing Limited on "Disclosure" specifies that an issuer shall disclose information as soon as reasonably practicable, "including information on any major new developments in the group's sphere of activity which is not public knowledge". The disclosure must also be made according to the principle of fairness and it must not be selective. Non-complying listed companies will be

subject to suspension and explanation. Hence, CLP Power Hong Kong Limited (CLP) publicly disclosed the information related to capital expenditures in 2011 on its website before disclosing the same to the Panel on Economic Development yesterday.

If these issues are regulated under certain laws, do we need to set up a dragnet for duplicated regulation? Though the P&P Ordinance is just like an "imperial sword" of the Legislative Council which ensures that we have the highest right to know, it must be used very carefully, without affecting the spirit of the rule of law and the business environment in Hong Kong.

I think that the rule of confidentiality has its values. Confidentiality is essential at the government level, for example, treaty negotiations between governments should be kept confidential. And at the business level, the contents of business negotiations should be kept confidential. Thus, I move the amendment to control public information within a certain extent.

At the special Panel meeting held yesterday, Honourable colleagues basically reached an agreement on the types of information considered to be sensitive commercial information. The most obvious example is the purchase prices of power generation fuels. As business negotiations are involved, the disclosure of relevant information would definitely be unfavourable to electricity users because fuel costs are passed through on the basis of actual spending. In other words, users would be charged more if the purchase prices are higher.

Having elaborated my position, I would like to express my views on this incident. The two power companies had tried to maximize profits under their agreements with the Government, without paying due regard to their responsibilities as public utilities and the affordability of the community. They should be reprimanded. However, they have actually not made any mistakes. Who has made mistakes then? It is the Government.

Regarding the first mistake, when the Government discussed the new agreements with the two power companies in 2008, why the maximum profit level was set at such a high level of 9.99% of the total capital investment? The profit ceiling actually guarantees profits. All businessmen know that a guaranteed profit level of 9.99% is extremely high. Besides, the total capital investment of the two power companies is a huge amount. After all, government officials who participated in the negotiation might not have run a

business and they did not know how difficult it was for commercial organizations to make money. They were just accustomed to allocating money, say $200 million or $1 billion, from certain funds.

Hence, the Government should be the first party to provide information. It should provide information on the rationale for agreeing to set the profit ceiling at 9.99% during its negotiation with the two power companies in 2008, and the reasons why the two power companies could reduce their capital investments back then from some $50 billion to $39.9 billion for CLP, and from some $17.4 billion to $12.3 billion for The Hongkong Electric Company Limited (HEC). Even though the Secretary for the Environment said that he and his colleagues made their best efforts in vetting the capital expenditures of the two power companies and in reducing the amounts as far as possible, was the amount being "inflated"? Exaggerating the amounts in the bargaining process is a common practice in the business community.

The second mistake made by the Government is that it failed to convince the two power companies to reduce their rates of increase during their discussion on tariff increases last year. When the proposals were submitted to the Executive Council for approval, the Government resorted to "verbal manoeuvres" and criticized the high tariff increases. This is definitely not a gentleman's act to be undertaken by the Government. Owing to the Government's "verbal manoeuvres", various political parties took to the streets. Though the two power companies finally succumbed to political and public pressures and lowered the increase rate, can harmony be attained in society?

The third mistake of the Government is that up till the last minute, it was still not willing to co-operate with the Legislative Council and provide the justifications as requested by Members. Despite the fact that in early January, the House Committee supported Mr Fred LI's proposal to move a motion at Legislative Council meeting to invoke the P&P Ordinance, the Government had still not provided this Council with the information requested by Members up till last Wednesday (before the deadline for amendments to be proposed by Members). The Government submitted the first batch of document at the special meeting of the Panel last Thursday, and Members were even asked to read these papers in the library. Does the Government need to take such a long time to follow up the submission of papers? Does it only take actions when it is being pressed? Honourable colleagues should have an answer in their mind.

Putting business ethics aside, the tariff increases by the two power companies are decisions made in the spirit of contract, and they have done nothing wrong. While the two power companies might have envisaged a strong social reaction against their acts of maximizing profits, they did not expect the reaction was so violent. The two power companies have really suffered a double loss this time. They failed to substantially increase tariffs and lost the confidence of the Legislative Council, the community and users in them.

When the two power companies proposed an increase rate of 9.2% and 6.3% respectively, CLP claimed that there was no room for downward adjustment. Nonetheless, when public reactions became increasingly violent, CLP reduced the Fuel Clause Charge, which in turn reduced the tariff increase to 7.4% in disguised form; and later the rate was further reduced to 4.9%. Hence, to a certain extent, this incident has ruined the corporate image of CLP in people's mind.

Whether or not this motion is passed today, Members of the Legislative Council and various groups in Hong Kong would pay closer attention to the operation of the two power companies in the future. The future tariff increase proposals to be made by the two power companies may also attract more controversies. Yet, as business operations, these public utilities cannot operate easily if there is a lack of government support and they are subject to increasing environmental protection pressures. Hence, I hope that the Environment Bureau would play a more proactive role in implementing schemes to improve air quality or regulate emissions.

All in all, I think our government officials are too narrow-minded. They just choose to undertake the easiest tasks that can be accomplished most easily, and for which they can shirk responsibilities. If the Government has the courage to take actions, its power and influence will expand and become a strong government. Yet, if the Government dares not take actions and just follows in the footsteps of others, it can, at most, "do a good job".

With these remarks, I hope Honourable colleagues would support my amendment. Thank you, President.

Mr Vincent FANG moved the following amendment: (Translation)

"To add ", but it must be ensured that the exercise of this power is in the public interest, does not interfere with normal commercial operation, and does not lead to divulging sensitive commercial information" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr Vincent FANG to Ms Miriam LAU's motion, be passed.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President and Members, the Government prudently examines the information submitted by the two power companies in handling the annual tariff adjustments. We had encountered unprecedented circumstances this year when we dealt with the tariff adjustments. A consensus had not been reached before the deadline for negotiations between the two power companies and the Government on 13 December last year when we submitted the proposed tariff adjustments of the two power companies to the Executive Council. However, the negotiations between the Government and the two power companies had not come to a stop. While reporting the progress to the Executive Council and the Legislative Council, we had continued to discuss with the two power companies, asking for further reduction in the 2012 tariff increases. The two power companies had ultimately made adjustments.

During the ensuing two months, the executive authorities, the Legislative Council and the public have raised many questions about the tariff increases by the two power companies, especially that of CLP Power Hong Kong Limited (CLP). Our major queries about CLP's tariff increase include: the projection of a 11.2% increase in operating expenses in 2012; the inclusion of some premature items in its capital expenditure that have not been approved by the Government; the balances of the Tariff Stabilization Fund (TSF) and the Fuel Clause Account, as well as the handling of some revenue items.

We had the support of the Panel on Economic Development, and I would particularly like to thank Mr CHAN Kam-lam for moving a motion at the Panel

meeting on 23 December. The motion, which was overwhelmingly supported by attending Members, urged the two power companies, especially CLP, to respond to the four requests made by the Government and further reduce the tariff increase. Later, CLP adjusted downward the tariff increase to 4.9% on 30 December as requested by various parties.

Over the past few weeks, the two power companies have responded to the request of the Legislative Council and have provided Members with information on its business operation, together with some detailed data. On 3 February, the Panel on Economic Development discussed the handling of confidential information. At the Panel meeting held yesterday, Members and the two power companies proceeded to scrutinize the data and the Secretariat is now making arrangements for follow-up meetings.

The Government's position is that it supports the disclosure of information by the two power companies as far as possible, so that the public can understand the rationale behind the tariff increases. All along, either at the meeting of the Panel on Economic Development on 13 December last year, or in responding to four urgent questions and the subsequent motion debate at the meeting of the Legislative Council on 21 December, the Government had, with the provision of public information, specific data and justifications, explained to the Legislative Council and the public the Government's position towards the tariff increases of two power companies and the queries raised. We had, on just grounds, asked the two power companies to respond to the requests of the Government and the Legislative Council in a reasonable and responsible manner. Later, the Government had, in response to the Panel on Economic Development, obtained some sensitive commercial information in writing and through meetings. We had, together with representatives of the two power companies, attended the open and closed meetings of the Panel to hold discussion and analysis, so that Panel members could further understand the specific situation in connection with this year's tariff increases. We had also provided detailed information on the five-year Development Plans for the Panel's reference. President, I must say that most information provided to the Panel on Economic Development is accessible to the public, but some of the information and data concerning business development involve commercial secrets. As the two power companies have reflected to Members, sensitive commercial information include the future business development plans and contract fuel price forecasts, which will affect the competitiveness of the two power companies in future tendering in the

market. The full disclosure of such information may also directly or indirectly affect the future tariff levels. Take tender price forecast as an example, any improper handling leading to disclosure of such data may weaken the bargaining powers of the two power companies, which will adversely affect the interests of electricity users and the general public.

Based on the above consideration, and coupled with the fact that the two power companies have provided the Panel with a lot of information and data concerning the 2012 tariff adjustments and the five-year Development Plans, the Government seriously doubts whether the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) should be invoked.

President, we hope Members would consider several extremely important issues before they decide whether such powers of the Legislative Council should be exercised. First, is it necessary to exercise these powers in respect of the tariff increases by the two power companies? In providing information to the Panel on Economic Development and to all Members, the two power companies have presently kept a small amount of sensitive information confidential, so as to strike a balance between the need for Members to conduct scrutiny and the confidentiality of commercial information. Will this be of substantial help to the Legislative Council's scrutiny of the 2012 tariff adjustments?

Second, as the P&P Ordinance empowers Legislative Council Members to seek information and documents, what message will the invoke of the P&P Ordinance in this case give to our enterprises and investors; and how the business environment will be impacted? If such information can be obtained through other channels, will invoking the P&P Ordinance best serve the interests of our society as a whole?

Third, in exercising these powers, will the interests of the public as electricity users and ordinary people as small investors be increased or impaired?

I deeply believe that Members will carefully consider all these factors before making a decision that serves the interests of our society as a whole. President, I will listen carefully to Members' views and respond to them later. Thank you.

MR RONNY TONG (in Cantonese): President, I believe it is no exaggeration for us to use "squeezing toothpaste" to describe this tariff increase incident of the two power companies. We all remember that the initial proposed rate of increase had caused a public uproar, and "suitable adjustments" were only made in response to the strong reactions in the community. CLP Power Hong Kong Limited (CLP) further revised its tariff when there were heated debates in the community. Even when the tariff increases have been reduced to the present levels, we are still uncertain if the principles and spirit of contract have been complied with.

Later, the two power companies produced some documents, but they were totally irrelevant to the bone of contention. When Honourable colleagues indicated that these documents were not what we required, and we insisted in obtaining information on the five-year Development Plans, the two power companies submitted other documents, but some important data had been deleted or left blank. When we put further pressure on them, they submitted a document last week but stated that the document could only be read in the library; no photocopies or handwritten notes were allowed, and the document had to be discussed at closed meetings. When we were having closed-door discussion, we asked the power companies how we could give an account to the community. By then, they accepted my proposal to indicate the data that they considered not so sensitive, so that we would know which data could be disclosed and which could not be disclosed. However, at yesterday's meeting, the outcome was that we could not discuss openly a large number of data that were considered by the two power companies as sensitive commercial information. President, I would explain later why I disagree with their views on the so-called sensitive commercial information.

President, I must clarify and state one point. From what I heard, it seems that Honourable colleagues and the Secretary have different focuses from mine. President, first of all, I have to state clearly, it is fair and just for people doing business to make profits, as this is an inevitable phenomenon in a capitalist society. There is also a popular saying that goes, "it rains when Heaven deems fit, mother remarries when she wants to". How can we ask businessmen not to make profits? The problem is, whether making profits is in line with the spirit of the contracts. To make profits, they must comply with the basic regulatory rules of our society.

President, I do not quite agree with some Honourable colleagues' saying that businessmen who make enormous profits do not undertake social responsibilities. The Government likes to say that businessmen do not undertake social responsibilities. This statement is contradictory, for I believe that it is the Government which should undertake social responsibilities. If the Government does not undertake social responsibilities, how can it blame businessmen for not undertaking social responsibilities? The Government fails to undertake its social responsibilities in that it agreed to sign an agreement that allowed the two power companies to maximize profits. So, the Government should not blame the companies for maximizing profits because they are simply permitted by the Government to do so. Which party actually does not undertake social responsibilities then? It is the Government. Hence, we should not blame the two power companies; for me, I will not do so.

President, why have so many people become indignant? Many people, including people from the business sector, oppose the two power companies' making huge profits because they also have to pay their shares. They do not raise objection for social justice but for their wallets. Things are different this time because the Chief Executive suddenly acted as a good guy (or a bad guy, depending on your perspectives) and the Secretary also suddenly acted as a good guy (or a bad guy), stating that the tariff increases were not consistent with the Scheme of Control Agreements (SCAs) signed between the Government and the two power companies, and that the two power companies were cheating because their computations were inaccurate. President, this is a very serious issue. I have just said that businessmen should not be blamed for wanting to make profits, unless improper means have been used; as the saying goes, "it rains when Heaven deems fit, mother remarries when she wants to".

The focus of our discussion today is not on whether they can reap 9.9% profit because the 9.9% profit is permitted by the Government, but not by the Legislative Council or Hong Kong people. Nonetheless, if they make profits through cheating, or if profits are computed on the basis of some unacceptable data, I trust it is reasonable for us to oppose the tariff increases. President, we are viewing the matter from this perspective and we would like to examine their documents and find out how the computations are made. Such information is mentioned by the Government just now.

President, the remark just made by the Secretary is rather interesting. He suddenly made a U-turn and told us that there is no longer any problem. He asked us not to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to force the two power companies to produce documents for it would impair commercial operation. President, if I use the expression "a fine start but a poor finish" to describe the Secretary, I guess it would not be too disrespectful. Does he think that he has overplayed in this incident? If so, why did he accuse the two power companies at the very beginning? Is the Government happy when the two power companies have reduced the increase rates to the present levels, thinking that this is consistent with the spirit of making 9.9% profit? I hope the Secretary can make this point clear: does he think that it is reasonable for the two power companies to maximize profits, thus, it is superfluous to seek documents? If so, I hope the Secretary would withdraw his previous remark or ask the Chief Executive to delete the comment that he had uploaded on the blog.

Sorry, the fire has been lit, and as Legislative Council Members, we should be accountable to the public and perform our monitoring functions to the best of our ability, and we should continue to pursue on the issue. It may turn out that the two power companies have not been deceitful, and hence their innocence can be cleared. We should not keep accusing them as dishonest merchants. They are not dishonest merchants because they are permitted by the Government to make such profits. The Government should be named as dishonest. If we continue with the investigation and find that the computation methods are inconsistent with the basic principles or formulae under the SCAs, we have every right to pursue. I would like to make it clear that we are not questioning the so-called social responsibilities of the two power companies because I do not believe in such things. That is the Government's cover-up trick, to cover up its negligence and incompetence.

Now that the two power companies have produced the documents, why do we still need to exert pressure? President, the crux of the problem is whether the documents, information and data they produced can dispel public doubts. I do not think they can; thus, the P&P Ordinance should be invoked.

President, why do I say that public doubts cannot be dispelled? The documents submitted last week have now been revised with the so-called sensitive information being circled out. These documents can now be inspected

by the public, as all sensitive data have been marked yellow and deleted. Just take a look, and you will find that the most crucial data are not available. Concerning the five-year Development Plans (which certainly contain information within a five-year period), the data of the first few years are provided but the information is already known to us and does not help in our current debate. We would like to know more about their projections in 2012 (this year) and 2013, to see how costs and profits are computed. These two columns of data are precisely what we need to know, they are the focuses of our study and query. Yet, these data have now been deleted.

President, the Secretary may say in a short while that, "Mr Ronny TONG, you have already read the document as you have spent half an hour in the library last Friday, going through the whole document". I am really sorry, you may say that my mental power has degenerated, I really cannot remember all those data; and I cannot quite understand them even if I can remember them. President, I have spent half an hour reading the document; evidently, the Secretary has spent tenfold or 20-fold of time on negotiating with the two power companies over these data. The Secretary has the support of a large number of staff to analyse the data and explain to him; but for us, Legislative Council Members, our situation is miserable. President, only Mr Ronny TONG, Dr Margaret NG and Ms Audrey EU have been analyzing the data, and we cannot bring the document out of the library. Who can we talk to? How can we perform our monitoring functions? In any case, they have provided us with the data, and even though we do not quite comprehend the data, they have fulfilled their responsibilities.

The Secretary has once made some abusive comments. He said, "You Members ask me for these data and documents, do you understand them?" President, he had really said so and that was very abusive. Hence, it is very difficult for the executive and legislative authorities to have a good relationship. It is true that I have only spent half an hour reading the documents and I really cannot quite understand them. However, we, as Members, must fulfil our responsibilities. I am not the only one who have to read the documents, I can seek expert assistance in conducting studies and making detailed analysis and interpretation of these data, which would facilitate me in fulfilling my responsibilities. If we said that since we have already been provided with the data, it does not matter whether we understand them or not; in anyway, we have performed our monitoring functions. I am sorry, such saying only indicates that we are just rubber stamps, but not genuine Legislative Council Members.

President, we need to have more information, and the P&P Ordinance is an important tool of the Legislative Council to defend our dignity. If the Legislative Council does not have the right to ask questions, it is useless for Members to be conferred with such powers. Yet, if we have to fulfil such functions and duties, but we do not use this powerful tool to defend the dignity of the Legislative Council, we cannot blame the public for saying that the Legislative Council has very low popularity. Some have even joked, "Is it kidding for Members to ask for a pay raise? They deserve a pay cut instead."

President, what is wrong for us to use this tool to seek a reasonable explanation for the public? Mr Vincent FANG's amendment proposes that commercial secrets or sensitive commercial information should be protected. I have no strong opposition, disagreement or reservation about this. The crucial point is not that we should not disclose sensitive information but how the so-called sensitive information should be determined or decided. If we are to defend the dignity of the Legislative Council, Mr Vincent FANG and I, rather than the Secretary or the two power companies, should have the right to make the decision. They cannot specify in this Council what data should not be shown to Members; otherwise, would this Council have dignity?

President, Dr Margaret NG told me yesterday that it was nothing special as the Legislative Council has previously set up many subcommittees; the subcommittee on the Lehman Brothers incident is a very good example. After we have obtained the information, we will weigh them carefully and listen to opinions. If the parties who submit the information consider that certain data cannot be disclosed, we will respect their views. Nevertheless, this Council must have the ultimate right to make a decision; otherwise, the P&P Ordinance would exist in name only. President, if any one can tell us that he does not want certain data to be disclosed and thus will not provide such data to us, what is the point of invoking the P&P Ordinance? It is as bad as not exercising the powers.

Therefore, I think Mr Vincent FANG's amendment is acceptable but we must exercise the powers and seek all information required, so that we can decide on our own how to handle the data that we also considered sensitive. If necessary, we will invite the two power companies to give public and detailed explanations. Then, we can fulfil our responsibilities as Members and face up to Hong Kong people when we step out of this building today.

Hence, President, I totally disagree with the Secretary's views and I am very disappointed with him. I respect the Liberal Party for they have staged a good show this time and they are willing to stand on the side of the public. I hope that other people from the pro-establishment camp and the DAB will do the same. Thank you, President.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing …… Secretary.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, Mr Ronny TONG has just mentioned that I have once asked him a question, and the wording is roughly: "Can Members understand the document?" As far as I remember, I have never asked Mr Ronny TONG this question on public or private occasions. Can I ask for elucidation of this point that is related to my remark? Thank you, President.

PRESIDENT (in Cantonese): Secretary, you still have another chance to speak later.

MR WONG KWOK-HING (in Cantonese): President, in the course of discussing the applications made by the two power companies to the Government for tariff increases, the attitudes of the two power companies have been extremely disgusting and unyielding. They stated at the outset that there was no room for downward adjustment, which had infuriated all Hong Kong people. Hence, I publicly appealed to the Government to take the lead to defer tariff payment to CLP, and all CLP customers should follow suit, so that the "power overlord" would directly feel the public's indignation against its act of maximizing profits.

In this row, people are most unhappy because the two power companies, in their initial submission of papers to the Legislative Council on tariff increases, had not given any information on how the rates of increase were computed. Moreover, during the discussion process, the power companies had stated strongly at the outset that there was no room for downward adjustment of the increase rate. CLP initially asked for a 9.2% tariff increase in the coming year, but it reduced the rate to 7.4% and then to 4.9% under public pressure within two

weeks. Also, under public opinion pressure, The Hongkong Electric Company Limited (HEC) was willing to reduce the tariff increase to 4.97% for 90% of residential customers, and 6.08% for 70% of commercial customers. However, the average overall tariff increase still remains at the original 6.3% level. There is no intention of revising the increase rate.

Owing to a public uproar, the two power companies finally conceded and reduced the rate. I think people want to know why the "power overlords" acted so recklessly at first, and why there was a miraculous downward adjustment later.

The public has always been concerned about the mode of computation adopted by the two power companies, as well as the factors and rationale for substantial tariff increase at the maximum permitted rate. The public also want to know more about some key factors. When the two power companies adjusted downward the rates of increase, they made self-contradictorily remarks that there were "rooms" for tariff reduction. According to CLP, there are four main reasons for downward adjustment of increase rate. First, savings from the removal of planned capital expenditure on additional generating capacity; second, further efforts to reduce operating costs; third, reducing the balance of the Tariff Stabilization Fund to $100 million; fourth, providing customers with a Rent and Rates Special Rebate.

President, the four reasons are given by CLP and the public does not know the amount that has actually been reduced and what items have been removed. It is worth noting that, initially, CLP stood firm in requesting for a 9.2% increase and clearly stated that there was no room for downward adjustment, but it finally reduced the increase rate to 4.9%; there was a difference of 4.3% and the increase rate was nearly reduced by half, which was magical. Thus, Members should find out the data, experiences, lessons and tricks, so as to understand the real justification for tariff increases of the two power companies and the pattern involved. Though the two power companies have reduced the increase rates, the problem has not been solved.

It was only after the House Committee passed the motion on invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to be moved today that the two power companies responded to our request and provide certain documents and information in a "toothpaste squeezing" manner. My impression is that the documents submitted are fragmented, with bits and pieces

of information submitted each day. I consider the proposal of the House Committee to invoke the P&P Ordinance desirable, and can help Members perform the duties of monitoring the negotiations between the Government and the two power companies over tariff increases. It also serves to defend the public's right to know and safeguard the consumer rights of all Hong Kong people.

Invoking the P&P Ordinance to seek information from the two power companies in relation to the 2012 tariff adjustments and their five-year Development Plans would enable the public to know whether the two power companies have increased investments and exaggerated the increase in fixed assets in the name of emission reduction and environmental protection, and consequently the public have to foot the bill. The public would also find out why the two power companies can maximize profits at 9.99%. As there is a higher level of transparency, the public can then understand why the Government failed to force the two power companies to reduce the rate of increase during the final stage of negotiation. Now that the two power companies have reduced the rates of increase, does this prove that the Government has been ineffective in monitoring and gate-keeping? This point is worth our consideration. A comprehensive review is very important to the future monitoring of the five-year Development Plans of the two power companies and the long-term energy policy.

Therefore, we support that this Council should exercise the powers conferred by the law and invoke the P&P Ordinance to enhance the transparency of how the two power companies set the rate of tariff increase, strengthen the monitoring of the two power companies and enhance the gate-keeping role of the Government.

President, the crazy tariff hikes of the two power companies have led to strong public opposition. Lessons should be learnt from this incident as "stones from other hills may be polished into jade". Yesterday, a subcommittee of the Legislative Council discussed the issue of pay rise for Members and suggested that the salaries of Legislative Council Members should increase more than twofold. The relevant news report has aroused serious concerns, discontent and opposition from the public. I am not a member of the subcommittee and I did not attend the meeting yesterday. I wish this Council would act prudently in dealing with Members' pay raise and modestly listen to the views of the public. It must consult the public before making any decisions.

With these remarks, I support invoking the P&P Ordinance. Thank you, President.

DR RAYMOND HO (in Cantonese): President, the two power companies announced earlier drastic tariff increases for 2012. Under the pressures of public opinion, The Hongkong Electric Company Limited (HEC) took the lead and lowered the rate of tariff increase to 6.3%, while CLP Power Hong Kong Limited (CLP) finally agreed to lower the rate of tariff increase to 4.9%, which is marginally lower than the general rate of inflation. Members of the public have expressed their grave concern about the present tariff increases under the prevailing difficult livelihood conditions, in particular, the pressures of inflation. Business operators also consider that the tariff increases will aggravate their operational difficulty in future, given the uncertainties in the general economic environment and outlook.

The public's aspiration for the Administration to impose more stringent monitoring on the two power companies is perfectly understandable. But I must reiterate my reservation about the proposal to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to order the Government to produce all relevant information in relation to the tariff increases of the two power companies, as well as detailed information on their five-year Development Plans. When I spoke in previous discussions on this subject matter, I had already given the reasons for my disagreement. My major concern is that some documents may involve sensitive commercial information, such as contracts on fuel purchases, various projections made in the developments plans, cost projections and commercial contracts signed with other companies. If such information is improperly handled, it will not only affect the two power companies, but also increase the burden of the consumers, as well as undermine the interest of minority shareholders of the two power companies if the price of their shares is affected. This may have adverse impact on the public and the investors.

Although some Honourable colleagues have suggested that sensitive commercial information be exempted from disclosure, I believe that it will be difficult, if not impossible, to arrive at a consensus on the definition of "sensitive commercial information", as disputes would arise easily. As we all know, business organizations have all along guarded the confidentiality of their sensitive

commercial information closely. If the P&P Ordinance is invoked casually by the Council for the purpose of obtaining some sensitive commercial information, it will definitely influence the perception of business organizations on our business environment, erode the confidence of investors and undermine Hong Kong's competitiveness.

On the other hand, once the P&P Ordinance is invoked, the relevant investigation can take up considerable time and resources. For example, the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products under my Chairmanship was established in October 2008, and it has held as many as 160 meetings to date. If preparatory meetings are also counted, almost 400 meetings have been held; and among them, 100-odd are public hearings. I think Members who support the proposal of invoking the P&P Ordinance should re-consider the matter carefully from this perspective.

In the matter of monitoring the tariff adjustments of the two power companies, the Panel on Economic Development of the Legislative Council has all along performed an active role by inviting the Government and senior management of the two power companies to attend its meetings (including closed meetings) and has conducted in-depth discussions about confidential information provided by the two power companies in relation to the 2012 tariff adjustments, as well as the forecast and actual annual figures of capital expenditure under the five-year Development Plans. Hence, I think we should first conduct more comprehensive study on the basis of these relevant information. It is absolutely unnecessary and unjustified to invoke the P&P Ordinance for the sake of seeking information requested by some Members.

I firmly believe that this Council must meet the public's expectation of the Legislative Council as the defender of public interest, while safeguarding and respecting the confidentiality of sensitive commercial information to preserve our hard-earned competitive edge and sound business environment. With these remarks, President, I oppose the original motion and the amendment.

MS STARRY LEE (in Cantonese): President, the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) is the "imperial sword" of the Legislative Council. Extreme caution is invariably exercised by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) when considering

whether this "imperial sword" should be drawn. Within the current term of the Legislative Council, the DAB has given support to invoke the P&P Ordinance twice, to study issues arising from Lehman Brothers-related minibonds and structured financial products, and to appoint the Select Committee to Inquire into Matters Relating to the Post-service Work of Mr LEUNG Chin-man.

The DAB has also rejected proposals to invoke the P&P Ordinance by this Council, which reflects that in considering whether support should be given for invoking the P&P Ordinance, the DAB will always consider each and every case carefully on their own merits. The prime consideration is of course whether the intended objective can only be achieved by invoking the P&P Ordinance, and whether the greatest public interest is served by invoking the said Ordinance.

The objective of Members' current proposal to invoke the P&P Ordinance is to seek adequate information from the two power companies, so that this Council and the public can monitor these public utilities effectively, including whether their proposed tariff increases for this year are reasonable or excessive, and whether they have engaged in over-investment to increase their returns. On the other hand, Members also want to ensure effective monitoring on the Government's performance of its gate-keeping role, so as to ensure proper investment and expenditure of the two power companies.

The DAB considers that it is necessary for both the Council and the public to get hold of adequate information before effective control can be exercised. As early as 19 December — that is, right after the crazy tariff increases were first proposed by the two companies — the DAB had already met with senior management of CLP Power Hong Kong Limited (CLP) to relay the request for providing additional information to the Legislative Council.

Subsequently, I raised an urgent question at the meeting of the Council on Wednesday, 21 December, calling on the Government to request the two power companies to submit the relevant information to Members. Thereafter, the Panel on Economic Development of the Legislative Council passed a motion proposed by Mr CHAN Kam-lam on 23 December 2011, requesting the Government and the two power companies to submit the financial information relating to the capital investments of the two companies in the next five years as well as their operating expenditures. Mr CHAN Kam-lam then wrote to the Secretary after the meeting, stating the request for further detailed information.

Members have a clear idea of the ensuing development as the Panel on Economic Development had held two special meetings recently to discuss the additional information provided by the two companies to the Council. The additional information provided by the two power companies, which includes the contents of the approved five-year Development Plans, the amount of actual expenditures within the period covered under the five-year Development Plans and the rationale for the relevant tariff increases, are open to Members as well as the public.

The two power companies were basically willing to disclose all information, except for figures on projections and fuel prices. At the Panel meeting held yesterday, the two power companies also undertook to provide other relevant information as requested by Members at future meetings, so as to facilitate further understanding of Members and the public about the actual components of electricity tariff as well as the reasons for tariff adjustments.

I have already prepared additional questions to be pursued in the context of the Panel on Economic Development. Hence, at this stage, the DAB considers that the Panel on Economic Development is an effective channel for public monitoring and for Honourable Members to follow up on the tariff increases of the two power companies. At this stage, it is unnecessary to invoke the P&P Ordinance. Subject to further development in the future, it will be a separate question as to whether other investigation is required.

At this juncture, I would like to response to several viewpoints specifically. First of all, the question as to whether all information should be disclosed has been raised at meetings held yesterday and today. Some Members opined that should the P&P Ordinance be invoked, the Legislative Council would take the initiative in the matter so that Members could decide which documents were to be kept confidential or made public.

Members know very well that subject to Members' request, all meetings held under the P&P Ordinance shall be open to the public and hence, all information should be made public theoretically. I have two points of concern in this matter. Firstly, should the two power companies be asked to disclose all information eventually, including agreements and other contractual documents, disputes would definitely arise. The two power companies would definitely seek legal advice as to whether the disclosure of such information would contravene any legal provisions. They might even resort to legal proceedings to

prevent such disclosure. The good progress currently achieved at our meetings can be impeded. This is the first point I am worried about.

The second point I am worried about is that according to my judgment, the bargaining power of the two companies in fuel purchases will definitely be affected if all information — including prices of fuel purchased by the two power companies and their projections — is to be made public. If the two power companies cannot get the best deal because of full disclosure of information including fuel cost, it will be members of the public who suffer ultimately as they are the ones who foot the bill. Hence, the DAB considers it reasonable to maintain the current practice of keeping some information confidential in the course of balancing the right to know of the public against public interest.

Although I agree with the overall direction of maintaining confidentiality of certain information, I have also made clear the stance of the DAB at yesterday's meeting, that is, we will continue to negotiate with the two power companies in the Panel for the purpose of seeking a wider scope of information disclosure. Even though the DAB does not support the proposal to invoke the P&P Ordinance at this stage, I must issue a serious warning to the two power companies and the Government: the DAB will not preclude any recourse, including invoking the P&P Ordinance, to obtain sufficient information in case the Legislative Council is prevented from exercising effective monitoring in matters such as the formulation of the next five-year Development Plans and tariff adjustments as a result of their failure to provide the necessary information at future meetings.

I must reiterate the two requests and one warning we have for the two power companies. The first request is that the Government and the two power companies must ensure the availability of effective channels of engagement for the Legislative Council as well as the public in the process of formulating the next five-year Development Plans. The reason is simple, because the Basic Tariff charged by the two power companies is basically calculated on the basis of capital investments made under the five-year Development Plans. In the past, the public did not have any opportunity to get involved in the formulation of the five-year Development Plans, and even the Legislative Council was only aware of the lump sum. How can the situation be improved? The only way is for the Government and the two power companies to ensure the right of involvement of the public and the Legislative Council.

The second request is that when consulting the Council on annual tariff increases, the two power companies must provide us with adequate information — I will take the information provided in the present exercise as the minimum requirement — and allow sufficient time for the scrutiny of Members and the public. In the past, information provided by the two power companies in relation to tariff increase proposals to the Legislative Council was not only minimal but also tardy. Members would recall that we received the information on tariff increases barely half an hour before the meeting. This reflects that two power companies have completely disregarded their fundamental responsibility as the only supplier of electricity in the market. Instead of striving to increase the transparency of electricity tariff, they were evasive and tried to provide the least possible information. The DAB calls on the two power companies to learn the lessons and change their practices in future; otherwise, they must accept the consequences.

Regarding the warning to the two power companies, the two power companies must consider the response and affordability of the public before any tariff increase is proposed in future. From the data provided, it can be predicted that the level as well as the pressure of future tariff increases will be increasing. On the one hand, the balance of the Tariff Stabilization Fund of the two power companies has been depleting; and on the other, the negative balance of the Fuel Clause Recovery Account has been on the increase. Projections made from such factors show that pressures of tariff increase in the coming two years will definitely be mounting. Hence, it is likely that the public may find the level of tariff increases proposed by the two power companies in the next two years unacceptable. I must issue a prior warning to the two power companies here. I hope that the two power companies will heed my warning and definitely take the affordability of the public as well as the overall society into consideration when contemplating their tariff increases.

Last but not least, the DAB must seriously urge the Government again to make good preparations for opening up the electricity market. The Scheme of Control Agreements (SCAs) were formulated with historical reasons. Under the current SCAs, any investments made or costs incurred by the two power companies — I am not sure if Members are aware of this fact — including tax payments are included in the calculation of their 9.99% permitted rate of return, which is borne by the general public. This is a sure-win business found nowhere

else in the world. I cannot find any example in any developed electricity market around the world which still adopts this mode of guaranteed return.

It is the public's general aspiration that upon the expiry of the SCAs, there will be *bona fide* competition in the electricity market. Judging from the current excess generating capacity of the two power companies, competition will indeed be introduced with interconnection between their networks. However, there is the question of how to ensure a remarkable reduction in tariff after the introduction of competition. In this regard, there are actually many technical issues which the Government must resolve. It is incumbent upon the Government to plan ahead. Both the current SAR Government in its remaining term as well as the next SAR Government must make the best use of the several years in the run-up to 2018 to ensure optimum preparatory work for introducing competition in the electricity market.

Before the expiry of the SCAs, the Government must also make the best use of the opportunity presented by the interim reviews (to be undertaken in 2013) to increase the involvement of the Legislative Council in the formulation of the next five-year Development Plans, so that the two power companies will provide sufficient information to the Council when proposing their annual tariff adjustments. Of course, it would be most important for the Government to strive to lower the permitted rate of return of the two power companies so that the public will not be subject to continuous pressures of tariff increase.

President, on account of the above reasons, the DAB will neither support the original motion proposed by Ms Miriam LAU, nor the amendment proposed by Mr Vincent FANG. The DAB will continue to demand adequate information in the context of the Panel on Economic Development in order to achieve effective monitoring. I so submit.

MS LI FUNG-YING (in Cantonese): President, over the past few days, the two power companies have provided supplementary information to the Panel on Economic Development of this Council in relation to their proposed tariff increases for 2012, as well as their five-year Development Plans. CLP Power Hong Kong Limited (CLP) is only willing to submit such information, given the immense pressures of the community and the Legislative Council. I would like

to ask CLP, had it known what would happen today, would it have acted as it did? I think such an outcome is far from desirable for all parties concerned as CLP is only willing to concede when the Council prepares to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance).

When the motion on creating a sustainable and open electricity market was discussed by this Council early last month, I had already stated my position that I support invoking the P&P Ordinance to obtain relevant information from CLP. I pointed out then that CLP's performance in the matter of tariff adjustment demonstrated on the one hand that the Scheme of Control Agreements (SCAs) signed between the Government and the two power companies could not safeguard the overall interest of society as such agreements were fraught with faults; and on the other hand, CLP is so greedy and unscrupulous that it has completely forgotten its social responsibility as a public utility. Members belonging to different political parties and groupings have demanded that the current SCAs signed with the two power companies be revamped, and information related to the tariff increases be submitted by the two power companies. This fully reflects that the two power companies have completely lost the confidence of society.

President, many changes have taken place since mid-January to this day. First of all, CLP was "compelled" to concede by handing over a considerable amount of information. While I cannot say CLP is now totally willing to co-operate with the Legislative Council, the information provided has indeed facilitated our understanding on the ins and outs of its proposed tariff adjustment. Secondly, the Panel on Economic Development of this Council decided at yesterday's meeting that except for closed meetings held to discuss sensitive information provided by CLP, the Panel will hold public meetings for posing questions to CLP, so as to facilitate public understanding.

Having re-considered the matter, I decide not to support this motion for invoking the P&P Ordinance, in the hope of providing a buffer between this Council and CLP so that the Panel on Economic Development can follow up on the tariff increases of the two power companies thoroughly. However, I must reiterate here that should the two power companies refuse to fully co-operate with the Panel on Economic Development of this Council by providing an honest account on the computation of tariff adjustments and the relevant issues, I think

this Council can still invoke the P&P Ordinance to compel compliance from the two power companies.

President, I so submit.

MR JEFFREY LAM (in Cantonese): President, as I said in the last motion debate, the tariff increases proposed by the two power companies have indeed created much controversy in society. Under the great uncertainties in the prevailing global economic outlook as well as the high inflation environment, drastic tariff increases will create considerable impact on people's livelihood as well as Hong Kong's business environment. Although CLP Power Hong Kong Limited (CLP) eventually lowered the rate of tariff increase under pressures in the community, we still cannot fully understand some of the rationales behind the proposed tariff increase.

For instance, according to CLP, the latest proposal of reduced tariff increase was achieved through savings from the removal of planned capital expenditure on additional generating capacity, as well as further efforts to reduce operating costs. However, the former is just a deferred expenditure in accounting, and CLP can still seek additional tariff increase on this ground next year. Besides, we have no means to ascertain whether there is any over-spending, excessive claim of expenditure or premature investment on the part of the two power companies.

President, I agree that the two power companies should enhance the transparency of tariff adjustments as far as possible, so that we can ascertain whether a reasonable level of tariff increases has been proposed by having a better understanding of the financial data and rationales behind such proposals. On this premise, the Panel on Economic Development under my chairmanship has been asking the Government to seek information on the tariff increases from the two power companies. Recently, we finally managed to obtain the so-called "highly sensitive commercial information" in relation to the 2012 tariff adjustments, including information related to the five-year Development Plans, such as capital expenditure, as well as information in relation to the tariff adjustments such as the operating costs and electricity sales of the two power companies.

President, given that we have already obtained the relevant information and the two power companies have explained to us various issues related to the tariff increases, we should not invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to demand disclosure of the accounts of the two power companies, because this is not conducive to rational communication between the two sides. Firstly, Hong Kong is an international financial centre and the spirit of contract should be respected. If the relevant information has been specified as classified information or commercial secrets in the contracts, should we casually invoke the P&P Ordinance, an "imperial sword", to demand disclosure of commercial secrets and price-sensitive information, just because we are dissatisfied with the level of tariff increases? This may result in a breach of their duties to investors, as well as serious impact on their business operation. Even more so, the bargaining power of the two power companies in the market may be affected adversely, jeopardizing their positions in business negotiations, tendering and cost control, and even undermining the interest of their minority shareholders. Besides, at present, there is no evidence to show that the two power companies have breached their obligations under the Scheme of Control Agreements (SCAs). If we casually invoke the P&P Ordinance to disclose their commercial secrets, it will only serve to undermine our business environment and frighten away foreign investors.

The papers provided by the two power companies allow me to have better understanding of their five-year Development Plans and tariff adjustments. Nonetheless, some Members who have read the papers said that they did not understand why information on material cost was commercial secrets. These Members may have little understanding on business operation, and they do not understand that such sensitive information can affect the bargaining power of the two power companies and create difficulties for them in tendering or cost control. Ultimately, customers may suffer. Hence, I hope that Members, after examining these confidential information, can gain better understanding of the tariff increases and the five-year Development Plans of the two power companies, and at the same time, respect the operation of businesses and the spirit of contract.

The present dispute arises primarily because the SCAs signed between the Government and the two power companies have provided the power companies with the legal basis for tariff increase. As one of the contracting party to the SCAs, the Government is duty-bound to scrutinize the financial and operational data provided by the two power companies and examine whether the proposed

tariff increases are justifiable. It should also properly perform the gate-keeping role of vetting and approving the expansion investments made by the two power companies, for instance, whether some of the expenditure items under CLP's $9 billion plan on emission reduction measures for coal-fired generators are unnecessary or excessive? As one of the contracting party to the SCAs, the Government should request the two power companies to duly consider their social responsibility while making profits because electricity tariff will impact on people's livelihood and increase the operating cost of business operators.

Hence, the Government must take good use of the opportunity presented by the interim reviews of the SCAs in 2013 and strive to alleviate the burden of electricity tariffs on the public by applying further pressures on the two power companies. The Government should also increase the transparency of the financial position of the two power companies, so that the public can have a clear understanding on the rationale and data for the tariff adjustments, and can enjoy a stable supply of electricity at a reasonable cost.

President, the Economic Synergy does not support invoking the P&P Ordinance to demand the two power companies to disclose their accounts because it contravenes the spirit of contract which we have respected all along, seriously undermines the confidence of international investors on Hong Kong, and destroys the core values on which Hong Kong's success was built.

President, I so submit.

MR FRED LI (in Cantonese): President, the whole incident in fact just lasted for two months. The announcement of tariff increases made by the two power companies at the meeting of the Panel on Economic Development on 13 December had triggered off numerous arguments and protests in society, as well as demonstrations by many political parties. Having heard the speech just made by Mr Jeffrey LAM, I must respond immediately. Mr Jeffrey LAM once said on a radio programme — let me reiterate, it was a programme of the Commercial Radio which was also attended by the Secretary — Mr LAM said at the outset of the programme that the tariff increase "scandal" was caused by inadequate gate-keeping on the part of the Government. But now he talks about undermining the business environment, deterring international investors, respecting the spirit of contract, and so on. So what is really the problem?

The problem lies with the tone he adopts now. I recall that during the debate of the motion proposed by Ms Audrey EU on 18 January, which was not too long ago, Members belonging to the Economic Synergy had also seriously reprimanded CLP Power Hong Kong Limited (CLP), and Mr Andrew LEUNG mentioned about the serious impact caused by the drastic tariff increases on the business environment, as well as the plight faced by the industrial and commercial sectors as a result of the additional burden. However, they have now reversed their stance to protect CLP and The Hongkong Electric Company Limited (HEC). Have they forgotten something? Is there any competition between CLP and HEC? Can people living on the Hong Kong Island use the electricity supplied by CLP? That is not possible. In fact, the two power companies are operating regional monopolies. So, how can the business environment be affected?

Furthermore, the two power companies are different from other listed companies in the general sense because they have entered into a 10-year Scheme of Control Agreement (SCA) with the Government respectively. The Government thus has a role to play in control and regulation. As the two power companies are basically different from other commercial organizations, how can a comparison be made categorically? When Members intend to protect the two power companies, they focus on the point that these companies are commercial organizations; when Members intend to attack the two power companies, they talk about how the industrial and commercial sectors suffer due to tariff increases — is this kind of logic somewhat schizophrenic?

Of course, people who are unwilling to listen to the views of others have all left the Chamber now, because their arguments do not hold water. They keep saying that the business environment will be impacted. I think the argument of business environment being affected is mainly cited by Members returned from functional constituencies who represent the industrial and commercial sectors. But as I have explained just now, this is utterly untrue because the two power companies are not commercial organizations in the general sense even though they are listed corporations.

Besides, we have shown great respect to the two power companies after their submission of relevant information to us. Has such information been leaked by any Member? Has the data stated therein been made public by any Member? In fact, we cannot practically disclose any information because the

data just slip out of our mind since we are not allowed to take away the papers or make photocopies. Hence, we have been very accommodating to the two power companies, we agree to read the papers in the library; we have been most accommodating indeed. Yet we still managed to dig up so many questions.

Why did the two power companies consent to provide papers to us? Secretary, on 17 January, Miss LAU of the Environment Bureau wrote to Mr Jeffrey LAM stating that much information would be provided by CLP and HEC. Why were they willing to provide us with information? That is because we have this "imperial sword" in hand. Hence, a strange phenomenon has arisen in this incident: if no discussion has been held on invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) and if the House Committee did not agree to discuss the motion on invoking the P&P Ordinance, I think we would not even have the opportunity to study the information in the library. The two power companies would not care about us, or they just submit some information to fool us. We can now squeeze the information out of the two power companies bit by bit. As the information provided on Friday was considered inadequate, the two power companies then provided some more information on Monday. All these add up to the information we have with us today — President, I reckon you may not have read them, but I have already studied carefully all information submitted by CLP and HEC — of course, I could read all the data previously, but there is now some undisclosed information marked in yellow.

The question is, we asked the two power companies at the meeting of the Panel on Economic Development about confidentiality. According to them, the reasons for maintaining confidentiality included affecting the interest of minority shareholders, contravening the Listing Rules of the Hong Kong Exchanges and Clearing Limited, the Securities and Futures Ordinance if there was any breach of confidentiality, and so on. But when our Legal Adviser asked them which specific legislation would be contravened if the information was disclosed, they could not give us an answer, and said that they have to seek the opinion of their legal advisers. Notwithstanding the serious consequences depicted by the two power companies that such and such rules and regulations would be violated and contravened, that was how they responded when being challenged …… Hence, what does this indicate? It indicates that the two power companies merely want to protect their own interest by keeping all information confidential. At the outset, that is, in the paper provided to us last Friday, practically all information

was kept confidential — I mean not just the information marked in yellow was kept confidential, but also the preceding information as well. After we indicated our dissatisfaction at the meeting on Friday, the two power companies agreed to disclose more information.

Hence, the information accessible to the media, Honourable colleagues and the reporters today is the outcome of the hard battle we fought. But does it mean that we have a full picture of the whole truth, or that we know clearly all the details under the five-year Development Plans, or that we can get hold of all the financial data in relation to the present tariff increases? No, we do not have a full picture; we can only accept the information provided by the two power companies as such. That is the difference. But if the P&P Ordinance is invoked, the two power companies are legally required to submit all the information. As the Secretary has always said, the problem may lie in the facts that Members do not understand the information provided, or they do not know whether adequate information has been provided. However, when I asked the power companies whether they have provided all the information, they were unwilling to give a definite answer; all they said was that they did not know what information we wanted. Hence, we end up in this "tug-of-war" situation.

Funny enough, through this debate, it can be reflected that some political parties say one thing and do another. All those people are not in the Chamber now. Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) dare not stay in the Chamber, because I am going to reveal some facts. President, you are welcome to listen because you also belong to the DAB. After the two power companies announced the proposed tariff increases on 13 December, the Panel on Economic Development held a special meeting on 23 December to discuss the matter. At the meeting, a motion was proposed by Mr CHAN Kam-lam and seconded by Mr Andrew LEUNG — that is, the DAB and the Economic Synergy. Of course, in the motion, the two power companies were asked not to increase tariffs. It also requested, among other things, that two power companies and the Government should submit to the Council before 1 January — the deadline of 1 January was proposed on 23 December — the financial information relating to the capital investment of the two power companies in the next five years as well as their operating expenditures, that is, the financial information in relation to the tariff increase, which is exactly what we seek to obtain by invoking the P&P Ordinance. The

motion, which we voted in support, was eventually passed. As I recall, the motion was passed unanimously at the said meeting.

After some time, I proposed at the meeting of the House Committee on 6 January — in fact, we have already waited a long time between 23 December when the motion was passed and 6 January — that the P&P Ordinance be invoked; and the motion would, subject to the passage of the House Committee, be moved by the Chairman of the House Committee on behalf of Members. But the DAB opposed the proposal. I pointed out at that time that the DAB had moved a motion, which was non-binding, on 23 December to request the Government to submit the relevant information by 1 January. But when I proposed a motion at the House Committee on 6 January, the Government had neither provided any information, nor agreed to provide or disclose any information; yet the DAB opposed to invoking the P&P Ordinance. Of course, Members such as Mr Jeffrey LAM and Mr Andrew LEUNG were also against the proposal; one of the reasons was the impact on the business environment. As a matter of fact, the Government had never agreed to provide any information.

It turned out that my proposal for invoking the P&P Ordinance was passed by the House Committee on 6 January. The show has thus started. On 17 January, I received a letter from the Government stating that the two power companies would submit the remaining information. When Ms Audrey EU's motion was debated on 18 January, the DAB was very pleased, and so was Mr Andrew LEUNG; they said that it was no longer necessary to invoke the P&P Ordinance as the requested information had already been provided. However, I noticed something even more funny when I went through the speeches made by Members on that day because Mr Andrew LEUNG was saying that, "I think ……" — I am talking about the debate on Ms Audrey EU's motion on 18 January, which Mr Andrew LEUNG has participated. On the day before, that is, 17 January, Members received a letter from the Government stating that relevant information would be provided. That was a perfect arrangement, or I should say, that was a perfect arrangement between the Government and Members belonging to the pro-establishment camp to cater for Ms Audrey EU's motion. Why was it necessary to cater for Ms EU's motion? It was because Ms Audrey EU's motion was amended by Ms Miriam LAU, and part of Ms LAU's amendments was about invoking the P&P Ordinance. So, the problem must be resolved by 18 January. Hence, the Government indicated on 17 January that the requested information would be provided. That was why Mr

Andrew LEUNG was saying in the motion debate that, "I think it would not be necessary for the P&P Ordinance to be invoked since the two power companies are willing to provide detailed information." However, we have yet to see such information. The Government only indicated on 17 January that relevant information would be provided as per an itemized list. Although the list was quite detailed, no substantial information had been provided. The Government only said that relevant information would be provided later, but when the information would be provided? We did not get the information until 3 February. However, Mr Andrew LEUNG said at that time that he was pleased as detailed information was provided.

Regarding Ms Starry LEE, of course she often mentioned the "imperial sword". According to Ms LEE, she would follow up on the issue of requesting information from the two power companies, and she would continue to demand and seek adequate information from the two power companies through different channels and means in the Legislative Council, so as to monitor the their crazy tariff increases. Had we not intended to invoke the P&P Ordinance, would the Government be compelled to send us a letter on 17 January stating that the relevant information would be provided? However, she twisted the fact around and did not support the proposal of invoking the P&P Ordinance.

During the debate of Ms Audrey EU's motion on 18 January, Mr Jeffrey LAM simply said that, "[T]he Economy Synergy does not support invoking the Legislative Council (Powers and Privileges) 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." (End of quote) While at one time he criticized the Government for not performing effectively its gate-keeping role when he spoke in a radio programme, he said, at another time, that the matter should be left to be handled by the Government. What was he really talking about? I really have no idea.

Mr CHAN Kam-lam has written an awesome article on today's *Sing Tao Daily*. He wrote that people should not blindly seek to activate the P&P Ordinance because the relevant information had already been made available. According to him, "the two power companies have already provided the information requested by Members". I have no idea whether he has actually read the said information. He then wrote, "Members should read the information carefully before deciding whether adequate information has been

provided; if they found that the information provided is inadequate, the two power companies should be requested to further provide the necessary information, instead of seeking information blindly. The Government has already exercised due diligence in vetting the tariff increases. It has been acting in the public interest, but not against public interest." I almost mistook it as an article issued by the Government. He further wrote that, "If the P&P Ordinance is invoked frequently, it will impact on the overall business environment of Hong Kong. Over the past two months, the two power companies have been acting in a co-operative attitude as far as possible by disclosing the relevant information to the Legislative Council."

Is there something wrong? Mr CHAN Kam-lam moved a motion on 23 December, demanding the relevant authorities to provide the requested information by 1 January. That was the motion moved by Mr CHAN Kam-lam. When I moved my motion for invoking the P&P Ordinance at the House Committee on 6 January, the Government had yet to provide us with any information. But those Members said that as the Government's arrangement was acceptable, they did not support invoking the P&P Ordinance. Of course, I did not know whether they had received any information and had reviewed on such information to conclude that it not necessary to invoke the P&P Ordinance. However, the Legislative Council had not received any messages from the Government until 17 January, that is, the day the Government told us in black and white that relevant information would be provided. How then can Mr CHAN say that over the past two months, CLP has been very obliging and the two power companies have been co-operative in disclosing the relevant information to the Legislative Council. Isn't that a lie?

Just now, I have spent some time to recap the facts. Being a rational person, I make neither slanderous accusations nor groundless criticisms; I merely recount the facts of the whole incident in chronological order. Mr CHAN proposed a motion on 23 December to demand the provision of relevant information by 1 January, but the Government had not provided the requested information. Yet they opposed to invoking the P&P Ordinance. We did not receive any information until 17 January. So, how can he say that the two power companies have been very co-operative over the past two months? Besides, on 3 February, the authorities handed in the confidential papers, but we were asked to read them in the library. In the afternoon of the very day, the Panel on Economic Development held a special meeting. The relevant

information was finally submitted on 3 February. From the moving of the first motion on 23 December to the endorsement of the proposal to invoke the P&P Ordinance by the House Committee on 6 January, the Government indicated on 17 January that relevant information would be provided, the information was finally submitted only on 3 February. The relevant papers only contained a few pages, and all information was kept confidential. After Members expressed their dissatisfaction at the Panel meeting, the authorities only provided us with supplementary information a few days later, that is, the day before yesterday. Is that really co-operative? Is that really a case of providing us with adequate information? I have attended all relevant meetings, including all special meetings of the Panel on Economic Development. I have been engaged throughout the entire process. I have cancelled all other appointments so that I can attend all meetings because I have to witness the whole process. Otherwise, I am not qualified to say what I have just said.

Some Members hold the view that the P&P Ordinance should not be invoked casually. Of course, the P&P Ordinance should not be invoked casually. Of course, we know the significance of this "imperial sword". We have been Members of the Legislative Council for so long, how can we have no knowledge about it? The question is, had the motion on invoking the P&P Ordinance not been proposed, could we get these papers today? Can we have access to these information? While all information was kept confidential originally, only a small part of these information remains confidential today. Is that not the power of an "imperial sword", ready to be weilded? If Members find the situation acceptable, the sword will not be wielded because the two power companies have already provided the information. Hence, it is no longer necessary to use the sword. The matter is just that simple.

Nonetheless, why does the Democratic Party still insist on using the "imperial sword"? Are we silly? Having read the information, I still have many questions which the Government and the two power companies have yet to answer. I can readily give some examples. For instance, I asked yesterday for details of premature investment items amounting to $300 million which the Government had successfully removed from CLP's forecast capital expenditure. Nothing has been mentioned in the information provided. Again, I must extract such information slowly bit by bit, just like squeezing toothpaste out of a tube. It is stated that the reduced cost of $60 million is due to certain factors in the operating environment, what are the costs then? Nobody knows because we are

just given a figure. Regarding the 30-odd capital investment items in CLP's accounts, amounting to a total of some $20 billion, only one item is specified. When will such projects be commenced, and why are they so costly? No information has been given. Is this situation really acceptable? What information can we get hold of so far? We can only get hold of the information provided by the two power companies, and then we say that everything is okay. Is that what we should do in performing our duty? Is that what a Member should do in duly performing his role of monitoring the Government? Sorry, I do not think so. Nothing can be done if we do not take the final step and wield our sword. That is indeed the course of action we must take in some matters. I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, the SAR Government should conduct a self-review, given that its governance has come under public scepticism and criticism in recent years. First of all, many add-on surcharges are included in air fares. In fact, the exact amount of air fares should be specified by airlines when customers buy their tickets, and no add-on surcharges should be included. However, has the Government ever monitored whether the surcharges and basic fares charged by airlines are reasonable? If reasonable air fares are charged, lesser airlines would close down — in fact, one or two airlines have closed down — Cathay Pacific Airways holds the trump card as Hong Kong's airline, but it has also come under many criticisms in recent years, and its world ranking has fallen from the first to the sixth or seventh. Of course, that is not the topic of our discussion today, but it is enough to demonstrate the ineffectual monitoring of the Government.

Secondly, we all notice that oil companies are quick in raising auto-fuel prices. Although auto-fuel prices can go down, they will invariably go up a few days later. Members of the public have suffered gravely under the *de facto* monopoly enjoyed by the eight major oil companies. Hong Kong people like to flaunt their superiority by pretending to know everything. However, the public are really clueless about how electricity tariff is determined; even Members of the Legislative Council have no idea about it. Nonetheless, some Members just agree to support the two power companies after lobbying. The people of Hong Kong are gravely disappointed by this attitude.

In fact, Hong Kong people are not afraid of high prices. If it has been agreed that electricity tariff can increase by 9.9% after vetting by the Legislative Council, people will raise no objection because this level of tariff increase is endorsed by Members of the Legislative Council under the powers conferred by members of the public. However, the general public basically want to understand the rationale of tariff increases proposed by the two power companies through Members of the Legislative Council. While the public are not afraid of tariff increases, the two power companies should clearly account for their capital investment. If their capital investment is $10 billion, then their annual return is capped at $990 million. But if the two power companies have resorted to trickery, the public will feel cheated, just like a person who is given one more piece of meat after he has been cheated by the local butcher. That is what the public are most dissatisfied about because they are kept in the dark, and they really know nothing about what is going on.

The Government should accept responsibility in this incident because it is responsible for monitoring the two power companies. Of course, we are not asking the Secretary to handle all these matters on his own, other government departments must also be involved. Hence, President, the present controversy, in particular the drastic adjustment in the rate of tariff increase made by CLP within such a short span of time, has made the public as well as electricity users sceptical. While CLP insisted at the outset that it was impossible to lower the tariff, it had eventually reduced the rate of tariff increase drastically. Is there any trickery involved? Or how much of its gains are ill-gotten? If all its gains are legitimate, CLP must have fought the battle through, and would not readily reduce the rate of tariff increase, particularly within such a short span of time. The public has become even more sceptical and queried whether they have been cheated by the two power companies time and again in the past. That is why the incident has been so intensely debated and discussed by the media and the community.

President, we must understand that Hong Kong has already turned into a political city, glutted with theories of conspiracy, corollaries and declarations of stance. I have all along considered that the media is merely a business; some media organizations would make up news or blow up stories each day for the sake of increasing circulation of their publications.

President, we are now discussing whether the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) should be invoked to investigate into the relevant matters. I agree with Mr Fred LI's view that the two power companies would only submit the papers we requested and put up a pretense of co-operation under these pressures. As a matter of fact, the two power companies are duty-bound to submit the papers voluntarily even without the pressures.

Having read some of the so-called confidential papers, I cannot really understand what is so confidential about the information. Given that only some figures are given in the papers, what impact can they possibly have? Given the operating franchises of the two power companies, there is nothing we can do even with those figures. Are we going to compete with them for the operating franchises? In an economic society, we must protect our business environment, particularly that for small and medium enterprises because of the tough competition they must face. However, is there any competition for the two power companies? It is the hope of the people and Members that the two power companies can play fair. Of course, Members also want to do something; otherwise, how can they get paid? Nonetheless, the public want to understand how their right of service is protected, and whether value-for-money service has been provided?

I do not think the figures provided by the two power companies are confidential. As I have just said, given the operating franchises of the two power companies, there is no competition. What about the future situation? The most important thing is what can be done to resolve matter in the future. Regardless of whether the level of tariff increase is pitched in the range of 4% or 5%, it must give the people the impression that such a rate accords with the spirit of contract — of course, it can be said that any increase less than 9.9% also accords with the spirit of contract, but the crux is how the calculations are made.

As I have once pointed out, there is hardly any dispute between punters and casinos or international betting companies in Macao because punters who go inside the casinos know the rules very well. The agreements signed between the Government and the two power companies have now given rise to disputes because there is a lack of clear definitions, including the amount of capital investment and how they are calculated. By including their gains or other expanded items as capital investment or operating cost for the purpose of

calculating permitted return, the two power companies have engaged in certain kind of fraud.

In fact, recently, Hong Kong people have an anti-rich mentality or ideology, which is not quite right. There are also adverse comments in the community about certain real estate developers. Why? While it is justifiable for real estate developers to make profits, getting excessive profits through "inflated buildings" …… Of course, property development is not subject to any control on profits. However, if real estate developers try to earn excessive profits through "inflated buildings" rather than normal profits, the general public and potential flat buyers will find that unacceptable, sparking off criticisms from the entire community. That is the most important point. Real estate developers who acquired land sites at bargain prices through legitimate means will make profits when land premium rise in a few years' time. President, although rising land premium is not within our topic of discussion today, the same argument applies. As the Government insists on its high land-price policy and takes no direct actions against developers of "inflated buildings", the society as a whole gradually takes on the ideology and views similar to those held by Legislative Council Members when they comment on the tariff increases of the two power companies.

Hence, I must give a word of caution to the Government. While I believe that in most cases, Directors of Bureaux, Secretaries of Department and the Chief Executive have not colluded with the business sector, the Government should well capitalize on the co-operation between the Government and business, so as to fully develop Hong Kong's potentials. This is an initiative we should encourage rather than criticize. However, the most important thing is that a clear stance should be maintained without any equivocation. As I said just now, I firmly believe that no civil servants or government officials can and dare obtain any direct benefits from the relevant parties. If that is the case, why has the Government failed to do better by maintaining a clearer stance? Owing to its failure, there is a sense of hatred in society, a sense of hostility and antagonism of the masses or the grassroots against the rich. President, I stress again that the relevant departments of the Government are responsible in this matter.

Hence, we hope that through this …… I do not support invoking the P&P Ordinance casually. The P&P Ordinance is not intended to target the two power companies; instead, it should be used to find out whether the Government has

performed its monitoring role well, or whether it has acted recklessly, causing suffering to people. That should be the spirit of the legislation. Hence, I consider that if comprehensive information has not been provided by the two power companies, the two power companies are duty-bound to provide all the relevant information to Members of the Legislative Council, so that we can understand the mode of computation. The two power companies should list out all the figures including the items of capital investment. All these figures should be listed out clearly without any deletions; otherwise, the public will lose confidence in the two power companies. We are aware of the importance of electricity supply in Hong Kong in providing the society with a steady synergy of economic development — of course, I am not talking about the Economic Synergy of the Legislative Council — under the circumstances, the two power companies must win the confidence of the public. I think after the interim review in 2013, the Government should make preparation right away so that the electricity market can be opened up as soon as possible after 2018. In that case, the 7.1 million people in Hong Kong will stand ready to move onto the next stage because the role of electricity supply will become even more important when the population of Hong Kong reaches 10 million.

As we can see, other than the spectacular night lights in Las Vegas, the night lights on both sides of the Victoria Harbour are also an attractive sight. This is one of the functions of the power companies — of course, the price is paid by us — and their achievements are visible to the world.

I hope that the Government can open up the electricity market in 2018 so that operators around the world can join in the competition to bring about a reasonable level of tariff for the public.

Regarding the present controversy, had Members not proposed to invoke the P&P Ordinance, I think the two power companies will continue to stay aloof, disregard the demand of Members of the Legislative Council and ignore the views of the public. Nonetheless, we hope that different views can be embraced in society, so that better development can be achieved through the exchange of views. Moreover, we must understand that Members of the Legislative Council represent different sectors, views and interests. That is the pinnacle and destination of our debate. Of course, Members have to be responsible for their own views and speeches, and it is a different matter as to whether they can win the support and recognition of the general public or the sectors they represent. I

think the preferred course of action is for various parties to resolve the issue through negotiation, such that their respective objectives are met, rather than invoking the P&P Ordinance easily. Of course, the Member who proposes the motion should also understand his own need before making the relevant demands and requests. All in all, I hope the public as well as the end users will be satisfied with the result, which is the most important.

President, I am opposed to the motion and the amendment in principle.

MS EMILY LAU (in Cantonese): President, I speak in support of Ms Miriam LAU's motion.

When the Secretary spoke earlier, he said that the current tariff increase was unprecedented. President, we worry that if the incident is allowed to run its course, similar incidents will occur in succession. As pointed out by Members who spoke earlier, since fuel prices keep rising and the deficit balance of the fuel clause account continues to drop, even though the rate of tariff increase is relatively low this time, the power companies may ask for a higher increase rate in the future. Hence, why are we stranded in such a situation? Just now, Ms Miriam LAU has used a series of four-word Chinese aphorisms to describe the case, I did try to jot them down, but the most important expression I can remember is to "loot a burning house". She has poured out a number of four-word Chinese aphorisms to depict the situation. The Liberal Party acts bravely this time.

Some representatives from the business and industrial sectors do not support the proposal. President, in fact, many members in the business and industrial sectors are furious this time, because the authorities fail to fulfil its gate-keeping function properly. They too have to pay for electricity tariffs, right? Hence, they think that the Legislative Council should exercise its legitimate power to thoroughly investigate the causes of the unprecedented messy account.

The authorities have acted strangely. When they came to the Legislative Council, they told us unexpectedly that a consensus had not been reached with the two power companies. What had happened actually? President, in the past, Members complained about the authorities' late submission of information papers,

and some papers were only submitted before the meeting. These papers would contain information about the consensus forged, and Members had to endorse the proposal, irrespective of whether they liked it or not. Nevertheless, this is not so in the present case, where many slips and omissions had been found. When the authorities came to the Legislative Council, it told us that there were disagreements with the two power companies. As such, we did not know what to do at the Panel. How about the views of the Executive Council? Members of the Executive Council had read the papers as well. Then, the Chief Executive expressed his views on the social network sites. Someone has resorted to "verbal manoeuvres"; the only step that was not taken was to call on the people to take to the streets. In fact, a mechanism has not been put in place. President, what had happened in the course? If the incident was handled like that this year, how would it be handled next year? As such, the Democratic Party wants to obtain the information to find out what had happened. Therefore, President, we propose the motion to seek all information relating to the tariff increase, including the papers, books and records.

The earlier speech made by Mr Vincent FANG — he just left the Chamber — is good, and he has also used a lot of four-word Chinese aphorisms. We in the Democratic Party should learn from them. He said that the authorities had made three mistakes. First, why would the authorities enter into this agreement with the two power companies in 2008? He said that a permitted rate of return of 9.99% on total capital investment was a very high return rate, and he wanted to find out the justifications for agreeing to this rate at the time. May I ask Members what justifications can be found in this paper? I cannot say that the paper is so thin that it can be blown away by the wind, yet it only contains a few pages. Can anyone tell us the reasons for that?

Second, Mr Vincent FANG said that the Government has not undertaken a gentleman's act in this tariff increase incident. I have also said so earlier, and I cannot agree with him more. How could the authorities deal with the issue in this manner? Why would it do so, President? What had the authorities done in handling the case? It had been holding meetings with the two power companies as well as with the Executive Council till the middle of December, but why it suddenly came forward and said that a big problem had emerged. Mr FANG wants to know the reasons, so do I, as well as all the tariff payers.

Third, he said that the authorities had refused to co-operate with the Legislative Council. This point has been mentioned by a number of Members earlier. Mr TONG is concerned about whether the Secretary has made that particular remark. At the Panel on Economic Development, I asked the Secretary how Members could perform the monitoring function if they did not submit the information to us? He replied that how we would perform our monitoring function was our own business and he would not care about it. The authorities should co-operate with us. Yet the point is whether the authorities have submitted all the information to us now.

President, you have also attended our meeting. The information provided by the authorities included the five-year Development Plans, and some data were provided on various types of items, such as the expenditure on the generation system and emission reduction, as well as other relevant generation projects, transmission and distribution systems, and the development of customer and corporate services, and so on. President, we have asked at the meeting how these figures and data were computed?

When it comes to tariff increase, it is stated in the paper that the Basic Tariff has to be increased, the net fixed assets value on average also has to be increased, whereas some information in this respect cannot be disclosed to us. Regarding other items, such as the increase in operating expenditure, the increase in local electricity sales and the decrease in sales to the Mainland, we need to obtain further information. President, the case is not as simple as that described in the paper with merely four lines. Hence, if we may invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), we will be able to obtain more basic information, including the minutes of the meetings, so that we can have a better picture and can answer the three questions put forth by Mr Vincent FANG. We will be able to point out the three mistakes made by the authorities, ensuring that it will not make the same mistakes again in future.

President, it is not just a question of whether or not the authorities had made mistakes, for the seven-odd million people have to bear the consequence of tariff increase. The reason put forth by Dr Raymond HO earlier is laughable. One of the reasons he opposed the arrangement was related to the experience of the subcommittee on Lehman Brothers. That subcommittee has held more than one hundred meetings, and I have heard much opposing views from Members about this. It is a fact that the subcommittee has held a lot of meetings, though I

doubt about its efficiency, I think Members do hope to work efficiently and settle the issue as soon as possible. Nevertheless, this is not a reason for opposing the proposal to obtain information. We have to hold meetings to get information, so that we can arrive at conclusions and put forth recommendations.

Ms LI Fung-ying is good and she has all along supported this approach. We have to thank Members for supporting the proposal to invoke the P&P Ordinance at the meeting of the House Committee held in January. A motion for this purpose was then put forth by the Chairman of the House Committee. I believe, and I hope everyone will agree, that had this motion not been proposed, Members would not have been provided with so many documents for reference, and the many dates recapped by Mr Fred LI earlier can well illustrate this point. President, some people in this world will not repent till they have one foot in the grave. Since we have made this request, they have submitted some papers to us in the last few days. However, the point is that the information provided is inadequate, and we have reasons to seek more information.

Some Members say that this practice will affect the operation of the business sector. I share the views of Mr Ronny TONG about the amendment put forth by Mr Vincent FANG. The amendment states that we must ensure that the exercise of this power should be in the public interest, we definitely will do so. It also states that the practice should not interfere with normal commercial operation. Regarding this point, if it is reasonable, we will definitely handle cautiously and ensure that it will not lead to the divulging of sensitive commercial information.

In the investigation of the Lehman Brothers incident, as well as the investigation of the airport incident in the past, a lot of sensitive information was involved. Yet at the relevant committees of the Legislative Council, we must be conscious about these rules in exercising such power. We follow rules. When Ms Audrey EU proposed the motion last time, I had also asked for the information. At that time, the Clerk had given us a big helping hand in retrieving the information, and there was a resolution. We handle these cases in an orderly manner.

As for the Lehman Brothers case and the subcommittee responsible for investigating the Lehman Brothers incident, I have not heard of any strong opposition from banks that the Legislative Council has been unruly and has not

followed the rules, nor are there complaints that we seek papers arbitrarily and affect their commercial interest. They have not staged any opposition. As for the current incident, I have, on the contrary, heard some members from the business sector urging the Legislative Council to investigate into the case thoroughly. Given the mess made by the authorities, had the Legislative Council not made all-out efforts to dig into the case and strive for reduction of tariff, do you think CLP would reduce the increase rate time and again?

Hence, President, I believe there is a clear record to prove that the Legislative Council has not used this "imperial sword" arbitrarily. Moreover, since the invoking of such power must be passed at the Legislative Council meeting, there are many checks and balances. When we exercise this power, I believe the majority of the public will consider that Members are exercising their power in a reasonable and responsible manner.

Hence, I do not quite understand why Ms LI Fung-ying would give up in the end and said that she would not support the motion. Actually, I have all along thought that her remarks are good. But the problem is that the information we now have is inadequate. President, Ms Starry LEE of your party said that the issue could be followed up continuously at the Panel. We will certainly do so. Yesterday, we had a long meeting with the authorities. However, without using this "imperial sword", what do you think we can get from the follow-up action of the Panel? We have no way to follow up. The authorities just act this way.

Hence, I earnestly hope that the Democratic Alliance for the Betterment and Progress of Hong Kong will take action. If they are really so angry, they should have the courage to support this motion, for this will enable the legislature to have adequate power to follow up the incident.

The problem at issue is, President, as I mentioned earlier, what can we do now? What should we do next year? If, at that time, the Secretary once again tells Members that the two power companies have proposed an unprecedented tariff increase of a dozen percentage points or so, should we make the same mistakes again and repeat the whole process again? This is unacceptable.

The Secretary said that they are responsible for gate-keeping, so they have read all the sensitive information. But the reality proves that they have failed to perform the gate-keeping function properly. When we considered the rates of

tariff increase proposed by the power companies too high, we pressed for a lower rate. We then exerted pressure on power companies at meetings and we took to the streets. Eventually, the power companies further lowered the increase rate.

I believe the Secretary should tell us later whether this is the new mechanism we intend to adopt. In other words, if a consensus cannot be reached next time and if the authorities cannot do anything, they will say that they hold different views with the power companies, and then they will appeal on social network sites for the public to indicate their preferences and stage protests outside the Government. Is this what the authorities want?

President, if the authorities do not want the legislature to monitor certain issues as many documents involved cannot be disclosed, it should at least set up a statutory organization or an independent organization with credibility and trust of the public to be responsible for examining such information. If so, the organization can come forward to tell the public that they have examined the information concerned. This is one of the options. At present, the authorities have already established the Energy Advisory Committee. Yet, in this incident, members from the Committee have openly expressed their opposition, and they all consider the present case ridiculous. President, do you know what they said? They said that they were not allowed to access to a lot of information, for the authorities had not submitted the information to them.

The problem is, what lesson have we learnt from this incident? As in the case of the Public Accounts Committee of the Legislative Council, after numerous hearings, the most important page is the lessons to be learnt, so as to avoid the same mistake in future, and restore the public's confidence in the gate-keeping system and the gate-keeper. This will also prevent the two power companies from making gluttonous requests. I do not have much confidence in them. I also agree with Members that they will naturally maximize their profits since the authorities allow them to have a rate of return of 9.99%; they have been granted approval by the authorities. However, if a mechanism is put in place, the power companies will be informed in good time that the inclusion of certain expenditure items as the justification for tariff increase is inappropriate or premature, or that the proposed rates of tariff increase have far exceeded the inflation rate. When the authorities first came to the Legislative Council to explain the case, I do not understand why they failed to put forth justifications, which they and the public considered reasonable, against the tariff increase

proposals of power companies. The authorities could not give justifications at that time. In fact, the issue had been discussed at the Executive Council …… President, you have once been a Member of the Legislative Council, you should know what has happened. This has put us in great disappointment. We are terribly worried that we have to go through this process every year. No one can guarantee that similar cases will not happen next time. The situation can be more radical and more embarrassing. Concerning the tariff increase of the power companies, why would a crap mechanism like this be put in place?

Will the authorities tell us the mistakes it has identified in the present incident? What should be done? Will the authorities perform the monitoring role or will it commission other organizations to perform this role, so that the authorities will have more credibility and power to bargain with the power companies on the tariff charged, and that similar incident will not recur?

I hope that the Legislative Council will pass the motion and the amendment proposed by Ms Miriam LAU and Mr Vincent FANG respectively today, so as to convey a clear message and warning to the two power companies and the authorities that they should not treat the public as fools, and that they should not made exorbitant demands.

Thank you, President.

MISS TANYA CHAN (in Cantonese): President, it is a small miracle that this motion can be proposed at the meeting today for discussion. At first, we did not even expect that the motion would be passed at the House Committee, let alone debate at this Council today. Before coming to the debate, we should first examine the original text of the motion. The Secretary is not in the Chamber now; actually I want to tell the Secretary that the motion debate may do him justice. Why? If Members read the wordings carefully, they will understand. The motion indeed orders the SAR Government and the Secretary to produce papers, books, records or documents in relation to the discussion of tariff adjustments between them and the two power companies.

Perhaps, Members may still recall the aggrieved look of the Secretary when he first explained the case on the tariff increases of the two power companies. In answering our questions, he hinted that one of the two power companies was

not complying and he failed to convince it. He also said that the Government had queried the other power company for the premature inclusion of certain expenditure items. In fact, the Secretary had raised three complaints, which included queries about the effectiveness of the cost control measures, the premature inclusion of certain expenditure items and the effectiveness of the control on operation costs. So, what purpose will today's debate serve? It will do him justice, President.

If Members have a chance to examine the papers, which are marked with yellow boxes, we eventually obtained …… Yet, I wonder what has gone wrong as the paper from The Hongkong Electric Company Limited (HEC) only includes the odd-number pages but not the even-number ones. We have notified the Secretariat, and they have been handling the problem, yet we have not yet received the even-number pages. Some time ago, including last Friday, we went to the library to examine the papers. Certainly, we understand that it is almost an impossible task to extract blood out of a stone, yet we have been able to get the first drop of blood. Back to the point, when was this first drop of blood submitted to us? It was only submitted a few hours before the meeting. On that day, we had a house warming lunch gathering, a welcome party arranged by the Legislative Council, and right after the lunch, many Members hurried to study the papers. It was a tough task, for we were informed well in advance that no photocopying, photo-taking or copying would be allowed, and all Members tried to memorize as much information as they could. At that time, the Bureau said that all information was sensitive and could not be disclosed. However, in the face of continuous pressure, the two power companies eventually submitted the papers we have at hand today. However, when Members examine the papers to try to find the answers to their many queries, it turn out that they have even more queries after examining the papers. I do not think that we can get answers from this avalanche of figures.

I will cite the simplest issue as an example: the projection and actual situation of the five-year Development Plans. President, this issue is straightforward and most fundamental. Take the case of CLP Power Hong Kong Limited (CLP) as an example. Discrepancies were found every year, and the amount involved had been significant. In view of this, I cannot help but ask how the Government had discussed the issue with the two power companies. In fact, I earnestly hope that the Secretary or the Government will take this opportunity to explain to us how they have performed their gate-keeping role

properly on our behalf. Regrettably, the Government does not treasure this opportunity. This is actually an opportunity to do justice to the Government, and the Government should treasure this opportunity without a thought.

Moreover, a number of Members have mentioned the "imperial sword" of the Legislative Council earlier. Honestly, this "imperial sword" cannot be used arbitrarily. With the amendment of Mr Vincent FANG, the blade of this "imperial sword" may still be shinny, yet to certain people, its sharpness has already been compromised. No matter what, Members will use this sword in a rational, systematic and disciplined manner, and this will not, as claimed by certain Members, undermine Hong Kong's status as an international financial centre. Frankly, which attribute of Hong Kong has won the most respect from others? It is our legal system. People understand the functions to be performed by the Legislative Council under the separation of the three powers. In many places with open market competition, the government and the executive authorities are monitored by the legislature with more democratic elements than the Legislative Council in Hong Kong. At present, the legislature in Hong Kong can hardly be called a completely democratic legislature as half of its Members come from the functional constituencies, yet it has aroused considerable fear when this "imperial sword" is used. In fact, what is the major cause of worry to most businessmen? They are most worried about the "verbal manoeuvres" made by the Chief Executive. They should have been able to do business freely provided that they act in compliance with the regulations. If they follow the rules and act properly, they can do business freely and do not have to worry about being monitored by us. However, since the SAR Government is short of other tactics, it can only resort to "verbal manoeuvres".

On the whole, this motion offers an opportunity for the Policy Bureaux, the Government or the executive authorities to disclose the relevant information in detail to us and the public, so that we can have a better understanding of the incident, and are aware that the authorities have indeed done its level best in gate-keeping, and that this is the most it can achieve despite all the efforts made. In that case, we will know that each year we have to take to the streets, stage signature campaigns and demonstrations, and make use of the influence of the Internet to express our opposition, so that the authorities can attain success in gate-keeping. The authorities should let the public know the truth earlier, so that they can stage signature campaign all year round to give the authorities a helping hand.

Whenever we discuss these issues, I can hardly understand the views expressed by certain Members. For instance, a Member mentioned the issuing of a warning. However, I doubt its deterrent effect. Frankly speaking, no matter how much effort has been made, a warning of a general nature can hardly be taken heed of by the power companies. In the present case, it is only because we demand invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) that the two power companies have at least provided some additional information to us within the tight time frame. Let us not talk about other aspects but concentrate on the information now available to us, such information has never been provided to us before. I am referring to the information since 2008. I believe Members — I am a Member too, and I have been a Member since 2008, yet I had not read the relevant information in 2009 and 2010. Am I right? This information is of great importance, but we have never had the chance to understand it. Had not we proposed a discussion on invoking the P&P Ordinance to seek such information, we would not even have the opportunity to discuss such information. We could only access to part of such basic information, or worse still, we could be denied of any information.

Actually, the quality of information provided by the two power companies is not the same. Simply put, let me talk about the information provided by CLP and HEC now. For CLP, I am not commending CLP, yet they have at least been more honest. It is stated in the paper when CLP first proposed to the Government the rate of tariff adjustment. Certainly, the increase had been stunning. However, HEC did not provide the exact date and only stated roughly that it was in December …… that the first proposal was submitted to the Government before the announcement of the tariff adjustment. As a Member of the Legislative Council from the Hong Kong Island constituency, I am terribly dissatisfied with this practice of HEC. The HEC is very lucky this time, for CLP has been made the scapegoat. However, the increase imposed by HEC this time is higher than the inflation rate. Certainly, the amount the public owe to CLP will be repaid sooner or later. However, regarding the information provided by HEC this time, is it adequate? I am really doubtful.

Moreover, at the first meeting after we had obtained the strictly confidential documents, I had stated that we had to make cross-checking on a lot of information, and we had to obtain other materials for reference. At the same time, I would like to ask the Government, since it is responsible for gate-keeping, and given that HEC and CLP have now provided the information to us, whether it

has got the same information from HEC and CLP? Can the Government perform the gate-keeping function based on such information? Is such information adequate? If it is inadequate, why would the Government consider that the provision of such information will satisfy the demand of Members? Why can't Members invoke the P&P Ordinance to obtain more information? Will the Government please confirm this point later? If the authorities are provided with the same information as we have at hand, I am shocked to find that the authorities would consider those figures adequate in justifying the increase proposed by the two power companies. Really, I do not believe that such information is adequate. Why are the authorities provided with more information but not we Members?

President, finally, I have to say that this is a very precious opportunity. Truly, this is an opportunity for the Secretary or the executive authorities to do justice to the public. Or, perhaps it is an opportunity we give to the authorities to do justice to themselves, for the authorities may explain to the public how hard they have worked in the course of discussion to strive for a reasonable increase and how they have made CLP willing to lower the increase rate. Should all the credits go to the public, or had the authorities put in extra efforts to strive for a better deal for us? It depends on the invoking of the P&P Ordinance to allow the Legislative Council to obtain the relevant papers under appropriate procedure and system.

Furthermore, I have to highlight the following point again. Many Members said earlier that they were considering voting against the motion or abstaining from voting, for they were concerned that commercial operation and sensitive information would be affected. However, this is exactly the issue addressed in the amendment proposed by Mr Vincent FANG. In my view, if Members cannot put forth some new arguments, their cases will seem weak and unconvincing. The proposal of issuing a warning is out of the question. It is a wishful thinking that the power companies will be scared by the warning and become co-operative. I earnestly hope that Members who have expressed such views earlier will change their mind at the last minute. I hope that these Members will show the public that they are performing gate-keeping function and working for the public rather than working for the interest of their friends in the minority. After all, they are paid by the public but not the people they are now serving. I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, in the entire course of the tariff adjustment of the two power companies, Members would have noticed that there are problems with the whole mechanism, the monitoring mechanism of the Government, as well as the Legislative Council's monitoring of the Government. Obviously, the public must have an impression that the whole process is like "squeezing toothpaste", or like buying food in the market.

I compare the process to "squeezing toothpaste", as the difficulty to seek information is obvious to all. To this day, it is only when we propose to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) that the two power companies have reluctantly provided the information. If Members had not proposed invoking the P&P Ordinance, eventually we would not have got any information and the two power companies could once again get away. The next scenario come to sight is the bargaining scene at the market, where the rate of tariff increase could be lowered from over 9% to some 4%. However, when we examined the information later, we found that the basis on which CLP lowered the increase rate from over 9% to some 4% was just a play on figures, and there was no real reduction after all. CLP just uses the compensation it will be awarded from the lawsuit with the Government to lower the increase rate by some 3%, which means the lowering of the increase is offset by the rates compensated by the Government. In actuality, the actual reduction rate is insignificant. Due to the increase in net fixed asset value, the revised reduction rate is even more insignificant. I will talk about the information in this respect later.

Just now, I said that the whole mechanism was problematic. The problem mainly lies in the Government's tilting towards consortia in the 10-year Scheme of Control Agreements (SCAs), and betraying the interest of the public. As a matter of fact, the several figures in the 10-year SCAs have well illustrated that the public have been betrayed. Indeed, the approval of the 9.99% rate of permitted return for the two power companies at the outset was a betrayal of the public. It is stated in the SCAs that the formula of computing the rate of return on the basis of 9.99% of net fixed asset value will continue to apply. The so-called agreement on rate of return is indeed an agreement on guaranteed profit, and that implies "game over" for the Government. I often say that the Government has no power to monitor tariff increase after all. If the two power companies manage to keep tariff increase within 9.99% on the net fixed asset value, and the Government approves their capital expenditure, the two power

companies can increase their tariff at will, be it 10% or 20%, and the Government cannot stop them. The only way out is to reduce the capital expenditure of the power companies, yet this can hardly be done, for the Government has already approved their five-year Development Plans. The two power companies put forth their annual capital expenditure according to the five-year Development Plans, and the annual adjustment in capital expenditure will naturally result in the increase in the net fixed asset value. This is the formula adopted for computing tariff increase. As such, after the Government has approved the five-year Development Plans of the two power companies, it can only make minor adjustment to the annual expenditure of power companies, where tariff increase must be allowed under the system. Hence, the second aspect which the Government has betrayed the public and has failed to handle is that it has already approved the five-year Development Plans of the two power companies. When the Government approved the five-year Development Plans of the two power companies, it has in *de facto* given up its power of scrutiny and approval, for the Government can at most make minor adjustments to the annual capital expenditure of the power companies.

The third point we consider unfair is that the responsibility of emission reduction has in actuality been shifted to consumers. Consumers are paying the cost of emission reduction for the two power companies. Surely, we support emission reduction, yet the Government may achieve this by means of legislation. It can enact legislation to require the two power companies to reduce emission, and it does not necessarily have to compromise in this aspect. However, in the end, the Government has chosen to compromise. Though it requires the two power companies to reduce emission, it allows them to charge the cost to the public, shifting the responsibility of environmental protection completely to the public, to the consumers and customers. As consortia, the two power companies do not have to undertake any responsibility. This is the third major problem.

I would like to come to the details of the five-year Development Plans I mentioned earlier to illustrate how the Government has betrayed the public. In fact, when I read the five-year Development Plans of the power companies — what I am going to say does not involve the disclosure of confidential information, for I will not disclose any parts highlighted in yellow, and I will only replace with a "du" sound. What is the concept involved? The concept involved is straightforward. At the meeting on that day, I asked CLP about the hypothesis made in the entire five-year Development Plan. CLP said that it was

based on the hypothesis that within the five-year period, the population in Hong Kong would increase by 280 000, and there would be various infrastructural development, such as the development of the West Kowloon Cultural District, the development of The Hong Kong University of Science and Technology (HKUST) and the science park, and many other infrastructure projects. CLP said that a five-year Development Plan had to be laid down in view of these infrastructure projects and the 280 000 increase in population, and the Development Plan had been approved by the Government. However, is this really necessary? Just think, all along, the supply of electricity in Hong Kong has exceeded the demand for electricity in most of the time. Is it necessary to achieve the reliability of 99.999%? CLP has no incentive to reduce its capital expenditure, and the Government, the monitoring authority, has approved the expenditure. Let me cite an obvious case. According to CLP, in order to meet the load requirement, it has to spend a total of $6.8 billion — this figure has not been highlighted in yellow — in the five-year Development Plan, how did it arrive at the amount of $6.8 billion? The amount includes the construction of transmission substation at Chui Ling Road, the construction of "du" — I have to make the "du" sound as I cannot state the content — the construction of the Southeast Kowloon A transmission substation "du", the construction of the Southeast Kowloon D transmission substation "du", and the construction of the transmission substation "du" for the HKUST. Alright, I will stop here, for I do not want to go on making this "du" sound. Will the development of the HKUST make it necessary for CLP to construct the transmission substation? What is the basis of the figures? Why is it necessary to carry out this project? If Members have the five-year Development Plan at hand, we should discuss these issues one by one. Why are these development projects necessary? There are other examples. For instance, the project to maintain the reliability and quality of electricity supply involves $6.2 billion and the construction of additional 400 kV overhead cable systems to withstand super typhoon "du". Wow! I just learn that we are now in danger, for we are in trouble whenever there is a typhoon. Is it the case? This has to be left to experts to discuss. For the construction of 132 kV open-loop network, it will cost "du" dollars. Is this necessary? For the construction of two 132 kV lines for Tseung Kwon O Industrial Estate at Chui Ling Road, it will cost "du" dollars. Again, is it necessary? We are actually quite doubtful about all these project items, yet the Government has already given approval. In future, CLP will spend all the capital expenditure, yet is this really necessary? In fact, an entire electricity generation/transmission network has been established in Hong Kong. Will certain development of the HKUST give

rise to the need of all these projects? Moreover, $2.8 billion will be spent on replacement and renovation work, is it necessary?

It will be time-consuming if we have to discuss these projects one by one. Another project included in the five-year Development Plan is the transmission and distribution system, which involves the construction of two 132 kV Tin Shui Wai A Tuen Mun lines, the construction of 132 kV Tai Kok Tsui Airport Railway West Kowloon Reclamation Area B line, the Tai Hom Hammer Hill line, and so on, and then "du, du, du", yet are all these projects really …… In fact, I think the greatest problem at present is that some unnecessary projects are still carried out as planned. Despite the projected increase of 280 000 in population, is it necessary to carry out the development projects according to this formula? If Members consider the formula acceptable, does it mean that the electricity network will have to be expanded continuously to cope with the increasing population? Yet Hong Kong is a small place after all, the electricity network has nearly covered the entire territory. Is it still necessary to continue with the expansion? This arouses considerable doubt. Hence, Members would have noticed that the five-year Development Plan as a whole poses a problem.

Another major problem is about tariff increase. As I said earlier, despite the reduction in tariff increase of CLP, the specific structure has not been changed. Why? Members know that the formula for the computation of tariff is composed of two main parts. First, the increase in net fixed asset value, and second, the operating expenditure. These two parts are permanent and structural. According to the information provided to us by CLP, under the original tariff adjustment proposal submitted by CLP to the Government, the net fixed asset value will increase from "du" dollars in 2011 to "du" dollars in 2012, and the impact on tariff is an increase of $1.7 per kilowatt. And then, after further adjustment, the increase of "du" dollars in 2011 to "du" dollars in 2012 will result in the increase of $1.6 per kilowatt. In other words, the reduction in the net fixed asset value can only reduce the tariff as a whole by a meagre $0.1 per kilowatt, which means the structural proportion is not substantial. As for the increase in operating expenditure, which increase from "du" dollars in 2011 — I do not need to make the "du" sound" in this respect — increase from $12.63 billion in 2011 to $13.32 billion in 2012, and the other scenario is from $12.7 billion in 2011 to $13.26 billion in 2012, which only involves a modest reduction of $60 million. How much can this $60 million reduction lower the

tariff? The tariff increase is lowered from $2.2 per kilowatt to $1.8 per kilowatt, which is only a $0.4 reduction per kilowatt.

I would like to point out that not much change can be made to these structural elements. If no change is made to the structure, the adjustments proposed will only be a game of figures. For the adjustment made is setoff by reducing the balance of the Tariff Stabilization Fund, as well as the amount the Government is required to pay to CLP. In the end, it is the public who have to bear all the consequence of all the capital expenditure. Though the public may not have to settle the difference now, they will have to do so in future, for the capital expenditure will increase continuously.

President, finally, I would like to point out that from the figures mentioned earlier, it is evident that there are still many areas which warranted queries and continuous monitoring. However, without the power conferred by the P&P Ordinance, the operation of the entire Legislative Council will be likened to a blind men figuring out an elephant, there is no way for the Legislative Council to monitor the Government. Unless we all have complete trust on the Government and consider that everything it does is correct. However, it is the function of the Legislative Council to monitor the Government. We should assume that the Government will have slips and omissions in performing its duties. In actuality, we think that the Government has completely betrayed the people of Hong Kong in handling the five-year Development Plans of the power companies.

Hence, if Members do not invoke the P&P Ordinance, there is no way to obtain such information. When it comes to invoking the P&P Ordinances, some people often oppose on the ground that it involves confidential and sensitive information. I think these people only use this as an excuse, and they are purely bias towards those consortia. However, Members should remember, the consortium we are trying to protect is a "power overlord"; it is a monopolized corporation. Should we protect a monopolized corporation, which make it difficult for us to get information? Certainly, I think if we invoke the P&P Ordinance, we have to be responsible in the end. If we consider that certain information is really sensitive after examining it, I think Members may discuss about that and keep such information confidential. However, I must stress that the power of initiating such action should be in the hands of the Legislative Council.

In the present case, information is submitted by the "squeezing toothpaste" approach. The information submitted by CLP yesterday is a case in point. I have openly pointed out that CLP has been "squeezing out" information to Members, and it has stated that the information is provided under the condition of confidentiality, where Members cannot make public the content. In other words, it is for CLP to decide which information should be kept confidential. However, when the Legislative Council invokes the P&P Ordinance, we but not CLP will decide which information should be kept confidential. If the P&P Ordinance is not invoked, the power companies will decide which information should be kept confidential and which should not. Hence, I support the original motion and very reluctantly support the amendment of Mr Vincent FANG. However, I think Mr Vincent FANG's amendment is only self-restraining. In my view, we will be self-restraining after all, for we are acting responsibly. When sensitive information is involved, we will be self-restraining. As such, I also support Mr Vincent FANG's amendment. Moreover, I hope that the motion on invoking the P&P Ordinance will be passed, so that we may continue to discuss this issue. However, I have to emphasize the point that once the motion on invoking the P&P Ordinance is passed, it will no longer be left to CLP and HEC but the Legislative Council to decide which information should be kept confidential.

As for the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), I would like to respond to the views expressed by Ms Starry LEE last time. She said that we should not draw the "gun" or wield the "imperial sword" arbitrarily. I think that she as a Member and the Legislative Council as the legislature have to bring the monitoring role to full play. It is irresponsible and doing a disservice to the public if we do not exercise the power conferred to us by invoking the P&P Ordinance. When the incident comes to this stage, should we still be discussing whether the P&P Ordinance should be invoked. I think it should definitely be invoked. She said earlier that a warning should be issued to the two power companies first to remind them that such a motion would be proposed if they continued to be unco-operative. Upon hearing this proposal, Members should reckon immediately that she is "offering great assistance in the disguise of light criticisms". She may be a "two-headed snake", and no one knows which side she is supporting in actuality. She may make an effort in staging protests and demonstrations, yet when it eventually comes to pressing the legislature to invoke the P&P Ordinance to monitor the two power companies, she let them go instead of fulfilling the monitoring function. In my view, if we

want to perform our task, we must invoke the P&P Ordinance. Only with the power conferred by the P&P Ordinance will we be able to fulfil our function in monitoring the tariff increases of the two power companies, and seek sufficient information for examination, and this will in turn lay a sound foundation for the overall monitoring system of Hong Kong.

Thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, in the face of increases in charges by public utilities, people in Hong Kong generally have two different approaches. One approach is that they think they cannot do anything since it is a common practice for public utilities to increase charges. After all, prices of all commodities keep soaring, what can ordinary citizens do to oppose the price rise? Nothing can be done. Whenever public utilities propose an increase in charges, they can usually get what they want. This situation not only applies to the two power companies, but also to bus companies and the MTR Corporation in the past. They could always increase their charges. What can ordinary people do about that?

President, this attitude is actually understandable. What can ordinary people do to stop public utilities from increasing charges? I really do not know what they can do. Even if they speak up in radio programmes and news programmes, or take to the streets, their views will still be ignored by public utilities, which will go ahead with their plan and increase charges. Why is it so? That is because we do not have a mechanism to restrain public utilities from increasing charges. As long as public utilities claim that they are acting in accordance with the agreements, they will be allowed to increase charges. As a matter of fact, there is no mechanism to restrain them. The Government may deny this fact and say that they have been monitoring the utilities to see if the rate of increase is reasonable. In the past, there are incessant comments about the collusion between business and the Government. Even if there is no business-government collusion, we often note that the Government acts in favour of large businesses and capitalists, so that they can reap profits. A case in point is the agreements signed between the Government and the two power companies, which is the subject of today's debate. Large businesses are connived by these agreements to reap profits. While there is a mechanism to allow increases in

charges by public utilities, there is no mechanism to restrain such increases. Hence, I also feel helpless for people having this mentality.

As for the other approach, people act rationally in the face of increase in charges. The general public is willing to accept reasonable increases proposed by public utilities. But what increase rate is regarded as "reasonable"? An increase in line with inflation may be considered reasonable because many people think that as public utilities also have to bear higher staff cost and other rising expenses at times of inflation, they should not be blamed for increasing the charges. Many members of the public are rational and accommodating, and they are ready to accept reasonable increases in charges. Unfortunately, the increase rates proposed by the two power companies are much higher than the inflation rate, which can hardly be accepted even by those rational and tolerant people.

Yet, what can we do? We want the increase rates to be reasonable but we do not have a fair mechanism to restrain the tariff increases by the two power companies. Although we understand that the two power companies should be allowed to have a reasonable rate of tariff increase, we do not know if their justifications are reasonable. At the same time, the Government only has a monitoring power, but its hands are tied in many areas. While the Government had requested the two power companies to provide relevant information, we do not know if the information provided is sufficient. What is more, even though the Government had queried the two power companies about premature capital investments and other issues, the power companies paid no heed and proceeded with their plan to increase tariffs. Even the Government is helpless in this situation, what can it do? The Government took an uncommon move and asked the public, through the Internet, to express their views and sought their support. It called on people to "Like" the Government if they thought that the two power companies, being public utilities, should take into account their social responsibility and users' affordability in tariff adjustment and reconsider their stance in tariff increases.

President, it was uncommon for the Government to do so. Without the backing of a mechanism, even the Government has the sense of helplessness. It thus resorted to seeking public support to stop the unreasonable rate of tariff increases. The public was kind enough to co-operate with the Government. Shortly after the Government had made the appeal, 7 000 people gave their

support to the Government in Facebook. President, what is the public view on these tariff increases? The public hopes that the two power companies can propose a reasonable increase rate or put forward some reasonable justifications for the increases. However, the two companies have not provided us with sufficient justifications. The Government has also failed to force them to take further actions. What should we do now?

The issue for our debate today is whether we should invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to demand the two power companies to disclose their information, so that the public can be better informed to judge if the tariff increases are justifiable. Nevertheless, many colleagues, as well as the two power companies, consider this idea infeasible, because commercial organizations should not be asked to disclose information of their financial operation or future development plans. They consider that the operation and development of commercial organizations will be affected, and hence, this act is undesirable from the business perspective.

President, I have a different view. It is true that the two power companies are private organizations. Yet, they are different from ordinary private organizations as they have signed an agreement with the Government, under which they are allowed to obtain a reasonable return. In other words, the Government allows them to make money from the public. This makes them different from other commercial organizations which make profits by boosting their product sales with an effective operation. The two power companies are public utilities. By public utilities, they do not merely sell product to the public, there are also statutory provisions specifying that they can make profits from their business. The two power companies are therefore different from other commercial organizations.

As the saying goes, "he who eats salted fish must stand thirst". Given that the two power companies have signed an agreement with the Government, they cannot refuse to disclose their operational information on the pretext that commercial secrets are involved. On the contrary, the Government should, when entering into agreements with the power companies, state clearly that the power companies have to pay a price for their statutory status to make profits from the public, that is, they cannot refuse to disclose their commercial secrets under the principle of commercial operation, as in the case of ordinary

commercial organizations. I think the arguments of the two power companies are unjustifiable and inappropriate. Such arguments cannot hold water. If that is the case, the Government may as well not sign an agreement with the two power companies, nor stipulate statutory provisions to guarantee them a permitted rate of return. As a matter of fact, the two power companies did not take other factors into consideration and insisted on getting the highest permitted return. Can we sue them? In fact, it is not possible to neither sue the power companies nor stop them. Now, we can only rely on social pressure to stop the tariff increases. If they finally decide to increase the tariffs, we cannot do anything to stop them. In this situation, why should we not have the right to scrutinize the two power companies?

Starting from the 1970s, in every protest against the increases in charges by public utilities, the principle that has all along been advocated is that the financial operation of public utilities must be transparent, so as to allow public monitoring. The monitoring role should not only be played by the Government, but also by the general public and the whole society, because these utilities are allowed to have reasonable returns. We will not make such a request if public utilities are not entitled to a permitted rate of return. Since the Government has now given them the right to get a reasonable return, why are we not allowed to regulate them? Is it reasonable that we are not allowed to regulate the operation of public utilities while they are allowed to make money from us? Just now, Mr LEE Cheuk-yan has quoted loads of information, some of which are really ridiculous. I do not think any of them can be regarded as secrets. I also doubt if their development plans should be devised in this way.

It is pathetic that we cannot even get such information if we have not exerted pressure on the two power companies recently. Therefore, in today's debate, I think it is reasonable to support exercising our privilege to demand the two power companies to provide additional information. I do not understand why some colleagues hold opposite views. While the legislation allows these companies to make money from us, why should we not have the right to know how they achieve this goal? They are making money from us! How can we keep ourselves in the dark? If we do not monitor their operation, we will be conniving these businesses to take advantage from us. It is by no means reasonable.

President, I earnestly support the Council to invoke the P&P Ordinance today in order to seek information from the two public utilities. Apart from the two power companies, other public utilities should also enhance their transparency when they propose increases in charges in the future. It will only be fair if the public, in addition to the Government, is allowed to monitor and speak up. Otherwise, these public utilities should not be allowed to make reasonable profits.

President, I so submit.

MR WONG YUK-MAN (in Cantonese): President, let me sidetrack a little. Now at this Council, there are …… one, two, three, four, five, six, seven and eight Members. There are people who have shamelessly proposed to double the remunerations of Legislative Council Members. As a Legislative Council Member myself, I feel ashamed.

President, the public are victims of the two power companies' frenzied rise in tariffs. Let me quote, "Since the data and information behind the 2012 tariff adjustments by the two power companies have not been fully disclosed, and the details of their five-year Development Plans approved in 2008 have also not been publicized, the motion today seeks to resolve whether this Council can authorize the Panel on Economic Development under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by the Ordinance to order the Secretary for the Environment of the Government of the Hong Kong Special Administrative Region to produce all papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited and The Hongkong Electric Company Limited respectively, including detailed information on the 2012 tariff adjustments by the two power companies; and detailed information on the five-year Development Plans of the two power companies."

I can foresee that the motion will be vetoed under the separate voting system. We detest and loathe the notoriety of this Council, the despotism of the Administration and the ruthlessness of those in power. As a Legislative Council Member elected by the people, I have witnessed more than once in this Council how motions concerning people's livelihood and well-being, human rights and the rule of law being crushed in separate voting under the evil system of functional constituency (FC).

As Members, we feel powerless and helpless, and are seriously dismayed. In my view, it is really shameful to propose an increase in remuneration. There is a Member of this Council, who went to Shantung Street in broad daylight during a Legislative Council meeting to pay the telephone bill for his son, and being kicked by someone on the street, he seriously held a press conference and allegedly claimed that WONG Yuk-man was involved in this incident. How dare he do so? Is it not dreadful if his remuneration is doubled? President, you are in a more sympathetic situation. You cannot go to Shantung Street to pay telephone bill for your wife because you have to sit here to chair the meeting. Nevertheless, your remuneration is twice as much as ours.

President, what kind of Council is this? Let us look at the data. I have listed the data in my script, so I am not going to read them out. How many motions, which sought to establish a select committee to invoke the power of the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance), had been vetoed in the past? I have with me loads of information on how FC Members have vetoed Members' motions concerning the development of democracy and enhancement of people's livelihood in the past. Many motions had been vetoed, such as the motion on whether the level of minimum wage should be reviewed bi-yearly or yearly, and the voting result of that motion was again dictated by FC Members. We requested a yearly review, but they requested a bi-yearly review. They said that their baseline was a bi-yearly review, but has a review ever been conducted? The answer is no. The Government once again pulls the wool over our eyes, and we can only submissively give in. It is saddening to see all such misdeeds. I have made a full list in my script.

The rights and interests of people have all along been betrayed, thanks to the FC. As long as the evil FC remains, universal suffrage will not be implemented; this Council will keep deteriorating, and the rights and interests of people will be trampled on. In June 2010, in the Legislative Council Chamber, the Democratic Party (the largest political party of the democratic camp) joined hands with the Hong Kong Association for Democracy and People's Livelihood (the one-man political party of the democratic camp) to vote for the political reform package. They endorsed the proposal of electing the Chief Executive in 2012 by a 1 200-member coterie, and they have even practiced what they preach by holding a mock Chief Executive election for the pro-democracy candidates. Members who have endorsed the coterie election are indeed shameful.

I was already very disgruntled when Mr Alan LEONG stood for the last Chief Executive Election. Nevertheless, I regard his candidacy as his attempt to put his feelers out about the coterie election, testing whether the coterie election was really that despicable that a candidate as smart as Mr Alan LEONG would not be able to secure enough votes to win. Right? Despite my doubts, I had some empathy for him, though Members would certainly beg to differ that I had any empathy. This time, however, Members have gone one step further, not only supporting the political reform package, but actually standing for the election.

In this Chamber, there are many robbers who act like cops. These Members criticize the Democratic Alliance for the Betterment and Progress of Hong Kong and call other Members deserters. However, are they not deserters of democracy? Although some Members intend to be deserters and do not support this motion, there is nothing odd as they only perform their role as supporters of the pro-establishment camp. On the contrary, we find it odd that some Members have chosen to be deserters of democracy. We not only feel odd, but also feel sad.

The notoriety of this Council cannot be totally attributed to the pro-establishment camp or the FC. To be honest, the FC is certainly an evil group, though I am not against individual Members. Mr Paul CHAN, you need not stare at me, I am only against the system. This is an evil system, the source of all evils. Yet, the Government has perpetuated the FC, even trying to tone it down by adding five new FC seats to be returned by a "one-person-one-vote" election. What does it mean by "toning it down"? It means that the democratic camp will be allowed to win more seats. If the democratic camp turns out only winning one seat in the election this year, then I truly do not know which camp will be toned down. Can they guarantee that they can tone down their opponent? The Government has time and again manipulated with these ridiculous ideas, and brazenly and shamelessly deceived the electors in Hong Kong, but the sarcasm actually lies in the electors who have willingly submitted to these proposals.

President, the notoriety of the FC has led to motions concerning democracy, rule of law, and people's livelihood and well-being in Hong Kong frequently being vetoed in this Chamber. If all vetoed motions are listed out, it will make people's blood boil and their heart loathe with disgust. President, may

I correct myself. I meant to say "disgrace". People do not know what disgrace is because they have condoned Members' actions.

Regarding this motion, Members of the pro-establishment camp have all mentioned the interests of the two power companies, and then kept up a pretense of imposing sanctions on the two power companies. Members are harsh in shouting for sanction, but lenient in imposing punishment. They gave great favours to the power companies and raised insignificant criticisms. I heard Ms Starry LEE say just now that she wished to give the two power companies some warning. In what capacity will she do so? If she really wishes to warn them, she should vote for this motion. Members' speeches are really infuriating. That said, she cannot do anything as she has to toe the party line; that is, she only reads out the information given by her political party. Buddies, what kind of warning are you going to issue to the two power companies? The two power companies will not even cast an eye on you. Just take a look at this Chamber. Are there any Members of the pro-establishment camp? I am not sure if Mr Paul CHAN is a pro-establishment Member. All pro-establishment Members are not here. In other words, he is not a pro-establishment Member. All pro-establishment Members have left the Chamber. I do not know whether they are having a meeting. Or, they may be discussing which Chief Executive hopefuls they should vote for. Not even one pro-establishment Member is here. What warning is she talking about? Even Edward YAU is not here, leaving only Kitty POON behind. I wonder if Edward YAU is now having a meeting with them, saying, "Dajia an[1] *(In Putonghua)*" …… This motion will definitely be vetoed. Let's have a cup of coffee first. I do not know whether they are now on the fifth floor or in someone's office. How absurd!

Besides, we do not like this kind of game. Members always stay upstairs and do not often come down to attend meetings. It will be funny if I ask the President to confirm whether a quorum is present now. Members will then come in from all directions after the bell has been rung, but they will leave again when I speak. "Big Guy" will speak after me. It is queer that whenever we speak, there are no Members in the Chamber. This happens every time. Hence, I must thank the four honourable barristers of the Civic Party who are still sitting here. There are only a few Members. Although we are not afraid of

[1] A common greeting in Putonghua, meaning how are you.

being isolated, we are actually a little scare. Fortunately, the four Members of the Civic Party are still here, and Mr Ronny TONG is now looking at me with a smile at the far end.

At this juncture, Members of the pro-establishment camp are now coming in. We are just about to call you back and you are smart to come back in time. Edward YAU, you were not here just now when I mentioned your name. I will be fair with you. I did not criticize you just now, I only mentioned that you were not here and I wondered whether you were having a meeting with the pro-establishment camp. I can reassure you that this motion will definitely be negatived. Given the nature and composition of this Council as well as the present situation of Hong Kong which encourages collusion between the business sector and the Government, transfer of interests and monopoly of public utilities by large consortia, there is a 110% chance that this kind of motion will be negatived by Members in the Council.

Many people applauded the Budget, but I truly do not understand why. President, 500 people participated in the protest on Sunday. I am not kidding. No one "blows the whistle" — this term should not be used casually. However, Ms Emily LAU just used the term. A Member so refined and detests foul language has used this term …… The protest was not called or mobilized by any particular person, but it attracted 500 participants. We will have another 1 000 elderly people participating in another protest, calling for a refund of $8,000 from the SAR Government. "I am about to die, give me $8,000" is all they ask for. As the slogan will go, "I am already on my deathbed. Give my $8,000 back". We will need 20 couches to transport the 1 000 elderly people. I am not kidding. I am talking about the elderly. Members can follow suit and organize similar protests as long as they also call for a refund from the Government.

The entire Budget does not provide any help to the elderly people, not even a tiny little help. Who will benefit from the $11.7 billion "cash back"? Is the Financial Secretary out of his mind for proposing a $12,000-cap tax rebate? However, Members applauded, saying that it would benefit the middle class and claiming credit for getting a higher tax allowance for the middle class. Everybody is happy. The people of the lower echelon, however, cannot share a penny of the $80 billion dished out by the Government. The Government claimed that these people would be benefited, such as the two months' rent paid on behalf of each public housing tenant, the "double-pay" for each CSSA

recipient, and so on. However, the Government has provided such allowances in the past budgets. It is the incompetency of the Government that the two power companies can get whatever they demand.

The Liberal Party happened to be the mover of this motion as the motion has been endorsed in the House Committee. We were the majority on that day, making it possible to pass the motion, but the motion has no binding effect. Right? In the capacity as Chairman of the House Committee, the leader of the Liberal Party was forced to move the motion. Thus, a Member of her party has to move an amendment to the motion. I will for sure oppose the amendment because it will turn the original motion into a "toothless tiger". We will definitely support the original motion and oppose the amendment. I will oppose the amendment, for sure. The condition contained in the amendment will make the motion meaningless. We will thus oppose the amendment and support the original motion. Even so, however, all efforts will still be futile. President, Members of your political party have already indicated that they will vote against the motion. If your political party, the biggest political party of the pro-establishment camp, does not support the motion, the voting result will be more than clear. A tiny clue reveals the whole picture. We know that the motion will definitely be negatived under the separate voting system if your political party, being the biggest political party of the pro-establishment camp, opposes the motion.

Hence in this Council, there are robbers who act like cops, such act is meaningless; some Members have given great favours to power companies and raised insignificant criticisms, such act will only be scoffed at. In brief, as a Member of this Council, I sometimes feel agitated and helpless. Some Members have taken advantage of me, so it is fair that I take advantage of them in return. A Member said, "The public are of the view that some Members do not deserve a remuneration increment because they are often kicked out of the Chamber for hurling objects." He sounded as if it was because of me that he would not get an increase in remuneration. How could he say something like that? Mr CHEUNG Man-kwong, you teach five days a week, but I am a full-time Member.

A certain Member said, "After hurling an object or two, he can then leave the Chamber and does not need to work." How could he say something like that? A Member of his party went to Shantung Street on Wednesday when the Council meeting was in progress. There are many "one-woman brothels" in the

area. The Member said he was kicked by someone when he went there to pay his son's telephone bill and he then held a press conference accusing me for kicking him. President, you need not stop me or look at me. I know that my speaking time is about to finish. It is a herculean task to uphold justice and defend people's well-being in this Council. We can only resign ourselves to the frenzied tariff rise by the two power companies. What other choice do we have? Should we fight until either of us perish? The people of Hong Kong do not have the guts to collectively refuse paying the electricity tariffs. We actually can, as long as we act collectively because the law is not enacted to punish the majority. People in some country have tried to fight against their government by refusing to pay the tax together. However, the people of Hong Kong do not have the guts to do so.

Hence, Member who moves this motion can only raise public attention and let them realize the fact that this Council is beyond redemption and politics in Hong Kong is beyond redemption. It is as simple as that. In face of the tariff rise by the two power companies, which is a very important issue, we are not even allowed to ask them for more information. Instead, we can only move a motion to discuss whether the P&P Ordinance should be invoked. Nevertheless, the motion will still be negatived. President, is this Council hopeless? Is the politics of Hong Kong hopeless? Are people of Hong Kong hopeless?

MR ALBERT CHAN (in Cantonese): President, as described by Mr WONG Yuk-man earlier, the motion today, which demands invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) for seeking important information from the two power companies for further examination, will not be passed eventually as Members from the functional constituencies and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) will vote against the motion. This scenario reminds me of the case of Route 10 in the past. Back then, the Government intended to build a new arterial highway running from Yuen Long to Tsuen Wan via the tunnel and then to the Lantau Island, so as to ease the traffic congestion on Tuen Mun Road. However, subsequent to the lobbying of certain large consortia behind the scene, Members from the DAB and parties representing the industrial and business sectors opposed the proposal. Eventually, the construction of Route 10 was voted down at the Finance Committee.

Oddly, the background of the DAB's opposition in constructing Route 10 back then is similar to today's situation where the DAB opposed the invoking the P&P Ordinance. Back then, Members of the Legislative Council and the District Councils from the DAB had put up a lot of banners and posters to strive for the construction of Route 10 to ease the traffic problem in Tuen Mun District. Members of the DAB at the district level had shouted themselves hoarse for the construction of the route, yet when the proposal was put to vote at the Legislative Council, they acted in contradiction to the views of District Council members.

The situation today is almost the same. I notice that Legislative Council Members and District Council members belonging to the DAB had put up a lot of banners and posters on the streets, opposing the tariff increases of the two power companies. Since they oppose tariff increases and the two power companies have insisted on their stance, they should support the Legislative Council in invoking the P&P Ordinance to obtain the required information for further examination, so that there will be a chance that tariff increases will not be implemented. This is the most powerful, effective and authoritative means to exert greater political pressure in opposition to tariff increases.

However, the present situation is just the same as that in the case of Route 10 back then. Since giving support to this motion implies standing against the interests and stances of plutocrats and consortia, Members will rather vote down this motion at the expense of the interest of the public, and give up the fight to oppose tariff increase. This is the same as the situation when the proposal on Route 10 was voted down. Due to that opposition, residents of Tuen Mun and Yuen Long have to put up with traffic congestion whenever incidents have happened on Tuen Mun Road, such as car crashes or traffic accidents. Had the DAB supported the construction of Route 10, the project would have been completed for years by now, and the traffic condition in New Territories West and New Territories North would have been greatly improved. Hence, it is evident that certain political parties have been contradictory in their actions and thoughts time and again. Yet, regrettably, the public are often forgetful, and the impact of these examples and experience is no comparison to the customized services like snake banquets, vegetable banquets and rice dumplings offered.

President, on the issue relating to the two power companies, in 2006, I submitted a proposal to the Government demanding the opening up of the

electricity market to protect the interest of the public. At that time, the Government was conducting a review on the profit control scheme ― I usually call the profit control scheme the "guaranteed return scheme", for the scheme indeed ensures that the two companies will get the return. President, what I am going to say is indeed some information in the past. I find out the proposal I submitted in 2006 and notice that many of the analyses and criticisms about the two power companies put forth back then are still applicable today.

The two power companies have committed four sins. The first sin is excessive investment and wastage of resources. As we review the development of the two power companies over the years, say the development between 1995 and 2004, we notice that the total value of fixed value had increased by 81%, which meant a 46% increase in the permitted rate of return. Regarding the increase in fixed asset values and profit, it was obvious that the increase in investment and asset value would lead to the increase in profit ratio. It is only natural that the two power companies would indulge in investment under this approach. However, not much improvement has been made under the new profit control scheme, for the principle applied remain the same.

We notice that the development of the two power companies in the past had resulted in long-term over supply and serious wastage. Certain figures and tables set out in the paper clearly indicated that in comparison with other countries, the surplus electricity level of the two power companies in Hong Kong had been a very serious problem. President, according to the figures in 1994, the surplus electricity level of CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC) was 59.4% and 28.9% respectively, whereas it was 5.9% in Taiwan, 7.8% in South Korea and 9.0% in Thailand. For the figures in 2011, the surplus electricity level of CLP and HEC was 41% and 31% respectively, whereas in Taiwan and South Korea, it was 14% and 15% respectively.

As such, the expenditure from electricity wastage over the years has to be borne by the public. This has led to the second sin of charging expensive tariff which makes the public suffer. The wastage resulted from the overall development had led to some unnecessary expenditures, and under the profit guaranteed scheme, consumers had to bear those expenditures in the end.

Besides, the actual rate of return of the two power companies is alarming. The information would only be meaningful when compared with figures of other countries. Under the previous profit control scheme, the rate of return ranged from 13.5% to 15%, yet it has been lowered to 9.9% now. However, the return on equity has also been quite alarming. Based on the 13.5% rate of return in the past, the permitted return on equity would be 20% to 25% in actuality. Hence, in reality, consumers have to pay a huge amount of tariff due to the arrangement of the rate of permitted return.

At that time, the permitted return on assets in our great Motherland was only between 8% and 10%, and the permitted return on equity was only between 10% and 15%. As for Australia, France and Britain, the permitted return on assets was in general between 6% and 7%. However, in Hong Kong, it was 13%, and it is close to 10% at present.

The second sin is charging expensive tariff, which leads to suffering of the public.

The third sin is emitting exhaust to threaten the health of the public. Surely, certain emission reduction measures have been implemented over the years and some improvement have been made. Yet I still have to point out that the problem of pollution caused by electricity generation of the two power companies still persists. Despite the colossal reserve, the Government remains unwilling to use public money to take action to improve air quality. I am really infuriated.

In the *Wall Street Journal* today, there is a column criticizing the Budget and condemning the Government for not using public money to alleviate the air pollution problem. As the Director of Bureau under the accountability system, Secretary Edward YAU, you should reflect on your deeds and blame yourself for not capitalizing on the opportunity of the robust financial position to alleviate the air pollution problem. Why have you not used public money to subsidize the two power companies to reduce their emission, so that tariff can be lowered or even exempted? This will indeed bring mutual benefits. You have on the contrary allowed the Government to transfer benefits to plutocrats …… through profits tax, but have not lowered individual income tax, provided tax rebates or waived rates, and so on. More often than not, the authorities tilt towards the interest of plutocrats, particularly that of estate developers.

Since the Government has set aside $80 billion from the public coffer to be distributed to the public, it should put public interest above everything, and the improvement of air quality is one of the major concerns. The provision of subsidy by the Government for emission reduction can, on the one hand improve air quality, and on the other hand lower the overall asset expenditure of the two power companies, which will in turn lower the tariff. This is a win-win situation. Unfortunately, in the eyes of the Government, there is only the interest of real estate hegemony. It simply ignored the objective environment, so even the *Wall Street Journal* condemns the act of the Government. It is interesting.

The fourth sin of the two power companies is, President, reaping exorbitant profits to fatten themselves by exploiting the public. The profits made by the two power companies have all along been really alarming. President, let me make a brief calculation. During the 10-year period between 2000 and 2010, the total profit made by CLP was $97 billion — it was $97 billion — and the profit made by HEC was $69.2 billion. In other words, if calculated on the basis of 10 years, the annual profit of CLP was $9.7 billion on average, and that of HEC was $6.7 billion.

In the discussion of electricity supply, I must also mention water supply, for electricity and water are the two essential public services which meet the daily needs of the public. The situation in Hong Kong is abnormal. In many places overseas, water and electricity are supplied by the government or the statutory organizations set up by the government, where they are subject to the same control. However, in Hong Kong, water is supplied by the Government, while electricity is left to the private market. The Government has imposed control in the name of the Scheme of Control Agreements (SCAs), yet the SCAs in actuality provide a guarantee for the two power companies, the two big plutocrats, to reap exorbitant profits. Not only has the air quality in Hong Kong been sacrificed, there is also a wastage of resource. Eventually, the public are exploited to enable the two power companies to reap profits. In the past decade, the two power companies had made a total profit of $162.2 billion. What a shocking figure!

On the contrary, President, losses had been recorded in each of the past 10 years for water supply. In 2002, the loss was $700 million; in 2003, the situation was similar; in 2004 and 2005, the loss was $800 million; in 2006, the

loss was $500 million, and the loss in 2007, 2008 and 2009 was around $300, whereas that for 2010 was $600 million.

Since 1995, water charge has remained unchanged. We can notice clearly the consequence when public resources are controlled by plutocrats. The Government manipulated by small coterie election of the Chief Executive and this legislature inclines to transfer benefits to plutocrats, so that they can have their way at will. In some measure, the plutocrats are not subject to any control in terms of environment, facilities and development. The five-year Development Plans of the two power companies had been approved and accepted by the Government back then. Perhaps, during the final year of the term of this Government, Donald TSANG may, for the sake of his popularity, suddenly express his dissatisfaction with the tariff increases of the two power companies before he left the Government.

I often think that the furious complaint made by the Government earlier, particularly its dissatisfaction with the increase rate proposed by CLP, is the popularity engineering work of Donald TSANG. Since he does not want his popularity rating plunges to the lowest point right before he leaves office, he has come forward to make a heroic call against the tariff increases. Certainly, the Government still has some influence, and these large consortia are a bit scared, particularly when the call is made by the Chief Executive in person, for the Government has seldom disputed with large consortia in public. As a result, the consortia apply some financial tactics to adjust the increase rates, which are nicely put to lower the increase rate in name, but in reality, it is an extension of the suffering of the public.

Hence, President, due to the opposition from the functional constituencies *(The buzzer sounded)* …… I believe the call for invoking the P&P Ordinance will eventually be voted down.

MR LEE WING-TAT (in Cantonese): President, I speak in support of the motion.

President, first, I have attended the two special meetings of the Panel on Economic Development. Though I am not a member of that Panel, I have tried to attend most of the meetings and I have read some of the papers. As for the paper put on the table today, many figures have been highlighted in yellow, and I

have read those figures at closed meetings. President, frankly speaking, regarding the information contained in these papers, first, are they really so sensitive? I think this is subject to divergent views. Second, based on the items set out in the papers, it is indeed quite difficult to come to a conclusion within a short time, President. We all know that in the calculation of the so-called profit of the two power companies, asset value is used as the basis for the calculation of profit. According to economists, anything being used as the basis for profit will become an incentive to investors and owners. In other words, they will expand the asset value as far as possible to maintain the profit at a high level. Everyone, not only CLP Power Hong Kong Limited (CLP) and The Hongkong Electric Company Limited (HEC), will act this way, only that CLP and HEC have been gluttonous and have gone too far.

President, as we study the information, we identify one major problem, that is, there is no supporting document. Even though there is a list of all assets, stating the distribution networks, power stations and infrastructure to be built, as well as other projects, no supporting document is provided for the verification of such information. I had pointed out this concern at yesterday's closed meeting. At the previous meeting, I had asked the Secretary about this, and the Secretary replied that he had, during the debates with CLP and HEC, pointed out his disagreement with the asset growth rate of various items. I believe this is not only the views of the Secretary, for I believe other colleagues, say colleagues from the Electrical and Mechanical Services Department — I do not know whether other professions were employed — had told him that the development of such asset had been unreasonable in some measures. Therefore, President, I think this paper can in no way serve as a foundation for the Legislative Council to judge whether the asset expansion is reasonable. First, this paper lacks supporting documents.

Second, as I told Mr Paul CHAN just now outside the Chamber, though the Legislative Council is not a parliament or a congress of a country, it is a legislature representing 7 million people. President, honestly, you are in a highly respected position as you are the President of this legislature. We may look at the case in some western European countries. For instance, in Denmark, there are only 4 million to 5 million people; in Sweden and Norway, there are only 4 million to 5 million people. In fact, the business handled by this Council is far more complicated than many relatively small countries. Hence, President, I always respect you, for you have the same status as the speaker of the parliament.

However, Hong Kong lacks two things which can be found in other parliaments. First, most of the parliaments have some independent advisers. As in the case of the Parliament of the United Kingdom, there are some scientific advisers in general. Among our colleagues, Mr LEUNG Yiu-chung is majored in Mathematics and I, in Biology. I do not know whether there is any colleague majored in Chemistry. However, we are all of the same level, for we are all university graduates with a degree. I know that the President is outstanding for he graduated with First Honour in Mathematics, and this means the President is very smart. When we come across any problems in mathematics, we may just ask the President for the answer. However, when dealing with complicated issues, such as the justifications for electricity growth and capital investment, honestly, it is not possible for a degree or master holder to make an instant judgment. Certainly, I do not know how the Secretary decides whether certain investment items of CLP and HEC are premature, and he may have his own advisers. Return to the previous point, the current practice is extremely undesirable.

I recall one case in the Legislative Council, though we seldom adopt such practice, we did so in that case. At that time, Mr Alan LEONG was the Chairman of the Joint Subcommittee on the West Kowloon project. Members considered the overall operation and financial arrangement, the so-called financial model and arrangement for income and expenditure, proposed by the Government for the West Kowloon project unsatisfactory. What did we do? At that time — Mr Paul CHAN was not yet a Member of the Legislative Council — though some of the colleagues had knowledge about accounting, we could not be rest assured, and we decided to find colleagues or academics in universities to carry out another audit. We had probably commissioned the University of Hong Kong to carry out the audit. Eventually, the result of the audit differed from that of the financial report prepared by the Government on the West Kowloon project, and we put forth some new proposals to the Government. It is somehow different. Frankly, even if I tell Mr Paul CHAN, "Since we are friends, will you stop handling your own businesses, that of your accounting firm and of the Legislative Council, and spend a month to study all the papers and submit a report to us?" Can we do so? Perhaps we may, but it will be really difficult. President, the first reason is that this legislature is different from other parliaments, for we lack advisers in various fields, such as advisers in the fields of science, health or accounting.

Second, Mr Paul CHAN told me that in overseas parliaments, the committees or the public accounts committees responsible for the audit work are provided with assistance from many professionals. They do not only examine public accounts, but will also carry out audit on other committees and panels of parliaments or legislatures. Are we capable of doing so? President, we can in no way do so.

In respect of this paper, first, even if the authorities submit the paper to colleagues for examination, the paper is incomplete with some information deleted; second, we do not have the resources, manpower and professional knowledge to examine the information. Hence, when I listened to a radio programme this morning and heard Ms Starry LEE from the DAB say that she was satisfied after reading the paper, I was a bit surprised. How could she feel satisfied? To consider it from a very solemn perspective, I do not think we can arrive at a reasonable judgment after reading the paper.

What makes it so difficult to arrive at a judgment? Regarding the cases I mentioned earlier, as well as the cases relating to the development of generators which we had debated in the past, the current reliability of electricity supply in Hong Kong seems to be 99.99%. In fact, I am curious about one point: What is the impact of the reliability rate at 99.99%, 99.9% and 99% on capital investment? We do not even have the answer for this question. President, I believe this is a very reasonable question. Certainly, we all know that the capital cost will be greatly different when the reliability is high. It is possible to maintain the reliability at the level of 99.999999%, but more capital resource has to be injected. The problem at issue is whether tax payers and consumers are willing to pay more. Why do they have to pay more?

At the meetings held yesterday and last week, I had also raised this concern. The electricity market in Hong Kong is shrinking, and HEC records a negative growth for Hong Kong Island — President, you live on Hong Kong Island, no, President, you live in the New Territories. Colleagues living on Hong Kong Island know that the electricity consumption of Hong Kong Island for last year has reduced by 0.3%, yet the Basic Tariff we have to pay has increased by some 1%. As for CLP, the consumption has grown by some 1%, whereas the increase in Basic Tariff amounts to 5%. Yesterday, I asked CLP and HEC which kind of economic activities would result in increase in unit cost when the economies of scale reduce. According to our economic knowledge in the past,

the unit cost would in general reduce as the performance improved. I have already put the fuel cost aside. Certainly, the loads of general remarks given by the gentleman in reply could not answer my question. Why he could not answer the question? For they do not have to care about this, there is not much incentive for them to lower the capital investment, as the lowering of capital investment will affect their profit.

There is a third aspect worthy of debate. However, it is impossible for us to debate about it, for we do not have adequate information. The electricity reserve, that is the basic reserve, of various countries differs, varying from some 10% to 20%. However, for power companies in Hong Kong, this reserve rate had reached 50% in a certain year. Naturally, higher rate of reserve means higher reliability. Yet, frankly, there is a cost, Secretary. What is the difference in the tariff charged when the reserve ratio is set at 30% and 50% respectively? To me, the information papers provided have not provided any answer. I have studied the information attentively and worked hard to raise these questions, but still I cannot get the answer. The choice between maintaining the reserve ratio at 30% or 50% is translated into the tariff the public have to pay. If so, why are we not given the opportunity to choose? Why are we forced to accept a reserve ratio ranging from 35% to 40%? Why not set the rate at 25% or 30%? Why the rate cannot be lowered further? Once again, there are no answers.

President, there is another point which we cannot find the answer despite reading the information. In fact, Hong Kong people should know that the so-called electricity reserve is not provided for the daily activities of the public throughout the day. All over the territory, be it on Hong Kong Island or in Kowloon or the New Territories, electricity consumption reaches its peak between 11 am and 1 pm, when all kinds of business activities, such as office operation in Central and the running of the MTR, are carried out, and when many families started cooking their meals. These are the periods when the so-called electricity demand reaches its peak — I hope I have not got it wrong.

All the facilities of the entire generating system and distribution network are designed to cope with the demand during the dozens of minutes in a specific hour of a day. I am not referring to the present moment, for there is ample electricity reserve at this time as many shops in Central have already turned off their lights and business activities have stopped; hence, it is not the peak hour.

As such, in the context of economics or electricity generation, investment is not the only means for maintaining the reserve, demand side management should be adopted. In some countries, the surplus electricity generated during non-peak hours or midnight will be turned into some kind of electricity reserve to be used in the morning. However, Hong Kong has not adopted this approach. Why has Hong Kong not adopted these practices? Again, there is no answer. We have asked the Secretary about this, yet he has not answered.

In the many issues concerned, it is not that colleagues are unwilling to spend time to study the information, nor that colleagues refuse to raise questions in a rational manner, but that we have failed to get any answers over the years, not even one that I consider …… even if the investment of a company should generate profit. I have never thought about making the company a state-owned or a public-owned company. I do not agree with such practice. Yet, what is regarded as reasonable? To one who is willing to study papers and have discussion, if Ms Starry LEE feels comfortable after reading these papers, I cannot but feel sorry about that. I have spent much time to follow up the issue, and I do not think I am a person who opposes tariff increase blindly. However, I do not see how I can arrive at a reasonable judgment after reading these papers that the two power companies have do their level best in controlling capital investment within a reasonable range.

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

Hence, Deputy President, I do not think that we will be satisfied with merely reading these papers. If we cannot invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to obtain other papers, the public and even colleagues opposing the invoking of the P&P Ordinance today will have many more questions unanswered. Why should they oppose to such a simple request, particularly with the conditions imposed by the amendment of Mr Vincent FANG? The amendment of Mr Vincent FANG has imposed many reasonable restrictions on obtaining information, including that it should be carried out in the public interest, no sensitive commercial information should be obtained and it should not interfere with commercial operation. With these restrictions, why can we not invoke the P&P Ordinance? I really do not understand. What is more baffling is that the DAB and Ms Starry LEE consider

the present situation acceptable. Why a reasonable person would not support invoking the P&P Ordinance when so many restrictions have already been put in place? Deputy President, I really do not understand. I hope colleagues will openly respond to these queries. Thank you, Deputy President.

MR LEUNG KWOK-HUNG (in Cantonese): What is meant by "P&P"? It stands for "Painful and Pity" — whenever the issue of invoking the privileges of the Legislative Council is discussed, it is always "painful and pity". Whenever the issue of invoking the privileges of the Legislative Council is discussed, I am always told that the privileges should not be invoked easily.

Deputy President, let me cite the powers and functions we have as written in Article 73 of the Basic Law. According to Article 73(5), we can "raise questions on the work of the government", that is, we can raise questions to Secretary Edward YAU on matters under his scope of duties because he is responsible for monitoring the two power companies, over which we have no direct control. Then, according to Article 73(6), we can "debate any issue concerning public interests", which is what we do day in and day out, that is, we can hold debate on non-binding motions. There is one more point, according to Article 73(8), we can "receive and handle complaints from Hong Kong residents". We all know that public opinion is now boiling. Regarding the tariff increases proposed by the two power companies, it turned out that the Chief Executive was the one who incited public opinion to request the Legislative Council to monitor CLP Power Hong Kong Limited (CLP) or the two power companies which were under the purview of the Secretary. Besides, it is provided under Article 73(10) that we can "summon, as required when exercising the abovementioned powers and functions, persons concerned to testify or give evidence". While we have the power to set up a committee to summon persons to produce papers, we have been particularly lenient this time by merely demanding the provision of papers for perusal. Is that still too much of a request?

In the present incident, four out of 10 powers and functions provided under Article 73 of the Basic Law are applicable. Our conclusion is that as our functions and powers to "raise questions on the work of the government", "debate any issue concerning public interests" or "receive and handle complaints from Hong Kong residents" under Articles 73(5), (6) and (8) respectively cannot be

fulfilled, we must resort to the power under Article 73(10). That is the origin of our powers. However, I do not understand why the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) say that they are very satisfied with the papers provided.

I heard a story in the cafeteria downstairs. A Member of this Council has now in his possession some confidential papers provided by the two power companies to the Panel on Economic Development. He had sneaked out and photocopied the papers when the Panel Chairman was not looking. He then read out the information from the papers. As I am not privy to the papers, I have no idea whether the information he read out is correct or not. Why does a Member of the Legislative Council need to sneak out the papers? What came to my mind immediately was that he was lucky not to be held liable. I even heard that he was chased by Secretariat staff — luckily, they were not security staff or it would be most embarrassing — they reminded him that the papers should not be taken away.

Members, in addition to monitoring the government, the legislature should also introduce the fourth branch of government. In other words, the legislature should always let public opinion (including the views of the intellectuals, professionals, commoners, and the media) prevail in the course of its dealings, battles or tug-of-wars with the government; the legislature should always represent public opinion. If a Member of this Council has to sneak out some papers which contain hardly any secrets or hardly have any impacts even if they are disclosed, do you think we have any dignity left at all? A dutiful Member has to act like a thief to sneak out some papers so that other Members can take a look; and he was reprimanded by the media for this act: "Shame on you as a Member of the Legislative Council! How dare you breach the rules?" This situation reminds me of this stanza from the poem "To the Moon Goddess": "Are you sorry for having stolen the potion that has set you; Over purple seas and blue skies, to brood through the long nights?"[2] — you took the potion to save lives, yet you were penalized. I am telling the authorities that I will definitely steal the papers so that they can be made public. I also call on other Honourable colleagues to follow suit so that the papers will be made public.

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2 <http://etext.lib.virginia.edu/chinese/frame.htm>

Concerning this Council, I have often quoted an English adage as follows: "Parliament can do anything it wants except change a man into a woman and a woman into a man." Once again, this Council demonstrates today that it "can do anything it wants". Supposedly, we can do anything we want. The Legislative Council, regardless of whether Members are returned from general elections representing public opinion or small-circle elections, has the constitutional duty to monitor the Government. Why can we not have the papers we want? If we cannot even get the papers, how can we monitor the Government? If the Government says that we will act improperly with the papers in hand, may I ask the Government whether its officials will act improperly with those papers? They are merely government officials, whereas we are Members of the Legislative Council with virtues. Secretary Edward YAU, you are a government official, whereas we are members elected by the people. Why are government officials more virtuous than Members? If this sophistry is not broken, what is the point of having this Council? As shown in many past cases, the Government will leak out information at will. But we can never get the information we seek for the legitimate purpose of monitoring the relevant organizations, or allowing the media or public opinion to exercise monitoring through our deliberation.

The discussion today on invoking our privileges is again "painful and pity". The discussion on invoking the powers and privileges under the P&P Ordinance is invariably "painful and pity". We could have changed a man into a woman, or a woman into a man, but we will not do so. With a fart, the DAB changes a man into a ghost, and a ghost into a man — a feat even more remarkable because even their forms have been changed. I would like to ask our colleagues belonging to the DAB whether they have understood our request correctly because we are not seeking to set up a committee, right? We have yet to reach that stage; we are just asking the Government and the two power companies to provide us with additional information. If you say that the information provided is already clear and adequate, you must explain why such information is clear, how it helps alleviate your concerns, and why do you consider that it is no longer necessary to seek more information. It is most ridiculous for the two power companies to tell us that they have commercial secrets. What commercial secrets do they have? The two power companies enjoy a natural monopoly. Robbery is a crime of theft, and so is kidnapping. The monopoly they enjoy is both natural and artificial, so what secrets do they have? The crux of the question is that their investment and asset value have been increasing unnecessarily under the pretext

of emission reduction, and so on. But we are left to foot the bill. That is the crux.

Members representing the functional constituencies or those belonging to the commonly-known pro-establishment camp are now saying, "There is no need to inquire further, enough has been done and that is the end." I would like to seek their views as to whether the present course of CLP's actions is proper or we should continue to investigate into CLP's actions?

When I followed up on tariff increases of the two power companies from the 1970s to 1982, I had already requested that the two power companies should be monitored. The former Legislative Council at that time was very prestigious, and did not have any Members returned from direct elections. Given that the former Legislative Council was not open, we set up the "Monitoring Committee on the Two Power Companies" so that civic organizations could exercise monitoring. The Government told us then, "Who are you, LEUNG Kwok-hung and LAU Chin-shek? How dare you request for papers!" As the saying goes, "After taking pig's blood, one will discharge black excrement". The effects are immediate. After 30 years, we now have this entity called the Legislative Council. According to the Basic Law, this entity called the Legislative Council is no longer a colony-style rubber stamp, but the legislature of Hong Kong after the resumption of sovereignty. While the Government will definitely refuse to provide information requested by civic organizations, this time the request comes from the Council with its 60 Members entrusted by the people to monitor the Government and the consortia, and the Government still refuses to comply. Who does the Government trust? It is very simply the root of all corruption and graft, and the stretch of its powers is unimaginable. I hold some deadly information against you which will make you suffer, but I am not going to tell you — is that not corruption? Power breeds corruption, and absolute corruption is absolute corruption by any name. The Council today has illustrated this fact perfectly.

The situation is the same whenever we discuss this issue with the Government. The Government also adopted this attitude in the Lehman Brothers incident when we were told that the matter had already been resolved, and there was no need for inquiry. The present case is very similar to the Lehman Brothers incident. Donald TSANG said at the outset that the relevant instruments were not bonds, and then he went away — this Chief Executive always makes some irresponsible remarks and then goes away. When the

victims subsequently sought his intervention in demanding compensation, he then said, "This matter seems to be different, and we need to conduct a study first." At that point, we commenced our investigation which has been going on for four years.

Now, the DAB is "generous with words but tightfisted with the purse", is that right? This Council is like this in every matter. In respect of the Budget, I was reprimanded for saying that it was wrong to "hand out cash" last year. That is just a populist gesture. What is the use of handing out $6,000? "Handing out cash" will only spoil the people. Why does the Government provide tax refund for the richest people, that is, those who are better-off than the grassroots, in this year's Budget? Why are there no objections against such generous tax refund? That is really a case of double standard. Even though cash is not handed out this time, isn't tax refund also money? Does reasoning still prevail in this Council?

Deputy President, what is the morale behind this incident? It illustrates that justice will not be served as long as functional constituencies are not abolished. Many people consider me a trouble-maker. But for all the electors, as well as the people of Hong Kong, they can see for themselves today the true face of those political parties which claim to serve the public. When you want to know something, or when you want us to investigate into the Government, or when you want us to question the Government and follow up on reports in the media, what is their attitude? Will shit not stink if we cover them up? No matter how tight the cover is, maggots are found once the cover is open, buddy.

Members, I know that this motion will again be negatived today. Hence, Secretary Edward YAU's attendance is meaningless. He has glanced over his watch frequently, perhaps thinking about where to go for having some midnight snack and drinking champagne with the pro-establishment camp to celebrate another victory; our demand is now defeated and there is no need to provide information to the Legislative Council. The matter is just that simple.

Deputy President, this matter clearly reflects the problem with public utilities in Hong Kong: their operation is monopolized by consortia. Through special legislation devised by the Government, they can increase their rates indefinitely by using asset value as the basis of calculation. Notwithstanding the imbalanced traffic flows between the congested Eastern Harbour Crossing and the

uncongested Western Harbour Crossing, they crossings can increase their tolls. These issues have been discussed by this Council time and again. In fact, there is a perfect solution in a democratic society. Once these companies are turned into public utilities operated by the public sector, they become accountable immediately, or the Government can appoint a more competent authority to monitor their operation. Hence, what is the problem today? The problem is that some people can only talk "tough", but they will never take any action.

Deputy President, I hope the DAB will account to all their electors why it has "U-turned" again at the last minute, just as in the case of the Lehman Brothers incident, even though this Council should have a role to play in gate-keeping? Thank you, Deputy President.

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

MR PAUL CHAN (in Cantonese): Deputy President, I agree with the view expressed by many Honourable colleagues that we are gravely disappointed by the level of tariff increases proposed by the two power companies this year, as well as their handling of the matter. I have also expressed similar views in this adjournment debate, as well as in the motion debate held on 18 January. Looking back, almost two months have passed from the onset of the incident. Given the pressures from the people and the Council, the two power companies had already adjusted their level of tariff increases. The Government and the two power companies have also provided us with a lot of information.

I echo with some Honourable colleagues that the process of getting the information may not have been so smooth had the proposal to authorize the Panel on Economic Development to seek information by invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) not been passed by the Legislative Council House Committee. Notwithstanding our dissatisfaction and anger, I think we should not let those emotions affect us and we should stay calm to assess the information already provided by the two power companies, and the rationales for tariff increase, so as to assess whether it is still necessary to invoke the P&P Ordinance to seek further information.

According to the wording of today's motion, the P&P Ordinance is proposed to be invoked "…… since the data and information behind the 2012 tariff adjustments by the two power companies have not been fully disclosed, and the details of their five-year Development Plans approved in 2008 have also not been publicized ……" (the latter part omitted).

Deputy President, I have carefully read the papers submitted by the two power companies and the Government in the past few days, and have attended various open and closed meetings of the Panel to raise questions and receive answers from the relevant parties. I consider that for the time being, it is not necessary to invoke the P&P Ordinance. I will explain my decision by giving an account of my deliberation process. But I must first of all state clearly my support that all meetings of this Council should be open, and all information should be made public. This norm and practice is adopted for the purposes of increasing the transparency of political debate and discussion in the Council and facilitating Members in being accountable to the public. Nonetheless, closed meetings are also allowed under the rules of this Council for the purpose of scrutinizing confidential information. Of course, closed meetings should only be held if and when necessary, and the decision should only be made after careful consideration, particularly when the public interest is involved.

From the papers submitted previously, as well as the paper provided to members of the Panel on Economic Development today, we are given to understand what information is classified as confidential. Simply put, the capital expenditure forecasts for 2012-2013 under the five-year Development Plans, as well as increases in average net fixed asset in these few years are confidential information. I believe that such information is classified as confidential for a reason. As mentioned in the relevant information, future sales growth forecasts are also confidential information. Regarding the individual items under the five-year Development Plans, details have already been set out in the papers, together with the sum of contracts which have already been tendered out or awarded. Regarding projects which have not yet commenced, no figure has been disclosed. I believe that such information is not disclosed for a reason.

For instance, if information such as capital expenditure forecasts, increases in average net fixed asset and future sales growth forecasts is disclosed, it may indirectly reveal the future profits of the two power companies, which is price-sensitive information. Regarding the excluded items, the relevant figures

have also been withheld. The excluded items are those which have not yet commenced, but not necessarily abandoned, and they might be implemented at a later stage. If the relevant figures are disclosed, it will have an adverse impact on the future tendering process.

Another example is fuel costs. While fuel prices in the past have already been provided in the paper, price forecasts are not disclosed. But we have been given such information at closed meetings. Members must understand that the two power companies purchase fuel for electricity generation from suppliers in open market. If the bottom line of price forecasts is known to fuel suppliers, it will impact on the actual purchase price. Ultimately, the increased cost of fuel will have to be borne by the public because the final cost is directly passed through to customers under the fuel clause charge in electricity tariff. Hence, I consider it reasonable that such figures are not disclosed at this stage. In fact, by carefully comparing the past figures of fuel clause charges provided in the paper, it is quite clear that the actual charges can vary substantially from the estimates. Hence, we can see that there is a legitimate business consideration for not disclosing the information.

Of course, I also understand that information which is price-sensitive will no longer be so if it is disclosed to the Council and the public simultaneously. However, I cannot help but ask whether we must take this course of action to hinder commercial operation, which has the effect of undermining the interest of shareholders as a result of share price fluctuations caused by such disclosure? Can we still manage to resolve the issue without doing so? Having read the information at the meetings, I think this can be done.

When participating in the work of the Subcommittee on the Lehman Brothers incident, I found that while information on individual cases was confidential, we could avoid touching on and disclosing such information through tactful questions. Hence, for instance, when I first perused the information last Friday, I took some notes myself because some of the data were confidential. While I had of course not written down any actual figures in my notes, it was enough to remind me of the particular points of attention. In the meantime, I noticed at the closed meetings that there was cross-party participation in the discussions held by the Council as well as the Panel on Economic Development. Honourable colleagues have all given their best efforts to raise questions and peruse the information. In other words, even if closed meetings are held,

nobody can hide the truth from the masses. As representatives of our electors, we are, to a certain extent, authorized by electors to act and exercise monitoring on their behalf.

I will now give an account of my observations on the tariff increases of the two power companies after perusing the papers. Given the time constraint, I will give brief explanation on some aspects. First of all, when going through the information, I did not just focus on this year's figures as I would also pay attention to figures in the past few years. Although figures in the past few years are only accumulated figures or subtotals, I consider them to be more reliable because these figures are audited historical data rather than mere forecasts. Hence, from these figures, I try to get an overall picture of the two power companies in various aspects, such as their expenditures.

Given the time constraint, I will illustrate my point mainly with the case of CLP Power Hong Kong Limited (CLP). In each of the past five years, the actual capital expenditure of CLP was lower than the forecast expenditure under the approved five-year Development Plans. Regarding tariff increases of the two power companies, I notice that in the past two years after the new Scheme of Control Agreements came into operation, the adjustments of Basic Tariff and Fuel Clause Charge were lower than the forecasts under the approved five-year Development Plans. By these observations, I do not mean that reasonable actions have been taken by the two power companies. I am only saying that when making reference to this year's figures, we must also observe the past situation so as to predict the style of the two power companies.

Regarding tariff adjustments this year, the papers also contain information on the proposed tariff increases originally submitted to the Government, as well as the final proposal after discussions with the Government. In the case of CLP, the company has made its interim and final proposals for 2012 tariff on 21 December and 30 December respectively. What changes have been made? In fact, all major tariff components have been listed out in the paper.

For instance, in respect of Basic Tariff, the components include the increase in average net fixed asset …… pardon me, I mean the tariff impact caused by the increase in average net fixed asset, the increase in operating expenses, the increase in local electricity sales, the decrease in sales to Mainland, as well as the decrease in the Tariff Stabilization Fund Balance. In respect of Fuel Clause Charge, the paper has listed out various items including the tariff

impact caused by the increase in fuel price, the correction for the over-/under-collection of fuel clause charge in 2011, as well as the change in the Fuel Clause Recovery Account deficit. All the above information has been disclosed in the paper, and it is not confidential information. Members of the public can peruse and follow up on such information.

At yesterday's meeting of the Panel on Economic Development, we decide that closed meetings would first be held to peruse the relevant materials and raise our questions. Afterwards, open meetings would be held so that further questions and requests for additional information can be raised after perusal of the information papers I mentioned above. Hence, under the present circumstances, I consider it unnecessary to invoke the P&P Ordinance.

Regarding the information we obtained last Friday and this Monday, as just mentioned by some colleagues, it seems that the two power companies are unwilling to provide certain information, or they would want to maintain confidentiality even if the same is to be provided. I have also attended the two meetings, and most of the time was spent on arguments made by Honourable Members. I might be wrong, but that was my opinion and impression after attending those meetings. When the relevant organizations provided the information to us, they did not understand that we must be accountable to the public after receiving such information.

On this premise, information should only be classified as confidential under exceptional circumstances. Moreover, the papers should not just contain some figures, explanatory notes must also be given. The papers we subsequently received on the following Monday, including this paper, had contained the relevant supplementary information. As these are open information, we can follow up at public meetings. Hence, I still think we are able to seek the necessary information.

Deputy President, as far as I am concerned, today's motion is about whether the P&P Ordinance should be invoked to seek the necessary information so that we can make a justifiable decision on whether the content and level of the proposed tariff increases are reasonable. As to issues just raised by some Honourable colleagues, such as whether the 9.9% rate of permitted return is reasonable, and whether the Scheme of Control Agreements should be implemented, I think they fall outside our terms of reference.

By saying so, I do not mean that I think the tariff increase of 9.9% is reasonable for I have also expressed my criticisms before. Nonetheless, for this motion, I think we should focus on the tariff increases as highlighted in the motion wording. Regarding other issues, such as whether the interim reviews should be taken forward, the future development of the electricity market, and so on, they should be suitably followed up by the Council in the context of the Panel on Economic Development. I think Members will continue their best efforts to follow up on these issues in the Panel on Economic Development.

Deputy President, I so submit.

MR CHAN KIN-POR (in Cantonese): Deputy President, given the uncertain economic outlook and high inflation environment, the drastic tariff increases proposed by the two power companies at the end of last year have sparked off fierce criticisms from various sectors of the community in general. Although the two power companies have conceded eventually and lowered the tariff increase to a level relatively acceptable to the public, their corporate image has invariably been tarnished severely.

However, the matter is still not over. Early last month, the House Committee of the Legislative Council passed a motion for invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) at the meeting of the Legislative Council today to authorize the Panel on Economic Development to exercise the powers conferred under the Ordinance to compel the Government to provide papers in relation to the tariff increases of the two power companies, including detailed information on this year's tariff adjustments, as well as their five-year Development Plans.

In fact, I strongly agree that the Legislative Council needs to monitor the operation of the two power companies for they are public utilities and their tariffs would impact directly on people's livelihood, especially because members of the public have no right to choose their electricity supplier. Hence, we are duty-bound to monitor the two power companies to ensure the right balance between their tariff adjustments and reasonable return. Hence, if the Government and the two power companies repeatedly refuse to produce the relevant papers, there is no way the Legislative Council can exercise monitoring.

Then, we must indeed consider invoking the P&P Ordinance to ensure that the Legislative Council can conduct its monitoring.

Nonetheless, under the intense political pressures arisen as a result of the proposal for this Council to invoke the P&P Ordinance, the Government and the two power companies have finally conceded. In his letter addressed to the Panel on Economic Development in mid-January, the Secretary for the Environment stated that the two power companies had agreed to disclose the relevant information. The letter even listed out specific items of information to be provided to the Panel, which created the initial impression of sincerity on the part of the Government and the two power companies in resolving the matter. However, some Honourable colleagues were doubtful that the two power companies only complied with our request given the political pressures wrought by the P&P Ordinance, and the information submitted eventually might fail to match up with our request.

(THE PRESIDENT resumed the Chair)

In order to verify whether the information matched up with our request, I, as a non-Panel member, had perused the papers submitted by the two power companies in the library and attended the closed meetings of the Panel. While we cannot disclose any confidential information, it is stated in the papers that the major factor for this year's tariff increases is the projected rising cost of fuel for electricity generation, including oil, natural gas and coal. Of course, I think the Government should be responsible for ascertaining and verifying whether various projections made by the two power companies are supported by data, and are reasonable and accurate.

I have all along taken the view that the P&P Ordinance is intended to confer special powers to the Legislative Council so that it can seek the truth on behalf of society in cases involving great public interest. This course of action can only be taken as a last resort with proper justifications and must not be invoked casually, so as to prevent any abuse of this privilege.

On the other hand, Hong Kong is a commercial society, and sensitive commercial information should be protected and respected in line with

international practices. Even though the two power companies are public utilities and should be subject to public monitoring, they are listed commercial organizations, and their lawful rights should also be protected. The Legislative Council must have good reasons for invoking the P&P Ordinance, or else, it will definitely undermine the confidence of international investors in Hong Kong.

Hence, in my view, given that the Government and the two power companies are now willing to disclose the relevant information, such that the Panel on Economic Development can continue to follow up on and investigate into the matter on the basis of such information, it is more reasonable to consider the need for invoking the P&P Ordinance when the two power companies are not willing to disclose the necessary information or are engaged in any cover-up.

Just now, some Members referred to the various items under the five-year Development Plans and queried their need or justifications. I very much believe that the expert team of the Government is best suited to analyse and challenge the reliability and validity of the data given by the two power companies. I urge the Government to seriously perform its gate-keeping role to ensure that public interest will be safeguarded.

President, I so submit.

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

MR LAU KONG-WAH (in Cantonese): President, concerning the tariff increase incident of CLP Power Hong Kong Limited (CLP), negotiation between CLP and the Government had commenced since October 2011. This is an annual routine procedure, yet it seemed that the Government could not reach an agreement with CLP on the rate of increase this time. By 13 December last year, the issue was submitted to the Executive Council for discussion, and as a Member of the Executive Council, the incident had been brought to my attention. Eventually, Members considered the increase rate unacceptable, and this stance was mentioned in a statement issued at the time, which had reflected some of the views of the public. Later, the Chief Executive took the rare move of issuing a statement to urge the two power companies to reconsider and withdraw the proposed rate of increase.

However, the rates of increase were announced on 13 December 2011 and they would be implemented on 1 January 2012, which implied that there were only two weeks to effect any changes. At that time, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) had, after discussing the issue, considered that given the tight time frame, the primary task was to lower the increase rates to be implemented on 1 January by all means, which included staging signature campaigns and demonstrations, holding meetings or issuing letters or proposing a motion. That was the prime task, which was also the aspiration of the public.

Naturally, various political parties and groupings have different approaches and aspirations. Certain parties might consider that it is most important to "thrash the Government" or "thrash CLP", others might consider seeking information the most important task. There are no problems with such differences, and there should be mutual respect despite the various approaches adopted.

However, I think there is one important point …… at the meeting of the Panel on Economic Development on 23 December — I am not a Member of the Panel, but I attended the whole meeting — two motions were proposed, one by the Democratic Party and the other by the DAB. The motion of the DAB urged the two power companies to provide the financial information on the capital investment and operating expenditure for the next five years. In other words, we had required the two power companies to provide the relevant information. Yet, more importantly, we urged CLP to lower the tariff further. President, you also know that CLP had already lowered the tariff once at that time, yet we hoped that with the power of the Legislative Council, CLP would lower the increase one more time. We had put forth three points, which all sought to lower the rate of increase. I think this is the primary task and the aspirations of the public.

Mr Fred LI and Ms Emily LAU from the Democratic Party had each put forth a motion, but their original motions did not mention about lowering the rates of increase, not one word was made on this point. The motion put forth three points, namely, to invoke the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), to seek information concerning the 2012 tariff increases and the five-year Development Plan, and so on. Though these requests were necessary, the motion did not mention about lowering the increase rates. That is not a problem, for the legislature is composed of different political groups

and parties which will naturally adopt different approaches. Sometimes, various political parties and groupings may complement the inadequacies of each other, and they may join hands to "hem in" and press for certain demands. I think it is very important. It is not surprising that we have different focuses, yet this is the fact.

After Members had put forth the motions at the meeting of the Panel on Economic Development, the Government would definitely negotiate with CLP again. Later, during Christmas, CLP lowered the increase rate further, from the original proposed increase of 9.2% to 4.9%. In my view, this outcome should be attributed to the efforts of all Members of the legislature, Members of the Executive Council, the Chief Executive, government officials and the public. The DAB often says that we will "be practical and serve the public", and that is what we mean. Certainly, with this outcome …… Today, many political parties and groupings are against the DAB, and I can understand. Mr Fred LI is a typical example. Since he has spent a large part of his speech in criticizing the DAB, I must respond to the criticisms.

There are several blind spots regarding Mr Fred LI's comments. First, he criticized Mr CHAN Kam-lam for dodging for he did not attend the meeting. I want to tell Mr Fred LI that Mr CHAN Kam-lam cannot attend the meeting because he is sick, and I hope he will forgive Mr CHAN for that. I think any Member may fall ill and it is unnecessary to make such a mockery.

Second, Mr Fred LI said that the DAB was a deserted soldier if it did not support the invoking of the P&P Ordinance. He has used many insulting phrases and I will not repeat them. However, I would like to tell Mr Fred LI and the Democratic Party that democracy allows different opinions, different approaches and a pluralistic culture. Why do we have to follow your way? Besides, we have all along been requesting the power companies to provide information and have eventually forced CLP to provide the information. If so, why do we have to invoke the P&P Ordinance? It is always the principle of the DAB to "praise the right and criticize the wrong"; if invoking the P&P Ordinance is warranted, we will render our support, and if it is unnecessary to do so, we will not abuse the power. This has always been our principle. For certain issues which we consider are of great importance, we will support invoking the P&P Ordinance. In fact, we have presently adopted this attitude in conducting many of our work.

As for Mr Fred LI's presumption that other people must stand by him and follow him in words and deeds, I think it is arrogant and dictatorial. Such mentality is outdated. In fact, people with this mentality demand others to follow them, and if others refuse to do so, they will scorn them. The Democratic Party had experienced that agony during the discussion of the constitutional reform proposal, and it should feel deeply about this. Why has it treated other political parties and groupings the same way?

President, the third blind spot of Mr Fred LI is shared by many other political parties and groupings ― it is good that Mr Fred LI has returned to the Chamber, for I am just talking about your blind spot ― and they like to use the approach of …… Perhaps it is because this year is the year of election, and Mr Fred LI thought that he might elevate himself by belittling others. However, I have to tell Mr Fred LI that such times have passed, for the public have a clear mind. You will not succeed in belittling others or elevating yourself. Honestly, concerning the tactics to belittle others, there are always better tactics. Mr Fred LI, you are not new to these sufferings. Hence, I think we should cultivate a culture of rationality and mutual respect in this legislature.

President, politics in Taiwan has gradually developed to maturity; yet unfortunately, the politicians of this Council went to Taiwan and involved in fighting, which had brought shame to Hong Kong. In this Council, I think we have to be forbearing and respect each other. I agree with their approach in seeking the information, we have not raised any disagreements. However, at that time, we considered it most important to lower the rates of increase, and various political parties should join hands to "hem in" the power companies and complement each other. We think this is extremely important. President, I will stop here in responding to the criticisms, for Members have had enough. I will return to the crux of the issue.

The crux is the performance of CLP and the attitude we should adopt towards the future tariff increases of the two power companies. I would like to express my opinions as soon as possible. In my view, the current CLP incident will have far-reaching impacts. The attitude of CLP in "maximizing profits by all means" has provoked attacks from various fronts, making the company the enemy of the public and eventually subject to defeat. The Chief Executive Officer (CEO) of CLP put forth proposals to "maximize profits by all means".

While the company has made some profits, it has lost its credibility, goodwill and image. Indeed, CLP is a complete flop.

Many say that the mentality and practice of "maximizing profit by all means" prevailing in Wall Street, CLP and many public utilities have proved to be a blind alley. My advice to all public services organizations is that apart from giving regard to the interest of shareholders, the interest of the public should not be neglected. This is the lesson to be learned from this incident. We hope that the Government and public organizations, not just CLP but all public organizations relating to people's livelihood, should recognize that the world has changed. They can no longer push the public to the limit and simply ignore their feelings. I hope that this incident will turn out to be a blessing in disguise. The CEOs of all companies must understand this point, otherwise they will become outdated and incompetent.

After reading all the information, I told Ms Starry LEE that we have to continue following up the information at the Panel on Economic Development. If any problems are identified, we will pursue to the end. I would also like to give some advice to CLP. First, concerning certain items of expenditure as stated in the information paper, I advice them to spend money prudently. Since the information has been made public, they should avoid unnecessary expenditure items. They should not repeat the mistakes made in this incident, "inflating" certain expenditure or including inappropriate expenditure. Otherwise, they are engaging themselves in a dangerous game.

Second, it is about the original projected tariff increase in five years. Though the actual increase for these few years are lower than the projected rates, they should not presume that they can eventually make up the shortfall. No, they cannot. I advise the Board of Directors and the management of CLP to upheld honesty, they should not "inflate" the figures, nor should they make exorbitant demand. The days for such practice have passed. All people in Hong Kong will keep a close watch on the figures for the next year or two, so will every colleague in the legislature. Moreover, I hope that the Government and CLP will not wait till October this year to discuss those figures, for there will not be enough time. The negotiation should be carried out as soon as possible. Since the items have already been made public, the Government should discuss

with CLP at the earliest possible time, so that there will be room for manoeuvring. I do not want to see that history repeats itself.

Regarding the formulation of future agreement, the review will be conducted one day, and I hope the review will be conducted as soon as possible. After this incident, the agreement between society and CLP has changed. It is impossible to maintain the *status quo*. Should the authorities consider adopting the practice applicable to other public utilities by requiring the two power companies to seek the approval of the Executive Council prior to the implementation of tariff increase? At present, certain organizations have to obtain such approval before they impose fare increases. Should the unfair situation be changed in future? Is it necessary to lower the maximum rate of 9.99%? Is it necessary to introduce external electricity supply and competition? These ideas involve great issue. I hope the Government will learn from this experience, and that it will share and discuss these ideas with the public at an earlier time, so as to formulate the new agreement. It is an important issue.

Many colleagues in the Chamber come from the business sector. I believe they and people of Hong Kong understand that businessmen have to make money. However, if they go too far, they will be "lifting a stone only to drop on their own feet". The present incident is a very precious experience. Hence, I hope that review will be conducted as soon as possible in future.

Regarding the many criticisms launched against political parties by Members who spoke just now as well as the reciprocal attacks between political parties, I think there should be a ceasefire. In fact, to the public, it is most important that Members as a whole will work for the public. Probably inspired by the Chief Executive Election these days, I often say that one should not fix his eyes on his competitors but on the public, for the interest of the public should come before that of political parties. Thank you, President.

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

MR PAUL TSE (in Cantonese): President, in the past few years, I had all along adopted a rational or cautious attitude in assessing every application for invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance).

One notable example is the case concerning one of our colleagues, Mr KAM Nai-wai. When he was in trouble, an overwhelming majority of, or even all Members requested for invoking the P&P Ordinance to carry out an investigation. I raised strong opposition and I still consider I am right in doing so.

President, needless to say, Members all know when or under what circumstances the P&P Ordinance, or the so-called "imperial sword", can be invoked. Members surely know that the P&P Ordinance can only be invoked on matters with an overwhelming public interest or involving the dereliction of duties of the Government. In respect of this incident, I think there is certainly an overwhelming public interest. As regards whether there is any dereliction of duties on the part of the Government, I would like to quote the three points put forth by Mr Vincent FANG. His presentation is outstanding. I will not repeat them here, for Ms Emily LAU has already repeated two of the arguments.

Perhaps, I should add some more information to prove that the Government has not only made the three possible mistakes in handling this incident. In fact, when we refer to Clause 9 under section 9 of the agreement, which is related to tariff adjustment, we note that it is different from other problems. It can be said that the Government is hamstrung, and it had practicably done nothing at all. Hence some people commented that the Chief Executive has resorted to "verbal manoeuvers" after the outbreak of the incident and urged the public to add a "Like" on the Internet. Such act seemed to be very childish, but it provoked the public to exert pressure on the two power companies to change their minds. This rightly reflects the incompetence of the Government in this respect. We as Members are put under greater pressure for we consider that we must shoulder the responsibility, to consider whether or not we should resort to the only option available, so as to rectify the incompetence of the Government.

President, Secretary Edward YAU has made an excellent speech. He has put forth three points for our consideration. For the so-called "mischief", that is, in invoking the P&P Ordinance, what effect and objectives do we want to achieve? The three points he put forth are …… I hope my analysis is correct, and if I am wrong, will the Secretary please rectify. In gist, the first point is whether it is necessary for us to obtain such information to assess the appropriateness in handling the tariff increase this time. Concerning the five-year Development Plans as mentioned by many colleagues, whether justifications can be provided and whether there are any problems. As

mentioned by Mr CHIM Pui-chung and Mr LAU Kong-wah earlier, will there be any deliberate move — I will quote Mr CHIM Pui-chung's unique way of presentation — he said that they adopted tricky tactics close to "forging" ledgers to cheat people. As for the second point made by Secretary Edward YAU, it is about the message we want to convey to society or to the business sector. The third point is certainly about considering the pros and cons of doing so from the perspective of public interest.

President, allow me to give a brief analysis of the three aforesaid points. I did have the opportunity, though limited, to read the so-called restricted papers on two occasions. I used to study accounting and law. Though I am not a practicing accountant, I hold a relevant degree and have basic knowledge about accounting. I had handled some commercial cases in the past and had often come across those figures. However, regarding the figures presented to us, I am afraid it is not easy to analysis the picture behind merely from those figures. I will not mention the figures which have been covered or highlighted to bar from arbitrary disclosure; even if we are allowed to make public all other figures, it will require detailed analysis and even expert assistance for analysis. We may even have to get round those figures to understand certain bargaining made behind. The content of the meetings concerned or other important information may have to be made public, so that we can conduct a relatively reasonable or rational analysis and decide whether those figures are reasonable. In particular, as mentioned by Mr CHIM Pui-chung, there may be some hidden information behind these figures about certain assets being covered up. Can we examine the situation? As such, we can hardly judge expediently from the figures whether the adjustment is acceptable. In order to analyse these figures, I think it is necessary to examine the situation behind the scene.

Second, what message will this convey to society and the business sector? As rightly pointed out by some critics, Hong Kong, being a highly developed cosmopolitan city, must respect the contractual spirit and the spirit of the rule of law. However, I believe a highly civilized society should also respect transparency and social responsibility. From the perspective of the lesser of the two evils, should we discharge the required duties of the legislature to enhance transparency? Since the organizations concerned are public utilities, which enjoyed privileges unavailable to other organizations, should we then adopt a different yardstick? I would rather enhance the transparency in this respect even though the organizations concerned may be unhappy for being required to disclose certain information. We do not hope that the Chief Executive has to

resort to "verbal manoevres" every time to muster public pressure to force the organizations concerned to change their initial commercial decisions, for this will inflict greater harm to Hong Kong society.

President, regarding the pros and cons from the perspective of public interest, I have mentioned the factors for consideration including transparency, public interest and monitoring of the privilege concerned. After hearing the views of Members and government officials, it may be concluded that there are seemingly three reasons for opposing the proposal. First, will the disclosure of such information violate the laws of Hong Kong, particularly certain regulations regulating listed companies, that is, the so-called Listing Rules? Mr WONG Yuk-man criticized Members for not staying in the Chamber to listen to his speech. In fact, I have been sitting here listening to the speeches of all colleagues. Yet, my colleagues and I are doing some information researches on the Listing Rules, particularly on Chapter 13, which is related to the disclosure requirements mentioned by the Mr Ronny TONG. As I go through the requirements on disclosure under the regulations, I notice that the requirements indeed encourage the disclosure of information rather than preventing it. The requirements only seek to ensure that persons concerned will not only disclose part of the information to mislead the public, and to prevent the persons concerned, particularly insiders, from gaining inappropriate benefits from the information they have.

Hence, if the information to be disclosed should be known by everyone, which will not adversely affect the share price and will even enhance fairness, I cannot find any particular provision in Chapter 13 that support the non-disclosure of such information. I welcome the views from members in the legal sector. I am no expert in this field, and I welcome colleagues engaging in stocks or listing to give their views. However, I understand that at the meeting yesterday, as mentioned by Mr Fred LI earlier, the two power companies were unable to provide the appropriate or applicable legal provisions that prohibit such disclosure.

President, the second concern is whether the disclosure of such information will hamper the bargaining power of the two power companies in future. I do not quite understand this logic. There are many messages about the so-called fuel or consumption projection in the market, only that we do not know for we are not experts in this field. According to my experience, as in the case of the air transport sector, airlines attach great importance to these figures as well. There

are many experts around the world and those figures are highly transparent indeed. They will project the trend of fuel prices in a certain year or under certain conditions, and they may even do hedging, and it is natural that they win and lose. Basically, the figures are not particularly sensitive in nature, where they are known only by the two power companies but not others around the world.

As for electricity consumption, I think by referring to past figures and the present economic development in Hong Kong, people will more or less get the figure by guessing. Yet, the most important point is that I do not think, nor do I understand why the disclosure of the figures will put the two power companies in an unfavourable bargaining position; and as argued by the two power companies, this will in turn put the public in the same unfavourable position. In this connection, despite the disclosure of such figures, I think we may still pursue for a reasonable deal, for suppliers around the world are not operating in a monopolized environment like the two power companies and we indeed have an array of choices. Hence, I hope to obtain more information to convince me that the disclosure will affect their bargaining power. I want justification not just statements, please convince me with facts.

The third point is whether the message conveyed to the market will tarnish the image of Hong Kong in terms of its business environment? As I explained earlier, I prefer to choose the lesser of the two evils. I prefer appropriate disclosure and monitoring to relying on the Government to make "verbal manoeuvres" when it is at its wits' ends, for the latter practice will tarnish Hong Kong's goodwill as a big commercial city. From the perspective of choosing the lesser of the two evils, I would rather choose the present path.

President, the request put forth this time does not request for a comprehensive investigation on the mistakes made by various government officials. We have not come to that stage yet. At the present stage, we only request to seek more papers or the power to do so, so that we may, in due course, ask the two power companies or government departments to provide certain information or data in a reasonable manner. As regards the next step we are going to take, it is too early to say. However, since our tenure of office will soon expire, if further follow-up is required, we may have to leave it to the next Legislative Council.

The problem at issue is, do we want the process to repeat year after year, perpetuating the Government's incompetence and replying on people's power on and on. By people's power, I am not referring to the political party of the same name, I mean soliciting public support, creating public opinion, or even resorting to "verbal manoeuvres" by the Chief Executive to press the two power companies to give in. Do we really want to see such practice again? Or should we act decisively? It is time to take the first step to get the necessary papers or be conferred with the necessary authority. As regards whether an investigation will be initiated, it is left to Members to decide.

Certainly, I hope that when the appropriate opportunity or circumstances arise, Members of the current term or the next term will solve this problem that has troubled Hong Kong for so many years. I can even say that it is an extremely inappropriate arrangement left behind by the colonial rule. I hope Members will address the problem, so that the public need not fear for a tariff hike year after year and there will not be major disputes in society.

President, regarding the conditions for invoking the P&P Ordinance this time, Mr Vincent FANG has made it very clear in his amendment. Though I consider it unnecessary to purposely include those conditions, I do not oppose those conditions, for it will make the arrangement more reasonable.

President, I notice that according to the agreement, we are provided with an option exercisable by the Government in 2018 to decide whether or not to extend the agreement. By 31 October 2013, the Government or the other party may modify or improve the provisions in the original agreement framework, certainly with the consent of both parties. However, if we can initiate the procedure today to require for the disclosure of information, we will come up with appropriate analyses and criticisms. We will not have to rely on dozens of Members doing searches in the library for the required materials, for we will receive appropriate assistance from the public in general as well as from experts, hence we can assess the merits and demerits of the entire system. I believe this practice will more or less enhance the transparency of the system as a whole. At the same time, it will provide the Government with mandate and bargaining power to make appropriate adjustment before 31 October 2013.

President, I so submit.

MS AUDREY EU (in Cantonese): President, when Mr WONG Yuk-man spoke just now, he asked why there were so few Members in this Chamber as there were only eight Members present. I have also taken a look and found that four of the eight Members are from the Civic Party.

The motion that we are discussing today is really important. First of all, the tariff increases by the two power companies will have impacts on the wallets of all Hong Kong people as almost all of us have to use electricity. We also discuss whether the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) should be invoked. Many Honourable colleagues have said that this is our "imperial sword" that cannot be used casually. I pay great attention when we discuss such an important topic and I pay special attention to the remarks made by some opposing Members.

When the two power companies announced the tariff increases, almost all parties and groupings in this Council unanimously criticized the two power companies for their inappropriate practice, data and justifications. I have also noticed that political parties have launched signature campaigns and put up banners. Some described that political parties were taking advantages of the incident, and they did it to the extreme. After they have taken full advantage and when they actually have to take real actions by voting for this motion, they back off, why is it so?

President, why do I say that today is the time for taking real actions? If we look back at our discussions in this Council on this motion concerning the tariff increases of the two power companies …… I will not talk about the meetings of the Panel on Economic Development or the House Committee; we had debated and voted at the House Committee meeting before our discussion on invoking the P&P Ordinance. I will not count those meetings and I will just count our discussions in this Council on the motion concerning the tariff increases of the two power companies. We have had three discussions within a short period of time. The first discussion was the adjournment debate held on 21 December, followed by the discussion on the motion I moved on 18 January, and finally our discussion today on invoking the P&P Ordinance.

While the two previous debates held at Council meetings do not have binding effect, the motion today has binding effect. That is the reason why I say that they have to take real actions today. When many Honourable colleagues spoke earlier, they criticized the two power companies for being unscrupulous

and "inflated" the amount. Despite their severe criticisms, they back off when they have to vote on a motion that really has binding effect.

I have listened very carefully to the reasons given by Members who oppose this motion, and I notice that the arguments that they put forth were just a few. The first point is about the "business environment argument". They think that the passage of this motion would affect the business environment. As I have said during the last motion debate, first, we are discussing about a public utility because all Hong Kong people use electricity; second, the power companies basically enjoy an exclusive right because people living on Hong Kong Island use electricity supplied by The Hongkong Electric Company Limited (HEC) while those living in Kowloon and the New Territories use electricity supplied by CLP Power Hong Kong Limited (CLP), and there is no competition between the two power companies. Third, the profits of the two power companies are guaranteed, and they will certainly have a return of 9.99%, no matter how inefficient they are, how high their costs are and how badly their operations are.

Under such circumstances, how dare the two power companies claim that they are ordinary business operations, and that business cannot sustain in an environment in which the Legislative Council uses this "imperial sword" on every occasion. This is indeed not the case. The tariff increases of the two power companies will really affect many operators in the business sector; many small and medium enterprises are already crying for help. Therefore, the two power companies should no longer use business environment as an excuse. If we seek all documents by invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance), so that we can examine whether the two power companies are justified to apply for tariff increases, whether they have made erroneous calculations or whether they have "inflated" the accounts, how would the business environment be affected?

President, their second excuse is the "not the right time argument", that is, the power should not be exercised for the time being. Ms Starry LEE is one of the Members who expressed such a view and she has also raised this point when she spoke just now. Mr Paul CHAN said that after considering the matter, he thought that a decision could be made later. Ms Starry LEE said that she has severely warned the two power companies that if they still do not co-operate, she would exercise the power; but right now, it was unnecessary to do so.

Mr CHAN Kam-lam has also expressed similar views on some previous occasions. When he and I appeared on a television programme, he also said that the P&P Ordinance should not be invoked for the time being. President, when should the Ordinance be invoked then? How much longer do we have to wait? President, the two power companies have started to charge higher tariffs since 1 January and it is now February. How many meetings have we held? How many more times should we "squeeze the toothpaste"? How much longer do we have to wait? If the two power companies have already submitted all information and after reading them, we were satisfied and concluded that the tariff increases are reasonable, the whole incident should come to an end. In that case, I would understand that the "imperial sword" need not be used for the time being.

However, that is not the case. I have just listened carefully to the remark made by Mr LAU Kong-wah. He said that the two power companies are incompetent, and if there are cases of "inflating" accounts and making exorbitant demands, all Hong Kong people will keep a watchful eye. I am really at a loss about how all Hong Kong people can keep a watchful eye. How can all Hong Kong people stay alert when the data are only accessible in the library or at closed-door meetings? He might as well say that all information has been accepted and no problem has been found. Yet, that is not the case. Ms Starry LEE said that Members should continue to pursue the matter and ask for the information, and we should use our privileges when the two power companies are not co-operative, but the "imperial sword" should not be used for the time being.

Ordinary people would certainly be puzzled by her remark and they would not understand why the Member has said so. How much longer would she wait before exercising the power? We have been arguing since December and I do not know how many meetings we have held during the period. But, some Members still say that we should continue to ask for information and should only invoke the P&P Ordinance if the two power companies refuse to comply. In fact, we have discussed at the House Committee meetings earlier, but now when we really have to vote on the motion to invoke the P&P Ordinance, some Members said that the Ordinance should not be invoked for the time being. However, Members belonging to the DAB or Mr Paul CHAN have not mentioned when this power should be exercised.

I have also heard from them the third excuse for not invoking the P&P Ordinance and I will call it the "very co-operative argument". They said that the

two power companies have been rather co-operative and they were willing to provide whatever information we required. Frankly speaking, as many Honourable colleagues have just said, if Members had not agreed at the last House Committee meeting that the motion of invoking the P&P Ordinance should be put to vote today, I believe that this document — the document with some parts marked in yellow would not be provided at the closed-door meeting and the numbers that Mr LEE Cheuk-yan has just referred to with a "du" sound would not be provided.

Another thing that is really outrageous is that, when we are having a meeting in this Council today, it is shown on my pager that some documents are now available for collection. Is that ridiculous? We have been asking for the documents since December when the two power companies proposed tariff increases and we endorsed all the motions; and today while we are having a debate, it is shown on my pager that we can have some documents. President, I wonder if you know that we are only given the odd-numbered pages of the documents because the Legislative Council Secretariat do not have enough time to make photocopies of the even-numbered pages. When we make photocopies of two-sided documents, we often make copies of the odd-numbered pages first and the copies of the even-numbered pages would only be available at around 4 pm to 5 pm. Can the power companies be described as showing respect for the Legislative Council and being very co-operative? How can we go on waiting? How dare they say that the two power companies are very co-operative.

President, another excuse for not invoking the P&P Ordinance is the "representation argument" as mentioned in Mr CHAN Kam-lam's article. According to him, when Members are returned by the people, they should represent the people and they have the responsibility to examine the relevant information behind closed doors. After they have digested dozens of pages of information, they should ask questions on behalf of the public. Members who fail to represent the public will be regarded as lazy. President, I think this is really ridiculous because people have the right to know. Furthermore, not only Legislative Council Members but also the public need to pay electricity tariffs, and people have also contributed to the 9.99% profits. Why do they not have the right to access to the documents or the right to know? Why the documents can only be read by Legislative Council Members? That also does not make sense.

I also want to respond to the Secretary's remark. The Secretary has stood up to speak after listening to the remarks made by Mr Ronny TONG and he claimed that he has never said, "Can Members understand such information?" Yes, the Secretary may not have said the exact words, but I remember clearly that the Secretary had said at the last motion debate that the Government had many experts to examine the financial information of the two power companies. After the Government had examined the very complicated information, it had already handled this issue according to expert advice. The Secretary has conveyed a clear message to Members present that they cannot understand the information even if they have the chance to read them. I am not going to argue with the Secretary over this point today. If the Secretary thinks that Members can understand the information …… Members should have the right to access to such information. However, I also want to tell the Secretary, not only Members are interested in such information, many experts are also very interested. They have all along been studying issues related to the two power companies, public utilities and proprietary undertakings. They are very interested in these data and they should have the right to access to such data as well. Why not? Many critics in Hong Kong write articles after studying certain data, why are they not allowed to access to such data?

When the Legislative Council handled the issues concerning the West Kowloon Cultural District, an expert was engaged to inspect and analyse the data and gave advice to Legislative Council Members, so as to help them consider the financing or expenditure data in connection with the establishment of the West Kowloon Cultural District Authority or the West Kowloon Cultural District. The Legislative Council often undertakes similar tasks. Why do we have to examine at closed-door meetings issues such as tariff increases by the two power companies, the operational effectiveness of the two power companies, as well as their five-year plans? Why do we not invite experts to join in the discussion?

Mr LEE Cheuk-yan has raised many questions just now. Perhaps it is very easy to answer his questions but at present, he is not allowed to discuss with others or to ask other people's opinions; he cannot even tell others the figures in question, thus he has to make a "du" sound. How can the issues be discussed efficiently and rationally? There is another very important question. A mechanism must be set to facilitate the deliberation of this Council; there must be precedents. If we can get the documents and conduct open discussions this time, our work will be easier in dealing with tariff increases in the future. These

things happen year after year; even if the tariff increases of the two power companies are accepted this year, they would propose tariff increases again next year. What should be done at that time? Should there be another round of inviting people to press the "Like" button on Facebook and should closed-door meetings be held? Another group of Members will be handling the issue by that time, but can Members who had experience in handling the issue share with new Members their views, arguments, established data or analyses? Should there be rational discussion? Should a system be established in our society? Why is this practice not feasible? Why should the issues be handled in isolation and behind closed doors instead of allowing the wisdom to pass on? Why can't we establish a precedent of this practice? This practice of handling all matters behind closed doors is highly undesirable.

President, I understand that some data may be sensitive and I would like to say that there are built-in safeguards when the P&P Ordinance is invoked. Even if the Legislative Council invokes the power to ask the other party or the two power companies to submit certain documents, the two power companies can still tell this Council that some sensitive information should not be disclosed, and this Council should determine what information should be or should not be disclosed. There is a well-established mechanism, and it does not mean that all information must be disclosed after the power has been exercised. Hence, the Legislative Council has all along complied with the principle of this internal mechanism, which has never given rise to any problems. The excuses just mentioned by Members such as the impact on the business environment are unwarranted.

Lastly, I would like to spend one minute discussing the amendment of Mr Vincent FANG. In fact, when I previously proposed a motion on this subject, Mr Vincent FANG, the Liberal Party in fact, had already proposed an amendment, and the Civic Party abstained from voting. In our view, the conditions set in the amendment are useless and superfluous. The exercise of the power must be in the public interest; otherwise, I would not support this motion. As I have just said, normal business operations will not be intervened and I have just given the explanation. Invoking the P&P Ordinance will not lead to divulging sensitive commercial information. I have also mentioned the previous mechanisms of the Legislative Council. While we abstained from voting last time, we will be vote for the motion this time, so as to give this motion the greatest chance of success.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Ms Miriam LAU, you may now speak on Mr Vincent FANG's amendment.

MS MIRIAM LAU (in Cantonese): President, in my capacity as Chairman of the House Committee, I move this motion today on the basis of a decision made by the House Committee.

The amendment moved by Mr Vincent FANG has not been discussed at the House Committee meeting and Members have not expressed any views on the amendment. So, I think that it is inappropriate for me to respond and state my position on Mr Vincent FANG's amendment here.

In my earlier speech, I have already expressed the views of the Liberal Party on Mr Vincent FANG's amendment. At this stage, I think I should not …… because I am speaking in my capacity as Chairman of the House Committee. I am not going to repeat myself but I hope Honourable colleagues would remember what I said when I spoke for the first time.

Thank you, President.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President and Members, first of all, let me clarify one point made by Mr Ronny TONG. He claimed that I had, in connection with the information submitted for scrutiny, said that, "Can Members understand such information?" President, Mr TONG claimed that I have said such words, but I have never said so, either in the Legislative Council or in private. Later, Ms Audrey EU said that even if I have not said such words, from my previous speeches, she or her party has the impression that I have such thoughts. I believe that Members will not be driven by feelings in their actions.

President, I must make a formal clarification as this quotation is related to me, and to my respect for Members. I have never said such words and I do not

have such an idea. Since 13 December, the Government (including my whole team and I) have made the best efforts to help Members understand this incident, either at four to five meetings of the Panel on Economic Development, during the discussions on the four urgent questions and the two motion debates raised at Council meetings, as well as at closed meetings. In handling this incident, the Government has tried its best to be open and co-operative, and we had sided with Members to get the most information, so that the Legislative Council and the Government can state their positions clearly.

At the meeting of the Panel on Economic Development last Friday, I had also expressed my views on Mr Ronny TONG's remarks and my agreement to some of his proposals. I have also responded respectively to the proposals made by him and Ms Starry LEE on how the information provided by the two power companies could be expressed in a more open way, so that it would be more conducive to Members in undertaking their responsibilities. President, I hope Mr Ronny TONG can clarify his quotation, and I also hope that Ms Audrey EU will clear her misunderstanding.

President, it is well evident that our discussion on this incident is not just about the tariff increases of the two power companies, as Legislative Council Members want to have a better understanding of the two power companies through various means. In particular, they want to understand the problems arisen in connection with the 2012 tariff adjustments, which have caused such a strong public reaction. Is invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to seek the relevant information the only or best method, taking into account the means and procedures involved? I have raised some questions in my opening speech, and Members have just voiced various views. I have also expressed my views on why the Government thinks that invoking the P&P Ordinance may not be the best approach. I agree to the views just expressed by Mr Paul CHAN after studying the relevant information carefully. First, only a small amount of sensitive data contained in the information paper submitted to the Legislative Council must be kept confidential; second, he has given many specific examples to illustrate why the disclosure of such information under the P&P Ordinance may have adverse effects on public interest. This is not defending the unilateral interests of the two power companies. It has an overall impact on consumers, electricity users and the future business environment.

President, quite a number of Members have talked about the Government's position on the tariff adjustments of the two power companies. I particularly wish to say that the Government has not changed its position on the 2012 tariff adjustments of the two power companies. The Government has clearly stated that with regard to the 2012 tariff adjustments, especially the adjustment proposed by CLP, there were certain disagreements or queries. We reported for the first time at the Panel meeting on 13 December about our disagreements and we had continued with our work. Even after the two power companies had respectively announced a downward adjustment of their tariffs on 30 December, we had still continued with our work. Hence, the Government and the Panel on Economic Development request the two power companies to explain further to Members the justifications for the current adjustments. From the information now available to Members and the remarks just made by Members, it is clear that Members can now give an account to the public. I believe the relevant scrutiny work will still continue to be undertaken in the near future.

The Government did not accept the rate of tariff increase in 2012 initially proposed by the two power companies, but that does not mean that we disagree that the two power companies should make public the information. I have made my points clear to Members in my previous statements. At the first meeting of the Panel on Economic Development to discuss this issue on 13 December 2011 and the two subsequent meetings held on 23 December 2011 and in January 2012, I had clearly stated that information that can be made public should be disclosed and further explanation can be given as far as possible. The Government has also taken specific measures to work with the Legislative Council on these issues. Firstly, when the Government first questioned the two power companies, especially CLP, on 13 December, we did not just casually say that we disagreed. Instead, we had clearly listed the four areas where we had queries in connection with the tariff adjustments of the two power companies in the coming year. Also, we have listed some data that can be disclosed to facilitate verification, as well as unacceptable items that should be removed.

Secondly, we have provided information papers to explain our work. Mr Paul CHAN has just mentioned that numbers alone could not give a clear picture. Hence when data were provided by the two power companies, we have tried our best to explain these data. Moreover, we had made the best use of the time when answering the four urgent questions at a Council meeting. President, during the answer session which lasted for two hours, we had given explanations

and had raised a number of arguments. We had also responded to written and oral questions. Later at all relevant meetings, we had discussed with representatives of the two power companies on points of contention. We hope that discussions can be held in an open, reasonable and objective manner.

At the Panel meeting held on 23 December, some sensitive information were handled and the Government had presented some arguments in the form of confidential documents for discussion. Certain data had not been disclosed. At the meeting held yesterday, the Government agreed that, owing to various reasons and the need for maintaining confidentiality, discussion should first be held behind closed doors and then some information could be disclosed after the meeting. Hence, in handling the information provided by the two power companies, the Government has been open, objective and impartial.

Though some controversies have arisen over the current tariff adjustments, we have tried our best to respond to Members' questions. I also thank Members for asking reasonable questions, including some common misconceptions in the past. For instance, many Members have asked if the two power companies can build up their assets under their five-year Development Plans or make various assets investments to increase their profits. According to the information now available, we know that in respect of electricity production, how much investment is allowed under the five-year Development Plans of the two power companies and the ratio relative to electricity transmission and distribution. We also learn from the five-year Development Plans what kinds of projects are included. A detailed list of dozens of projects has been set out in the documents provided by the two power companies. We have also listed the items that have been removed from the five-year Development Plans. When Members asked about the items removed at the meeting yesterday, we also provided the relevant amounts involved.

There are also some other misunderstandings. There are views and some Members have also asked today whether the increase in tariff is due to the emission reduction measures to be taken by the two power companies. Have the two power companies increased their capital investments for environmental protection purpose? I have already answered such questions at previous Council meetings and Members can also find from the documents in hand that the ratio of capital investments of the two power companies in emission reduction range from 14% to 16%.

Lastly, did the five-year Development Plans give green lights to the two power companies to adjust tariffs in the future? Some Members previously remarked that, in approving the five-year Development Plans, the Government allowed the two power companies to implement all previously approved investment projects within the five-year period. Yet, we learn from the documents that, take CLP as an example, the capital expenditure in the three-year period from 2008 to 2011 or from 2009 to 2011 was $24.9 billion in real terms, which was actually less than $27 billion as originally projected in the five-year Development Plans. This proves that, even if we give them room for continuous investment under the five-year Development Plans, it does not mean that they can maximize the investment, without being subject to an annual review. During the same three-year period, the capital expenditure in real terms of HEC roughly amounted to $7.8 billion, which was also less than the original projected $8 billion.

Through meetings and the information provided, Members can have a better understanding of the above issues. We understand that in the current tariff adjustments, a lot of controversies have arisen due to the divergent views of the Government and the two power companies. I agree with Members that the Government is expected to play a good role in gate-keeping. I hope Members would understand that the professional staff in the Civil Service will continue to perform gate-keeping functions. As I have repeatedly mentioned in the past, the electricity policy does not only involve tariff, it also comprises four important elements. Most important of all is to have a safe and stable electricity supply, and it is not easy to achieve. It is also essential to ensure that the two power companies have long-term and continued investments. I understand that if we cannot control investment expenditures under the existing system, the public or the Legislative Council would worry that the high capital expenditures of the two power companies which unduly push up their profits. Hence, in the past, apart from scrutinizing the five-year Development Plans, we also have to conduct annual vetting, so as to avoid premature or excessive capital expenditures. As Members have noticed, we have removed from the plans items of capital expenditure that should not be included, and that is exactly what we have been doing each year. The data I have just cited illustrate that, in the past three years, we have comprehensively and carefully examined the capital investment expenditures during the annual reviews, even though such expenditures have not exceeded the ceiling permitted under the five-year Development Plans.

President, I would like to thank Members for the efforts they have made in the past two months. I understand that they have encountered many problems in scrutinizing the tariff adjustments of the two power companies. These problems may not have aroused public concern and may not have drawn public attention during the previous tariff adjustments. During the latest regulatory period, starting from 2008 or 2009, the tariffs in real terms of the two power companies were still lower than those during the last regulatory period. Yet, we understand that people expect the Government to perform a good gate-keeping role. We thank Members for raising a lot of questions in a pragmatic manner over this period of time. We hope that we would continue to discuss the relevant issues through various channels, which include meetings of the Panel on Economic Development, questions raised by Members, requests made to the two power companies for providing information, attending closed-door or public meetings and discussing sensitive commercial information in a well-protected environment. We trust that a more satisfactory result can be attained. President, if we continue to carry out the ongoing work, I agree with many Members that it would really be unnecessary to invoke the Legislative Council (Powers and Privileges) Ordinance to seek further information. Hence, I implore Members to oppose the motion and the amendment.

Thank you, President.

PRESIDENT (in Cantonese): Before putting the question to you, I would like to tell Members that it is now 9 pm and I will suspend the meeting at around 10 pm until 9 am tomorrow.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the amendment, moved by Mr Vincent FANG to Ms Miriam LAU's motion, be passed. 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 Vincent FANG rose to claim a division.

PRESIDENT (in Cantonese): Mr Vincent FANG 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:

Dr Margaret NG, Mr CHEUNG Man-kwong, Ms Miriam LAU, Mr Tommy CHEUNG, Mr Vincent FANG, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Mr Paul TSE voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the amendment.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG and Miss Tanya CHAN voted for the amendment.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the amendment.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, nine were in favour of the amendment and 16 against it; while among the Members returned by geographical constituencies through direct elections, 26 were present, 17 were in favour of the amendment and eight against it. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

MS MIRIAM LAU (in Cantonese): President, I move that in the event of further divisions being claimed in respect of the motion on "Seeking papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited and The Hongkong Electric Company Limited" 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 "Seeking papers, books, records or documents in relation to the 2012 tariff adjustments by CLP Power Hong Kong Limited and The Hongkong Electric Company Limited" 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 call upon Ms Miriam LAU to reply.

MS MIRIAM LAU (in Cantonese): President, I am still going to speak in my capacity as Chairman of the House Committee but my speech will not be very long.

President, I am not sure if it is because the bargaining power of the Secretary has suddenly become stronger or because the House Committee has passed the motion on 6 January that I can move this motion on invoking the Legislative Council (Powers and Privileges) Ordinance (the P&P Ordinance) to empower the Panel on Economic Development to ask the two power companies for the related documents, the two power companies have provided some documents to the Legislative Council in the past few weeks that have never been submitted before. The documents have set out plenty of information on the companies' operation and capital investment. Initially, when the two power companies provided the information, they indicated that the information was classified. However, they later indicated that some information could be made public while some other information marked in yellow ought to remain confidential for various reasons.

Yesterday (7 February), we agreed on how these documents should be handled. All information can be inspected and questions can be raised at some closed meetings. In response to the compliant made by Ms Audrey EU, certain confidential information would be deleted from some documents to facilitate open discussion.

At this stage, I think we cannot affirm whether the information provided to us is sufficient. Some Members may consider that sufficient information has been provided but some other Members may think otherwise. Since discussion is still in progress, it is still necessary to move this motion today. We should determine whether further follow-up is necessary, depending on how Honourable colleagues have grasped the existing information.

Nevertheless, I wish to remind Members that this motion that I moved today seeks to empower the Panel on Economic Development to obtain the relevant information but such information is restricted to the detailed information on the 2012 tariff adjustments of the two power companies and the five-year Development Plans. There are a number of complaints against the two power companies; for example, some Members have mentioned in the debate why the Scheme of Control Agreements have been implemented and why the profits are specified as 9.99% of net assets. Is this percentage too high? Has the Government properly performed its gate-keeping role? Members also have many complaints about the policies of the two power companies including the policies on reserve electricity. Why do we need to collect the information now? It is because tariff will increase in 2012 but we are very puzzled about how the rates of increase have been calculated. The information we will collect by exercising this power should be related to the tariff increases in 2012 and the five-year Development Plans.

My preliminary view is that the documents provided by the two power companies in the past few weeks have generally covered the relevant information. As regards whether it is necessary to follow up further and collect more specific information, I think Members would follow that up at the meetings of the Panel on Economic Development. Nonetheless, I just want to say that this motion today seeks to empower the Panel on Economic Development to collect the related information. As the Panel on Economic Development has not yet finished scrutinizing the relevant information, Members can still determine on

their own whether the P&P Ordinance should be invoked to empower the Panel on Economic Development to collect the information. Members can definitely vote according to their views.

President, this is my brief reply in my capacity as Chairman of the House Committee. Thank you, President.

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

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for one minute.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che, Mr IP Wai-ming and Mr Paul TSE voted for the motion.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr Timothy FOK, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Vincent FANG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the motion.

Ms Miriam LAU abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr CHEUNG Hok-mng, Ms Starry LEE and Mr CHAN Hak-kan voted against the motion.

THE PRESIDENT, Mr Jasper TSANG, did not cast any vote.

THE PRESIDENT announced that among the Members returned by functional constituencies, 25 were present, six were in favour of the motion, 18 against it and one abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 20 were in favour of the motion and five 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 motion was negatived.

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

PRESIDENT (in Cantonese): First motion with no legislative effect: Reviewing the education policy for ethnic minority students.

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

I now call upon Mr Abraham SHEK to speak and move the motion.

REVIEWING THE EDUCATION POLICY FOR ETHNIC MINORITY STUDENTS

MR ABRAHAM SHEK: President, I move that the motion, as printed on the Agenda, be passed. President, when he announced the Budget last Wednesday, the Financial Secretary spoke on the economic miracle of Hong Kong, which has sustained a record surplus of HK$60 billion to the envy of many of the Western economic powers burdened with national debts and deficits. In spite of our economic success, there exist many pockets of societal underprivileged who have been unnoticed and have not received any assistance from our generous "Choy Sun Yeh" (財神爺) — they are the "N-nothings" and one of these groups is ethnic minority (EM) students and their families. These 14 000 EM students are the subject of my motion today, President.

The success of a country or city is not only about the economic achievement as reflected in its GDP growth but is also measured in terms of its

people's overall or general happiness founded on the core values of promoting and defending equal rights and opportunities for people of different races and colours. Hong Kong is blessed with the peaceful coexistence of multiple races, and the generosity of its people in embracing racial equality is admirable; however it is regrettable that our Government falls short of its duty in preaching messages of no-discrimination and compassion for our EMs. This prompts a policy talking high on its mission but landing low with little implementation. I shall take my hats off to Mr LAM Woon-kong, Chairperson of the Equal Opportunities Commission (EOC), for publishing the Report entitled, "人人有書讀" (Education for all) in July last year, in which we are led to do soul-searching on the plight of our EM students, and the ordeals plaguing them are underlined. While there are other problems, it is the use of Chinese as the medium of instruction for EM students that is the crux of the matter.

However, since the implementation of the Race Discrimination Ordinance (RDO) in 2009, we have often heard of cases where our EM students are allocated to designated schools due to their lower proficiency in Chinese when compared with local students, and even when they are admitted to mainstream schools they are given hardly any adequate and appropriate support to release themselves from the "Tower of Babel". This shows that the sword of the RDO has failed to ward off the discrimination faced by our EM students as stated by Kelley LOPER, Deputy Director of the Centre for Comparative and Public Law: "problematic language exemptions in areas of education in the RDO …… allows discriminatory policies and practices to go unchallenged". More importantly, the statutory rights of EM students to enjoy free and equal opportunities in receiving education are infringed upon by the racially discriminatory policy, because the alleged "choice" between "designated schools" and "mainstream schools" is in fact a Hobson choice, which in effect means no choice, one which leads them either to a dead end or the deep blue sea.

President, when assisting in brushing up EM students' academic performance, the Government has mistakenly, knowingly, or unknowingly, held the notion of formal equality instead of "substantive equality" as stated by K LOPER, which by definition requires "a careful analysis of context and an assessment of the actual situation of disadvantage faced by particular groups and individuals within those groups". Since EM students are mostly from working-class families leading a hand-to-mouth existence with meager monthly salaries and a lack of knowledge in the Chinese language, it is easy to imagine

that EM students are inevitably made to start the competition from a different starting line when compared with their local peers. Subjecting EM students to the same Chinese proficiency requirement as local students will plunge them into a disadvantaged position, because their equal opportunities of further education will be dented. No wonder the rates of EM students attaining higher levels of education are sorrowfully and disproportionately low: only 1.1% at the senior-secondary level, and merely 0.59% at the post-secondary level. This is indicative of EM students' grievances in learning Chinese from the pre-primary to secondary levels, grievances that have resulted in a substantial school drop-out rate and the involuntary and premature entry of EM students into the labour market. EM students are thus left with very few choices to achieve social and economic mobility as well as educational advancement.

The "blood trail" in EM students' odyssey may ironically be traced to the set-up of designated schools designed in 2006-2007. One example is that the Chinese Language curriculum available to EM students are unable to meet their future academic and employment needs. At the primary and secondary levels, most EM students attend designated schools which only provide a GCSE Chinese curriculum pitched at the levels of Primary Three and Primary Four. Even if an EM student excels in this curriculum, his or her Chinese language proficiency will still be unable to meet the requirements of secondary and post-secondary education. Thus, EM students are faced with an unbridgeable gulf when making the transition from primary education to secondary and post-secondary education. In addition, the set-up of designed schools overlooks the fact that the lack of language environment in these schools means little opportunities for the students to use Chinese for communication. The purpose of integration is defeated. A review of the current designated school policy should immediately be conducted. The Government stresses that it is parental choices which decide whether EM students will study in mainstream schools or designated schools. However, President, such an assertion is indeed a farce. The fact is that the parents only have a choice between schooling and no schooling for their children.

Considering the discrepancy of Chinese learning ability between EM students and their local peers, 75% of the teachers who responded to a survey conducted by Hong Kong Unison Limited, an non-governmental organization, and the Hong Kong Professional Teachers' Union in July 2007 agreed that the current central Chinese curriculum designed for local Chinese students was not suitable to the non-Chinese speaking (NCS) students. One feasible way out

would be developing an alternative Chinese Curriculum and Qualification for EM students learning Chinese as their second language. The idea found a chorus of support from the International Convention on the Elimination of all Forms of the Racial Discrimination Committee of the United Nations in 2009. In fact, we may learn from the abundance of international experience in teaching and learning English as a second language. As learning Chinese has been gaining currency all over the globe, and considering the merits of the policy of learning Chinese as a second language, there is very little reason why our Government should not consider adopting such practices to meet the specific needs of our expanding NCS population.

Prior to implementing the policy of "learning Chinese as a second language", the EOC's proposal on developing a dedicated Chinese Proficiency Programme and Testing System with a phased curriculum, graded assessments and accreditation should deserve our unremitting support. This will be a stop-gap measure to alleviate the present sorrowful state of affairs faced by our EM students in learning Chinese. The academic and social development of EM students must be seen as part of the bigger picture of our long-term demographic and economic development, which should be more conspicuously observed.

In Hong Kong where multiculturalism is in reign, our Government should not dig its head into the sand, ducking the cries and pleas of our EM students for fair and equal educational opportunities with which their path for a better future in Hong Kong are to be paved. President, before concluding my speech, I must say I am voicing the loud cries of the 14 000 EM students in the past, in the present and possibly in the future for positive measures to help them achieve equality and opportunities of receiving the kind of quality education that our students are already receiving. President, this is their fundamental right, and no less.

Thank you.

Mr Abraham SHEK moved the following motion:

"That, while the Equal Opportunities Commission ('EOC') already published 'Education for all: the Report on the Working Group on Education for Ethnic Minorities' ('the Report') in July 2011, highlighting how the mainstream education system has let down ethnic minority

students who are mostly from low-income families and putting forward various recommendations to the Government on addressing their learning needs, the Government has not yet proposed any concrete measures on following up the implementation of the EOC's recommendations in the Report and offered any additional support to the 14 000 ethnic minority students in Hong Kong; in this connection, this Council urges the Government to review its education policy for ethnic minority students, so as to address their concerns, particularly the admission and assessment procedures of schools, the available choices of designated schools and mainstream schools, learning support for pre-primary ethnic minority students and provision of an alternative Chinese Curriculum and Qualification, so that ethnic minority students can enjoy equal access to quality education, which is pivotal not only to such students' pursuit of further education and employment, but also to Hong Kong maintaining its competitiveness."

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

PRESIDENT (in Cantonese): Miss Tanya CHAN and Ms Starry LEE will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the two amendments.

I will call upon Miss Tanya CHAN to speak first, to be followed by Ms Starry LEE; but no amendments are to be moved at this stage.

MISS TANYA CHAN (in Cantonese): President, first of all, I thank Mr Abraham SHEK for raising this motion today. Hereafter, I will speak in Cantonese. We certainly know that it will be easier for ethnic minorities (EMs) to understand if we speak in English, but I hope that more Hong Kong people will get to know from my speech the difficulties faced by EMs and their current situation. I hope that the Government can face up to these problems squarely and tackle them as soon as possible.

In fact, we all know that the population of EMs is increasing in Hong Kong, which include Pakistanis, Nepaleses, Indonesians, Indians, Filipinos, Sri

Lankans, Thais, and so on. Many of them now have their own families and children in Hong Kong, thus giving rise to a large number of Hong Kong-born EM students. At present, deprivation of schooling is still common among these children. According to the 2006 Population By-census as quoted in the Education for all: the Report on the Working Group on Education for EMs (the Report) published in July last year by the Equal Opportunities Commission (EOC), EM students accounted for about 3.2% of the total student population at pre-primary level, that is, 5 452 out of 166 394 (excluding 1 325 White). At upper secondary level, the percentage of EM students was reduced to 1.1% (2 109 out of about 189 000). At post-secondary level (including Diploma/Certificate, Sub-degree course and Degree course, and so on), the percentage dropped significantly to less than 1%, only about 0.59%.

At present, there are about 14 000 EM students in Hong Kong, but education assistance provided by the Government is highly insufficient. Hence, the Civic Party supports the original motion moved by Mr Abraham SHEK in that the Government should review its education policy for EM students, and my amendment will supplement the motion by proposing specific policy initiatives.

First of all, let us start at pre-primary education. According to a survey conducted by the Hong Kong Christian Service in 2006 on 106 EM students and their parents, all parents interviewed agreed that if their children had the opportunity to learn Chinese and English at their early stage of development, it would be easier for them to integrate into society.

The 12-year free education in Hong Kong only covers primary and secondary education. As a result, many EM students directly attend primary schools without any kindergarten schooling. This affects the students' self-caring ability, social skills as well as language and academic development, making it more difficult for them to adapt to school life. The Education Bureau often says that non-Chinese speaking parents are encouraged to let their children receive local-curriculum kindergarten education, so that they can learn Chinese at an early age. However, kindergartens at present simply do not have any incentive or support to admit EM students. We have requested the Government to provide 15-year free education for years but failed. We hope that the Government can provide resources for kindergartens so as to encourage individual kindergartens to admit more EM students.

Another difficulty encountered by EM students, as mentioned by Mr Abraham SHEK just now, is learning Chinese. After completion of primary education in designated schools which used English as the medium of instruction, EM students will be subject to school place allocation under the Secondary School Places Allocation System which, however, cannot guarantee that they can be offered a place in secondary schools which use English as the medium of instruction. As a result, some EM students, after completing primary education in designated schools, have to pursue their secondary education in schools which use Chinese as the medium of instruction. To them, this is a great obstacle to their study.

It is even more difficult for them to pursue tertiary education after graduation from secondary schools. The chance for South Asian young persons aged 19 to 24 to pursue tertiary education is only 5.4%, which is far lower than the 22.4% of local young people. In 2011, only 17 out of 64 non-Chinese speaking students who had sat for the Hong Kong Advanced Level Examination received offers from tertiary institutions; and only 250 non-Chinese speaking students were taking self-financing degree or sub-degree programmes. The unfairness of the assessment system has actually forced many EM students out of school without completing their secondary education. As their total scores are negatively affected by their low attainment in Chinese, EM students are simply not given a level playing field under the present public examination system, thus undermining their chance of pursuing further study. Although universities accept Chinese language at General Certificate of Secondary Education (GCSE) level as an alternative language requirement for admission under specified circumstances, the GCSE Chinese language is often only assessed at Primary Three or Primary Four level and will not be considered by many universities. Besides, the fee for taking the GCSE for the first time is $540, which is still reasonable, but the fee for taking Chinese language of General Certificate of Education (GCE) Examination, which is equivalent to Primary Five Chinese, is about $2,700, which is about five times of the GCSE fee. Hence, the fees are actually very expensive. The Civic Party proposes that the Government should separately set up a Chinese curriculum and assessment system for EM students, so as to help them meet their tertiary education needs.

As mentioned in the Report by EOC, the education sector is concerned that "a maximum of funding of HK$600,000 per year for each school irrespective of the number of EM students admitted is insufficient to schools taking a large

number of EM students". Moreover, principals have also indicated that most of the serving teachers lack expertise in teaching Chinese as a second/foreign language, and hence, directly affecting the quality of teaching and effectiveness of learning. It is hoped that the Government can step up teaching training in this regard.

There is a tendency for many education psychologists to disregard special education needs of EM students, attributing such needs to cultural differences and language deficiency. However, as early as 2008 when I just became a Legislative Council Member, I had a meeting with a group of non-Chinese speaking parents who had children with special education needs. They said that the monthly cost for engaging private therapists to provide autism therapies could be as high as several hundred thousand dollars, and that EM students with special education needs were not easily identified because many assessment tools were catered to Chinese-speaking children. To this group of children, language is already an obstacle, not to mention other learning obstacles, thus hindering their development. Hence, it is hoped that more attention can be given in designing these assessment tools to address the needs of EM students and provide early support for them.

According to Government statistics, in the 2011-2012 school year, the English Schools Foundation operates with Government subvention a special school with 30 primary school places for non-Chinese speaking students with special education needs. Parents often have to wait two to three years for a school place, which is truly a bitter experience.

The Government should set up an EM student database for systemic data collection and analysis, so as to facilitate the formulation of an education policy and the provision of support services suitable for them in the future. The Bureau should also conduct comprehensive longitudinal surveys and studies to keep track of EM students' academic and social development, with a view to identifying policy deficiencies and service gaps.

It has been mentioned in the Report by EOC that Chinese parents tend to avoid sending their children to schools which has increased the intake of EM students. I believe such cases are possible and may still happen in future. We hope that the Government can strengthen public education in this regard, with an aim to promote racial acceptance and respect for multi-cultures.

Lastly, we all know that education is the critical factor to the futures of our next generation. The Bureau truly should find out how to support EM students in learning Chinese. When their Chinese standard increasingly falls behind, they will increasingly lose interests in study, thus affecting their academic development. In the end, they will become early school dropouts and their low education level will affect their future development potentials and opportunities. This may give rise to inter-generational poverty among the EM communities.

Mr LAM Woon-kwong, the EOC Chairperson once said, "There are now 13 000 EM students (it was 13 000 at that time and it is now increased to 14 000). This is only a figure to the Education Bureau, but to these children, losing five years of education is losing their entire life, losing the opportunity to compete with others as equals."

Hence, be it the Government, the education sector or the social service sector, they should all work concertedly to provide support to EM children and help them integrate into the society of Hong Kong. I so submit.

MS STARRY LEE: President, according to government statistics, the ethnic minority population in Hong Kong is about 350 000, accounting for about 5% of the total population, and 10% of them were born and brought up in Hong Kong. There are around 23 000 ethnic minority children studying in kindergartens, primary schools and secondary schools respectively. Most of the ethnic minorities regard Hong Kong as their home. They choose to live in Hong Kong and become Hong Kong citizens. Therefore, we have to ensure their rights to equal access to education and employment are fully protected. In order to monitor the issue closely, our party, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has already set up the Ethnic Minorities Committee and the Ethnic Minorities Service Centre in 2004. We would like to help them integrate into our society.

The Equal Opportunities Commission (EOC) notices that education is an effective means of empowerment and is fundamental to social and career development. The organization is also concerned about the barriers that ethnic minority students encounter in their academic pursuit. Thus, the EOC has set up a working group to identify the problems faced by ethnic minority students. The working group tries to explore possible measures that can help ethnic minority

students with a level-playing field in the education system and eventually in the employment market.

After several sharing sessions with teaching profession, ethnic minority students and parents, and representatives of non-governmental organizations (NGOs), the working group of the EOC notes that there are various challenges to the academic pursuit of ethnic minority students, of which learning Chinese remains the greatest concern. Therefore, the working group comes up with nine recommendations for the Government to take effective actions last July.

Recommendations include providing language and cultural programmes for ethnic minority students at pre-primary level, providing expert guidance and support to schools in curriculum design, and developing a Chinese Proficiency Programme and Testing System. Those initiatives are intended to enhance the protection of equal access to education for ethnic minority students.

President, education remains a great concern because education is the pre-requisite for facilitating upward social mobility. However, statistical data show that the number of ethnic minority students attaining higher level of education is disproportionately low compared with the majority ethnic Chinese. Only a small number of students can receive higher education. In 2011, 17 out of 64 ethnic minority students received offers from institutions under the Joint University Programmes Admissions System. Their admission rate is about 26.6%. And the admission rate for about 32 000 students attending Hong Kong Advanced Level Examination (HKALE) is about 37.6%. Obviously, the admission rate of ethnic minority students for higher education is rather low. Moreover, the percentage of attending self-financing higher education programmes is only about 0.3%. In this knowledge-based economy, how can ethnic minority students possibly move up to higher social ladder?

All the stakeholders that I have met share the same view that the greatest challenge faced by ethnic minority students is learning the Chinese language in schools. The current Chinese language curriculum in schools is specifically designed for Hong Kong students whose mother tongue is Cantonese. To ethnic minority students who are not native speakers of Cantonese, the curriculum is indeed too difficult. Coupled with the absence of relevant language environment at home and the lack of knowledge of Chinese culture, there are

indeed certain difficulties for them to catch up with the progress of the Chinese language curriculum.

Ethnic minority students who were born and brought up in Hong Kong may be able to understand and speak Cantonese from their daily contact with schoolmates or watching television programmes. However, when it comes to reading and writing Chinese characters, what they have learnt is only elementary even though they have made tremendous efforts. When they are promoted to senior forms and come across writings in classical Chinese, they are completely in confusion.

One NGO has already pointed out that in order to tackle the problem of ethnic minority students' difficulties in mastering the Chinese language, one has to accept the concept of "teaching and learning Chinese as a second language". In fact, school teachers are not aware of teaching Chinese as a second language when there are ethnic minority students in classes. Moreover, school teachers admit that they are facing difficulties in finding suitable textbooks and designing teaching materials. Even teachers of designated schools try to prepare teaching materials for ethnic minority students by themselves, the qualities of teaching materials are in great variation.

Therefore, for enhancing the efficiency of teaching the Chinese language, the DAB proposes that the Government should help develop and distribute teaching materials for these students. And the Government should equip school teachers with knowledge of teaching Chinese as a second language.

It is a common wish of young people to find a good job after completing their studies. Unfortunately, to the new generation of ethnic minorities, finding a good job can only be a dream beyond their reach because of their relatively weak Chinese language standard.

In addition to language support measures, vocational training and career guidance for ethnic minority students should not be neglected. I chatted with ethnic minority students and parents and found that students in general are lacking personal drive to learn. They have no aspiration. Due to early exit from secondary education, low education attainment and lack of vocational training, ethnic minority youngsters can only get manual labour jobs. It seems that their opportunities of moving upward of the social ladder are minimal.

Therefore, I believe if the Government provides ethnic minority youngsters with adequate vocational training, the career paths of those youngsters will be more flexible. I propose that the Government should provide career counselling and vocational training services for them so as to enhance their employability and career achievement.

President, I would like to explain here the relevant amendment proposed by the DAB. Besides enhancing the efficiency of teaching Chinese, the Government should prescribe the right remedy based on up-to-date and accurate information including statistical data about ethnic minority population. At present, the information of ethnic minority population collected by the Government on hand is quite out-dated. The latest statistics available are mainly derived from the 2006 Population By-census. Statistical data relating to education of ethnic minority students and youngsters are quite rare. Data such as results of the Hong Kong Certificate of Education Examination and HKALE, intake of ethnic minority students to sub-degree programmes, and employment situation after graduation are all missing. Without comprehensive information and data of ethnic minority students, how can we expect the Government to formulate appropriate education policies and provisions for the students? Therefore, I move an amendment to the motion that the Government should establish a comprehensive database capturing information about ethnic minorities. A comprehensive study and database are needed to keep track of the academic and social development of ethnic minority students and youngsters.

My proposed amendment today is also trying to draw the attention of the Administration to give support to ethnic minority parents. Parents of these students have limitations in educational attainment. They do not know much about English, not to mention Chinese. They do not fully understand the education system in Hong Kong. How can we expect those parents would make wise choices for their children in education? Thus, I propose that the Government should provide parental education which helps parents make informed choices about educational paths for their children. It is highly recommended that a special one-stop service on education needs and career counselling for ethnic minority students and parents be provided.

People of ethnic minorities who left their homeland to settle in Hong Kong are like our parents coming from the Mainland to settle in Hong Kong decades ago. In order to improve their living, many of them work harder than local

people. However, the unfair education system has shattered the dreams of many ethnic minority families. I think it is time to have a review of education measures for ethnic minority students, making sure that those measures can provide students with a level-playing field in the education system and eventually in the employment market.

With these remarks, President, I call on Members to support my amendment.

SECRETARY FOR EDUCATION (in Cantonese): President, first of all, I would like to thank Mr Abraham SHEK for proposing the motion, and Miss Tanya CHAN and Ms Starry LEE for each proposing an amendment.

The various Policy Bureaux and government departments will spare no effort to promote ethnic equality and provide support services for ethnic minorities. On the education front, under the spirit of the Race Discrimination Ordinance, we strive to ensure that non-Chinese speaking students are given the same chance as others in school admission, learning and pursuit of further studies. At the same time, a series of support measures are provided to them according to their situation and needs, particularly in respect of learning Chinese, so as to facilitate their early adaptation to the local education system and integration into society.

In respect of support for non-Chinese speaking students, the Education Bureau has focused its initiatives, since 2006, on three main areas, including:

(a) compiling a Supplementary Guide to the Chinese Language Curriculum and distributing "textbooks" covering primary and secondary curricula as well as teaching resources to schools and students, with a view to strengthening support for the teaching and learning of the Chinese Language;

(b) through the support mode of designated schools, building up an ethos and impetus which provide support for non-Chinese speaking students in schools, and accumulating relevant experiences, particularly those on the development of related teaching resources and school-based support measures for sharing with other schools

admitting non-Chinese speaking students, with a view to benefiting all non-Chinese speaking students; and

(c) catering to the needs of individual students: setting up more after-school Chinese Language Learning Support Centres and strengthening after-school support.

These support measures are developmental in nature and shall be subject to refinement, in order to meet the changing circumstances in society as well as to tackle different learning problems and needs of non-Chinese speaking students. In the past few years, we have constantly evaluated our support direction as well as improved and strengthened the modes of support, hoping that the measures concerned could better meet and cater for the needs of non-Chinese speaking students. In tandem, the views of the stakeholders are also taken into consideration, including the report published by a working group of the Equal Opportunities Commission earlier and the detailed discussions held at meetings of the Panel on Education of the Legislative Council.

In view of the increasing number of non-Chinese speaking students admitted to local schools and that these schools are widely distributed in location, a review on the support measures has been made in recent months and the Panel on Education was briefed on the latest situation at the end of last year. The direction of the review is three-pronged, including the following:

(a) the school network providing support to non-Chinese speaking students should be expanded and the appeal of mainstream schools be broadened to attract non-Chinese speaking parents, with a view to recruiting more schools, apart from the designated schools, in adopting the Supplementary Guide to the Chinese Language Curriculum for Non-Chinese Speaking Students, such that the system concerned can be jointly taken forward by these schools. This will facilitate the integration of non-Chinese speaking students into mainstream schools and in turn provide a favourable environment for non-Chinese speaking students to learn the Chinese Language;

(b) in respect of learning and teaching, given that schools admitting non-Chinese speaking students each have their own specific

situation, it is not advisable to provide one mode of support for all schools. On the contrary, school inspections should be stepped up, in order to fine-tune the Chinese Language curriculum for individual schools and build up a more systematic feedback loop on teaching and learning. This will tie in with the multi-channel approach for teaching and learning the Chinese Language, and meet different aspirations of non-Chinese speaking students in pursuits of further studies and career; and

(c) efforts should be made to encourage non-Chinese speaking parents to let their children learn the Chinese Language at pre-primary stage to facilitate their adaptation to local primary schools, and subject to the needs, provide professional support to pre-primary education institutions. We hold that this measure can best address the various problems at present. It is hoped that non-Chinese speaking students can gradually integrate into the mainstream school system in Hong Kong when the measure takes effect.

We have to face the fact that this problem cannot be unraveled by a single and instantly-effective measure. We must persevere with our efforts in providing fundamental education in a steady and ongoing manner, so as to get the desired result in the future.

Based on the aforesaid direction, we will formulate the implementation details and consult the relevant stakeholders this year.

President, I so submit. After listening to Members' views, I will respond to them in detail. Thank you, President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at six minutes to Ten o'clock.

Annex I

ADAPTATION OF LAWS (MILITARY REFERENCES) BILL 2010

COMMITTEE STAGE

Amendments moved by the Secretary for Security

Clause	Amendment Proposed
5	By deleting the clause.
Schedule 1	(a) By deleting "[ss. 3 & 5]" and substituting "[s. 3]". (b) By deleting the cross-heading before section 1. (c) By deleting section 1.
Schedule 1, section 8	By deleting "and used only on non-commercial service".
Schedule 1, section 14	In the Chinese text, by deleting "正在執行職務" and substituting "在當值中".
Schedule 1, section 20	In the Chinese text, by deleting "為在中國人民解放軍中服務的目的" and substituting "因服役於中國人民解放軍".
Schedule 1, section 45	In the Chinese text, by deleting "中服務" and substituting "服役".
Schedule 1, section 60	By deleting subsection (1) and substituting – "(1) Section 29(2) of the Summary Offences Ordinance (Cap. 228) is amended, in paragraph (a) of the proviso, by repealing "Her Majesty's naval forces" and

	substituting "the naval forces of the Chinese People's Liberation Army".".
Schedule 1, section 65	In the Chinese text, by deleting "為在中國人民解放軍中服務的目的" and substituting "因服役於中國人民解放軍".
Schedule 1, section 71(2)	By deleting "or the Hong Kong Garrison".
Schedule 1, section 119	In the proposed section 5(3)(b), by deleting "and is used only on non-commercial service".
Schedule 1, section 128(3)	By deleting "or on behalf of".
Schedule 1, section 132	In the proposed section 3(1)(a), by deleting "and used only on non-commercial service".
Schedule 1, section 135	By deleting "or on behalf of".
Schedule 1, section 137(1)	By deleting "competent authority" and substituting "Central People's Government".
Schedule 1, section 137(2)	By deleting "competent authority" and substituting "Central People's Government".
Schedule 1, section 137(3)(a)	By deleting "competent authority" and substituting "Central People's Government".

Schedule 1, section 137(4)	By deleting "competent authority" and substituting "Central People's Government".
Schedule 1, section 137(5)(a)	By deleting "competent authority" and substituting "Central People's Government".
Schedule 1, section 137	By deleting subsection (6) and substituting – "(6) Section 77(4) is repealed.".