

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 29 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 CHAN KAM-LAM, S.B.S., J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE JEFFREY LAM KIN-FUNG, 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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

THE HONOURABLE TSANG TAK-SING, G.B.S., J.P.
SECRETARY FOR HOME AFFAIRS

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

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

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

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

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

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

MS FLORENCE HUI HIU-FAI, J.P.
UNDER SECRETARY FOR HOME AFFAIRS

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): Will the Clerk please ring the bell to summon Members into the Chamber.

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

PRESIDENT (in Cantonese): The meeting will now start.

TABLING OF PAPERS

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
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Smoking (Public Health) (Designation of No Smoking Areas) (Amendment) Notice 2012	29/2012
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Other Papers

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| No. 73 | — | Hong Kong Arts Development Council Annual Report 2010/11 |
| No. 74 | — | The Hong Kong Academy for Performing Arts Annual Report 2010-2011 and financial statements together with the independent auditor's report for the year ended 30 June 2011 |
| No. 75 | — | AIDS Trust Fund
Financial statements together with the Report of the Director of Audit for the year ended 31 March 2011 |
| No. 76 | — | Report on Activities of the Hong Kong Examinations and Assessment Authority and financial statements together with the independent auditor's report for the year ended 31 August 2011 |

Report No. 13/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

QUESTIONS UNDER RULE 24(4) OF THE RULES OF PROCEDURE**Acceptance of Passage and Discounts by Public Officers**

1. **MR ALBERT CHAN** (in Chinese): *President, it has been reported that on 21 February, the Chief Executive stayed overnight on board a super-yacht of a tycoon and returned to Hong Kong on it, and on 9 February, he travelled with more than 10 business celebrities to Phuket in Thailand for holiday and back to Hong Kong in a private jet provided by a tycoon and rented a penthouse in Shenzhen with a market value of HK\$61.5 million from another tycoon as his residence after his departure from office. In response to the aforesaid reports, the Chief Executive responded that he had made payments to the super-yacht owner for using the super-yacht and also to the tycoon for using the private jet equivalent to the Hong Kong-Macao ferry fares and air fares, and that he paid market rent for the aforesaid flat. Given that quite a number of members of the public and civil servants are deeply perplexed by the behaviour of the Chief Executive in travelling on super-yacht and private jets provided by tycoons as well as renting a penthouse, and they are worried that there may have been transfer of benefits, will the Government, in order to address the concerns of the public and those of more than 160 000 civil servants, inform this Council:*

- (a) *whether acceptance by public officers of tycoons' invitation to travel on super-yachts and private jets is considered to be accepting an advantage under the Prevention of Bribery Ordinance (the Ordinance); if so, whether public officers making payments equivalent to the fares for similar journeys travelled via public transport constitutes reasonable excuse;*
- (b) *whether there is any law prohibiting public officers from receiving discounts in renting or purchasing flats from persons with whom they have official dealings, and whether such law is applicable to the Chief Executive; and*
- (c) *given that the existing general principles made by the Civil Service Bureau state that a civil servant "must not engage in activities or behaviour which may bring into question the impartiality of the Civil Service or bring the Service into disrepute", whether the Chief Executive has to observe such principles; if not, of the reasons why the civil servants are still required to observe such principles?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

Before answering the question from Member, the Administration would like to give accounts on behalf of the Chief Executive.

First, the Chief Executive thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". The Chief Executive has reflected deeply over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

The Chief Executive has set up a five-man Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will be chaired by the former Chief Justice of the Court of Final Appeal, the Honourable Andrew LI Kwok-nang. The Committee will review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests (including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality) concerning the Chief Executive, Non-Official Members of the Executive Council and Officials under the Political Appointment System, and make recommendations on improvement

measures. The Committee will submit a report with recommendations to the Chief Executive in around three months' time.

Details regarding the Chief Executive and his wife's travels involving private passages, the donations made to charitable institutions with all the proceeds from selling private wine collections and the rental residence in Shenzhen are set out in the Annex.

The Administration's reply to the question raised by Mr Albert CHAN is as follows:

- (a) Travelling on a friend's private jet or yacht to and from Hong Kong and various destinations may involve the acceptance of an advantage, as under section 3 of the Ordinance, and a public officer must not accept advantages without the permission of the Chief Executive. Since section 3 of the Ordinance does not apply to the Chief Executive, the Chief Executive has drawn up internal rules governing his acceptance of travelling on a friend's private jet or yacht. According to these rules, the Chief Executive may consider accepting such an invitation on condition that there is no conflict of interest, but he has to pay the fares for the same journey on public transport to show that he has not saved any travelling expenses by accepting the invitation.
- (b) If a public officer receives a concession in renting or purchasing a flat from a person having official dealings with the Government, it may involve an acceptance of advantages. Such acts are under the regulation of the Ordinance, but are not strictly prohibited. Under certain circumstances, the officer may also contravene the common law offence of misconduct in public office. The relevant provisions under sections 4 and 10 of the Ordinance and the common law also apply to the Chief Executive.

The report quoted by Mr CHAN in his question that the Chief Executive had rented a residential flat in Shenzhen at a rent lower than the market value is inaccurate. The Chief Executive has rented the flat at the market value and has not received any concession.

- (c) As the Chief Executive is not a civil servant, the general principles governing the conduct of the civil servants are not applicable to him. However, the Chief Executive observes the relevant provisions of the Code for Officials under the Political Appointment System on a voluntary basis. Under Chapter 5 of the Code, a politically appointed official shall not accept entertainment from any person if the entertainment is likely, for example by reason of its excessive nature, or of the relationship between the official and the other person, or of the character of that person:
- (i) to lead to embarrassment of the politically appointed official in the discharge of his functions; or
 - (ii) to bring the politically appointed official or the public service into disrepute.

Annex

(A) Key Facts of the Chief Executive and Mrs TSANG's Travels Involving Private Passages

<i>Destination</i>	<i>Date</i>	<i>Duration of trip</i>	<i>Accommodation</i>	<i>Private Passages Taken</i>	<i>Total Payment Made by Mr and Mrs TSANG for the Private Passages</i>
Japan	October 2009	Three nights	Hotel (charges paid by Mr and Mrs TSANG)	Chartered jet	\$188,000 (the share of total costs including charter fees, fuel, parking, and so on, for two people)
Macao	April 2011	Two nights	At the private yacht of a friend	A one-way yacht ride from Macao to Hong Kong	\$500 (amount corresponding to two tickets of one-way Macao-to-Hong Kong commercial ferry ride)
Phuket, Thailand	February 2012	Three nights	At the private yacht of a friend	Private jet	\$5,900 (amount corresponding to two round-trip economy class flight tickets between Hong Kong and Phuket)
Macao	February 2012	Two nights	At the private yacht of a friend	A one-way yacht ride from Macao to Hong Kong	\$500 (amount corresponding to two tickets of one-way Macao-to-Hong Kong commercial ferry ride)

(B) Key Facts of the Chief Executive's Private Wine Collection Sold to Mr Jim THOMPSON

- About 1 600 bottles, collected since the 1980s.
- Most were bought by Mr TSANG, with a small number given by friends as gifts and accepted under permitted circumstances in accordance with the rules.
- Mr Jim THOMPSON bought the whole collection at a price based on professional valuation in 2010, and the Chief Executive donated all the proceeds, totalling \$2 million, to the Red Cross, Community Chest, and Society for the Promotion of Hospice Care.
- The donations were properly reported in the Chief Executive's tax return, and the tax deduction claimed in accordance with the Inland Revenue Ordinance.

(C) Key Facts of the Chief Executive's Rental Residence in Shenzhen

- The Chief Executive will rent a 630 sq m apartment in East Pacific Garden, Shenzhen and live there temporarily upon the conclusion of his term of office in July 2012.
- The rental agreement was signed in February 2012. The three-year lease will commence in July 2012, at the market rate of RMB 800,000 yuan (about HK\$1 million) per annum.
- The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Persons with Official Dealings with Government Providing Advantages and Discounts to Public Officers

2. **MS CYD HO** (in Chinese): *President, the Chief Executive openly admitted on 22 February that during his term of office, he accepted entertainment offered*

by tycoons on four occasions. The persons offering the entertainment included the supporters of one of the contenders for the office of the Chief Executive. Members of the public not only query that the entertainment may involve a conflict of interest, but also worry that some people are interfering with the election of the next-term Chief Executive by offering entertainment to the Chief Executive. In addition, quite a number of serving or retired civil servants made telephone calls to radio programmes on current affairs in recent days, saying that the nature and contents of the entertainment accepted by the Chief Executive were in breach of the relevant disciplinary requirements for civil servants, and the incident had dealt a serious blow to the integrity of the Chief Executive as well as the clean reputation and the credibility of the governance of the SAR Government. Furthermore, there were long press reports on 23 February that the Chief Executive had rented a penthouse in Futian District in Shenzhen as residence after his departure from office, triggering concerns about suspected transfer of benefits. As the credibility of governance of the SAR Government will be affected by the aforesaid matters, will the Government immediately inform this Council:

- (a) whether the persons extending the offer of the aforesaid entertainment and the accompanying persons have official dealings with the Government; if they have, of the details; whether it knows when and where they provided the entertainment as well as the arrangements for transport, meals, accommodation, entertainment activities, security, and so on; whether the amounts of payments required to be paid by participants for such items were set by the persons who extended the offer, and of the market prices of the aforesaid entertainment; and*
- (b) whether the owner of the aforesaid penthouse has official dealings with the Government; if so, of the details; whether it knows the date on which the tenancy of the penthouse was entered, as well as the length and rental of the tenancy; the channel through which the penthouse was leased out and the renovation expenses paid by the owner?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive

accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

Before answering the question from Member, the Administration would like to give accounts on behalf of the Chief Executive.

First, the Chief Executive thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". The Chief Executive has reflected deeply over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

The Chief Executive has set up a five-man Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will be chaired by the former Chief Justice of the Court of Final Appeal, the Honourable Andrew LI Kwok-nang. The Committee will review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests (including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality) concerning the Chief Executive, Non-Official Members of the Executive Council and Officials under the Political Appointment System, and make recommendations on improvement measures. The Committee will submit a report with recommendations to the Chief Executive in around three months' time.

Details regarding the Chief Executive and his wife's travels involving private passages, the donations made to charitable institutions with all the proceeds from selling private wine collections and the rental residence in Shenzhen are set out in the Annex.

The Administration's reply to the question raised by Ms Cyd HO is as follows:

Detailed information of the four travels mentioned in the question is set out at Part A of Annex. The travelling expenses were calculated and paid according to internal rules. As for meals and entertainment, the Chief Executive was on vacation with friends and the amount each participant had to share was not specifically calculated. The security of the Chief Executive during vacation was provided in accordance with the Government's policy. As for the identity of accompanying friends, since it involves the privacy of individual persons, details cannot be provided.

The date on which the tenancy of the flat in Shenzhen was entered, its tenure and rental are set out at Part C of Annex. The tenancy was made directly between the Chief Executive and the owner. The owner is fully responsible for the conversion works, including determining the scope of renovation and expenses. The Chief Executive has no idea about the specific amount involved.

Some of the persons taking part in the four activities with the Chief Executive and the owner of the Chief Executive's rented apartment in Shenzhen have official dealings with the Government to a different degree involving different nature of business. However, the Chief Executive stressed that he had accepted the offer of private passages on the premise that the invitations involved no conflict of interest, and that he had calculated and paid the relevant costs in strict accordance with the internal rules. The rental of the property at Shenzhen was also at market rate without any concession. The Chief Executive reiterated that he has never acted against the law nor breached internal rules.

Annex

(A) Key Facts of the Chief Executive and Mrs TSANG's Travels Involving Private Passages

<i>Destination</i>	<i>Date</i>	<i>Duration of trip</i>	<i>Accommodation</i>	<i>Private Passages Taken</i>	<i>Total Payment Made by Mr and Mrs TSANG for the Private Passages</i>
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(B) Key Facts of the Chief Executive's Private Wine Collection Sold to Mr Jim THOMPSON

- About 1 600 bottles, collected since the 1980s.
- Most were bought by Mr TSANG, with a small number given by friends as gifts and accepted under permitted circumstances in accordance with the rules.
- Mr Jim THOMPSON bought the whole collection at a price based on professional valuation in 2010, and the Chief Executive donated all the proceeds, totalling \$2 million, to the Red Cross, Community Chest, and Society for the Promotion of Hospice Care.

- The donations were properly reported in the Chief Executive's tax return, and the tax deduction claimed in accordance with the Inland Revenue Ordinance.
- (C) Key Facts of the Chief Executive's Rental Residence in Shenzhen
- The Chief Executive will rent a 630 sq m apartment in East Pacific Garden, Shenzhen and live there temporarily upon the conclusion of his term of office in July 2012.
 - The rental agreement was signed in February 2012. The three-year lease will commence in July 2012, at the market rate of RMB 800,000 yuan (about HK\$1 million) per annum.
 - The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Relevant Codes and Regulations Governing Acceptance of Entertainment by Public Officers

3. **MR CHEUNG KWOK-CHE** (in Chinese): *President, it has been reported that on 18 February this year, the Chief Executive visited Macao on invitation to attend a spring gathering held in a hotel by a casino VIP club, and the guests attending the gathering included "a group of gambling club operators, members of loan-sharking syndicates, night-club personnel and many heavyweights of dubious background". Moreover, the Chief Executive indicated that during his term of office, he travelled to and from Macao on private yachts twice and visited Phuket in Thailand and Japan by private jets twice respectively, and that he had already paid the expenses of amounts equivalent to the fares of public transport in accordance with the "internal codes of the Government". According to section 5.10 of the Code for Officials under the Political Appointment System (the Code), a politically appointed official shall not accept entertainment if it is of excessive nature or the persons present are of questionable character, so as to avoid embarrassment or being brought into disrepute. To immediately address public concerns, will the Government inform this Council:*

- (a) *of the details of the aforesaid "internal codes of the Government" (including whether travelling on private yachts or private jets is regarded as accepting a passage or accepting entertainment);*
- (b) *whether it has assessed the impact of accepting similar entertainment by public officers on the public's perception of the Government and public officers; if not, whether it will make an assessment immediately; and*
- (c) *whether the Code is applicable to the Chief Executive; whether acceptance of similar entertainment by public officers is in breach of the Code; whether there are any other codes regulating the Chief Executive's acceptance of entertainment; if not, whether it will formulate the codes immediately?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

Before answering the question from Member, the Administration would like to give accounts on behalf of the Chief Executive.

First, the Chief Executive thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". The Chief Executive has reflected deeply over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community.

Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

The Chief Executive has set up a five-man Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will be chaired by the former Chief Justice of the Court of Final Appeal, the Honourable Andrew LI Kwok-nang. The Committee will review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests (including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality) concerning the Chief Executive, Non-Official Members of the Executive Council and Officials under the Political Appointment System, and make recommendations on improvement measures. The Committee will submit a report with recommendations to the Chief Executive in around three months' time.

Details regarding the Chief Executive and his wife's travels involving private passages, the donations made to charitable institutions with all the proceeds from selling private wine collections and the rental residence in Shenzhen are set out in the Annex.

The Administration's reply to Mr CHEUNG Kwok-che's question is as follows:

(a) and (c)

Chapter 5 of the Code sets out the mechanism and the relevant rules of preventing and handling conflict of interests. The Chief Executive, though not a politically appointed official, voluntarily observes the Code (except in cases where there is no officer at a higher rank from whom he can seek approval). Such codes are what the Chief Executive referred to as "internal codes of the Government". As section 3 of the Prevention of Bribery Ordinance is not applicable to the Chief Executive, the Chief Executive has formulated internal rules to govern his acceptance of transport services on his friends' private jets or yachts by stipulating that when no conflict of interests is involved, the Chief Executive may consider accepting a friend's invitation, provided that the Chief Executive pays to his friends the fare of the same journey on public transport to

show that he has not saved any travelling expense by accepting the invitation.

The Chief Executive has set up the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will review the mechanism as a whole and come up with recommendations.

- (b) The Chief Executive has indicated that upon reflection, he has come to realize that public expectations on the Chief Executive have become higher as times change. There is a gap between the current system, with which he has faithfully complied, and the expectations of Hong Kong people, and the system needs to be reviewed and improved.

Annex

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- The donations were properly reported in the Chief Executive's tax return, and the tax deduction claimed in accordance with the Inland Revenue Ordinance.

(C) Key Facts of the Chief Executive's Rental Residence in Shenzhen

- The Chief Executive will rent a 630 sq m apartment in East Pacific Garden, Shenzhen and live there temporarily upon the conclusion of his term of office in July 2012.
- The rental agreement was signed in February 2012. The three-year lease will commence in July 2012, at the market rate of RMB 800,000 yuan (about HK\$1 million) per annum.
- The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Arrangements for Declaration of Interest by Public Officers

4. **MR LEE CHEUK-YAN** (in Chinese): *President, it has been reported that the Chief Executive has repeatedly accepted extravagant entertainment and he had rented a luxurious apartment in Futian District in Shenzhen as residence*

after his departure from office, paying a rental below the market rate. Given that the reports have aroused suspicion among some members of the public on the conduct of the Chief Executive, in order to address public concerns, will the Government immediately inform this Council:

- (a) whether acceptance of similar entertainment and renting luxurious apartments constitute "interests" referred to in Chapter 5 of the Code for Officials under the Political Appointment System (the Code);*
- (b) whether, during meetings of the Executive Council at which items relating to businesses operated by the aforesaid tycoons or property owner were discussed, any person attending such meetings had made any declaration (including whether such person has accounted for his personal friendship with the aforesaid tycoons or property owner, his acceptance of entertainment offered by them, or his intention of renting their properties); if so, of the details; if not, the reasons for that; and*
- (c) whether measures are in place to prevent the Chief Executive from handling matters with real or potential conflicts of interest, including acceptance of deferred benefits; if not, whether the Government can formulate such measures immediately?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

Before answering the question from Member, the Administration would like to give accounts on behalf of the Chief Executive.

First, the Chief Executive thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". The Chief Executive has reflected deeply over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

The Chief Executive has set up a five-man Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will be chaired by the former Chief Justice of the Court of Final Appeal, the Honourable Andrew LI Kwok-nang. The Committee will review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests (including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality) concerning the Chief Executive, Non-Official Members of the Executive Council and Officials under the Political Appointment System, and make recommendations on improvement measures. The Committee will submit a report with recommendations to the Chief Executive in around three months' time.

Details regarding the Chief Executive and his wife's travels involving private passages, the donations made to charitable institutions with all the proceeds from selling private wine collections and the rental residence in Shenzhen are set out in the Annex.

The Administration's reply to Mr LEE Cheuk-yan's question is as follows:

- (a) Provision of private jet or yacht for travelling to and from Hong Kong and various destinations may involve an advantage under the

law. Under Chapter 5 of the Code, a politically appointed official must not accept advantages without the permission of the Chief Executive. Since there is operational limitation if this requirement is to be applied to the Chief Executive, the Chief Executive has drawn up internal rules governing his acceptance of travelling on a friend's private jet or yacht. According to these rules, the Chief Executive may consider accepting such an invitation on condition that there is no conflict of interest, but he has to pay the fares for the same journey on public transport to show that he has not saved any travelling expenses by accepting the invitation.

Regarding the apartment rented by the Chief Executive in Shenzhen, since the rent is set at market rate it should not constitute "interests" or "advantages" referred to in Chapter 5.

- (b) Normal social contacts with friends, including the acceptance of entertainment from friends, are not required to be declared at the Executive Council. When the Executive Council discussed the issues of the licence of the Digital Broadcasting Corporation (DBC), the Chief Executive had not associated his future accommodation plan in Shenzhen with one of the shareholders of the DBC, hence he had not made declaration at the Executive Council meetings. The application for licence and other related matters submitted by the DBC was processed in strict accordance with statutory procedures. The decisions by the Chief Executive in Council were made on the basis of and in line with the recommendations of the Broadcasting Authority, which is an independent and statutory body established by the Government.
- (c) The Chief Executive has always attached great importance to the prevention and handling of conflict of interest. Relevant work has been done in the following three aspects:
 - (i) From the legal aspect, the Chief Executive is prohibited from offering or accepting bribes under the common law offence of

bribery. The Prevention of Bribery Ordinance amended in 2008 has also extended some provisions to cover the Chief Executive, and imposes restrictions on the Chief Executive in respect of any bribery acts of solicitation and acceptance of advantage and possession of unexplained property. In addition, under Article 47 of the Basic Law, the Chief Executive must be a person of integrity and shall declare his assets to the Chief Justice of the Court of Final Appeal.

- (ii) From the system aspect, though the Chief Executive is not a politically appointed official, he voluntarily observes the relevant provisions of the Code and declares his registrable investment and interests in accordance with the requirements of the Annual Declaration of Registrable Interests of Members of the Executive Council, which is available at the Executive Council's website. As for the post-office employment arrangement, the Chief Executive has also set up the Advisory Committee on Post-office Employment for Former Chief Executives and Politically Appointed Officials, comprising members of the community, to draw up principles and criteria and to offer advice.
- (iii) From the monitoring aspect, members of the public, the media and Legislative Council Members can monitor the Chief Executive through the above legal measures and established systems.

With regard to the recent public concern over the acceptance of entertainment by the Chief Executive, the Chief Executive has set up the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests to review the regulatory frameworks and procedures, and to make recommendations.

Annex

(A) Key Facts of the Chief Executive and Mrs TSANG's Travels Involving Private Passages

<i>Destination</i>	<i>Date</i>	<i>Duration of trip</i>	<i>Accommodation</i>	<i>Private Passages Taken</i>	<i>Total Payment Made by Mr and Mrs TSANG for the Private Passages</i>
Japan	October 2009	Three nights	Hotel (charges paid by Mr and Mrs TSANG)	Chartered jet	\$188,000 (the share of total costs including charter fees, fuel, parking, and so on, for two people)
Macao	April 2011	Two nights	At the private yacht of a friend	A one-way yacht ride from Macao to Hong Kong	\$500 (amount corresponding to two tickets of one-way Macao-to-Hong Kong commercial ferry ride)
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(B) Key Facts of the Chief Executive's Private Wine Collection Sold to Mr Jim THOMPSON

- About 1 600 bottles, collected since the 1980s.
- Most were bought by Mr TSANG, with a small number given by friends as gifts and accepted under permitted circumstances in accordance with the rules.
- Mr Jim THOMPSON bought the whole collection at a price based on professional valuation in 2010, and the Chief Executive donated all the proceeds, totalling \$2 million, to the Red Cross, Community Chest, and Society for the Promotion of Hospice Care.

- The donations were properly reported in the Chief Executive's tax return, and the tax deduction claimed in accordance with the Inland Revenue Ordinance.

(C) Key Facts of the Chief Executive's Rental Residence in Shenzhen

- The Chief Executive will rent a 630 sq m apartment in East Pacific Garden, Shenzhen and live there temporarily upon the conclusion of his term of office in July 2012.
- The rental agreement was signed in February 2012. The three-year lease will commence in July 2012, at the market rate of RMB 800,000 yuan (about HK\$1 million) per annum.
- The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Acting Arrangement for Chief Executive During Leave and Related Matters

5. **MR ALAN LEONG** (in Chinese): *President, in response to media enquiries, the Chief Executive admitted that he had travelled to and from Macao on yachts twice and also by private jets twice for round trips to Thailand and Japan, and he had made payments equivalent to economy and business class airfares respectively (that is, several thousand dollars and several tens of thousand dollars), and such payments were far lower than the amounts needed for hiring a plane for round trips to the two places. It has been learnt that the trips on private jets were arranged by the Chairman of The Cross-Harbour (Holdings) Limited, which holds an interest in the Western Harbour Tunnel and also has multiple connections with the policies handled by the Chief Executive. Besides, during the Chief Executive's recent return trip from Macao on a yacht, his duties were not undertaken by any officer in acting capacity. The spokesman of the Office of the Chief Executive explained that "the Chief Executive can return to Hong Kong within a few hours upon departure, so it is not necessary to make any acting appointment." In this connection, will the Government inform this Council:*

- (a) *of the mechanism for determining the amounts of payments required for the aforesaid entertainment; the actual amounts calculated according to such mechanism; whether it has a mechanism for assisting the Chief Executive, when he considers whether or not to accept entertainment, in assessing whether the acceptance of the entertainment will involve any conflict of interest; if it has, of the details of the mechanism and the person who makes the assessment; whether the mechanism was used in the aforesaid incidents; if not, whether it will consider setting up such a mechanism immediately;*
- (b) *given that at present, entertainment accepted by the Chief Executive is not required to be declared, whether the Government will immediately amend the existing mechanism to increase its transparency, and state whether public officers have to make declarations regarding the advantages they accepted while on leave, so as to address public concerns; and*
- (c) *whether the practice of not arranging acting arrangement for the Chief Executive's leave is consistent with the existing acting arrangements for civil servants or officials under the accountability system; whether the Chief Executive when he is on leave with no acting arrangement made still has the capacity as Chief Executive and should still be regarded as carrying an official capacity during the period; if so, whether the Chief Executive is still subject to the regulation by the laws and requirements relating to public officers during the said period?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

Before answering the question from Member, the Administration would like to give accounts on behalf of the Chief Executive.

First, the Chief Executive thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". The Chief Executive has reflected deeply over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

The Chief Executive has set up a five-man Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will be chaired by the former Chief Justice of the Court of Final Appeal, the Honourable Andrew LI Kwok-nang. The Committee will review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests (including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality) concerning the Chief Executive, Non-Official Members of the Executive Council and Officials under the Political Appointment System, and make recommendations on improvement measures. The Committee will submit a report with recommendations to the Chief Executive in around three months' time.

Details regarding the Chief Executive and his wife's travels involving private passages, the donations made to charitable institutions with all the proceeds from selling private wine collections and the rental residence in Shenzhen are set out in the Annex.

The Administration's reply to the question raised by Mr Alan LEONG is as follows:

(a) and (b)

Generally speaking, accepting a friend's invitation to make an overseas journey on his or her private jet or yacht may already constitute the acceptance of advantages under Chapter 5 of the Code for Officials under the Political Appointment System. As required by the rules, it is then necessary to seek the approval of the Chief Executive. However, since there is operational constraint in imposing the same restriction on the Chief Executive, the Chief Executive has instead laid down internal regulations, which set out that when no conflict of interests is involved, the Chief Executive may consider accepting a friend's invitation to travel out of and return to Hong Kong on his or her private jet or yacht while on private holiday, provided that the Chief Executive pays the fare of the same journey on public transport to show that the Chief Executive has not saved any travelling expense by accepting the invitation. This rule applies to three of the four trips mentioned in the question. The private jet that the Chief Executive boarded for his trip to Japan was hired from a commercial company by a fellow passenger and the expenses were shared by the Chief Executive with his fellow passengers.

In response to recent social concerns, the Chief Executive has set up the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests. The review committee will look into, among other things, the arrangements governing the Chief Executive's acceptance of advantages and entertainment.

(c) While the Chief Executive is out of Hong Kong for duty visit or on vacation, so long as he is able to return to Hong Kong and perform his role within a short span of time when the situation so requires, it is not necessary to make any acting arrangement. This practice also applies to principal officials and civil servants.

While on vacation and in the absence of any acting arrangement, the Chief Executive may attend private social functions in his personal capacity. He may also perform functions in his official capacity when necessary, and under such circumstance, he will be subject to applicable laws and regulations.

(A) Key Facts of the Chief Executive and Mrs TSANG's Travels Involving Private Passages

<i>Destination</i>	<i>Date</i>	<i>Duration of trip</i>	<i>Accommodation</i>	<i>Private Passages Taken</i>	<i>Total Payment Made by Mr and Mrs TSANG for the Private Passages</i>
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(B) Key Facts of the Chief Executive's Private Wine Collection Sold to Mr Jim THOMPSON

- About 1 600 bottles, collected since the 1980s.
- Most were bought by Mr TSANG, with a small number given by friends as gifts and accepted under permitted circumstances in accordance with the rules.
- Mr Jim THOMPSON bought the whole collection at a price based on professional valuation in 2010, and the Chief Executive donated all the

proceeds, totalling \$2 million, to the Red Cross, Community Chest, and Society for the Promotion of Hospice Care.

- The donations were properly reported in the Chief Executive's tax return, and the tax deduction claimed in accordance with the Inland Revenue Ordinance.

(C) Key Facts of the Chief Executive's Rental Residence in Shenzhen

- The Chief Executive will rent a 630 sq m apartment in East Pacific Garden, Shenzhen and live there temporarily upon the conclusion of his term of office in July 2012.
- The rental agreement was signed in February 2012. The three-year lease will commence in July 2012, at the market rate of RMB 800,000 yuan (about HK\$1 million) per annum.
- The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Investigation of Offences Under Prevention of Bribery Ordinance Involving Public Officers

6. **MR PAUL TSE** (in Chinese): *President, it has been reported that the Chief Executive accepted tycoons' invitation to travel on private jets and paid the costs at market prices, and in renting a luxurious apartment in Shenzhen, he was alleged to have obtained concessions such as a rental below the market rate and a waiver of the renovation expenses in excess of \$10 million. The public and the media query the integrity and conduct of the Chief Executive, and they also have concern about the number of similar incidents of suspected unreasonable acceptance of entertainment and concessions which have yet to be uncovered. The public have expressed their discontent by joining several demonstrations and processions, and the incident has been extensively covered by overseas media, causing a serious blow to the credibility of the governance of the SAR Government. In this connection, will the Government inform this Council:*

- (a) *of the system put in place by the Office of the Chief Executive to keep records of various entertainment or concessions received by the Chief Executive (including the means of and information used for assessing the market prices); the mechanism in place to enable the public to check such records; if no system or mechanism is in place, whether it will set it up immediately;*
- (b) *given that after the passage of the Prevention of Bribery (Amendments) Ordinance 2008 in July 2008, the Chief Executive comes within the remit of the provisions in the Prevention of Bribery Ordinance which prohibit public officers from soliciting and accepting advantages, under what circumstances the Commissioner of the Independent Commission Against Corruption (the Commissioner) will take the initiative to investigate the Chief Executive and other public officers accepting discounts and extravagant entertainment; whether there are now such circumstances; if so, whether it will launch an investigation immediately; and*
- (c) *given that a press report has queried the independence of the Commissioner as the Chief Executive was suspected to have "given special treatment" to the incumbent Commissioner by giving him a further appointment of three years without announcing the reason for the further appointment, whether the Government will immediately adopt the recommendation made by some academics of setting up an independent committee with members drawn from the Independent Commission Against Corruption (ICAC) and the Audit Commission to comprehensively review the code of ethics and conduct for the Chief Executive?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to

attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

Before answering the question from Member, the Administration would like to give accounts on behalf of the Chief Executive.

First, the Chief Executive thanked the media for the reports and Members' questions, which shed light on and allow him to better understand that public servants must be "whiter than white". The Chief Executive has reflected deeply over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

The Chief Executive has set up a five-man Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests, which will be chaired by the former Chief Justice of the Court of Final Appeal, the Honourable Andrew LI Kwok-nang. The Committee will review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests (including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality) concerning the Chief Executive, Non-Official Members of the Executive Council and Officials under the Political Appointment System, and make recommendations on improvement measures. The Committee will submit a report with recommendations to the Chief Executive in around three months' time.

Details regarding the Chief Executive and his wife's travels involving private passages, the donations made to charitable institutions with all the proceeds from selling private wine collections and the rental residence in Shenzhen are set out in the Annex.

The Administration's reply to the question raised by Mr Paul TSE is as follows:

- (a) The Register of Official Gifts Presented to the Chief Executive was accessible on the website of the Office of the Chief Executive, though it does not include information about entertainment and hospitality. The Chief Executive has set up the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests to review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Non-Official Members of the Executive Council, and Officials under the Political Appointment System, including the arrangements for declaration of investments/interests and acceptance of advantage/entertainment/hospitality.
- (b) As amended in 2008, sections 4, 5 and 10 of the Prevention of Bribery Ordinance are now applicable to the Chief Executive. The ICAC, upon receipt of sufficient information that justifies follow-up action, will investigate impartially and independently in full accordance with the law a corruption offence alleged to have been committed by any person. All investigations will be conducted in confidence. The ICAC will seek legal advice from the Department of Justice if necessary. All the results of investigations concluded by ICAC will be reported to the independent Operations Review Committee (ORC) and subject to the monitoring of ORC.
- (c) The Commissioner is required to discharge his duties in full accordance with the law. The independence of the Commissioner and the ICAC is clearly spelt out under the Basic Law and the Independent Commission Against Corruption Ordinance. All the results of investigations concluded by ICAC will be reported to the independent ORC and subject to its monitoring. The ORC comprises distinguished non-officials and is tasked to ensure that all corruption complaints are handled properly.

The Chief Executive has set up the Independent Review Committee for the Prevention and Handling of Potential Conflicts of Interests to

review the existing regulatory frameworks and procedures for the prevention and handling of potential conflicts of interests concerning the Chief Executive, Non-Official Members of the Executive Council, and Officials under the Political Appointment System.

Annex

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- The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Persons with Official Dealings with Government Leasing Flats to Public Officers

7. **MR LEE WING-TAT** (in Chinese): *President, it has been reported that the Chief Executive had rented a penthouse of East Pacific Garden in Futian*

District in Shenzhen as residence after his departure from office, and probably because the owner of East Pacific Garden is a shareholder of the Digital Broadcasting Corporation Hong Kong Limited (DBC), the public query that in respect of the licensing of DBC, the Chief Executive was suspected to be involved in the transfer of benefits, and giving rise to public concern about the integrity and conduct of government officials. To immediately resolve the doubt of the public about the governance of the Government, will the Government inform this Council if it knows:

- (a) whether the tenancy offer was initiated by the owner of the aforesaid residential unit; if so, the details (including when the offer was made); whether the owner had, when he leased out the unit, indicated that the tenant might give views on the fitting-out of the unit; if so, the details; and*
- (b) whether the owner of the aforesaid unit had, in the process of leasing out the unit, indicated to the tenant that he would consider selling the unit during the tenancy term or upon the expiry of the tenancy agreement, and whether he had indicated that there was any specific target buyer; if so, the name of the target buyer?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, in response to recent reports about the Chief Executive accepting hospitality offered by his friends and the related discussions in the community, the Chief Executive has explained to the public by personally attending a radio programme and by issuing a press release via the Chief Executive's Office on 26 February (Sunday). To uphold accountability to the community and the spirit of transparency, the Chief Executive has agreed to attend a special Question and Answer Session in the afternoon of 1 March (Thursday), where he stands ready to address Members' questions on the events.

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over the recent events again and again, and come to the conclusion that there is a gap between the current rules, with which he has faithfully complied, and the expectations of Hong Kong people. In consequence, there has been disappointment from the community. Noting the view of some sectors of the community that he should not have any association with people who might be considered "wealthy" or "rich", the Chief Executive wishes that the public can understand he has to get a full picture of what is happening in the community. Hence, he has been maintaining contact with people from all walks of life, including the grassroots, the middle class and people from different economic sectors. The Chief Executive realizes from the events that there are rooms for greater vigilance and sensitivity in his handling of the relevant trips.

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The Administration's reply to the question raised by Mr LEE Wing-tat is as follows:

- (a) The Chief Executive had indicated earlier that he would not take part in any commercial activities after retirement, and that he wished to leave Hong Kong for some time after retiring from office. A few years ago, he started to look for a suitable short-term place of residence in Macao and the Mainland. He then learned that one of his friends owned a unit in Shenzhen and intended to convert it from a club house into a residential unit. The Chief Executive

considered the premises a suitable accommodation for him and his wife after retirement, and expressed interest to the owner in 2010 in renting the unit after its conversion, provided that the conversion works must be completed by July 2012 so that the Chief Executive and his wife could move in immediately after retirement. In early 2012, the owner indicated that the conversion could be completed by mid-2012 as scheduled. As such, the Chief Executive signed a tenancy agreement with the owner in February 2012 for renting the unit at market rate. Details of the tenancy agreement are at Annex (C).

The conversion of the unit is the sole responsibility of the owner, including the scope and costs of the alteration and fitting-out. While works were in progress, the owner had invited the Chief Executive and his wife to give their views on the alteration and fitting-out, on the premise that their views would not affect the progress of the works.

- (b) In the process of leasing out the unit, the owner did not indicate to the Chief Executive that he would consider selling the unit during the tenancy term or upon expiry of the tenancy agreement.

Annex

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(B) Key Facts of the Chief Executive's Private Wine Collection Sold to Mr Jim THOMPSON

- About 1 600 bottles, collected since the 1980s.
- Most were bought by Mr TSANG, with a small number given by friends as gifts and accepted under permitted circumstances in accordance with the rules.
- Mr Jim THOMPSON bought the whole collection at a price based on professional valuation in 2010, and the Chief Executive donated all the proceeds, totalling \$2 million, to the Red Cross, Community Chest, and Society for the Promotion of Hospice Care.
- The donations were properly reported in the Chief Executive's tax return, and the tax deduction claimed in accordance with the Inland Revenue Ordinance.

(C) Key Facts of the Chief Executive's Rental Residence in Shenzhen

- The Chief Executive will rent a 630 sq m apartment in East Pacific Garden, Shenzhen and live there temporarily upon the conclusion of his term of office in July 2012.

- The rental agreement was signed in February 2012. The three-year lease will commence in July 2012, at the market rate of RMB 800,000 yuan (about HK\$1 million) per annum.
- The agreement includes the provision of renovation by the developer, but not domestic helpers or chauffeurs.

Public Officers Engaging in Private Dealings with Persons with whom Government has Official Dealings

8. **MR KAM NAI-WAI** (in Chinese): *President, it has been reported that the Chief Executive admitted on 26 February that he had sold 1 600 bottles of his private wine collection in 2010 to a former Chairman of the American Chamber of Commerce in Hong Kong, and donated all the sale proceeds totalling \$2 million to charitable organizations, but the Chief Executive admitted that he had claimed tax deduction for the donations. In 2003, the Government leased the former Central Ordnance Munitions Depot, Shouson Hill to a wine cellar operated by that former Chairman for a monthly rent as low as \$2,700. The report pointed out that the incident has aroused suspicion among the public on whether some officials may have engaged in the transfer of benefits and has given the general public a negative perception of public officers. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed if public officers engaging in private dealings with persons with whom the Government has official dealings and benefiting from such transactions may have impact on the public's perception of the Government and public officers; if so, of the details; if not, the reasons for that; if it has not assessed, whether it will carry out the assessment immediately; and*
- (b) *with regard to the leasing of the former Central Ordnance Munitions Depot, Shouson Hill to the wine cellar operated by that former Chairman, of the government departments and post titles of the officers involved in making the decision; further, whether such government departments had received recommendations on the lessee, verbally or in writing, from staff members of the Chief Executive's Office; if so, of the details?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President, the Administration's reply to the question raised by Mr KAM Nai-wai is as follows:

- (a) A summary showing the sale of the Chief Executive's private wine collection and the subsequent donation of all the proceeds to charitable organizations is given at the Annex. The Chief Executive reiterated that he had not obtained any advantage alleged by Mr KAM Nai-wai. It is the Chief Executive's rights to report his charitable donations for the purpose of tax deduction under the Inland Revenue Ordinance, and he indicated that he had been doing so from time to time.
- (b) In its "Study of Evaluating Hong Kong as a Wine Distribution and Trading Centre" back in 2000, the Government proposed using bunkers as cellars. It had tried to identify interested parties in the wine industry to implement the proposal but in vain.

In 2002, the Crown Worldwide Group indicated interest to turn a bunker into a facility for wine storage. To implement the above recommendation put forward in 2000, the then Financial Secretary endorsed in November 2002 the proposals of the then Economic Services Bureau to lease the Central Ordnance Munitions Depot in Deep Water Bay Drive to the Crown Worldwide Group at the prevailing market rent for a term of seven years for wine storage purpose. Following an open tender, the Government renewed the lease with the Crown Worldwide Group at the prevailing market rent in 2010.

The Chief Executive's Office has not recommended, whether verbally or in writing, to the department concerned that they lease the facility to the Crown Worldwide Group.

Annex

Key Facts About the Chief Executive's Private Wine Collection Sold
to Mr Jim THOMPSON

- About 1 600 bottles were collected since the 1980s.
- Most were bought by the Chief Executive, with a small number given by friends as gifts and accepted under permitted circumstances in accordance with the rules.
- Mr Jim THOMPSON bought the whole collection at a price based on professional valuation in 2010.
- The Chief Executive donated all the proceeds, totalling \$2 million, to the Red Cross, Community Chest, and Society for the Promotion of Hospice Care.
- The donations were properly reported in the Chief Executive's tax return for the purpose of tax deduction in accordance with the Inland Revenue Ordinance.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Declaration of Interests by Public Officers

1. **MR ANDREW CHENG** (in Cantonese): *President, in response to recent media enquiries on the West Kowloon Reclamation Concept Plan Competition (the Competition) held in 2001-2002, the Government indicated that after the voting process had been completed, it came to the notice of the Competition Team that a project team member of an entrant on the preliminary list of winning entries appeared to be associated with a member of the Jury for the Competition, who was a public officer. The incident has caused extensive discussions in various sectors of the community, and how the Government handles incidents*

relating to omissions in declaration of interests by public officers has aroused much concern. In this connection, will the Government inform this Council:

- (a) in the past 10 years, of the number and details of omissions by public officers, including Members of the Executive Council to declare interests on matters relating to public interests;*
- (b) of the criteria of the Government for determining whether to make public or keep confidential the incidents of omissions to declare interests in part (a); and*
- (c) in the past 10 years, whether the Government had imposed any punishment on the persons involved in the incidents of omissions to declare interests in part (a); if it had, of the details of the punishments and the number of times they were imposed, as well as the criteria for determining whether or not to impose punishment?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, according to our understanding, "public officers" as referred to in the question cover mainly Principal Officials, the Members of the Executive Council and civil servants. Having consulted relevant bureaux, our consolidated reply is as follows:

With regard to omissions to declare interests on matters relating to public interests, according to our record, there are two cases of omissions by Principal Officials and Members of the Executive Council in declaring interests in the past 10 years.

In 2003, Mr Antony LEUNG, the then Financial Secretary, proposed to increase the First Registration Tax for motor vehicles in formulating the 2003-2004 Budget. When Mr LEUNG presented the Budget to the Executive Council on 5 March 2003, he did not declare that he had purchased a new car. The case was investigated by the Independent Commission Against Corruption and examined by the Department of Justice. It was considered that no prosecution should be instituted. Mr LEUNG resigned from the post of the Financial Secretary.

Upon media reports in September 2010, Mr LAU Wong-fat, an Executive Council Member, acknowledged having omitted to declare the shareholdings (of a nominal value greater than 1% of the issued shared capital) in 13 companies, 19 residential properties and over 300 pieces of land in the "Annual Declaration of Registrable Interests of Members of the Executive Council". Mr LAU had made declarations of all necessary information in September to October 2010, which was uploaded to the Executive Council website.

After the incident was reported by the media, the Administration immediately launched an in-depth investigation. There was a detailed examination and analysis of the property transactions declared by Mr LAU as well as all the items and related papers involving land or property discussed by the Executive Council in the relevant period. The analysis indicated that the property transactions did not constitute direct conflict of interests in the items discussed by the Executive Council. There was also no evidence to suggest that Mr LAU had used the Executive Council's confidential information for his personal benefits.

There were also instances in which Principal Officials, when filling out their declaration forms, forgot to include certain directorships of statutory bodies which they took up as Principal Officials. Principals Officials and the Chief Executive's Office deal with technical omissions very seriously. Once the omissions are noticed, corrections will be made as soon as possible.

As regards civil servants, the database kept by the Secretariat on Civil Service Discipline does not contain a category of "omissions in declaration of interest". Disciplinary cases are classified according to the nature of the misconduct acts. Cases involving failure in declaring interest may, for instance, be classified under "breach of departmental instructions", "unauthorized acceptance of loans or other advantages from persons with official dealings", or where a guilty finding is returned by the Court, "Misconduct in Public Office", "breach of section 3 of the Prevention of Bribery Ordinance", and so on. These categories may, however, consist of other cases which do not involve failure in declaring interest. Take the categories of "unauthorized acceptance of loans or other advantages from persons with official dealings" and "breach of section 3 of the Prevention of Bribery Ordinance (POBO)" as an example, in the past five years (2006-2007 to 2010-2011), there were 21 and 14 concluded formal disciplinary cases under these two categories respectively. These cases involve

solicitation of loans from subordinates, co-workers or persons with official dealings, acceptance of pecuniary interests or gifts from contractors or other persons with official dealings, and so on. Of these civil servants, six were punished by dismissal, four by compulsory retirement, and the others by reprimand, severe reprimand or other forms of punishment.

Since disciplinary action involves the management of individual civil servants, the Civil Service Bureau will not normally make public individual disciplinary cases concerning failure in declaring interest or other misconduct acts. The Civil Service Bureau reports to the Legislative Council Panel on Public Service on the mechanism and overall figures of civil service disciplinary matters on a regular basis.

MR ANDREW CHENG (in Cantonese): *President, I wish to ask the Chief Secretary a supplementary question concerning the violation of section 3 of the POBO by civil servants, which is mentioned in the second last paragraph of the main reply. Today, many civil servants have phoned into a radio programme, saying that civil servants observe strict discipline, that section 3 of the POBO imposes very stringent regulation on them and that this is actually warranted. However, the Chief Executive, as the head of the Civil Service, is not regulated by this provision and can take rides in yachts and private jets and rent luxury properties at a cheap rent at will. In view of such stringency imposed on subordinates but laxity on the Chief Executive, may I ask the Chief Secretary if he thinks that section 3 of the POBO should be amended immediately, so that instances of the Chief Executive accepting advantages can also be regulated?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): *President, according to the Basic Law, the Chief Executive must be a person of probity, dedicated to his duties and as a matter of fact, we amended the POBO in 2008 and some provisions therein are applicable to the Chief Executive.*

When we examined section 3 back then, the policy stance adopted was that since section 3 is only applicable to persons over whom the Chief Executive has authority and the offence in the section targets situations in which a person solicits or accepts an advantage without the permission of the Chief Executive, so its implementation requires the participation of the Chief Executive. Therefore,

it can hardly be applied to the Chief Executive. In the discussion and legislative process at that time, all of us examined the issues in this regard together.

DR PHILIP WONG (in Cantonese): *Point of order. President, Rule 41(7) of the Rules of Procedure states, and I quote, "Except where his conduct is the subject of a motion to which Part JA applies, the conduct of the Chief Executive, a Member of the Executive Council or a Member of the Legislative Council otherwise than in the performance of his official duties shall not be raised."*

PRESIDENT (in Cantonese): I did note this provision in the Rules of Procedure. The supplementary question asked by Mr Andrew CHENG just now did not violate this provision.

DR LAM TAI-FAI (in Cantonese): *President, I remember that in the Legislative Council meeting last week, I asked Secretary Raymond TAM if, compared with some Western democratic countries, the systems for the declaration of interests by public officers in Hong Kong, including that for Executive Council Members, were lax or stringent.*

At that time, the Secretary said that he had no such information on hand and had to ask his colleagues to look for the information on returning to his office. That was a week ago and today, another Honourable colleague raised a similar question again. I wonder if Secretary Raymond TAM has made any effort to examine how this long-established system of ours compares with those overseas. Without reference to objective facts or circumstances, we do not know where this system of ours stands and as a result, we cannot convince other people, nor would other people be convinced of the stringency or otherwise of the existing reporting system in Hong Kong. Chief Secretary, since today, you are taking charge personally by coming here to answer this question, may I ask your opinion on whether the existing reporting system in Hong Kong is lax or stringent compared with the mechanisms in Western democratic countries? I hope the Chief Secretary can answer my supplementary question.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, let me answer this supplementary question asked by Dr LAM. As far as I can remember, in establishing the Accountability System for Principal Officials in 2002, the Code for Officials under the Political Appointment System drawn up and the reporting system designed by us are applicable to Principal Officials and reference was made to overseas practices. I believe our reporting system and the Code are more or less the same as those in open democratic societies overseas. Back then, we made reference to the systems in such places as the United Kingdom and the United States.

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

DR LAM TAI-FAI (in Cantonese): *No, what I am not clear about is the meaning of "more or less the same". Does that mean equally lax or stringent? Can the Chief Secretary reply clearly as to whether, in comparison, our system is lax or stringent?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I can only give a general reply. When we were designing this system, we took into account the fact that as Principal Officials and Executive Council Members, there had to be transparency about the assets owned by them, their directorships in statutory bodies or the companies set up by them together with their family members for the purpose of holding family properties, and so on.

Besides, when policy issues or individual items are discussed in the Executive Council, they must declare their interests. In addition, we also require that in accepting gifts, Principal Officials must comply with the POBO and when necessary, they have to make applications to the Chief Executive for approval and prepare a list of the gifts for inspection by the public. Therefore, back then, after taking these several steps, we considered that on the one hand, the implementation of this system in Hong Kong was in line with public interest, and on the other, we could be on a par with other open and democratic societies.

MR RONNY TONG (in Cantonese): *President, suppose a radio station applied to the Chief Executive in Council for a licence in 2010 and subsequently, in 2011, a major shareholder of the radio station agreed to offer some advantages to one of the Executive Council Members. In view of the Chief Secretary's reply, may I ask him if, firstly, this Executive Council Member should make a declaration to the Executive Council immediately and secondly, would it do just to declare his interests, or is it necessary for him to obtain the permission of the Chief Executive and the Executive Council before accepting those advantages, or should he withdraw from a meeting whenever matters relating to the approval of licences are dealt with hereafter? Can the Government give me a reply on the details of the procedure?*

PRESIDENT (in Cantonese): Which public officer will reply? Chief Secretary for Administration, please.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I understand that Mr Ronny TONG's question is hypothetical in nature, but I will still answer it according to our general principles.

President, when the Executive Council deals with any policy issue or legislative proposal, its Secretariat will examine stringently the declarations of interests made by each Executive Council Member and Principal Official, including those of the Chief Executive. If any situation that may give rise to possible conflicts of interests is found, the President of the Executive Council will be advised of it. During meetings, the Executive Council Members concerned have to declare their interests. If the conflict of interests is more serious, the President of the Executive Council (that is, the Chief Executive) will ask the Executive Council Member concerned to withdraw from the meeting. This system has been practised for many years and is proven.

Although the example given by Mr Ronny TONG is hypothetical, I believe he had the issue of digital broadcasting mentioned earlier in mind. In this regard, the Chief Executive has already given his explanations in public.

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

MR RONNY TONG (in Cantonese): *President, in fact, he did not answer my supplementary question. I hope he can give me an answer relevant to the example given by me.*

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

MR RONNY TONG (in Cantonese): *What I said just now was: After the radio station had made an application, a major shareholder made a transfer of benefit to an Executive Council Member. My supplementary question is: First, does the Executive Council Member have to make a declaration immediately; second, after making the declaration, is that the end of the matter or is the approval of the Executive Council required? After the approval has been given, should a decision be made to require the Executive Council Member to withdraw from some meetings? President, this is a very real example, so I do not understand*

PRESIDENT (in Cantonese): The Member wants to ask if, according to the existing requirements, when the situation mentioned by him arises, is it necessary for the Executive Council Member concerned to make a declaration immediately and how would the matter be dealt with after the declaration has been made? Chief Secretary, can you explain further?

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, as I said in reply just now, in the Executive Council, the Chief Executive will determine if there is any conflict of interest according to the declarations of interests made by individual Executive Council Members and the policy items or legislative proposals to be dealt with. Often, two kinds of situation would arise: First, after making a declaration, the Executive Council Member concerned can continue to attend the relevant meetings; second, if the conflict of interests is

more serious, the Member concerned will have to withdraw from the meeting. This has been the practice for many years.

PROF PATRICK LAU (in Cantonese): *President, the Chief Secretary pointed out clearly in the sixth paragraph of the main reply that Principals Officials and the Chief Executive's Office deal with technical omissions very seriously. Once the omissions are noticed, corrections will be made as soon as possible. Having heard a number of instances mentioned just now, may I ask the Chief Secretary to tell Members how those instances were discovered? Were they exposed by the mass media, or did some people write letters to report them?*

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, concerning the instances of omissions to declare interests involving Principal Officials and Executive Council Members mentioned by me in the main reply, I remember that it was the mass media that first raised queries about the instance relating to the former Financial Secretary, Mr Anthony LEUNG, and this is also the case in the instance involving Mr LAU Wong-fat. As regards the technical omissions mentioned by me, I believe they were discovered when colleagues in the Policy Bureaux concerned or the Chief Executive's Office was verifying whether or not the interests declared by Principal Officials were consistent with the public offices held by them. If it is found that a Director of Bureau is serving as a member of a statutory body but there is an omission, he will be reminded to rectify it at once.

Hong Kong is a very free, open and highly transparent society, so apart from these codes and systems for declaration of interests, it is also necessary to rely on the mass media and the Legislative Council for monitoring. Transparency is important.

MR KAM NAI-WAI (in Cantonese): *President, recently, we can see that the Chief Executive has taken rides in yachts and private jets by paying minimal fares. Moreover, recently, we learnt that he had been using a treadmill borrowed from a certain company, and for many years for that matter.*

If civil servants in general are involved in such instances but did not declare such interests, may I ask if they have already violated the relevant guidelines for civil servants and will follow-up, prosecution or disciplinary actions be taken against them? Will the Government issue new guidelines to civil servants in this regard?

PRESIDENT (in Cantonese): Which public officer will reply? Chief Secretary for Administration, please.

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, we have clear codes to deal with public officers, including officers and civil servants under the Political Appointment System. Under the Political Appointment System, there is a code stipulating the need for them to comply with the POBO and the relevant laws. Throughout the years, civil servants also have to perform their duties according to the POBO and the relevant guidelines issued by the Civil Service Bureau.

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

MR KAM NAI-WAI (in Cantonese): *My question is related to several specific examples*

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

MR KAM NAI-WAI (in Cantonese): *..... the supplementary question asked by me just now is about the loan of a treadmill for years and taking rides in yachts or private jets at low fares. If no declarations of interests were made about them, have the guidelines on declaration of interests been violated? In view of this, will the Government draw up new guidelines for compliance by civil servants?*

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

(The Chief Secretary for Administration indicated that he had nothing to add)

PRESIDENT (in Cantonese): Secretary for the Civil Service, please.

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): President, on instances of civil servants allegedly accepting advantages without making declarations, we would conduct investigations according to the Acceptance of Advantages (Chief Executive's Permission) Notice, the POBO, Civil Service Regulations, the notices issued by the Civil Service Bureau on the declaration of interests and having regard to the specific circumstances of each case, natural justice and procedural justice. After an investigation has yielded results, we will proceed according to the said regulations or legislation and take appropriate disciplinary action, if necessary.

PRESIDENT (in Cantonese): We have already spent 22 minutes 30 seconds
.....

(Mr LEE Cheuk-yan indicated his wish to speak)

MR LEE CHEUK-YAN (in Cantonese): *President, point of order. We have received a notice telling us that the replies to the various urgent questions asked by us have been changed to written questions instead, but it seems the replies have yet to be tabled. I wish to understand more about this.*

PRESIDENT (in Cantonese): The Government has just provided us with the written replies to the several urgent questions. Staff members of the Secretariat are now distributing them to Members.

MR LEE CHEUK-YAN (in Cantonese): *Fine. However, President, I find this most regrettable because the replies to all the urgent questions have been*

changed to written form instead. As a result, it is not possible for us to ask oral questions here.

In addition, I wish to ask about the arrangement for the Chief Executive's Question and Answer Session tomorrow. Is the arrangement for Members waiting to ask questions the same as the Question and Answer Sessions of the past, or is there any new arrangement? We want very much to ask the Chief Executive questions but if the usual practice is adopted, even if I want to ask more questions, it would be impossible to do so. Therefore, I wish to seek a clarification on the arrangement tomorrow.

PRESIDENT (in Cantonese): Concerning the Chief Executive's Question and Answer Session to be held tomorrow, of course, the arrangement for Members waiting to ask questions will follow the usual practice. However, if any Member cites special grounds on why we should be flexible and make changes, I will be happy to listen to his view prior to the Question and Answer Session. Then, I will make a decision after balancing the views of various parties.

PRESIDENT (in Cantonese): Second question. Since Mrs Regina IP, the Member asking this question, is not present, according to Rule 26(6A) of the Rules of Procedure, I call on the Chairman of the House Committee to ask this oral question for her.

Staff Establishment of Chief Executive's Office

2. **MS MIRIAM LAU** (in Cantonese): *President, will the Government inform this Council:*

- (a) *of the staff establishment (including the number of posts, ranks as well as the functions, remunerations and benefit levels of the various posts) and the total staffing expenditure of the Chief Executive's Office (CE's Office) at the time when the First Government of the Hong Kong Special Administrative Region (HKSAR) was established on 1 July 1997, as well as the respective details of the aforesaid items as at 1 January 2012;*

- (b) *of the number of posts, which were vacant for a long time before June 2006, filled by the CE's Office so far, as well as the functions, remunerations and benefit levels of those posts; in addition, the posts newly created, the posts upgraded, as well as their remunerations and benefit levels; and the reasons for creating or upgrading such posts; and*
- (c) *how the Government assesses and measures whether there is any significant improvement in the effectiveness of the Chief Executive in leading the work of the SAR Government after the CE's Office upgraded certain posts and increased manpower?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, my reply to Mrs Regina IP's question is as follows:

- (a) Regarding the staff establishment (including the number of posts, ranks and their duties, salaries and benefits) of the Chief Executive's Office (CEO) on 1 July 1997, we have provided the information in writing in Table 1. Details of the same on 1 January 2012 are also set out in writing in Table 2. The total salary cost in the 1997-1998 financial year was \$37.51 million (including the expenditure of Government House and the Political Adviser's Office from 1 April 1997 to 31 March 1998, but excluding the expenditure of the Chief Executive Office before the establishment of the HKSAR) and that in the 2011-2012 financial year was \$49.37 million.
- (b) Posts that have been filled on leaving vacant for a long period of time before June 2006 and posts created, deleted and upgraded to a higher rank are detailed in writing in Table 3.
- (c) As shown in item (b) of the aforesaid main reply and Table 3, posts were created or upgraded to a higher rank to meet the CEO's operational needs, such as new tasks and increasing workload. The increased CEO manpower and resources have a positive impact on the effectiveness of the HKSAR Government led by the Chief Executive.

Table 1

Staff establishment of the CEO
on 1 July 1997

<i>Rank</i>	<i>Number</i>	<i>Pay Scale *</i>	<i>Duties</i>
Directorate, Administrative Officer, Staff Grade B1	1	D4 (1-2)	Private Secretary to the Chief Executive, to assist the Chief Executive in daily office work, official engagements and overseas duty visits.
Directorate, Administrative Officer, Staff Grade C	1	D2 (1-3)	Deputy Private Secretary to the Chief Executive.
Senior Administrative Officer	2	45-49	Assistant Private Secretary to the Chief Executive.
Executive Officer I	1	28-33	To provide administrative support.
Clerical Officer I (later renamed as Clerical Officer)	1	16-21	To provide clerical support.
Clerical Officer II (later renamed as Assistant Clerical Officer)	3	3-15	To provide clerical support.
Clerical Assistant	1	1-10	To provide clerical support.
Office Assistant	4	1-6	To provide general support.
Senior Personal Assistant **	1	34-39	Personal Assistant to the Chief Executive.
Senior Personal Secretary	1	22-27	To perform secretarial duties.
Personal Secretary I	2	16-21	To perform secretarial duties.
Personal Secretary II	2	4-15	To perform secretarial duties.
Social Secretary	1	30-32	To provide social support for the Chief Executive and his wife.
Assistant Social Secretary	1	24-26	To provide social support for the Chief Executive and his wife.

<i>Rank</i>	<i>Number</i>	<i>Pay Scale</i> *	<i>Duties</i>
Housekeeper	1	26-31	To provide housework support for the Chief Executive.
Domestic Staff I	2	17-19	To provide housework support for the Chief Executive.
Domestic Staff II	4	13-16	To provide housework support for the Chief Executive.
Domestic Staff III	3	11-12	To provide housework support for the Chief Executive.
Domestic Staff IV	12	8-10	To provide housework support for the Chief Executive.
Domestic Staff V	9	4-7	To provide housework support for the Chief Executive.
Senior Personal Chauffeur	1	13-14	Personal driver for the Chief Executive.
Personal Chauffeur	4	11-12	Driver for CEO's fleet.
Communication Controller	4	4-13	To handle public enquiries and communication.
Total	62		

Notes:

* Directorate Pay Scale for D2 and D4, and Master Pay Scale for the rest.

** Filled by civil servants or officers under special appointments.

Remarks:

- (1) The above civil service establishment did not include the 24 posts under the Political Adviser's Office before the establishment of the HKSAR. Between 7 June 1996 and the period shortly after the establishment of HKSAR, the posts were put under the CEO's establishment until they were deleted upon exhaustion of final leave of the relevant officers.
- (2) The benefits (for example, leave and allowances entitlement, and so on) of the officers listed in the above table were provided in accordance with the then Civil Service Regulations.
- (3) Apart from the civil service establishment listed above, the CEO also employed four non-civil servants under special appointments, including Senior Special Assistant, Special Assistant, Personal Assistant and Personal Chauffeur.

Table 2

Staff establishment of the CEO
on 1 January 2012

<i>Rank</i>	<i>Number</i>	<i>Pay Scale *</i>	<i>Duties</i>
Directorate, Administrative Officer, Staff Grade A	1	D-6 (1-2)	Permanent Secretary of CEO, to oversee the co-ordination with the offices of the Secretaries, bureaux and departments to ensure effective implementation of the Chief Executive's directives and agreed policies and programmes, to help keep track of the progress of policy implementation and to oversee the Executive Council Secretariat.
Directorate, Administrative Officer, Staff Grade B1	1	D-4 (1-3)	Private Secretary to the Chief Executive, to assist the Chief Executive in daily office work, official engagements and overseas duty visits.
Information Co-ordinator **	1	D-4 (1-3)	To co-ordinate the media and public relations strategy and to closely liaise with Director of Information Services and the press sections of bureaux to ensure effective implementation of media and public relations strategy for major policies.
Directorate, Administrative Officer, Staff Grade C	1	D-2 (1-4)	Deputy Private Secretary to the Chief Executive.
	1		Clerk to the Executive Council.
Senior Administrative Officer	2	45-49	Assistant Private Secretary to the Chief Executive.
	2		Assistant Secretary of CEO, to assist in research, policy assignments and administrative functions for CEO and to help track the status of various commitments which the Chief Executive has made.
	1		Deputy Clerk to the Executive Council.

<i>Rank</i>	<i>Number</i>	<i>Pay Scale *</i>	<i>Duties</i>
Chief Executive Officer	1	45-49	To provide administrative support.
Senior Executive Officer	4	34-44	To provide administrative support.
Executive Officer I	6	28-33	To provide administrative support.
Senior Personal Assistant **	1	34-39	Personal Assistant to the Chief Executive.
Personal Assistant	1	28-33	Personal Assistant to Director of CEO.
Senior Personal Secretary	4	22-27	To perform secretarial duties.
Personal Secretary I	4	16-21	To perform secretarial duties.
Personal Secretary II	8	4-15	To perform secretarial duties.
Clerical Officer	4	16-21	To provide clerical support.
Assistant Clerical Officer	10	3-15	To provide clerical support.
Clerical Assistant	7	1-10	To provide clerical support.
Office Assistant	4	1-6	To provide general support.
Confidential Assistant	5	9-17	To provide clerical support in handling confidential files.
Chief Official Languages Officer	1	45-49	To perform translation duties.
Official Languages Officer I	1	28-33	To perform translation duties.
Social Secretary	1	30-32	To provide social support for the Chief Executive and his wife.
Assistant Social Secretary	1	24-26	To provide social support for the Chief Executive and his wife.
Housekeeper	1	26-31	To provide housework support for the Chief Executive.
Domestic Staff I	2	17-19	To provide housework support for the Chief Executive.

<i>Rank</i>	<i>Number</i>	<i>Pay Scale *</i>	<i>Duties</i>
Domestic Staff II	4	13-16	To provide housework support for the Chief Executive.
Domestic Staff III	3	11-12	To provide housework support for the Chief Executive.
Domestic Staff IV	8	8-10	To provide housework support for the Chief Executive.
Domestic Staff V	3	4-7	To provide housework support for the Chief Executive.
Senior Personal Chauffeur	1	13-14	Personal driver for the Chief Executive.
Personal Chauffeur	2	11-12	Driver for CEO's fleet.
Chauffeur**	1	5-10	Driver for CEO's fleet.
Motor Driver	3	5-8	Driver for CEO's fleet.
Total	101		

Notes:

* Directorate Pay Scale for D2, D4 and D6, and Master Pay Scale for the rest.

** Filled by civil servants or officers under special appointments.

Remarks:

- (1) The benefits (for example, leave and allowances entitlement, and so on) of the officers listed in the above table were provided in accordance with the Civil Service Regulations.
- (2) Apart from the civil service establishment listed above, the CEO also employed one politically appointed official (that is, Director of the Chief Executive Office (D/CEO)) and five non-civil servants under special appointments, including Information Co-ordinator, Senior Special Assistant, Special Assistant, Senior Personal Assistant and D/CEO's driver; and seven officers on non-civil service contract, including two Project Officers and five domestic staff.
- (3) The staff establishment of the Executive Council Secretariat (a total of 16 posts), originally under the Chief Secretary for Administration's Office and Financial Secretary's Office, has been put under the CEO since 2003. As two of the posts were deleted in 2004 and 2007 respectively, there are currently 14 posts in the Secretariat.

Table 3

(A) Posts that have been filled on leaving vacant for a long period of time before June 2006 in the CEO

<i>Post</i>	<i>Master Pay Scale</i>	<i>Duties</i>	<i>Remarks</i>
Senior Personal Assistant	34-39	Personal Assistant to the Chief Executive	Between July 1997 and June 2005, the post was left vacant and its duties were taken up by non-civil servant under special appointment.
Social Secretary	30-32	To provide social support for the Chief Executive and his wife	Since 2003, the post has been left vacant while duties taken up by Assistant Social Secretary, and a supernumerary post of Personal Secretary II has been created to provide support for Assistant Social Secretary.
Domestic Staff III	11-12	To provide housework support for the Chief Executive	Since 2006, the post has been left vacant and a supernumerary post of Domestic Staff V has been created to meet operational needs.

(B) Post created and upgraded in the CEO since June 2006

<i>Post</i>	<i>Number of posts created</i>	<i>Number of posts deleted</i>	<i>Master Pay Scale</i>	<i>Reasons</i>
Assistant Secretary	2		45-49	To assist in research, policy assignments and administrative functions for CEO and to help track the status of various commitments which the Chief Executive has made.

<i>Post</i>	<i>Number of posts created</i>	<i>Number of posts deleted</i>	<i>Master Pay Scale</i>	<i>Reasons</i>
Clerical Assistant	1		1-10	To enhance clerical support, the posts were upgraded from Office Assistant to Clerical Assistant.
Office Assistant		1	1-6	
Confidential Assistant		1	9-17	To enhance clerical support in handling confidential files.
Senior Personal Secretary	2		22-27	To provide secretarial services.
Personal Secretary I	1		16-21	The post was upgraded from Personal Secretary II to Personal Secretary I to meet operational needs.
Personal Secretary II		1	4-15	
Senior Executive Officer (Support Service)	1		34-44	To enhance administrative support, including handling invitations and requests to the Chief Executive from local and overseas institutions and organizations.
Executive Officer (Support Service)	1		28-33	To enhance support in handling public enquiries, complaints and petitions to the Chief Executive and CEO.
Executive Officer (Support Service)	1	1	28-33	The post was upgraded from Executive Officer II to Executive Officer I to enhance support in handling public enquiries, complaints and petitions to the Chief Executive and CEO.
Clerical Officer (Support Service)	1		16-21	The post was upgraded from Assistant Clerical Officer to Clerical Officer in 2010 to enhance support in handling public enquiries and complaints.
Assistant Clerical Officer (Support Service)		1	3-15	

<i>Post</i>	<i>Number of posts created</i>	<i>Number of posts deleted</i>	<i>Master Pay Scale</i>	<i>Reasons</i>
Assistant Clerical Officer (Support Service)	2		3-15	To enhance support in handling public enquiries and complaints.
Motor Driver	1		5-8	To provide transport services.
Total	14	4		

Remarks:

- (1) The benefits (for example, leave and allowances entitlement, and so on) of the officers listed in the above table were provided in accordance with the Civil Service Regulations.

PRESIDENT (in Cantonese): Mrs Regina IP has just arrived. I now call upon her to ask a supplementary question.

MRS REGINA IP (in Cantonese): *President, I am sorry for being late. Although I did not have time to analyse in detail the Government's reply, I would like to seek the Secretary's advice on one thing. A major difference between the two Chief Executives (that is, Mr TUNG and Mr TSANG) is that Mr TSANG is living in Government House, whereas Mr TUNG has never lived there. To my understanding, whether or not the Chief Executive is residing there, Government House requires a large domestic staff. Currently, the Chief Executive and his wife are living there, and given the relatively large number of entertainment functions there, the increase in the number of domestic staff members is understandable. Nevertheless, I have noticed the increased manpower for administrative support, especially media support, in the CEO. Moreover, an additional Permanent Secretary post has been created.*

To my understanding, during the TUNG Chee-hwa era immediately after the reunification, there was an administrative support staff only 20 or so members in the CEO. Why is there a need to increase the manpower significantly nowadays? In particular, there has been a significant increase in the size of the support staff, particularly for communication with the media.

What effects have been achieved? What impact will it have on boosting the Chief Executive's popularity and communication with the media? Will the Secretary please reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, thanks to Mrs Regina IP for the supplementary question. According to the tabulated information submitted by us to the Legislative Council, the staff establishment of the CEO was around 60 in 1997 and stands at around 100 now. The increase in manpower was mainly attributed to the creation of 10-odd additional posts in the CEO because the Executive Council Secretariat, originally under the Chief Secretary for Administration's Office and Financial Secretary's Office, was placed under the CEO a couple of years ago.

In regard to the manpower responsible for information co-ordination, as mentioned by Mrs Regina IP just now, there were a D-8 Information Co-ordinator post and a D-3 Press Secretary post during Mr TUNG's era. In addition, a D-2 Assistant Director of Information Services post in the Information Services Department at that time was responsible for co-ordinating and assisting in the Chief Executive's publicity work. Currently, a D-4 Information Co-ordinator in the CEO is responsible for handling the Chief Executive's publicity work. Meanwhile, a D-2 Assistant Director in the Information Services Department is responsible for assisting the Information Co-ordinator in handling the publicity work for the Chief Executive. Hence, the two Chief Executives' eras are actually similar in terms of staff establishment and support.

MS LI FUNG-YING (in Cantonese): *President, if we simply look at the establishment, we can see that the number of staff members has increased by 39 from 62 in 1997 to 101 at present. According to the Secretary, the manpower was increased to meet actual operational needs, including new tasks. May I ask the Secretary what new tasks were not found in 1997? With the additional 39 staff members available now, what new tasks has the CEO launched accordingly and what items are new?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, thanks to Ms LI Fung-ying for the supplementary question. According to the information on hand, insofar as new tasks and increasing workload are concerned, the latter refers mainly to the support provided by the Executive Officers and relevant officers, which are general grade staff. As the CEO has to handle on a daily basis many complaints and enquiries made by various sectors of the community in writing or by telephone, the manpower has been increased to undertake such tasks.

As for the new types of work, just now I already explained briefly that 14 colleagues in the Executive Council Secretariat were transferred from the Chief Secretary for Administration's Office to the CEO a couple of years ago.

Furthermore, the CEO has recruited several new colleagues to undertake tasks related to new media, especially those arising from communication with the community through facebook or other new media over the past couple of years. The increase in manpower on this front is, however, not substantial since only a couple of colleagues have been recruited by the CEO to handle these new types of work. This is the general picture of the manpower increase.

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

MS LI FUNG-YING (in Cantonese): *President, the Secretary has not answered what additional tasks have actually been created and the relevant staff establishment. According to his reply just now, the additional manpower adds up to 20-odd persons at the most. So, why is it that there are 30-odd additional staff members?*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the information set out in Tables 1 and 2 reflects mainly the number of support staff newly recruited to cope with increasing workload.

Just now, I already explained the new types of task, such as those undertaken by the Executive Council Secretariat and related to new media. During the several years after the reunification, an additional D-6 Permanent Secretary post was created in the CEO, with two Senior Administrative Officers under it, to enhance the support for the Chief Executive, especially in relation to the implementation of his political platform and following-up the collaborative and co-ordination work in relation to the annual policy address. These additional posts were all created to meet needs of operation.

MRS REGINA IP (in Cantonese): *Regarding remark (3) in which it is mentioned that "the staff establishment of the Executive Council Secretariat was originally under the Chief Secretary for Administration's Office and Financial Secretary's Office", we, as former Administrative Officers, all know that it is referring to the Councils Division, in which there is a PAS (Councils) Staff Grade C post. The Division is responsible for co-ordinating and submitting the items proposed by various bureaux for inclusion in the Agenda to the Chief Secretary for Administration and Financial Secretary for perusal before putting them on the Agenda.*

Why is this task now performed by the CEO? What special reasons are there to make the Chief Executive so busy, for he is now required to act as the controller of the entire Agenda of the Executive Council? Why was such a major change made?

PRESIDENT (in Cantonese): Is your question about remark (3) in Table 2, which is attached to the main reply?

MRS REGINA IP (in Cantonese): *Yes, remark (3) in Table 2.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the Chief Executive is the President of the Executive Council, and the Executive Council Secretariat was responsible for assisting in drawing up the Agenda for the Chief Executive. Even before coming under the establishment of the CEO, the Secretariat was responsible for handling the

documents submitted by various bureaux to the Executive Council, document filing, and so on.

As regards the reason for placing the Secretariat under the establishment of the CEO, I am sorry, Mrs Regina IP, for I do not have such information on hand. Nevertheless, I believe the change in the establishment back then has been explained to the public and the Legislative Council according to the established procedure. I am sorry that I do not have the background information on hand at the moment.

MRS REGINA IP (in Cantonese): *The Secretary has not answered my earlier follow-up question: Is there any significant improvement in the effectiveness of the Chief Executive in leading the work of the SAR Government after the restructuring and increase in manpower? I hope the Secretary can make an assessment.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the CEO is mainly responsible for supporting the Chief Executive in performing his duties, which cannot be quantified easily. Nevertheless, perhaps I can try to report on the work of the CEO from another perspective.

First, the CEO is mainly responsible for playing a co-ordinating role and monitoring the implementation of policies. As I said earlier, the CEO has to monitor the implementation of the policy address or the Chief Executive's political platform and examine with various departments, after the announcement of the policy address, the progress of implementation of the recommendations made in the policy address. Of the 173 pledges made by the Chief Executive during his election campaigns, 169, or most of them, have been honoured or are being honoured. As for the 10 major infrastructure projects proposed in the 2007-2008 Policy Address, various relevant preparations and construction works have been launched one after another or are underway. As regards the industries with clear advantages and pillar industries mentioned in the several ensuing policy addresses, the follow-up initiatives proposed are also being implemented in a progressive manner.

Second, the Director of the CEO and his team has been maintaining liaison and communication with the Executive Council and the Legislative Council, and arranging for frequent meetings to be held to listen to the views of Honourable Members and various sectors of the community on administration. With the creation of the post of Director of the CEO and the establishment of his team a few years ago, I believe the aforesaid political liaison work has already been enhanced.

Third, the frequent occurrence of unexpected events over the past couple of years, such as the human swine flu outbreak in 2009, the hostage incident in the Philippines in 2010, and the nuclear incident in Fukushima, Japan in 2011, has obliged the Chief Executive to personally take charge of and co-ordinate various departments in taking emergency actions. The CEO has been able to provide the Chief Executive with effective support in responding to contingencies on each and every occasion.

Nevertheless, the CEO also has some day-in and day-out tasks which must be dealt with on a daily basis and can be quantified more easily. For instance, it is required to handle more than 100 000 letters, emails and telephone calls related to invitations, complaints or expression of opinions every year; making arrangements for the official or public service visits made by the Chief Executive on the Mainland or abroad, and rendering assistance and support to the Chief Executive in attending the events organized by various sectors of the community. In 2011 alone, the Chief Executive attended some 500 public service and social events.

I do not intend to take up too much time of the Council to cite other examples. Generally speaking, as I pointed out in the main reply just now, we think that the existing establishment and work of the CEO has a positive impact on giving support to the Chief Executive and is able to cope with the operational needs of the CEO.

MR PAUL CHAN (in Cantonese): *President, despite the mention of several non-civil service ranks in remark (2) in Table 2 attached to the main reply, I cannot find these two ranks, namely Senior Special Assistant and Special Assistant, in the Table. May I ask what are the duties of these two Special Assistants, and why are they so special that civil servants cannot perform their tasks?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, several colleagues in the CEO are non-civil servants under special appointment, including the Senior Special Assistant and Special Assistant mentioned by Mr Paul CHAN just now. Currently, these two posts are taken up by Mr CHAN Kin-ping and Mr Ronald CHAN Ngok-pang respectively.

The main duty of the Special Assistant is to assist the Chief Executive in handling tasks related to new media, especially communication with various sectors through the CEO website, facebook and other new media. The Special Assistant is also required to assist the Chief Executive in liaising with various sectors of the community, and sometimes assisting in making arrangements for the Chief Executive to visit various districts in the territory.

The main duty of the Senior Special Assistant is to assist in liaison between the Chief Executive and the Mainland departments, particularly during the Chief Executive's annual duty visits and attendance at sessions of the National People's Congress and the Political Consultative Conference. Furthermore, he is required to undertake liaison during the public service visits made by the Chief Executive to Mainland provinces and municipalities. Depending on the needs, he will also assist in the drafting of speeches for the Chief Executive. This is the general picture of the delineation of responsibilities among them.

PRESIDENT (in Cantonese): Third question.

Public Transport Fare Concessions for Students

3. **MS STARRY LEE** (in Cantonese): *President, at present, except under the Student Travel Scheme offered by the MTR, students have to pay full fares when taking other modes of transport such as public buses and ferries, and so on. Moreover, students who wish to apply for subsidy under the Student Travel Subsidy Scheme (STSS) offered by the Student Financial Assistance Agency are required to meet a number of criteria (including passing the means test, residing beyond 10 minutes' walking distance from school and travelling to school by public transport). The amount of travel subsidy provided under STSS is just sufficient to pay for the average public transport fare for home-school travel, and*

does not cover the travelling expenses incurred when students take part in other learning activities. In this connection, will the Government inform this Council:

- (a) of the increase in the number of beneficiaries and government expenditure to be resulted in expanding the public transport fare concessions scheme (fare concessions scheme) for the elderly and persons with disabilities to cover all students receiving formal primary, secondary education or attending a full-time day course up to first degree level in an acceptable institution in Hong Kong; whether it will consider expanding the fare concessions scheme to cover such students; if it will, of the details; if not, the reasons for that;*
- (b) whether it will suggest the Community Care Fund (CCF) to look into the feasibility of providing the aforesaid fare concessions to full-time students; if it will, of the details; if not, the reasons for that; and*
- (c) when the scope of assistance under the STSS was last reviewed; whether the Government will consider relaxing the eligibility criteria for applying for the STSS and increasing the amount of subsidy with a view to encouraging students to participate in different kinds of activities and broadening their learning experience; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Cantonese): President,

- (a) The STSS is a means-tested financial assistance scheme which aims to provide cash subsidy to needy students pursuing full-time studies at primary, secondary and post-secondary levels up to the first degree for the purpose of meeting their expenses incurred on home-school travels.

The means-test mechanism currently applicable to various student financial assistance schemes assesses the applicants' eligibility for financial assistance on the basis of their gross annual household income and household size. The gross annual household income of the eligible family, when translated into monthly family earnings, is generally comparable to the median household income. Depending

on the actual financial situation of the applicant's family, the student-applicant may receive a full rate or a half rate of travel subsidy for home-school travels. At present, there are approximately 900 000 students studying full-time from primary up to first degree levels. In the 2010-2011 school year, around 231 000 students were eligible for and received travel subsidy. To enhance financial support for needy students, we have relaxed the income ceiling for full level of assistance of the means-test mechanism in the 2011-2012 school year. The percentage of students eligible for full rate of travel subsidy as against the total number of STSS beneficiaries increased from around 30% in previous school years to 57% in 2011-2012. The estimated disbursement under the STSS will increase by \$75.35 million (or around 21%) to \$427.35 million in the 2011-2012 school year. The subsidy rate for individual students depends on the distance between the students' residences and their schools. In 2011-2012, the median travel subsidy amount received by primary and secondary students is \$1,258 per student and that for post secondary students is \$2,457 per student.

If the Public Transport Concessions Scheme for the elderly and persons with disabilities is extended to cover all students receiving primary, secondary education or attending a full-time day course up to first degree level in an acceptable institution in Hong Kong, all 900 000 students, including those from families without any economic hardship, will benefit from this scheme. In view of the large number of students involved and the great variations in the mode of transport, travel patterns, frequency and travel distance involved for individual students, it is not possible to accurately estimate the additional amount of government expenditure involved at this stage.

To safeguard the proper use of public money, we consider it appropriate to continue with the existing arrangement which restricts student travel subsidy to eligible needy students.

- (b) The CCF is established to provide assistance to people facing economic difficulties, in particular those who fall outside the social safety net or those within the safety net but have special

circumstances that are not covered. The CCF also takes forward initiatives on a pilot basis to help the Government identify those measures that can be considered for incorporation into the regular assistance and service programmes. As the STSS already provides regular travel subsidy to needy students, the Government has no intention of inviting the CCF to consider providing extra travel subsidy to full-time students.

- (c) The STSS was last reviewed in 2004 when the Cross-net Travel Subsidy Scheme and the STSS were merged as a unified financial assistance scheme to cover all local full-time primary to post secondary students up to the first degree level with financial need. The scope of beneficiaries was also enlarged to include needy students aged below 12 who were attending private schools and schools under the Direct Subsidy Scheme. The proposal was subsequently implemented from 2004-2005 onwards. We continued to expand the scope of beneficiaries under the STSS thereafter. In the 2008-2009 school year, the STSS was extended to cover full-time sub-degree graduates studying self-financing locally-accredited degree or top-up degree programmes. In May 2011, the income ceiling for full level of student financial assistance under the means-test mechanism was relaxed such that more student-applicants passing the means test could receive full assistance.

As the Government has been encouraging and supporting needy students to participate in extra-curricular activities through a number of different schemes, we have no plan to relax the eligibility criteria and increase the subsidy rate of the STSS.

MS STARRY LEE (in Cantonese): *President, there are two major problems with the STSS currently and that is, the threshold for application is too high and the amount of subsidy receivable is small. If anyone wants to make a successful application, he has to clear three hurdles. First, he has to pass a means test; second, his place of residence must be beyond 10 minutes' walking distance from school and third, he must use public means of transport. It is because of this that the number of students who can apply successfully for the STSS is small. As*

at 20 February, only about 180 000 students from primary and secondary schools can make a successful application. In other words, only one in four is successful.

Besides the small number of beneficiaries, the amount of subsidy obtained is also very small. We have checked the information and found that the current amount of subsidy is only \$1,568 and that translates into a daily average of \$4.3. There is no consideration of the transport needs of students who make use of their spare time to take part in extra-curricular activities or other learning experiences. Does the Government agree that the current method of calculating the subsidy does not encourage students to take part in extra-curricular activities, which is not in tune with the practical reality, and hence should be reviewed? Will consideration be given to reintroducing the half-fare transport pass of the past so that all students can enjoy half-fare concessions when they ride on public means of transport if they hold such a pass? If so, will this measure be introduced; and if not, why? How will the Government then encourage students to take part in other activities?

SECRETARY FOR EDUCATION (in Cantonese): President, as I have said in the main reply, the STSS aims mainly to provide cash subsidy to needy students for the purpose of meeting their expenses incurred on home-school travels. As for extra-curricular activities, we have other schemes in place to provide the relevant kinds of subsidy for students taking part in such activities. If Members would like to know the details, I can explain them in detail later on.

As to the question of whether the threshold for application is too high, actually I have pointed out in the main reply that we have recently relaxed the income ceiling under the means-test mechanism and so more student-applicants passing the means test could receive a full-rate or half-rate travel subsidy.

As to the question of whether the amount of travel subsidy is too small, that will depend on the distance between the applicant's place of residence and his school. According to some information on hand, the maximum amount of travel subsidy granted is \$19,059 a year and so the amount can vary greatly and that depends on the practical circumstances, the distance between place of residence and school, and so on. So no generalization can be made on that.

MR CHAN HAK-KAN (in Cantonese): *President, I agree very much with the view of Ms Starry LEE, that the vetting and approval criteria for the present STSS are too stringent and even if an applicant gets the subsidy, as Ms LEE said, the daily rate is just some \$4. Many parents therefore have told us that they would rather not apply for it. I do not know whether the Secretary has checked the amount of resources used by the Student Financial Assistance Agency to process such applications, that is, how much money the Agency spends in terms of manpower and other expenses to vet such applications. Would there be greater value for money if the amount of expenditure is used entirely to finance full-time students or even kindergarten pupils to ride on public means of transport? As a matter of fact, it can be said that students all have Octopus cards, so will administrative expenses be saved and can students benefit directly if the subsidy is paid out via the Octopus card?*

PRESIDENT (in Cantonese): Mr CHAN, you have raised a number of questions, giving people an impression that you are raising questions in a debate rather than presenting them as supplementary questions. Please raise your supplementary question clearly.

MR CHAN HAK-KAN (in Cantonese): *President, my supplementary question is simple enough. Can the Student Octopus Cards be used to enable students to get half-fare concessions on public transport without requiring the students to undergo any vetting and approval procedures? May I ask the Secretary if that will work?*

SECRETARY FOR EDUCATION (in Cantonese): The main point about the STSS is not how much the fares will cost but the subsidy should be provided according to the family conditions of the students concerned. So there is a need to undergo a means test. As we know, the means test is not only set up for the travel subsidy. There are many student financial assistance schemes offered by the Government such as those on school fees remission, and so there is a need to set up a permanent mechanism to vet the income of the parents making such applications. Often the parents will apply for different financial assistance schemes and we will process them jointly.

Therefore, we will not reduce the amount of subsidy receivable by the students because of administrative expenses incurred for the STSS. The amount of travel subsidy paid out by the Government is not an accountable subsidy and as I have mentioned earlier, since the number of students is large, and as the distance between the place of residence and school is long, the number of means of public transport used will also vary, so we cannot adopt an accountable method to vet how an applicant will use the subsidy because the amount of administrative expenses thus incurred will be enormous. We will conduct a survey every year to examine the amount of average transport fares paid by every applicant in his own district. After obtaining the average figures, we will pay out the subsidy to the students.

MR LAU KONG-WAH (in Cantonese): *President, the Chinese society attaches great importance to respecting the elderly and helping the young. With respect to respecting the elderly, the Government has recently introduced the scheme to let the elderly enjoy a fare concession of \$2 when they take any means of public transport. But with regard to the student travel subsidy, it is very inconvenient and applicants have to go through many kinds of tests and these present a headache to parents. With respect to the supplementary question raised by Mr CHAN Hak-kan earlier, I do not think the Secretary has given a complete reply. Currently, roughly 60% of the students can get a full transport subsidy and I am sure the administrative expenses involved are huge. If these administrative expenses are saved to enable all students to enjoy a full subsidy, how much in cost would that incur?*

The Democratic Alliance for the Betterment and Progress of Hong Kong has always advocated student half-fare passes should be used on all means of public transport. This arrangement, being simple, can reduce administrative expenses, obviate the need for vetting and approval, enable students to take part in extra-curricular activities and pre-empt the present situation of the MTR and buses charging fares under two different fare structures. May I ask the Secretary if he agrees to this analysis made by me? Does he agree that consideration can be given to studying and implementing such an arrangement?

SECRETARY FOR EDUCATION (in Cantonese): President, I have stated clearly in my main reply just now that we have some other schemes in place to

provide assistance to students who want to take part in extra-curricular activities and such schemes can subsidize the transport fares paid by students. The assumption underlying the STSS is that each student in a primary or secondary school makes an average of 12 rides on public means of transport in a week while a post-secondary student makes an average of 14 rides. Under this method of calculation, it is assumed that 10 rides are made for the daily trip from home to school and the other two rides are for students to take part in extra-curricular activities during weekends. As post-secondary students have more chances to take part in extra-curricular activities, the number of trips they make on public means of transport would presumably be larger.

Schemes that come under the travel subsidy for participation in extra-curricular activities are first, the School-based After-school Learning and Support Programmes. The Programmes mainly aim at helping needy students in their personal development and all-round development. There is a great diversity in the extra-curricular activities covered by the Programmes. Besides assistance in school work, there are also cultural and artistic activities, sports activities, leadership training, voluntary services, visits to places and people.

The other subsidy scheme is the Hong Kong Jockey Club Life-wide Learning Fund. The Fund operates mainly to complement the school curriculum to finance needy students in taking part in life-wide learning activities organized or approved by the schools. Such activities include those held in Hong Kong or abroad and the nature of such activities varies from sports and artistic events, visits, exchange projects and social services to work-related experience.

These two schemes can provide subsidy to students to meet the transport expenses incurred for taking part in these activities.

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

MR LAU KONG-WAH (in Cantonese): *President, the Secretary has not replied on the question of administrative expenses and also on whether the student half-fare pass idea is workable.*

PRESIDENT (in Cantonese): Secretary, could consideration be given to offering half-fare concessions on a full scale?

SECRETARY FOR EDUCATION (in Cantonese): With respect to administrative expenses, I have already given a reply to that in the last supplementary question. We do not want to make any consideration with respect to the travel subsidy which is not necessary, nor do we want to set up any administrative framework especially for that purpose. The framework with respect to student finance is huge and we have many other kinds of subsidies as well, such as those on remission of school fees and other fees. The relevant administrative work is handled jointly. Therefore, the administrative expenses will not increase substantially as a result of the vetting and approval of the travel subsidy applications.

As to the question whether it is feasible to introduce one card to meet all the needs of student travel, we all know that public transport operators are mainly commercial operators and they engage in commercial activities. We would of course not raise any objection if it is the policy of these operators to permit the introduction of such measures. But very often if the introduction of these measures would lead to any adverse effect in costs, these operators would often demand that the Government should compensate their losses. So we have not considered this option.

DR LAM TAI-FAI (in Cantonese): *President, I think that the Government's plan to introduce a \$2 concessionary fare is really a benevolent policy because it would enable the elderly and people with disabilities to go into the community, merge with it and enjoy life. I am therefore very supportive of that. However, under the existing plan, those who will benefit are only limited to recipients of Comprehensive Social Security Assistance with 100% incapacity or recipients of the Disability Allowance. Other people with disabilities like those students receiving special education cannot benefit from it at all. I think that this restriction is much too extreme and applicants for assistance are subject to excessive limitation. Since the Government has such a huge surplus, we should be generous to these groups of disadvantaged people and help them integrate into society by all means.*

President, it is said in part (a) of the main reply from the Government that in view of the large number of students involved, it is not possible to accurately estimate the additional amount of government expenditure involved. In this connection, may I ask the Secretary whether consideration would be given to extending this scheme to include students receiving special education so that they too can benefit from the scheme? In fact, the Government must know the number of students going to special schools and as these students do not go out for activities so often, why can the Government not help these students? If it does, it will certainly help these students integrate better into the community.

SECRETARY FOR EDUCATION (in Cantonese): In fact, students who receive special education do not really differ from other students. The vetting and approval work we do with respect to the applications is based mainly on the family conditions of the applicants and it is not true to say that disbursements will not be made to them. If these students wish to apply for the travel subsidy, we will treat them like any other applicants.

PRESIDENT (in Cantonese): We have spent nearly 22 minutes on this question. Fourth question.

Regulation of Sales of First-hand Private Residential Properties

4. **MR ALAN LEONG** (in Cantonese): *It has been reported that a member of the public bought an "Oceanaire Garden Residence" flat situated on the podium floor of a residential property named "Oceanaire" in Ma On Shan at a price of \$7 million. As the member of the public bought the flat during the pre-sale of uncompleted flats of the property, it was not until two months ago when he took possession of the flat that he came to know that it is actually situated on the ground level, and he suspects that the contents of the sales brochure of the property are misleading. The sales brochure states that the residential flats are situated on the podium floor and on the fifth to the 30th floors, and there is no ground floor, first to fourth floors, 13th, 14th and 24th floors in the property. The floor plans are only in English and the distance between the podium floor and the ground level is not indicated; further, the layout plan of the clubhouse shows that the podium floor is situated above the*

clubhouse which is on the first floor. In this connection, will the Government inform this Council:

- (a) when approving the building plans of the aforesaid residential property, whether the Buildings Department (BD) had considered if the contents of the sales brochure would mislead buyers into believing that the flats on the podium floor which they bought are not on the ground level; if it had, of the details; if not, the reasons for that;*
- (b) given that according to the Practice Note for Authorized Persons, Registered Structural Engineers and Registered Geotechnical Engineers (Practice Note) amended by the BD in May 2010, omission of floor numbers "4", "13" and those ending with a "4" may be accepted, but assigning floor numbers with other omissions would not be allowed, and the use of non-numerical names, alias names, alternative floor numbers (for example, in the form of "also known as x/F"), illogical or non-consecutive numbers would also not be accepted for assigning floor numbers, so as to avoid causing confusion to potential property buyers, visitors and government departments which provide emergency services, whether the authorities had, when approving the building plans of "Oceanaire", assessed if the developer had violated the Practice Note by stating that flats located below the fifth floor are on a non-numerical floor of "podium floor" and omitting the first to third floors; if so, of the details and whether they had requested the developer to amend the plans properly; if no assessment had been made, the reasons for that; and*
- (c) according to the Government's proposed legislation to regulate the sales of first-hand residential properties, whether the aforesaid "Oceanaire" case has violated any provision in the proposed legislation; if so, of the details; if not, whether it will consider including the relevant requirements, so that the proposed legislation can better protect the consumers?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, in vetting and approving building plans, the Building Authority (BA) must act according to

the Buildings Ordinance (BO). Section 16 of the BO stipulates the grounds on which the BA may refuse to approve building plans. These provisions do not provide for a ground related to sales brochures. Therefore, in vetting and approving building plans, the BA will not consider the contents of sales brochures.

If the land grant contains a provision requiring the Deed of Mutual Covenant (DMC) to be approved by the Director of Lands, the Lands Department (LandsD), when vetting and approving the DMC, will take the floor numbers shown on the building plans approved by the BA as the floor numbers to be set out in the DMC. If the land grant contains another provision requiring the developer to obtain the presale consent of the Director of Lands before the issue of the Certificate of Compliance, the sale of uncompleted units will be subject to the LandsD's Consent Scheme. The Consent Scheme requires developers to provide information on floor numbering in the section entitled "Basic Information of the Development" at the front part of the sales brochure. Such information should accord with the information as set out in the approved DMC.

While the floor numbering system of buildings is not a ground on which the BA may refuse to approve plans under section 16 of the BO, the BA has drawn up the Practice Note on "Standardization of Floor Numbering" with a view to formulating a reasonable approach and a code of good practice for floor numbering for the industry to adopt. Despite that the Practice Note is advisory in nature, according to past experience, the industry will follow it. In view of public concerns on floor numbering systems, the BA last conducted a review on the Practice Note in 2009 and introduced revisions in May 2010 following a thorough discussion with stakeholders. Under the prevailing Practice Note, when submitting plans to the BA for approval, the Authorized Person (AP) must clearly and unequivocally indicate the numbering of each floor on the plans. If the BA or other government departments concerned consider that the floor numbers of a building as shown on the plans are not arranged in a logical sequence or the numbering arrangement may cause confusion, the BA would advise the applicant to make appropriate amendments to the plans.

My reply to the three-part question is as follows:

- (a) As I mentioned above, section 16 of the BO stipulates the grounds on which the BA may refuse to approve building plans. These

provisions do not provide for a ground related to sales brochures. Therefore, in approving the building plans of the development project "Oceanaire", the BA did not consider the contents of the sales brochure. In fact, chronologically, a sales brochure is generally provided for the purpose of property sale (including pre-sale) and does not exist at the time of submission of building plans.

- (b) The general building plans of the development project "Oceanaire" were first approved by the BA in December 2007. Subsequently, in July 2009, the BA approved the amendment plans on which the existing floor numbering system was indicated. As the revised Practice Note that I mentioned above had yet to be issued at that time, the BA only assessed the floor numbering system adopted in the project according to the previous Practice Note. In December 2010, the AP submitted the final amendment plans of the project to the BA. The revised Practice Note had come into effect by then, and it was applicable to the development project. Accordingly, while there was no change to the floor numbering system in the final amendment plans submitted, the BA had made an assessment in accordance with the revised Practice Note.

The site of the development project generally takes the shape of a pot. The floor numbers of all the residential towers in the project are arranged having regard to the geographical conditions of the site. The lowest point of the site is found at its middle part, at which the residential clubhouse is situated. The floor numbers of the residential clubhouse are consecutively designated as the 1/F, 2/F, 3/F and 5/F (with the omission of the 4/F). On the other hand, the six multi-storey residential towers and the 14 houses are distributed on the periphery of the site, with an elevated topography over the middle part of the site. For the six multi-storey residential towers, the first floor on the ground level is designated as the podium floor, and the floors above the flats on the podium floor are consecutively designated as the 5/F to 30/F (with the omission of the 13/F and floor numbers ending with a "4").

According to the building plans submitted by the AP and already approved, the floor numbers of the development project take

consideration of its overall design and are assigned in a consecutive ascending order. Towers 6 and 7 are attached to the residential clubhouse. For these two towers, as the level of the floor above the podium floor is close to the level of the 5/F of the clubhouse, that floor is designated as the 5/F. The floor numbering arrangement adopted in Towers 6 and 7 are applied to other residential towers in the development project (that is, Towers 1, 2, 3 and 5) so as to achieve consistency and avoid confusion and inconvenience. The floor numbers of the whole development project are arranged as follows: basement, 1/F (clubhouse), podium floor, 2/F (clubhouse), 3/F (clubhouse), 5/F of the six multi-storey residential towers, and 5/F (clubhouse). From the perspective of the whole development project, there is no omission of the 1/F to 3/F.

As regards the nomenclature of "podium floor", while it is a non-numerical name, APs, when applying the Practice Note, make use of their professional judgment to consider whether a particular proposal for floor nomenclature is reasonable. In fact, the nomenclature of "podium floor" has been adopted in typical residential buildings in Hong Kong. Besides, in an example of an appropriate floor numbering system as set out in the Practice Note (at Appendix A of the Practice Note), the BA will accept certain non-numerical names as floor nomenclature such as "mezzanine floor" and "podium".

Under the existing centralized processing system for building plans, upon receipt of the building plans for approval, the BA had referred the plans to the relevant government departments for consideration. In this "Oceanaire" case, the relevant departments (including the Fire Services Department) did not raise any comments on the above floor numbering system. After assessing the above factors, the BA considered that the floor numbering system of the development project was acceptable and, therefore, did not advise the applicant to make amendment.

- (c) To further enhance the transparency and fairness of the sales arrangements of first-hand residential properties, the Transport and Housing Bureau prepared the proposed legislation on regulating the

sale of first-hand residential properties after taking into account the recommendations of the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation (the Steering Committee). The legislative proposals are primarily based on the recommendations of the Steering Committee. The Transport and Housing Bureau conducted a public consultation exercise on the proposed legislation from 29 November 2011 to 28 January 2012. The Transport and Housing Bureau received 959 submissions during the public consultation period. The Transport and Housing Bureau is considering the views received and will revise the proposed legislation as appropriate.

The proposed legislation requires vendors to prepare sales brochures and sets out the requirements on the information to be included in sales brochures, which includes a location plan of the development, an aerial photo of the development and the floor plans of residential properties in the development. The Transport and Housing Bureau is finalizing the draft legislation and among other things, a clause will be added to the proposed legislation such that the vendor will be required to provide information on the difference in levels between the lowest residential floor and the ground level for the reference of prospective purchasers, with a view to enhancing consumer protection.

The regulation of the sales of first-hand residential properties is one of the most important tasks of the Transport and Housing Bureau. The Bureau will endeavor to introduce the Bill into the Legislative Council in the first quarter of 2012, and will make every effort to complete the legislative work within the current legislative year.

MR ALAN LEONG (in Cantonese): *President, the Secretary gave a reply in four whole pages to my main question, but it seems that her reply has not addressed the core of my main question. The Secretary appeared to be telling consumers, especially buyers of flats of "Oceanaire", that there is no problem and that they only have bad luck to blame for buying these flats when they thought that their flats were on the fifth floor but then found out that they are actually situated at the ground level with buses passing by their flats.*

In part (c) of my main question, I deliberately asked the Government: As there is such a case and there is also a white bill, and according to the proposals of the Government, will the developer of "Oceanaire" give the buyers a fair deal? If not, is it necessary for the Government to make amendments to this white bill? This question was asked from the consumer's point of view, and it seems that the Secretary has not given an answer.

May I ask the Secretary whether she is telling us that the case of "Oceanaire" has not in the least violated the existing mechanism as this is all because of bad luck on the part of consumers and that it is unnecessary to make any changes to the requirements proposed by the white bill, and consumers will continue to have bad luck in future? Is this what she means?

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

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I believe the Secretary for Transport and Housing will definitely give a response to Mr LEONG's question on the white bill. But I must clarify that I have not stated any view in my main reply. On this case of "Oceanaire", I have not made any comment in respect of the information obtained by consumers or the feelings of consumers who have purchased these flats. So, Mr LEONG cannot say that I have made such remarks as "there is no problem" or "consumers have run into bad luck", and so on.

Mr LEONG must understand that the objective of the BO is to make provisions on the design, planning and construction of buildings for the purpose of regulation, so that there will not be dangerous buildings in Hong Kong. This is the major objective of the BO.

As there was another case arousing great concern before, we already took the initiative to standardize floor numbering. After all, we have always worked on the basis of the BO.

I trust that that one of the most important tasks of the Transport and Housing Bureau is to prepare the bill on the sale of first-hand residential

properties is because the Administration thinks that in order to truly enhance transparency for consumers and prospective purchasers, a specific law should be enacted for this purpose. Therefore, in parts (a) and (b) of my main reply, I can only provide a professional assessment under the BO and the Practice Note in my capacity as the Principal Official responsible for building issues.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, during discussions on the white bill, Members have all thrown weight behind the bill, and I thank Members of this Council for their support. We will make clear provisions to require the sales brochure to set out a lot of specified information. For example, the street number of a development project will be assigned by the Rating and Valuation Department. With regard to the floor numbering system under discussion today, building plans are approved according to the BO, whereas the DMC is approved by the LandsD. As clearly stated by the Secretary for Development just now, with regard to the relevant requirements or procedures such as the seeking of approval, and so on, they will all be completed before the preparation of the sales brochure. Therefore, such information must be clearly set out in the sales brochure.

The point that we need to consider in this special case seems to be the distance between the floor level of the flats in question and the ground level. In this connection, we have consulted some professionals and exchanged views with them. We consider that a clause can be added to the bill to require the provision of information on the difference in floor level between the lowest residential floor and the ground level in the sales brochure and as mentioned in the main reply, such information is provided for reference of prospective purchasers, with a view to enhancing protection for them. Even though various requirements have been prescribed, such as the Practice Note mentioned by the Secretary just now, the sales brochure can further include information on this to help consumers understand the property development project, especially at the stage of sale of uncompleted flats.

Concerning the regulation of first-hand residential properties, during the sale of uncompleted flats, the information on the development project actually rests in the hands of the developer and it is generally impossible for consumers to access all the information. In view of this, we have required developers to set out all the information in the sales brochure, so that consumers can get the

picture. We think that after the addition of this clause, the problem as revealed in this property development project can be addressed.

MR LEE WING-TAT (in Cantonese): *President, a past example is the large-scale omission of floor numbers at 39 Conduit Road, as the floor number suddenly jumped from 20-something or 30-something to 88. The then Director of Buildings initially said that nothing was wrong, but as public sentiments seethed, a new Practice Note was drawn up ultimately.*

I would like to tell the two Secretaries that this incident occurred during the sale of uncompleted flats, and after the previous incident of 39 Conduit Road, we are very concerned about whether there is any discrepancy between the floor numbers and the actual floor levels or the actual environment or whether such information is in any way misleading. But the biggest problem in this incident lies in the words "podium garden". By "podium garden", people normally understand it as having a distance of at least several storeys or two, three or four storeys from the ground level, but it turns out that the podium garden is just one or two feet above the ground level.

My question is: As this case involves uncompleted flats, which department is responsible for examining whether the floor in question, which is described as "podium garden", can in fact meet the height and setting as required for "podium garden", and has the department under the charge of the Secretary done enough to protect the rights and interests of consumers?

PRESIDENT (in Cantonese): Which Secretary will give a reply? Secretary for Transport and Housing, please.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, perhaps let me give a reply first, and I do not know whether or not the Secretary for Development will wish to add anything later.

In the Consent Scheme for the pre-sale of uncompleted flats, developers are required to provide certain information in the sales brochures, including information on floor numbering over which Members have expressed great

concern earlier on. In this respect, as I explained in reply to Mr Alan LEONG's question just now, generally speaking, the sales brochure provides information which has been confirmed by clear sources, such as the floor numbering system which is of concern to Members, and such information is provided on the basis of the building plans approved under the BO, and the sales brochure is required to provide information which has been approved and comes from different sources.

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

(Secretary for Development indicated that she had nothing to add anything)

PRESIDENT (in Cantonese): Mr LEE Wing-tat, has your supplementary question not been answered?

MR LEE WING-TAT (in Cantonese): *President, my question is very short. When ordinary consumers see the words "podium garden" or when the department under your Bureau analyses these words, should they not understand it as meaning several storeys above the ground level, rather than understanding "podium garden" as being situated at the ground level?*

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

SECRETARY FOR DEVELOPMENT (in Cantonese): President, in the main reply, I tried to explain to Members that the design and floor numbering of this project are considered from the perspective of the whole development project. In the project, there are higher floors and lower floors and a residential clubhouse. The site is surrounded by several roads and has different base levels. Some roads are at higher levels and some are at lower levels. Therefore, the floor in question is called the podium floor because there are other floors underneath the clubhouse. But as the clubhouse, which is on the fifth floor, is located at the same level of other multi-storey towers in the project, the developer, therefore,

numbered the floors having regard to the overall planning, and basically, the floors are numbered with reference to the "ascension level". Therefore, when a person walks on this level of this project, he will find that the numbering of all the floors on this level is consistent. This is the reason.

MR ALBERT HO (in Cantonese): *President, in the past, during the sale of uncompleted flats, major property developers would often employ various means to mislead buyers into buying these uncompleted flats, thus causing many problems. The omission of floor numbers was one of the problems, and the Government had immediately responded by improving the Practice Note.*

The problem now is that although the floor numbers are assigned in a consecutive order, the first to the fourth floors are omitted for no reason as the floor numbering starts from the fifth floor and then, it is said that there would be a podium garden below it. As buyers could not view the actual flats, it was natural for them to think that the first to the fourth floors were omitted because this podium garden has replaced these four floors. It is most natural to think this way, and it is very reasonable

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

MR ALBERT HO (in Cantonese): *My question is: What exactly is the use of the Practice Note? It now turns out that the ground floor can be turned into the fifth floor in such a way. May I ask, when the authorities examined this plan according to the Practice Note, whether they had asked the developer why these four floors were missing? Was approval so easily granted to this development project, allowing its floor numbering to start from the fifth floor and allowing the developer to tell prospective buyers that there would be a podium garden underneath?*

Moreover, as it is so easy to circumscribe the safeguards of the Practice Note, is it necessary to review the entire Practice Note comprehensively to ensure that the buyers will be provided with a lot of basic information, such as the distance between each floor and the ground level? Particularly as we can see

from the plan that the podium is actually on the same level as the ground, is it all the more necessary for the developer to clearly disclose such information?

SECRETARY FOR DEVELOPMENT (in Cantonese): I must reiterate that under the BO, the BA issued these codes of practice mainly with the objective of facilitating regulation by the BO. They are no substitute for the information and transparency of the sale of first-hand residential properties in the property market, still less a substitute for protection of consumer rights and interests over which Members have expressed great concern.

Let me now respond to Mr HO's question more specifically. Concerning the final amendments submitted by the developer for this development project, although many plans had been approved previously, the new Practice Note had not yet been made available at the time when these plans were examined and for this reason, the Director of Buildings made an assessment and asked the AP to explain why the floors were numbered in such a way. The reason given by the AP is the same reason I have tried to explain at great length to Members earlier on. The Director of Buildings considered this explanation acceptable, for it is basically in line with the most important principle in the Practice Note in 2010 of being logical. After considering the site condition, the reason given was considered logical and the floors were numbered in a consecutive order without arbitrary omission of particular floors.

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

MR ALBERT HO (in Cantonese): *No matter how well the Practice Note has been drawn up, many people can always think of ways to circumscribe*

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

MR ALBERT HO (in Cantonese): *My question is: Is it necessary to conduct an overall review of the inadequacies of this Practice Note?*

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

SECRETARY FOR DEVELOPMENT (in Cantonese): Mr Alan LEONG put this question in part (c) of the main question. He surely does know that the answer is in part (c) of the main reply. To truly protect the rights and interests of prospective purchasers and uphold transparency of the property market of Hong Kong, a separate law must be enacted, rather than relying on other laws to perform this function temporarily. This is exactly one of the most important tasks of the Transport and Housing Bureau now. In this connection, on behalf of the Secretary for Transport and Housing, I call on Members to pass the bill as soon as possible after its tabling before the Legislative Council.

PRESIDENT (in Cantonese): We have spent almost 25 minutes on this question. Fifth question.

Services Provided to Autistic Children

5. **MR CHEUNG KWOK-CHE** (in Cantonese): *President, in the 2010-2011 Policy Address, the authorities proposed to support the development of autistic children through healthcare, education, pre-school services and social services. In this connection, will the Government inform this Council:*

- (a) *given that quite a number of organizations which provide services to persons with intellectual disabilities (PIDs) have reflected that 20% to 60% of PIDs suffer from autism, of the respective current numbers of autistic persons and PIDs with autism in Hong Kong; whether the authorities at present offer additional support to organizations which provide services to PIDs with autism; if they do, of the details; if not, the reasons for that;*
- (b) *of the direct or ancillary services and support under the various areas of healthcare, primary education, secondary education, pre-school services and social welfare, and so on, offered at present by the authorities to autistic persons at different stages of their*

developmental process; the details of implementation of the services proposed in the aforesaid Policy Address to date; and

- (c) *of the employment support or vocational training offered at present by the authorities to autistic persons after their graduation from secondary schools, and how the authorities assist them in pursuing tertiary education?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, my reply to Mr CHEUNG Kwok-che's question is as follows:

- (a) Based on the findings of the Survey on Persons with Disabilities and Chronic Diseases conducted by the Census and Statistics Department (C&SD) during 2006 and 2007, the estimated number of autistic persons was 3 800. Regarding the statistics on persons with intellectual disability, since intellectual disability is a relatively sensitive topic to some respondents, information collected from them may be subject to larger error. Owing to such limitation, the survey can only provide a crude statistical assessment on the number of persons with intellectual disability. In this regard, the C&SD does not have statistics on the number of persons with both autism and intellectual disability.

According to information collected by the Department of Health (DH), among the pre-school children assessed by the Child Assessment Service in 2010, 1 225 of them were diagnosed with autism or autistic tendency, of whom 810 were also diagnosed with developmental delay.

According to the records of the Education Bureau, there are around 3 370 students with autism studying in public sector ordinary primary and secondary schools in the 2011-2012 school year. Besides, around 2 140 students with both intellectual disability and autism are enrolled at special schools.

Special schools have smaller class sizes of eight to 15 students and better teacher-to-students ratio. Teachers devise individual

education plans for students in accordance with their needs, and provide appropriate curriculum and intervention in consideration of their interests and abilities. Besides, the Education Bureau also provides additional teachers for special schools in accordance with the number of intakes with both intellectual disability and autism, thereby enabling the schools to provide additional support for the students. Such support includes individual intervention, small group intervention, in-class support and follow up intervention, and so on, so as to enhance the students' learning, communication, social and independent living abilities and skills.

On the welfare front, the Social Welfare Department (SWD) strives to provide children with disabilities from birth to six years old, including those who suffer from autism, with early intervention through pre-school rehabilitation services, with an aim to enhance their physical, psychological and social developments, thus improving their opportunities for participating in ordinary schools and daily life activities. Same as other children receiving pre-school services, a substantial number of children with autism are suffering from multiple disabilities (for example, developmental delay, speech impairment, and so on). To meet the varied developmental needs of children with disabilities, the SWD has adopted, since 2002, an integrated service mode for the Early Education and Training Centre and Special Child Care Centre to facilitate the service units to make optimum use of resources (including manpower and accommodation) in a flexible manner, as well as to provide comprehensive and suitable support services, including physiotherapy, speech therapy, clinical psychology and occupational therapy services, having regard to the varying needs of children with different disabilities.

(b) and (c)

To ensure that autistic persons can obtain suitable support and training at different stages of their developmental process, various government bureaux/departments provide them with a broad spectrum of services in healthcare, pre-school rehabilitation, education, community support, vocational training and employment

support services, and so on. These services enable them to develop their potentials and integrate into society, and relieve the pressure of their carers. To further strengthen the relevant support, the Chief Executive announced related new measures in his 2010-2011 Policy Address. Details of these services and measures are as follows:

(a) *Healthcare services*

The Child Assessment Centre (CAS) of the DH provides children with autistic tendency or symptoms with integrated assessment services, and arranges rehabilitation services for them as necessary. The CAS also organizes various activities to enhance parents' understanding of autism. After preliminary assessments at the CAS, children with autistic tendency or symptoms will be referred to the specialist out-patient clinics of the Hospital Authority (HA) for further assessment and treatment. The HA has a professional team comprising healthcare practitioners in various disciplines to provide autistic children with early identification, assessment and treatment services. In 2011-2012, the service provided by the professional team has been enhanced with an addition of 48 doctors, nurses and allied health professionals. Besides, the SWD has also provided five additional medical social workers under the welfare sector to dovetail with the service of the professional team.

(b) *Pre-school rehabilitation services*

The Government has along been steadily increasing the provision of pre-school rehabilitation places. Over the past five years, the Government has allocated resources to provide about 1 400 additional places, representing an increase of nearly 30%. We estimate that about 607 additional places will come on stream in 2012-2013. Furthermore, the Community Care Fund provides training subsidy for children from low-income families who are on the waiting list for pre-school rehabilitation services. The SWD also provides training subsidy for serving special child care workers to

attend recognized courses so as to enhance their professional knowledge and skills.

(c) *Education*

To support children with special educational needs studying in ordinary schools (including students with autism), the Education Bureau provides schools with additional resources, professional support and teacher training. Additional resources include Learning Support Grant, Enhanced Speech Therapy Grant, additional teachers under the Intensive Remedial Teaching Programme for Primary Schools and additional teachers to cater for low academic achievers, and so on. As regards professional support, educational professionals of the Education Bureau pay regular visits to schools to provide advice on schools' policy of support, measures, teaching strategies, resources deployment, home-school co-operation, and so on. The Education Bureau also provides schools and students with educational psychology service as well as speech therapy service. Besides, the Education Bureau has collaborated with tertiary institutions to develop various assessment tools and diverse teaching resource packages in relation to special education for use by teachers and parents. In respect of teacher training, the Education Bureau provides systematic training courses under the Teacher Professional Development Framework on Integrated Education, in order to enhance teachers' professional capacity in catering for students with special educational needs.

The Education Bureau has also launched a pilot project on enhancement of support services for students with autism in ordinary schools starting from the 2011-2012 school year. The project includes structured on-top group training for primary and secondary students with autism; and development and piloting of a school support model at junior primary level for early intervention of students with autism. The Education

Bureau will evaluate the effectiveness of the pilot project to facilitate consideration of the way forward of the project.

With regard to post-secondary education, student admission and formulation of entry requirements are matters falling within the autonomy of the institutions. Same as other students, students with autism pursuing ordinary curriculum enjoy equal opportunities in applying for further education. Apart from higher education funded by the University Grants Committee, the Vocational Training Council (VTC) also offers diversified vocational education and training programmes for school leavers with different levels of education. Institutions will offer special arrangement and support services according to the circumstances of individual students with special needs and the subjects that they have enrolled.

(d) *Community support services*

The SWD's District Support Centres for Persons with Disabilities assist autistic persons in need in integrating into the community through provision of training and support by clinical psychologists and occupational therapists. Under the community-based support projects, special support is provided to parents of persons with autism and persons with intellectual disability with challenging behaviour so as to relieve their burden. In addition, Parents/Relatives Resource Centre organizes social and recreational activities for autistic persons and their carers to facilitate mutual sharing and support.

(e) *Vocational rehabilitation service and employment support*

The Government, through the Shine Skills Centres of the VTC, the vocational rehabilitation services of the SWD and the employment support services of the Labour Department (LD), seeks to equip autistic persons with the work and communication skills required for jobs in the open market.

In addition to the provision of vocational training programmes, the Shine Skills Centres and related rehabilitation organizations also provide autistic students with personal counselling, independent living skills training and occupational therapy services; and assist students who have completed vocational training in job searching.

The Selective Placement Division (SPD) of the LD provides free and personalized employment services to job seekers with disabilities for open employment. The SPD also administers the Work Orientation and Placement Scheme which encourages employers to offer employment to persons with disabilities through provision of financial incentive. A participating employer will receive a wage subsidy up to \$4,000 per month for the employment of a person with disabilities with a maximum subsidy period of six months.

MR CHEUNG KWOK-CHE (in Cantonese): *President, in its four-page long main reply, the Government has not told us very accurately how many people suffer from autism in our society. According to a census research conducted by the United States in 1994, 70% to 80% of the autistic persons also suffer from intellectual disability with an intelligence quotient of less than 70. According to a survey conducted by me recently, about 20% of the service recipients in 40 service units for persons with intellectual disability suffer from autistic tendency, with the most serious situation being found in one of these centres where 77% of the service recipients suffer from both intellectual disability and autistic tendency.*

Regarding the services for persons with autistic tendency, it is necessary to provide autistic patients with facilities to enhance their sensory or perception abilities, in addition to professional services rendered by occupational therapists or speech therapists, for instance. It is also essential to hire a large number of supporting staff to help them adapt to daily life because they need a bigger room for activities than ordinary persons with intellectual disability. As far as we know, the Education Bureau has provided extra resources to special schools which have admitted students with autistic tendency so that they will have more resources to provide services for these students. May I ask why the service units

of the welfare sector are not provided with extra resources so that they can enhance their services for autistic persons with intellectual disability?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Mr CHEUNG for his views and questions. I would like to give a brief reply on the statistical data mentioned earlier. A special survey conducted by the authorities in 2006 and 2007 has confirmed the number of people with autism. The figure of 3 000-odd people with autism mentioned in the main reply is precisely a finding of the survey. But the survey does not include people with autistic tendency and we do not have any information on this. Nevertheless, the survey will be updated and Members' views will be taken on board. We will consider how best to collect relevant data so that a more accurate assessment can be made. Therefore, we agree that the number of 3 800 people may be an underestimate of the actual situation.

On the second question, Mr CHEUNG is very concerned that the authorities have not attached importance to social welfare organizations in this aspect. This is actually not true. We are very much concerned about the service need and development in this area. In fact, as you may be aware, the authorities have provided an extra allowance in the form of subsidy to certain organizations in order to meet the challenge in this regard. At present, special allowances will be granted to social service agencies depending on the number of service units and volume of demand in some clusters so that they can hire resident occupational therapists and clinical psychologists who will share with front-line workers their views on training with a view to equipping them better to cope with various problems, particularly new problems. Topics such as how services should be provided to persons with autism will be included in the training programmes and treatment protocols, in addition to imparting of professional knowledge. As for smaller institutions, though they are not provided with special grants and subsidies, the SWD's central support service unit will provide support in respect of medical and clinical psychological services. These are our ongoing commitments.

MR WONG SING-CHI (in Cantonese): *President, regarding vocational rehabilitation service and employment support mentioned by the Secretary in paragraph (e) of parts (b) and (c) of the main reply, I had reminded the Secretary*

in an oral question I raised in the Legislative Council on the last occasion that the waiting time for sheltered workshop places for autistic persons and persons with disabilities is as long as 14 years. In his reply, the Secretary kept denying this. I wonder if he does not know the actual situation or it is due to my misunderstanding. I hope the Secretary could clarify whether he is aware that the existing waiting time is more than 10 years.

Regarding services provided by the Government through the Shine Skills Centres of the VTC, I would like to tell the Secretary that the services currently provided by these centres are inadequate. Therefore, I hope the Secretary can answer this question. How many autistic persons or youngsters are the Shine Skills Centres able to help currently? If the number is small, will the Secretary undertake to set up more sheltered workshops expeditiously so that autistic persons can continue to learn skills required for jobs and personal development after leaving school?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, thanks to Mr WONG for his supplementary question. First of all, I would like to clarify a point. With due respect, the statement that the waiting time for sheltered workshop places is more than a decade is absolutely incorrect. At present, there are 5 133 places and there are as many as 2 457 applicants on the waiting list, which is not small indeed. But according to the latest figures, the average waiting time is 16.9 months. In other words, the waiting time at most is around one and a half year, which is an actual figure.

Secondly, concerning activity centres, while the existing quota is 4 637 with around 1 000 applicants on the waiting list, there is a certain demand in this regard. Nevertheless, we have indicated to relevant institutions that we will try to increase the number of places as far as possible and will, if possible, earmark resources for the provision of more places and training opportunities to meet the needs of persons with disabilities.

MR LEUNG YIU-CHUNG (in Cantonese): *President, the Secretary has just elaborated at great length how students with autism are helped in education. But unfortunately, I think these services are quite ineffective, which is a pet phrase of the Secretary. Why? This is because the extra support for schools*

does not specifically target at students with autism, but all students with special educational needs. So, I would like to ask the Secretary a question, which may be answered by Secretary Michael SUEN on his behalf. Can the authorities earmark more resources for the setting up of more after-school support centres, in order to provide in a targeted manner more professional support to autistic students so that they will receive skills training or counselling in respect of social intercourse and learning? This is because the authorities can concentrate its resources on after-school support in a number of schools where all students in need will be grouped together to optimize the effectiveness. Can the authorities allocate extra resources in this aspect?

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

SECRETARY FOR EDUCATION (in Cantonese): President, extra resources are provided to schools mainly for increasing manpower. If a school has difficulty in dealing with particular cases, we will provide a time-limited subsidy to it for hiring additional teaching assistants. If the students concerned do not show any marked improvement after school-based support has been provided, they will be referred to adjustment programmes under the Education Bureau or short-term attachment programmes run by special schools cum resource centres on a need basis so that enhanced counselling can be provided in the form of pull-out remedial classes. Hence, special care will be provided to students whom the schools cannot cope with.

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

MR LEUNG YIU-CHUNG (in Cantonese): *Yes, President. My question is very clear. I asked the Secretary whether extra resources would be provided for setting up after-school support centres in order to offer services to students who are grouped together. In order to receive the services mentioned by the Secretary, students who live in Tin Shui Wai may have to travel to Kowloon, thus rendering them impossible to receive more additional assistance. Therefore,*

they hope that district-based assistance can be provided by after-school support centres. Can extra resources be allocated by the authorities to provide such services?

SECRETARY FOR EDUCATION (in Cantonese): President, as I pointed out just now, the authorities have provided other support. Certainly, not every district has a support centre and some support centres are not in the vicinity of the homes of the students. However, owing to limited resources and manpower, we have made it convenient for students to access relevant services.

MR LEE CHEUK-YAN (in Cantonese): *President, just now the Secretary mentioned that the authorities have put emphasis on such services. However, I do not know whether he has paid visits to these social service agencies. The survey conducted by Mr CHEUNG Kwok-che's office has revealed some alarming figures, that is, about 80% of the social workers working in these service units indicated that there is a shortage of manpower and almost 55% of them indicated that they need professional support in other aspects. Has the Secretary considered that the crux of the problem lies not in providing them with support, but rather changing the baseline for their manpower establishment? If you do not change their manpower establishment, any extra manpower to them is not real because they are not part of the establishment for providing these services but are merely in charge of conducting inspections there from time to time. In our opinion, the Secretary should have a solid understanding of the difficulties faced by these social service units. Will the authorities modify their manpower establishment?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Thanks to Mr LEE for his comments and questions. I have made it clear that the authorities put emphasis on services in this regard. This is the first point. Secondly, we have provided extra resources to social welfare organizations because the existing lump sum grant model does not take into account their establishment nor impose any requirements on their establishment. The only requirement is that they must provide the relevant services. Factors which are taken into account include the service targets, service output and resource input. Therefore, we attach the greatest weight to the effectiveness in service delivery.

As I said earlier, there are 14 large non-governmental organizations and resources will be provided according to the number of service centres in the clusters in order to set up resident occupational therapy and clinical psychological services, meaning that staff are assigned to give advice on the service workflow and explore what professional support should be provided for front-line workers. In other words, the authorities have provided resources with which these organizations can decide on their own whether these resources should be used for the procurement of services or employment of staff.

As for smaller organizations, support is provided by the central department concerned. The SWD has set up a central support service unit comprising psychologists and occupational therapists who will visit the organizations direct to play the role of resident psychologists or occupational therapists there. Therefore, we have taken heed of the issue and agree that there is a need to further enhance our attention to these services as the problem is worsening. We will watch the problem closely and listen to the views of the sector before considering how the relevant services can be improved further.

PRESIDENT (in Cantonese): We have spent more than 22 minutes on this question. Last oral question.

Extending Trading Hours of Hong Kong Securities Market

6. **DR PAN PEY-CHYOU** (in Cantonese): *President, after the Hong Kong Exchanges and Clearing Limited (HKEx) implemented the first phase of the extension of trading hours of the securities market last year, the HKEx has planned to take forward the second phase trading hour extension as from 5 March 2012 in which the lunch break will be further shortened from one and a half hours to one hour. Quite a number of workers unions and practitioners of the trade have expressed their dissatisfaction with such an arrangement and request the HKEx to maintain a lunch break of one and a half hours. However, the HKEx has brushed aside the request and will implement the second phase of trading hour extension in March as planned. In this connection, will the Government inform this Council:*

- (a) *whether it knows if the HKEx has proactively held discussions with the trade before it implements the second phase of the plan to understand the difficulties the trade will encounter upon the further shortening of the lunch break; if it has, what the difficulties are; if not, the reasons for that;*
- (b) *whether the Financial Services and the Treasury Bureau and the Securities and Futures Commission (SFC) have assessed the impact of the HKEx shortening the lunch break on the practitioners of the trade, and whether the relevant supporting facilities are sufficient; if such assessment has been made, of the outcome; and*
- (c) *given that according to the consultation conclusions published by the HKEx in November 2010, there were in fact more members of the trade supporting the plan to shorten the lunch break to one and a half hours, plus the fact that quite a number of practitioners now object to further shortening the lunch break, whether the authorities will require the HKEx to temporarily suspend the plan and consider other options (for example, opening the market earlier, closing the market later, and so on) to replace the decision of shortening the lunch break to one hour; if they will not, of the reasons?*

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

- (a) The HKEx conducted a public consultation in September 2010 on the extension of trading hours. We understood that the Chief Executive of the HKEx met the representatives of seven securities industry associations (including the industry associations representing frontline staff and other market practitioners) to discuss the relevant proposal and collect their views. The HKEx received a total of 556 submissions to the consultation paper from Exchange Participants, brokerage industry associations, listed companies and a related association, professional bodies, a banking industry association, other entities, individuals (including employees of brokerage firms), and so on. Most responses from organizations and market participants supported the shortening of the lunch break,

but responses were mixed with advocates for one-hour lunch break and 1.5-hour lunch break. As regards responses from individuals, a comparatively large number of respondents did not support the shortening of the lunch break. In addition, some respondents also proposed eliminating the lunch break altogether or suggested no change should be made.

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

The HKEx maintains regular contact with industry associations and market practitioners to hear their views about the Hong Kong market, including their views on the extension of trading hours. Recently, the HKEx met with the industry representatives on 12 January 2012 and 9 February last year respectively to exchange views on the arrangement of the extension of trading hours. In general, the views collected by the HKEx in these different meetings were similar to those received during the public consultation period. Regarding the difficulties brought by the further reduction of lunch break, some market practitioners expressed that this would affect their use of lunch break to contact clients.

- (b) The HKEx in its 2010 consultation paper set out the benefits of extending trading hours to Hong Kong's overall market and its implications for market practitioners. The consultation conclusions paper also showed that among the responses from Exchange Participants, brokerage industry associations, banks, professional bodies and listed companies, the majority of market players supported the shortening of the lunch break, but among the responses from employees of brokerage firms, most of them did not support the shortening. In reviewing and approving the rules relating to the HKEx's proposal of extending trading hours, the SFC has taken into account the results of the HKEx's market consultation, which include the comments from market practitioners, and the impact brought about by the extension of trading hours to the development of Hong Kong's overall market.

- (c) As the international financial centre of China, the securities market of Hong Kong is closely connected to the Mainland's. Almost 60% of our market capitalization and over 70% of our market turnover come from Mainland-related securities, while growing numbers of our derivative products, Exchange Traded Funds and structured products have Mainland-related securities as underlying assets. With the further opening up of the Mainland market and Hong Kong serving as an offshore Renminbi centre, inter-market trading activities and the number of products cross-listed between the Hong Kong and Mainland markets are also poised to increase. In view of the increasing importance of the Mainland financial market as well as the closer interconnections between the Hong Kong and Mainland markets, the extension of trading hours can allow the trading hours of our market to overlap squarely with those of the Mainland's. This would help investors respond to market news, improve the price discovery function for Mainland-related securities traded in the Hong Kong market, and promote the development of cross-market products.

On the other hand, the extension of trading hours will help the Hong Kong market enhance its competitiveness by narrowing the gaps between its trading hours and those of its regional competitors. The SFC notes that it is a global trend to shorten or even remove the lunch break in the securities markets. For instance, the exchanges in Taiwan, South Korea and Australia do not have any lunch break. Singapore Exchange has already removed their lunch break since August last year, while the Tokyo Stock Exchange has shortened their lunch break to one hour since November last year.

In addition, considering that the shortening of the lunch break to one hour may bring inconveniences to front-line staff, the relevant changes are implemented in two phases with a one-year transitional period, so as to facilitate market practitioners to adjust to the revised trading schedule. The first phase has been implemented since 7 March last year. The lunch break has been shortened from two to 1.5 hours, in addition to the earlier opening of the morning continuous trading session by 30 minutes. The lunch break will be further shortened to one hour starting from 5 March this year when

the second phase commences. The SFC considers that the arrangement of trading hours extension has provided time for the industry to adjust to and prepare for the changes, and the latest arrangement on the trading hours are important to enhancing the competitiveness of the Hong Kong market.

DR PAN PEY-CHYOU (in Cantonese): *Deputy President, the Government's reply is really infuriating. As a matter of fact, since the first-phase shortening of the lunch break, the securities turnover of Hong Kong has not seen any growth at all. In her main reply, the Secretary mentioned the global trend and cited some examples where there is no lunch break. Nevertheless, has such a system, where there is no lunch break, taken the physical well-being of practitioners into account? The Secretary has turned a blind eye to the problem, concerned only about following the global trend.*

In addition, it was clearly stated in the Secretary's main reply that according to the results of the consultation conducted by the HKEx in September 2010, most of the employees of brokerage firms basically did not agree to shortening the lunch break to one hour. However, the HKEx turned a blind eye to the consultation results — evident in the Secretary's reply — whereas the SFC went so far as to accept such a biased public consultation.

The Secretary's main reply also mentioned the importance of alignment with the Mainland market. She pointed out that overlapping squarely with the trading hours of the Mainland market would help investors respond to the market. I would like to remind the Secretary that the lunch break of the Mainland's trading market is from 11.30 am to 1 pm. Nevertheless, the HKEx's consultation paper did not include this time slot as an option. Is the Secretary aware of the situation of the Mainland's trading market?

The consultation paper released by the HKEx in 2010 and the consultation it conducted are full of flaws and loopholes. Why did the Government turn a blind eye to the two major problems cited by me just now? Why did the Secretary's reply not mention the need to require the HKEx to conduct a consultation afresh?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, first of all, I thank Dr PAN for his question. He mentioned that the turnover had not grown as a result of the trading hours extension. I would like to emphasize that lengthening the trading hours or shortening the lunch break is mainly aimed at giving investors more time to amply digest news from the market and outside sources, such that they can take corresponding actions in the market through hedging, and so on. The volume of trading is subject to various factors rather than a single one in particular. Over the past year, trading has also been significantly affected by the external environment. However, in terms of enhancing competitiveness or the market's effectiveness, the extension of trading hours brings bigger benefits to investors.

Dr PAN also queried that given our bid to align with the Mainland market, why the Mainland market has its lunch break at 11.30 am, while ours starts at 12 pm. With the implementation of the second-phase change for the trading hours on 5 March, the trading hours of both the Mainland and Hong Kong markets will overlap squarely. What I mean is that our afternoon continuous trading session will start at 1 pm, which will align squarely with the Mainland's, since theirs also starts at 1 pm. While the Honourable Member proposed that the morning trading session ends at 11.30 am, that is, restoring the 1.5-hour lunch break, the trade was of the view that the period between 11.30 am and 12 pm is precisely the time when the Indian and other markets open, as well as the time when trading is taking place in other exchanges of the region. Hence, if we start the lunch break between 11.30 am and 12 pm, there may be implications on the HKEx's competitiveness.

As for the consultation, earlier I explained clearly that a total of 500 or so responses were received during the consultation. Some of them came from various organizations, such as brokerage firms, companies and professional bodies. Among them, most supported the shortening of the lunch break. On the other hand, there were of course quite a number of responses from individuals — mostly from practitioners — who held that it would cause inconveniences.

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

DR PAN PEY-CHYOU (in Cantonese): *Deputy President, the Secretary*

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

DR PAN PEY-CHYOU (in Cantonese): *The Secretary's reply is really one of a bad loser. What I wish to ask her is that the consultation was so full of flaws and loopholes that the opinions of the majority of employees had not been heeded. Second, the Mainland market has its lunch break at 11.30 am to 1 pm. Was it impossible to include this period as an option for people in the consultation? This was simply not included. I would like to ask*

DEPUTY PRESIDENT (in Cantonese): Dr PAN, please sit down.

DR PAN PEY-CHYOU (in Cantonese): *I would like to ask the Government why it did not require the HKEx to conduct a consultation again.*

DEPUTY PRESIDENT (in Cantonese): The question you have now asked was not part of your supplementary question. Your original supplementary question was: Why did the Government turn a blind eye to the HKEx not conducting sufficient consultation? Secretary, do you have anything to add?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, the SFC and the Stock Exchange of Hong Kong (SEHK) are both independent regulatory bodies. The SEHK has the legal obligation to ensure that the market operates in an orderly, informed and fair manner where practicable, whereas the SFC is duty-bound to monitor the SEHK's operation. When the two regulatory bodies discharge their statutory functions, the Government will not intervene. As for the operating procedures of the market as a whole, we are certainly concerned about them, and we maintain constant contact with the trade all along. Therefore, from our point of view, the HKEx has started the consultation process, which has been completed. In

addition, to our understanding, the HKEx kept on consulting the trade in January and February this year, even though the decision had been made.

MR CHIM PUI-CHUNG (in Cantonese): *Deputy President, the Secretary's reply is basically meant to shirk the Government's responsibility. Why do I say so? We have to understand the rationale behind a 1.5-hour lunch break and a one-hour one. In the United States, that is actually the time around midnight where people are sleeping; in Europe, that is the early hours. The Government said that it was to facilitate competition with Japan, Taiwan and other regions. Why was a comparison made with these places? The kind of stock products available in these markets is virtually different from that in Hong Kong. Are we going to grab a share of such business even? It was just a reply of no sincerity.*

My supplementary question also has something to do with part (c) of the Secretary's main reply. The Mainland is now giving help to Hong Kong, with 60% to 70% of the HKEx's business coming from Mainland stock products. Since the Mainland market has its lunch break at 11.30 am to 1 pm, why does Hong Kong not follow suit? You simply have no idea of other exchanges' practice nor the work of the SFC, other than saying that they are independent bodies. The Government really has no organization at all. The Government is lame. It comes at no surprise that the Government is now

DEPUTY PRESIDENT (in Cantonese): Please come to your supplementary question direct.

MR CHIM PUI-CHUNG (in Cantonese): *Deputy President, my supplementary question is whether the Secretary can repeat* Of course, if she is asked to take action right away tomorrow, she may have a feeling of losing face. However, could she, after thorough consideration, set the lunch break at 11.30 am to 1 pm in future to align with the Mainland's, so as to get a firm grasp of this 60%, 70% or even 80% to 90% of business? She also remarked earlier that the Indian exchange remains open during that half-hour. Should she not go all the way out by ordering the exchange of Hong Kong to open round the clock, with a view to soliciting business from all parts of the world?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, perhaps I did not explain clearly enough earlier. The exchange's bid to extend the trading hours is very often not just attributed to the fact that the Mainland has some of the same stock products as ours, such as A-shares in the Mainland *vis-à-vis* our H-shares. Very often, a certain piece of market news or external news, such as a hike or a cut in a major country's interest rate, will affect all of the world's markets. Suppose we follow the Mainland market entirely and set the lunch break at 11.30 am — bearing in mind that other markets, including that of Singapore, Japan, Taiwan, South Korea, Australia, India, and so on, may remain open during the time, then if a piece of news that would have implications on the general scenario or the region as a whole breaks out during that half an hour, investors may not be able to make timely responses in the Hong Kong market. Our exchange will hence face a tough test in respect of maintaining competitiveness.

MS STARRY LEE (in Cantonese): *Deputy President, employees of brokerage firms as well as small and medium brokerage firms certainly have strong views about a further extension of the trading hours, and their voice of opposition is very loud. I have been liaising and keeping in touch with them all along, realizing that they have quite a lot of grievances about the various measures introduced by the SEHK in the past. They are of the view that the measures were introduced too hastily and expeditiously while their opinions went unheeded.*

May I ask whether you will insist on implementing the second-phase change on 5 March amid such public sentiments or opinions? Can some postponement be allowed for communicating with them again and figuring out a way acceptable to all? Alternatively, can a timetable for an advance review be set to facilitate reconsideration of different parties' opinions once major problems arise after the implementation? As Mr CHIM Pui-chung said, as the market of the Mainland sets its lunch break at 11.30 am to 1 pm, we really cannot see any major problem in setting a same lunch break. Can these proposals be taken into account, such that your sincerity can be felt by the trade and its practitioners?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, in making the decision, the HKEx and the SFC

have taken into account that shortening the lunch break from two hours to one at short notice would cause lifestyle-wise inconveniences and challenges to the parties concerned, increase the pace of their life or various arrangements, and cut short the time for them to take lunch. Therefore, at that time, a decision was made to implement the initiative in phases, in the hope that under such an arrangement, relevant parties would offer support during the time, perhaps in the form of manpower expansion, in order to relieve the workload of practitioners. It was hence decided that the initiative was to be implemented in phases. That is also the arrangement the HKEx is now ready to put into practice. As for the review to be conducted in the future, we will refer Ms LEE's opinion to the HKEx for consideration.

MS STARRY LEE (in Cantonese): *The Secretary did not answer the first part of my supplementary question, that is: Could some postponement be allowed amid the current sentiments or public opinions, for negotiations with the trade again?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, as far as I know, over the past two months, the HKEx has also received opinions from practitioners' unions. Among the many industry associations that they have contacted, only one practitioners' union has called for a suspension. To our understanding, the HKEx is ready to implement this arrangement in the market on 1 March after giving due regard to the views of various parties.

MR WONG KWOK-HING (in Cantonese): *Deputy President, in my opinion, the Government has condoned the SFC and the HKEx and favoured institutional investors in this whole issue, to the neglect of small and medium brokerage firms as well as practitioners and brokers in the trade.*

Deputy President, Members should be aware of how tensed-up relevant practitioners in Central are. There, 10 000 or so to 20 000 people are engaged in the trade. If the lunch break is further shortened from 1.5 hours to one frankly speaking, given the ten or so to 20 minutes needed for taking the lift as well as the time for queuing up, ordering food and waiting for a seat in the fast-food restaurant, is there any time left for one to finish the lunch box? Apart

from that, those in the trade need to communicate with clients and exchange information with fellow practitioners during that mere 1.5 hours around noon. Moreover, they neither call it a day after the office hours, nor leave the office after putting the stock machine aside. They also need to do some recording and devote much effort to evidence-related work. Yet, the Government is totally unaware of these situations. Yesterday, more than 1 000 people took to the streets; and sometime ago, there was another demonstration by 1 000 or so people. The Government is now making it uneasy for them to take a proper lunch.

I have this question for the Government. Are the Government, the HKEx and the SFC not going to make any concession, until a fierce confrontation between the trade and the Government occurs in Central? May I ask the Government, given that the current Chief Executive Election has now turned as chaotic as one can imagine, whether it intends to induce some more havoc in Central? Could the Government please give a reply?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, thanks to Mr WONG for his view. As Mr WONG may also know clearly, we are fully aware of and sympathetic to the view of front-line securities practitioners, knowing that they may be inconvenienced by this arrangement. I once met with them personally, telling them that the Hong Kong market was unique in the sense that retail investors accounted for 30% or so of the transactions, which, as I also pointed out, represented the contribution made by the practitioners. Nevertheless, overall speaking, we also need to bear in mind that the HKEx made the decision after going through the consultation process and listening to the views of various parties — I emphasize "various". In this regard, we have to respect the decision made by the HKEx and the SFC.

MR WONG KWOK-HING (in Cantonese): *Deputy President*

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

MR WONG KWOK-HING (in Cantonese): *The Secretary did not answer whether the Government intends to add fuel to the fire in such a turbulent month of March. The Government did not answer the thrust of this supplementary question.*

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): I have nothing to add.

DEPUTY PRESIDENT (in Cantonese): We have spent more than 24 minutes on this question. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Tenants Purchase Scheme

7. **MR LAU KONG-WAH** (in Chinese): *President, at present, many tenants of Tenants Purchase Scheme (TPS) estates indicate that they still wish to purchase the public rental housing (PRH) flats in which they have been living for years. Under the current policy, the special credits given to the sitting tenants of TPS estates purchasing their flats are only applicable to those who purchase their flats within two years from commencement of the tenancy, while those who purchase their flats in the third year or thereafter are not entitled to such credits. In this connection, will the Government inform this Council:*

- (a) *of the total number of tenants of TPS estates who had purchased their flats as at December 2011; among them, of the respective number of tenants who were given a full credit, a halved credit as well as no credit at all;*
- (b) *whether the authorities will consider amending the current policy by relaxing the aforesaid restrictions on special credits to enable tenants who have rented their flats for over two years to enjoy such*

credits when they purchase their flats; if not, of the reasons for that; and

- (c) *given that the authorities terminated TPS after launching TPS Phase 6B in 2005-2006, but many PRH tenants still wish to purchase their residing PRH flats, whether the authorities will reconsider launching a new phase of TPS; if not, of the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Hong Kong Housing Authority (HA) introduced the TPS in 1998 to enable PRH tenants to buy their flats at discounted prices, thereby helping to achieve the then policy objective of attaining a home ownership rate of 70% in 10 years' time.

In 2002, the Government re-positioned the housing policy and decided to continue with the provision of PRH to low-income families who cannot afford private rental accommodation, with a target of maintaining the average waiting time (AWT) for general Waiting List (WL) applicants at around three years. The target home ownership rate was dropped. Thus the HA decided to halt the TPS after the launch of Phase 6B in 2005.

My answer to the three-part question is as follows:

- (a) and (b)

Under the HA's policy, a special credit will be offered to tenants of TPS estates purchasing their flats within the first two years of the launch of the sale of the flats, and to new tenants who purchase their flats within two years from the commencement of their tenancies. Full credit will be offered to tenants purchasing their flats in the first year, and a halved credit for those purchasing their flats during the second year. This is a long-standing policy and is widely understood by the tenants. We have no plan to amend this policy at this stage.

As at the end of December 2011, a total of around 119 800 tenants have purchased their flats under the TPS. Of which, about 114 500 tenants purchased the flats with full special credit, about 1 000

tenants with a halved credit and about 4 300 tenants with no special credit.

- (c) Recovered PRH flats are an important source of supply for WL applicants. PRH flats, once sold to the tenants, cannot be reallocated, thereby affecting the turnover and supply of PRH flats and undermining the HA's ability to maintain the AWT for general WL applicants at around three years. There are currently over 165 000 WL applications for PRH. Any measure that affects PRH allocation by the HA to WL applicants is undesirable.

Moreover, since the introduction of the TPS, the HA has encountered many problems with the management of PRH flats in TPS estates. The HA's estate management policies cannot be fully implemented in the TPS estates. This is an unsatisfactory situation. For example, the Marking Scheme for Estate Management Enforcement in Public Housing Estates is not implemented in the common areas of the TPS estates at present. The HA can only deal with the misdeeds committed in rental flats.

In view of the above reasons, we do not intend to re-launch the TPS. That said, under the current policy, the sitting tenants of the TPS estates can still opt to buy the flats in which they are residing. PRH residents interested in home ownership may also buy TPS flats and the Home Ownership Scheme flats on the Secondary Market where the premium of flats has not yet been paid.

Gifts of Precious Species from the Mainland to Hong Kong

8. **MR LEUNG KWOK-HUNG** (in Chinese): *President, Hong Kong has received gifts which are national treasures such as giant pandas and Chinese sturgeons from the Central Government several times, yet they are only displayed in the Ocean Park (the Park). Except for the elderly and those whose birthdays fall on the day of their visit, members of the public who wish to watch these national treasures have to buy a \$280 ticket for admission to the Park in order to get a glimpse of their glamour. In this connection, will the Government inform this Council:*

- (a) *of the reasons for deciding in the first place to entrust the Park with the custody and keeping of the giant pandas given to Hong Kong; which government department made such decisions; and whether the Government has considered that such arrangement might hinder the grassroots from watching the giant pandas;*
- (b) *given the Government's huge fiscal surplus at present, whether it will consider following the practice of the Government of the Macao Special Administrative Region in that the Government will keep those giant pandas, which are gifts from the State, and charge an admission fee of \$10 only, so as to enable the general public to watch the giant pandas at a lower price; and*
- (c) *given the imminent 15th anniversary of the reunification of Hong Kong, whether the Government will consider, when the same kind of animals are given to the people of Hong Kong again by the Central Government, keeping them at free-admission venues such as the Hong Kong Zoological and Botanical Gardens, and so on?*

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

- (a) Giant pandas are rare and endangered animals which must live in an environment similar to their natural habitat and be taken care of by husbandry and veterinary professionals. In 1999, the Central Government gave giant pandas An An and Jia Jia to Hong Kong as gifts. In order to provide a comfortable living environment for the giant pandas, the Home Affairs Bureau and the then Agriculture and Fisheries Department, after thorough consideration and consultation with experts at the State Forestry Administration and the China Conservation and Research Centre for the Giant Panda in Wolong, considered it would be most appropriate for the Park to accommodate and take care of the giant pandas for the major reasons below:
 - (i) the Park had the experience of looking after giant pandas that stayed briefly in Hong Kong in 1979 and 1984. The Park

also had experts on keeping animals. Furthermore, the Park was able to build special facilities within a short period of time to provide an appropriate habitat for the giant pandas;

- (ii) millions of people visit the Park each year. Local residents and overseas visitors may visit the giant pandas that are accommodated in the Park easily; and
- (iii) given that the Park is a non-profit-making organization, if there is an increase in attendance as a result of the display of the giant pandas there, the additional surplus so generated will be used to support giant panda conservation efforts as well as the long-term development of the Park.

Since their arrival in Hong Kong in 1999, An An and Jia Jia have been taken good care of by the Park. Therefore when the Central Government gave another pair of giant pandas Le Le and Ying Ying to the HKSAR in 2007, the Government, drawing on previous arrangements, entrusted the Park to take care of the giant pandas. To this end, the Park built a new Giant Panda Habitat with advanced facilities to provide the four giant pandas with an ideal living environment.

Although members of the public have to pay a fee for admission to the Park, the Park also provides a series of concessionary arrangements to facilitate visits by, among others, the elderly, the disabled and people from low-income groups. Specifically, free admission is offered to Hong Kong residents under the age of three or aged 65 or above, holders of a "Registration Card for People with Disabilities" and residents visiting the Park on their birthdays. Individuals on the Comprehensive Social Security Assistance Scheme and their family members, as well as the member organizations of the Social Welfare Department can also buy admission tickets at the discounted rate of \$20 each. In addition, the Park provides sponsorship to students with financial difficulties so that they can participate in activities organized by the Ocean Park Academy Hong Kong free of charge and visit the animals kept by the Park.

- (b) As stated in part (a) above, giant pandas are endangered animals under protection which must be kept in a suitable environment. At present, no Government-run sites have the necessary facilities, environment and professional caregivers to accommodate giant pandas. The Park, on the other hand, has been providing the special facilities and arrangements required for accommodating giant pandas, such as a designated environment with appropriate temperature, suitable food and professional husbandry staff. In addition, the Park has maintained close communication with the experts at the China Conservation and Research Centre for the Giant Panda in Wolong to ensure that proper care is given to the four giant pandas at all times. As such, we consider that entrusting the task of accommodating giant pandas to the Park is the most ideal and suitable arrangement. We have no plan to put the giant pandas under the direct care of the Government at present.
- (c) Different animal species require different living conditions. If the Central Government gives other animals to the HKSAR as gifts in the future, we will carefully consider all relevant factors, such as the required living environment of the species, the availability of husbandry staff and arrangements for public patronage, before making a decision as to the most suitable accommodation for the animals.

Special Stamp Duty

9. **MR ABRAHAM SHEK:** *President, on 19 November 2010, the Financial Secretary announced that he would introduce, amongst other measures, a Special Stamp Duty (SSD) on residential properties at the point of resale in order to curb short-term speculative activities that threatened our economic and financial stability, reduce the risk of asset bubbles forming and ensure the healthy development of the property market. He described such initiatives as extraordinary measures under exceptional circumstances. In this connection, will the Government inform this Council:*

- (a) *of the total number of residential property transactions subject to the payment of the SSD since its implementation, and the total amount of the SSD so collected;*

- (b) *out of the transactions in part (a), of the number of those which were loss-making to vendors (that is, where the price realized from the sale of the property was lower than its original purchase price);*
- (c) *whether the Government has granted exemption from the SSD to any residential property transaction so far; if so, of the total number of such exemptions and under what circumstances they were granted; and*
- (d) *whether the Government has considered if the policy objectives of the SSD, namely curbing short-term speculative activities and reducing the risk of asset bubbles forming, have been fulfilled?*

SECRETARY FOR TRANSPORT AND HOUSING: President, the Government has been monitoring developments in the private residential property market closely and remains vigilant on the risks of a property bubble. Since 2010, the Government has been responding to the situation through the introduction of long-, medium- and short-term measures in four areas, including increasing land supply, combating speculative activities, enhancing the transparency of property transactions, and preventing excessive expansion in mortgage lending, with a view to ensuring the healthy and stable development of the property market. The SSD, which is part of the aforementioned package of measures, aims to combat short-term speculative activities involving residential properties.

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

(a) and (b)

The SSD applies to residential properties acquired on or after 20 November 2010 and disposed of within 24 months after acquisition. Since the implementation of the SSD on 20 November 2010 and up to end January 2012, 98 transactions were charged with the SSD involving a total SSD amount of about \$29.6 million. Of the 98 transactions charged with the SSD, 10 cases had their disposal prices lower than their acquisition prices.

- (c) Since the implementation of the SSD on 20 November 2010 and up to end January 2012, the Stamp Office of the Inland Revenue Department had approved a total of 200 exemption cases in accordance with the relevant provisions of the Stamp Duty Ordinance (Cap. 117). These exemption cases involved, for example, nomination, sale or transfer between close relatives; sale or transfer of the residential property by the vendor whose property was inherited from a deceased person's estate; and sale of residential property where the property was transferred to or vested in the vendor by or pursuant to a decree or order of a court.
- (d) The SSD has been effective in curbing short-term speculative activities. Statistics show that on average there were 80 subsale cases (that is, confirmor cases) per month during the period from December 2010 to January 2012, representing a drop of about 75% as compared to the monthly average before the introduction of SSD (there were on average about 320 subsale cases per month in the first 11 months in 2010). We have no plan to review SSD at this stage.

Declaration of Change of Nationality by Overseas Hong Kong People and Right of Abode of Their Children

10. **MS AUDREY EU** (in Chinese): *President, it has been learnt that quite a number of Hong Kong residents who have emigrated overseas are very concerned about issues such as their declaration of nationality and their children's right of abode in Hong Kong (ROA), and so on, and it has aroused heated discussions in online parent-child discussion forums. In this connection, will the Government inform this Council:*

- (a) *whether Hong Kong residents who wish to return to Hong Kong for employment or settlement after emigrating overseas are entitled to ROA; whether they are required to make declaration of change of nationality to the Immigration Department (ImmD); if so, of the reasons; if not, the reasons for that;*
- (b) *of the number of declarations of change of nationality made by Hong Kong residents to the ImmD in each year since the handover of sovereignty over Hong Kong in 1997;*

- (c) *whether children born overseas to Hong Kong residents who have emigrated overseas and become local residents there are entitled to ROA; if so, of the reasons; if not, the reasons for that; and*
- (d) *of the number of applications for ROA made to the ImmD in each year since the handover of sovereignty in 1997 by children born to Hong Kong residents who have emigrated overseas; and the numbers of cases approved and rejected each year?*

SECRETARY FOR SECURITY (in Chinese): President, according to section 2A(1) of the Immigration Ordinance (the Ordinance), a Hong Kong permanent resident enjoys the ROA. Paragraph 2 of Schedule 1 to the Ordinance provides that a permanent resident of the Hong Kong Special Administrative Region (HKSAR) is:

- (a) a Chinese citizen born in Hong Kong before or after the establishment of the HKSAR;
- (b) a Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR;
- (c) a person of Chinese nationality born outside Hong Kong before or after the establishment of the HKSAR to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b);
- (d) a person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as his place of permanent residence before or after the establishment of the HKSAR;
- (e) a person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR in category (d) before or after the establishment of the HKSAR if at the time of his birth or at any

later time before he attains 21 years of age, one of his parents has the ROA; and

- (f) a person other than those residents in categories (a) to (e), who, before the establishment of the HKSAR, had the ROA only.

According to paragraph 1(1) of Schedule 1 to the Ordinance, "Chinese citizen" means a person of Chinese nationality under the Nationality Law of the People's Republic of China (the Nationality Law), as implemented in the HKSAR pursuant to Article 18 of and Annex III to the Basic Law and interpreted in accordance with the Explanations of Some Questions by the Standing Committee of the National People's Congress (NPCSC) Concerning the Implementation of the Nationality Law in the HKSAR adopted at the 19th meeting of the NPCSC at the 8th National People's Congress on 15 May 1996 (the Explanations).

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

- (a) According to the Nationality Law and the Explanations, where a Hong Kong resident is of Chinese descent and was born in the Chinese territories (including Hong Kong), or where a person satisfies the criteria laid down in the Nationality Law for having Chinese nationality, he is a Chinese citizen. According to the Ordinance, Hong Kong permanent residents who are Chinese citizens will not lose their permanent resident status.

According to the Nationality Law and the Explanations, all Hong Kong Chinese citizens, irrespective of whether they are holders of foreign passports, may continue to use the relevant documents for the purpose of travelling to other countries and territories. However, they shall not be entitled to consular protection in the HKSAR and other parts of the People's Republic of China on account of their holding the relevant documents. If Hong Kong permanent residents who are Chinese citizens choose to be treated as foreign nationals in the HKSAR, they must make declarations of change of nationality to the ImmD. Upon approval, they will no longer be regarded as Chinese citizens and can enjoy consular protection from the country of their declared nationality.

- (b) Breakdown of the number of declarations of change of nationality from Hong Kong residents who are Chinese citizens received by the ImmD from July 1997 to December 2011 by year is tabulated below:

<i>Year</i>	<i>Number of applications</i>
1997 (July to December)	2 682
1998	686
1999	75
2000	58
2001	69
2002	81
2003	51
2004	108
2005	48
2006	65
2007	52
2008	65
2009	94
2010	119
2011	152

- (c) According to Article 5 of the Nationality Law, any person born abroad whose parents are both Chinese citizens or one of whose parents is a Chinese citizen shall have Chinese nationality. But a person whose parents are both Chinese citizens and have both settled abroad, or one of whose parents is a Chinese citizen and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality. Therefore, children born abroad whose parents are Hong Kong permanent residents settled abroad and who have acquired foreign nationality at birth are not Hong Kong permanent residents under paragraph 2(c) of Schedule 1 to the Ordinance.
- (d) Any person born outside Hong Kong who meets the relevant legal requirements and claims to be a Hong Kong permanent resident under paragraph 2(b), (c) or (d) of Schedule 1 to the Ordinance above may submit, in accordance with established procedures, application for verification of eligibility for permanent identity card to the ImmD. The ImmD will process the applications in

accordance with the law. Breakdown of the number of these applications received, approved and refused from July 1997 to December 2011 by year is tabulated below:

<i>Year</i>	<i>(a) Applications Received</i>	<i>(b) Applications Approved*</i>	<i>(c) Applications Refused*</i>
1997 (July to December)	39 560	31 379	111
1998	69 008	49 389	534
1999	75 670	44 841	2 010
2000	60 577	50 109	1 785
2001	62 530	51 080	1 516
2002	68 361	61 878	1 587
2003	81 600	69 982	1 358
2004	72 560	62 518	2 677
2005	59 318	47 920	3 847
2006	57 119	46 933	4 433
2007	56 117	42 737	5 031
2008	49 990	42 799	5 354
2009	53 947	39 981	4 368
2010	60 711	52 316	5 204
2011	60 729	44 264	5 571

Note:

* Number of applications approved or refused in that year may not necessarily correspond with item (a)

The ImmD does not maintain statistics in respect of whether the parents of the applicants had emigrated overseas at the time of the applicants' birth.

One-off Ad Hoc Quotas for Cross-boundary Private Cars

11. **MISS TANYA CHAN** (in Chinese): *President, the first phase of the trial scheme on one-off ad hoc quotas for Guangdong/Hong Kong cross-boundary private cars (Self-drive Tour Scheme) will be launched next month. The Government has repeatedly stressed that details of the second phase will be*

determined only after reviewing the effectiveness of the first phase. Given that quite a number of members of the public still have reservations about whether the Self-drive Tour Scheme should be launched, will the Government inform this Council:

- (a) of the respective average monthly numbers of cross-boundary vehicle trips of the five types of boundary crossing vehicles (that is, HKSAR/Mainland coaches, HKSAR hire cars, HKSAR private cars, Mainland official/enterprise vehicles and HKSAR/Mainland goods vehicles) at present; whether it has assessed the changes in such numbers upon the launch of the Self-drive Tour Scheme;*
- (b) of the criteria to be adopted by the Government in assessing the effectiveness of the first phase of the Self-drive Tour Scheme, and the justifications for adopting such criteria, together with examples to demonstrate the specific circumstances under which the first phase will be judged to be effective, and the second phase will be taken forward;*
- (c) whether the authorities had given any undertaking to the Guangdong Provincial Government during their discussion on the Self-drive Tour Scheme that the second phase must be launched after implementation of the first phase; if they had, of the details of such undertaking; if not, whether the Government will shelve the Self-drive Tour Scheme in view of the strong public reaction against the launch of the second phase of the Scheme; if not, of the reasons for that; and*
- (d) whether the authorities have established any mechanism of communication and consultation with the Guangdong Provincial Government to deal with various problems arising after the launch of the Self-drive Tour Scheme, to collect views from the public of the two places on the Scheme and to discuss their views and worries; if they have, of the details; if not, the reasons for that?*

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

- (a) According to the relevant statistics⁽¹⁾ for 2011, the breakdown of the average monthly cross-boundary vehicular traffic by vehicle type is as follows:

<i>Vehicle type</i>	<i>Cross-boundary coaches</i>	<i>Private cars⁽²⁾</i>	<i>Goods vehicles</i>
Average monthly vehicular traffic	101 600	543 200	654 200

Note:

- (1) Based on the statistics of the Customs and Excise Department.
- (2) "Private cars" include cross-boundary hire cars, HKSAR private cars and Mainland official/enterprise vehicles.

Since the daily quota in the first phase of the Self-drive Tour Scheme is only 50 and each quota only allows the vehicle concerned to make one round trip to and from Guangdong Province within a specified period, we do not anticipate significant impact on the current cross-boundary vehicular traffic.

- (b) Upon implementation of the first phase of the Self-drive Tour Scheme, the Administration will carefully observe and review the operation and effectiveness of various aspects of the Self-drive Tour Scheme, including operation of the control point, application criteria, administrative procedures, impact on the traffic and relevant aspects in Guangdong Province, publicity and education, handling of incidents, and so on.

The Administration will review the effectiveness of the first phase of the Self-drive Tour Scheme in accordance with the aforementioned factors, and further study and discuss the specific arrangements of the second phase with the relevant Guangdong authorities. In formulating the arrangements of the second phase of the Self-drive Tour Scheme, we will certainly listen to the views of the Legislative Council and the public. Implementation of the second phase of the

Self-drive Tour Scheme would involve legislative amendments. Therefore, both the Administration and the Legislative Council will have an important gate-keeping role to play.

- (c) We have indicated at the meeting of the Panel on Transport on 23 January 2009, that we have reached preliminary agreement with the relevant Guangdong authorities to pursue the Self-drive Tour Scheme in two phases, starting with the issue of ad hoc quotas to Hong Kong private cars first, to be followed by the issue of ad hoc quotas to Guangdong private cars at a later stage upon satisfactory implementation of the first phase. It was stated clearly in our paper submitted to the Legislative Council then that experts of both sides would continue to study the implementation of the entire Self-drive Tour Scheme and that the implementation arrangements of the first phase (that is, issuing ad hoc quotas to Hong Kong private cars) would be announced first. The proposal was generally supported by Members at that time. The governments of Guangdong and Hong Kong have been studying the implementation details in this direction, and included the proposal in the Framework Agreement on Hong Kong/Guangdong Co-operation in April 2010.

We have publicly stated that we will further study and discuss the specific arrangements for the second phase of the Self-drive Tour Scheme with the Guangdong Provincial Government when there is experience in smooth operation after implementing the first phase for a period of time. We will listen to the views of the Legislative Council and the public, and do the relevant work properly.

Implementation of the second phase of the Self-drive Tour Scheme will involve legislative amendments, to provide legal basis for the issuance of temporary licences to Guangdong private cars and for charging the relevant fees. Without the Legislative Council's approval of the legislative amendments, we will not be able to implement the second phase of the Self-drive Tour Scheme. The Guangdong side is fully aware of our need to amend the legislation and go through the relevant procedures.

- (d) In late 2008, we set up an expert group with the relevant Guangdong authorities to study the implementation framework of the Self-drive Tour Scheme and the associated detailed arrangements. The relevant departments of the governments of Guangdong and Hong Kong will, after the launch of the first phase, carefully monitor the various issues set out in part (b) above and deal with the problems encountered during implementation. The two sides will also communicate and co-ordinate with each other via the expert group to review the effectiveness of the first phase, including the views of the public on the Self-drive Tour Scheme, for further study and discussion of the detailed arrangements of the second phase. We will continue to closely liaise with the Guangdong side.

Exchanging Hong Kong Driving Licence for a Great Britain Driving Licence

12. **MR PAUL TSE** (in Chinese): *President, an investigation conducted by a British Broadcasting Corporation programme has revealed that certain intermediaries used fake proofs of residential addresses in Hong Kong to assist applicants of different nationalities who held overseas driving licences to obtain full Hong Kong driving licences by direct issue without test, and then made use of the agreement on mutual exchange of driving licences between Hong Kong and the United Kingdom to assist such applicants to exchange for Great Britain (GB) driving licences without test. In this connection, will the Government inform this Council:*

- (a) *whether it knows, in the past three years, how many foreign nationals had, by the aforesaid means, obtained Hong Kong driving licences first and then applied to the British transport authorities for exchanging their driving licences for GB driving licences;*
- (b) *whether the Government will verify the information provided by each foreign national who applies for a Hong Kong driving licence by the aforesaid means (including proof of the applicant's residential address in Hong Kong and the authenticity of the applicant's overseas driving licence); if it will, of the details; if it will not or will only conduct random checks, the reasons for that and the details;*

- (c) *given that it has been reported that the Transport Department (TD) made enquiries with overseas consulates or transport departments and with relevant Mainland authorities regarding 401 such applications and, as a result, 106 applications were rejected and 126 were subject to further verification, of the reasons for rejecting the 106 applications; the number of applications which were suspected of involving the provision of false application information by intermediaries; and*
- (d) *of the measures in place to curb the aforesaid fraudulent practices of those intermediaries who profiteer through the illegal use of the Hong Kong-United Kingdom agreement on mutual exchange of driving licences?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, under regulation 11(3) of the Road Traffic (Driving Licences) Regulations (Cap. 374B) (the Regulations), the Commissioner for Transport may issue a Hong Kong full driving licence directly to an applicant on the strength of his/her driving licence issued by any country or place listed in the Fourth Schedule of the Regulations. There are at present a total of 32 countries or places listed in the Fourth Schedule of the Regulations. From 2009 to 2011, there were about 93 780 successful applications for direct issue of Hong Kong full driving licence.

- (a) United Kingdom is one of the countries recognizing Hong Kong full driving licence for direct issue reciprocally. The authority to issue the United Kingdom driving licence by direct issue rests with the Driver and Vehicle Licensing Agency (DVLA). The TD does not have figures of direct issue applications on the strength of Hong Kong full driving licence processed and approved by the DVLA.
- (b) An overseas driving licence holder applying for direct issue of Hong Kong full driving licence has to satisfy the requirements set out in the law, including that his/her overseas driving licence must be valid or has not expired for more than three years; and must be obtained through passing of driving test held in the issuing country or place. He/She is also required to submit the original and photocopy of each of his/her identity documents, overseas driving licence and other

relevant supporting documents, and proof of address in Hong Kong for verification by the TD.

The TD will prudently process and vet each of the direct issue applications to ensure that the applicants have fully satisfied the statutory requirements and produced true and accurate supporting documents. During the vetting process, if there is any doubt on the authenticity of an applicant's overseas driving licence, the TD will seek clarification and confirmation with the relevant consulate or transport authority. Doubtful applications will not be further processed unless the authenticity of the documents submitted has been verified.

- (c) In vetting the applications for direct issue of Hong Kong full driving licence, the TD will seek clarification and confirmation with the relevant consulate or transport authority on doubtful cases. In 2011, the TD made enquiries in respect of 401 applications with the consulates or transport authorities of overseas countries and the Mainland public security authorities responsible for issuing driving licences. Of these 401 applications, 169 were approved while 106 were rejected. The remaining 126 applications are pending which require further verification. The reasons for rejection include: the information provided by the overseas or Mainland authority was inconsistent with that shown on the driving licence held by the applicants, or the overseas driving licence had already been cancelled. There were no cases of suspected use of fraudulent documents.

In accordance with existing legislations, there is in general no requirement for an applicant to submit in person his/her application for licence or permit, including the application for direct issue of Hong Kong full driving licence. The applicant may submit application in person or through an authorized representative. There is no breakdown by channels of applications or submissions in the licence/permit application record of the TD.

- (d) The TD attaches great importance to possible abuse associated with the arrangement of direct issue of Hong Kong full driving licence.

It will conduct investigation into applications suspected to involve the use of fraudulent documents. These cases may also be referred to the police for consideration of taking prosecution actions depending on the circumstances. Hong Kong driving licences found to have been issued based on fraudulent documents will be cancelled by the TD. In relation to the United Kingdom, the TD has been working closely with the DVLA. Upon request from the DVLA concerning suspected applications for direct issue of United Kingdom driving licences, the TD would verify the authenticity of the Hong Kong driving licences of the applicants, and provide relevant information and assistance.

New Air Quality Objectives

13. **MR FREDERICK FUNG** (in Chinese): *President, in reply to my question on 8 February this year concerning the implementation of the new Air Quality Objectives (AQOs), the Secretary for the Environment did not give any definite response to the inquiries about updating the existing Air Pollution Index (API) first and the need to amend the legislation, and emphasized that the implementation of the new AQOs and related transitional arrangements required amendment of the Air Pollution Control Ordinance (Cap. 311) (the Ordinance). In this connection, will the Government inform this Council:*

- (a) *given that it is already stipulated in section 7(3) of the Ordinance that "any air quality objective may be amended from time to time by the Secretary, after consultation with the Advisory Council on the Environment", of the justifications for the Secretary for the Environment to point out that the implementation of the new AQOs required amendment of the Ordinance; and the related transitional arrangements mentioned by the Secretary for the Environment;*
- (b) *whether it has studied the feasibility of updating the existing API first; and*
- (c) *whether it has assessed the impact on public health of postponing the implementation of the new AQOs to 2014?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

(a) and (b)

Apart from serving as objective standards for local air quality, AQOs are a major factor for consideration in granting licences to specified processes (for example, power plants) under the Ordinance and in assessing the impacts of designated projects on air quality under the Environmental Impact Assessment Ordinance. In the process of updating the AQOs, we must make appropriate transitional arrangements, including drawing up a specific timetable for introducing the new AQOs to enable applicants of licences for specified processes and proponents of designated projects to plan their work on a highly transparent and legally sound basis. We also have to consider carefully the impact of the introduction of the new AQOs on projects for which an environmental permit (EP) has been issued. In the process of implementing the project, if application for variation of the EP becomes necessary and a new Environmental Impact Assessment (EIA) is warranted, applying the new AQOs may require significant amendments to the original design of the project, which will have major implications on the planning, cost, and even feasibility of the project. In order to reduce the uncertainty to those designated projects which have already completed the statutory EIA process as well as maintain the integrity of project planning, we have proposed, after careful consideration, a 36-month grace period from the commencement date of the new AQOs during which the new AQOs shall not apply to an application for variation of the EP.

Amendment of the Ordinance is a prerequisite for the implementation of the new AQOs and the aforesaid transitional arrangements. We shall table the Amendment Bill to the Legislative Council in the 2012-2013 Legislative Session. To complement the updating of the AQOs, we shall review and improve the current API system accordingly.

(c) We have been endeavouring to improve the air quality and have already implemented a series of air improvement policies and

measures, targeting in particular the power generation industry, vehicles and fuel oil quality, in order to reduce air pollution generated from their operation. Along with updating the AQOs, we shall step up the implementation of the 19 Phase I emission control measures as well as three additional measures. The latter include retrofitting of Euro II and III franchised buses with selective catalytic reduction devices, installing remote sensing devices at roadside and conducting advanced emission tests to strengthen control on emissions from petrol and LPG vehicles, requiring ocean-going vessels to switch to cleaner fuels while berthing and setting up Emission Control Area in Pearl River Delta waters in the long run. In addition, to underscore Government's determination and to take a leading role, Government has decided that Government projects, for which EIA studies have not yet been commenced, would endeavour to adopt the proposed new AQOs as the benchmark for conducting air quality impact assessment in the EIA studies, so that newly planned government projects could match the more stringent air quality requirements as soon as possible.

Integrated Community Centres for Mental Wellness

14. **MR CHEUNG KWOK-CHE** (in Chinese): *President, in 2010 to 2011, the authorities extended the services of Integrated Community Centre for Mental Wellness (ICCMW) to all the 18 districts across the territory and established 24 ICCMWs. Some front-line workers have relayed that even though the authorities have allocated additional resources to mental health services, such support is far from being adequate to meet the needs of the community, and in view of their huge workload and excessive work pressure, they hope that the authorities will provide additional resources for recruiting more professional grade staff to help enhance the services. In this connection, will the Government inform this Council:*

- (a) *of the amount of funding allocated to each ICCMW last year, and their respective numbers of staff belonging to different professional grades (social workers, nurses and occupational therapists);*

- (b) *of the respective numbers of members, various types of cases and small group activities of each ICCMW last year, together with the number of cases handled by each social worker;*
- (c) *of the respective numbers of the various types of service targets (that is, people recovering from mental illness aged 15 or above, people with suspected mental health problems, their families/carers and residents in the district) of the ICCMWs at present, together with a breakdown by various districts delineated by the Social Welfare Department (SWD) or the Hospital Authority; and the principles adopted by the authorities in determining the ratio of ICCMW manpower to their service targets; and*
- (d) *whether it knows, among the existing ICCMWs, the number of those which need to rent premises in commercial buildings because permanent sites are not provided to them; whether the authorities will offer rent allowance to enable such service units to have sufficient space to deliver normal service; if so, of the details (including the maximum amount of allowance); if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, the Government is mindful of the needs of persons with mental health problems and their family members/carers, and keeps under review the operation of and demand for community support services to ensure that the services would keep pace with the changing circumstances. In view of the growing demand of mental health services, the SWD has already launched the district-based and one-stop service delivery mode of the ICCMW across the territory, providing comprehensive and one-stop community support services ranging from prevention to risk management for discharged mental patients, persons with suspected mental health problems, their families/carers and residents living in the district. The Government has also continued to allocate additional resources to strengthen the manpower of the ICCMWs to enhance the services and relieve the pressure of their staff.

My reply to Mr CHEUNG Kwok-che's question is as follows:

- (a) Through consolidating the existing resources for mental health community support services and an additional provision of

\$70 million, the Government allocated a total of \$130 million to set up 24 ICCMWs across the territory in October 2010. In 2011-2012 and 2012-2013, the Government will further enhance the manpower of ICCMWs by allocating additional provision of about \$48 million to dovetail with the Hospital Authority's "Case Management Programme" and to provide services for more persons in need. Thereupon, the annual provision for the ICCMWs will be over \$180 million.

The ICCMWs are funded under the Lump Sum Grant (LSG) subvention system. While non-governmental organizations operating ICCMWs (operators) are required to provide professional staff, including social workers, occupational therapists, psychiatric nurses and other supporting staff according to the service contract in order to ensure service standard and meet service need, under the LSG subvention system operators have the flexibility to deploy the subvention to arrange suitable staffing on their own. In this regard, the SWD does not have statistics on the actual number of professional staff in each ICCMW.

(b) and (c)

In planning for the services of ICCMWs, we have taken into consideration such factors as the population size, population density, area coverage, and so on, in setting up the following 24 ICCMWs:

<i>Districts</i>	<i>Number of ICCMWs</i>
Central, Western, Southern and Islands	3
Eastern and Wan Chai	3
Kwun Tong	1
Wong Tai Sin and Sai Kung	3
Kowloon City and Yau Tsim Mong	2
Sham Shui Po	1
Tsuen Wan and Kwai Tsing	3
Sha Tin	2
Tai Po and North	2
Tuen Mun	2
Yuen Long	2
Total:	24

Depending on the situation and service needs of individual districts, the manpower and caseload of each ICCMW may vary. In this regard, it is not appropriate to make comparison of relevant figures among ICCMWs. Each ICCMW will flexibly deploy its resources to ensure that its services can meet the needs of its district. The ICCMWs have commenced service since October 2010. As at the end of December 2011, in total, 16 400 persons had registered as members of the ICCMWs. The ICCMWs had provided casework services to 15 300 ex-mentally ill persons and persons with suspected mental health problems and conducted 73 100 outreaching visits. Over 2 700 public education activities (with 171 000 participants) had also been organized to enhance public understanding of mental health.

- (d) Currently, among the 24 ICCMWs, six are operating in permanent accommodation; seven have secured suitable premises and are conducting relevant preparatory work, such as preparing for or carrying out fitting-out works; and two have identified premises and will conduct local consultation later this year. We will continue to identify suitable premises for the remaining nine ICCMWs. Pending the availability of permanent accommodation, the operators of other ICCMWs will make use of suitable premises of their organizations or rent suitable commercial sites as temporary service points. The SWD will examine an operator's application for setting up an ICCMW on commercial premises in consultation with relevant government departments. Up to now, the SWD has already approved four such applications and provided rent subsidy for renting commercial premises in setting up temporary service points in Kowloon City, Tsuen Wan, Eastern and Mong Kok. We expect that, through renting private commercial premises, we can make available suitable premises for ICCMWs to provide the needed community support services for ex-mentally ill persons and other residents in need as soon as possible. The maximum level of reimbursable rent and rates for renting a commercial site for operating ICCMW is equivalent to the concessionary rent payable⁽¹⁾ for and rate subsidy of renting premises in a public housing estate by that ICCMW.

(1) The Housing Authority can offer concessionary rate (currently at \$45 per sq m) of its commercial premises to non-profit making organizations for welfare purpose at a lower-than-market rent.

Provision of Columbarium Facilities

15. **MR LEUNG KWOK-HUNG** (in Chinese): *President, regarding the supply of columbarium niches, will the Government inform this Council whether:*

- (a) it knows the total number of niches provided by the 32 private columbaria under Part A (that is, private columbaria compliant with user restrictions in the land leases and the statutory town planning requirements and are not illegally occupying Government land) in the list of private columbaria updated by the Development Bureau as at 30 December 2011, and the utilization rate of such niches;*
- (b) it knows the total number of niches provided by the 66 private columbaria under Part B (that is, other private columbaria known to the Lands Department and/or Planning Department that do not fall under Part A) in the list of private columbaria updated by the Development Bureau as at 30 December 2011, and the utilization rate of such niches;*
- (c) it has carried out any planning for the number of public niches to be supplied in the coming 10 years; if it has, of the details; and*
- (d) it has carried out any planning for the number of private niches to be supplied in the coming 10 years; if it has, of the details?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, currently, there are eight public columbaria managed by the Food and Environmental Hygiene Department providing about 167 900 public niches, with some 300 re-used public niches available each year for allotment to applicants on the waiting list. A total of about 216 600 niches are provided and managed by the Board of Management of the Chinese Permanent Cemeteries, all of which have been allotted, with only a small number available for re-use. Other cemeteries managed by the Catholic, Protestant, Buddhist and other religious bodies provide about 126 700 niches in total, of which some 34 000 are not yet allotted. Besides, the Government also encourages the public to use more sustainable means of handling cremains and paying tribute to the deceased (such as scattering of cremains in Gardens of Remembrance (GoRs) or in designated Hong Kong waters as well as the Internet memorial service).

In order to provide information on private columbaria made known to the relevant government departments to the public in a more systematic manner and help the public make informed choices when purchasing niches, the Development Bureau published in December 2010 relevant land/lease (user restrictions) and town planning information on the private columbaria made known to the Lands Department and Planning Department, and which the departments had reason to believe are operating as columbaria. The information has been uploaded to the website of the Development Bureau and will be updated quarterly, with the latest edition published on 30 December 2011. My reply to the four parts of the question is as follows:

(a) and (b)

There are established channels and procedures for private columbarium operators to apply to the departments or organizations concerned for columbarium development or regularization of their operation (for example, applying for the relevant planning permission and/or lease modification, and so on). The Government does not have complete statistics on the niches provided by private columbaria at this moment. For such planning applications submitted by operators recently, the number of niches under application or approved will be included in the Information on Private Columbaria (the Information). Depending on the circumstances of each case, the number of niches (if any) that may be provided under the land leases, and so on, will also be included in the Information.

(c) and (d)

The construction of a public columbarium with a GoR at Kiu Tau Road of Wo Hop Shek will be completed in July 2012 to provide about 43 000 niches. Also, the concept of district-based columbarium development projects has also received public support. The Government has identified 24 potential sites in all 18 districts across the territory. Of these, with the support of the relevant District Councils (DCs), the Diamond Hill Columbarium extension project is due for completion soon (providing 1 540 niches) whereas the Cheung Chau Cemetery extension project (providing 990 niches)

will commence in early 2013 and is expected to complete by the end of 2013. The Government is forging ahead with the technical feasibility studies or traffic impact assessment (where required) related to those remaining sites to ascertain their feasibility, before rolling out the consultation with the various DCs from the second quarter of 2012 onwards. Subject to the support of DCs and the Legislative Council, it is estimated that together with the supply of Chinese Permanent Cemeteries, the Government will be able to provide more than 120 000 new niches in the coming five years (that is, from 2012 to 2016), and the supply of new niches will cumulatively increase to hundreds of thousands in the medium and long term (that is, from 2017 to 2031). As for the supply of private columbarium niches, it will be determined by the market demand and supply.

Vacant Public Rental Housing Units

16. **MS STARRY LEE** (in Chinese): *President, it has been reported that in a public housing estate in Tung Chung which has been in occupation for almost seven years, nearly 100 large units which can accommodate six to nine persons are suspected to have been unoccupied, and some flats are in such brand new state that even the plastic tapes over the door viewers and plastic wrappers over the handles have not been taken off. The report indicated that a large number of units have been left vacant for years, resulting in a waste of public housing resources. In this connection, will the Government inform this Council:*

- (a) *in each public housing estate, other than those unpopular public rental housing (PRH) units to be allocated under the Express Flat Allocation Scheme (EFAS), of the respective current numbers of units available for lease which have been left vacant for one year, one to two years, two to four years and over four years and not yet been allocated to public housing applicants; among them, the respective numbers of those units for families of one person, two persons, three to four persons, and five persons and more, and set out the breakdown in table form;*

- (b) *of the causes for the aforesaid PRH units being left vacant for a long time;*
- (c) *of the amounts of rental income foregone by the Housing Department (HD) in each of the past five years as a result of the aforesaid PRH units being left vacant; and*
- (d) *of the measures taken by the authorities in the past five years to minimize the circumstances of PRH units being left vacant for a long time; whether they have plans to convert large units which have been left vacant for a long time into smaller ones; if they have, of the details; if not, the reasons for that?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Hong Kong Housing Authority (HA) has all along been upholding the principle of optimization of resources. As soon as newly completed units or refurbished units become available, they are allocated to applicants on the Waiting List (WL) and other rehousing categories such as transfer and compassionate rehousing (CR). Whether the applicants accept the housing offers is a matter of personal choice. Apart from the less popular units that have not been accepted after repeated offers, vacant units in general include recovered units awaiting refurbishment, units reserved to cater for the rehousing of people affected by estate redevelopment/clearances or government clearances, and so on.

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

(a) and (b)

To optimize the use of public housing resources, the HD will arrange allocation in a flexible manner, and public housing units of different types and sizes have their respective ranges of allocation. For example, a two-bedroom Harmony unit can be allocated to four to six-person households. As such, the HD does not have the breakdown of vacant PRH units not yet allocated by the methodology as stipulated in the question.

Apart from those units which have previously been put under the EFAS to speed up allocation, as at December 2011, the numbers of rental units in estates that have not been allocated to PRH applicants for less than one year, one to two years, two to four years, and four years and above respectively are as follows:

	<i>< One year</i>	<i>One to Two years</i>	<i>Two to Four years</i>	<i>> Four years</i>
Number of units	1 432	79*	49	0

Note:

* Include 14 units where reservation is no longer necessary and will be arranged for letting soon.

The above 1 432 units that have been left vacant for less than one year include new and recently recovered units. The HD, apart from allocating them to WL applicants, will also let them through various transfer schemes such as Territory-wide Overcrowding Relief; Living Space Improvement and Special Transfer Schemes, as well as via CR.

In general, the HD will put units without being let out and have been left vacant for one year or above under the EFAS. A 50% rent reduction for eight to 12 months (see part (d) below) will also be offered to expedite the leasing out of such units.

Regarding the 114 units which have been vacant for one year or above as shown in the above table (including 65 units vacant for one to two years and 49 units vacant for two to four years), these units are mainly reserved for compulsory removals such as the HA's estate redevelopment/clearance or Government clearance projects. As the clearance exercises usually involve a large number of families, sufficient and appropriate PRH resources must be reserved for rehousing purpose in order to ensure their timely completion.

- (c) As mentioned above, in order to optimize the use of public housing resources, whenever new projects are completed or vacant units are refurbished, the HD will let them out as soon as possible. However, under certain circumstances, some units have to be left

vacant for a period of time. For example, units that need to be reserved to cater for the specific needs of individual rehousing categories. Units that are vacant for one year or more without letting are mainly reserved for compulsory transfer usage of the HA's estate redevelopment/clearance or government clearance projects. The issue of loss in rental income does not arise under the above circumstances.

- (d) Regarding units that are less popular, the HD has taken a multi-pronged approach to optimize the use of the valuable public housing resources and to expedite the leasing out of those units. These measures include:
- (i) Provision of 50% rent reduction for eight months in respect of units left vacant for 12 months to less than 24 months;
 - (ii) Provision of 50% rent reduction for 12 months in respect of units left vacant for 24 months or above; and
 - (iii) Implementation of the EFAS annually to let out less popular units, and thus speeding up the allocation of PRH units to the WL applicants who have joined the scheme.

At present, the demand for large units remains strong and PRH units accommodating larger households are in short supply. Having regard to the relevant factors, we consider that although the letting rate of such units in relatively remote areas is lower than that of other PRH units, there is a need to retain these large units to meet the demand of applicants with a large household size.

Unauthorized Building Works Involving Senior Government Officials

17. **MR KAM NAI-WAI** (in Chinese): *President, it has been reported that in response to media enquiries, a spokesman for the Chief Executive's Office stated on 13 February this year that the Chief Executive had reminded various Secretaries of Departments and Directors of Bureaux to review whether there was any unauthorized building work (UBW) in the properties owned by them, and*

that if necessary, they should appoint authorized persons themselves to inspect their property units and seek professional advice, while the Chief Executive had not requested the officials concerned to report the progress of handling. In this connection, will the Government inform this Council:

- (a) when the Chief Executive reminded the Secretaries of Departments and Directors of Bureaux of the aforesaid issue; why he did not request them to report the progress of handling;*
- (b) how many and which Secretaries of Departments and Directors of Bureaux (or former Secretaries of Departments and Directors of Bureaux) have reported to the Chief Executive or the authorities so far whether there are UBWs in the properties owned by them, and which of them have not yet done so;*
- (c) whether there are UBWs in the properties owned by the Secretaries of Departments and Directors of Bureaux (or former Secretaries of Departments and Directors of Bureaux) who have reported to the Chief Executive or the authorities as mentioned in part (b); if so, of the details (including the locations of the properties, the types and sizes of UBWs, when such UBWs were erected, the means of handling by the authorities, whether and when such UBWs were removed, as well as the current situation, and so on); and*
- (d) regarding the Secretaries of Departments and Directors of Bureaux (or former Secretaries of Departments and Directors of Bureaux) in part (b) who have not reported to the Chief Executive or the authorities, whether the authorities have investigated or whether they know if there is any UBW in their properties; if the investigation results reveal that or if the authorities know that there are UBWs in their properties, of the details (including the locations of the properties, the types and sizes of UBWs, when such UBWs were erected, the means of handling by the authorities, whether and when such UBWs were removed, as well as the current situation, and so on); if so far the authorities have not carried out any investigation or do not know the relevant situation, whether they will request them to give reports as soon as possible, and make public the contents*

(including the details of UBWs if there is any) of their reports; if they will, of the details; if not, the reasons for that?

SECRETARY FOR DEVELOPMENT (in Chinese): President, being the department responsible for enforcement against UBWs, the Buildings Department (BD) has all along been determined to act in accordance with the law and to be impartial to all. The BD will, as a matter of established practice, accord priority to follow up on cases of great public concern reported by members of the public or by the media involving senior government officials or celebrities with the objective of clearing any public concerns as soon as possible. After conducting the necessary inspection and investigation, the BD will take enforcement actions against all such cases in accordance with the Buildings Ordinance and the prevailing enforcement policy on UBWs in an impartial manner. There is no special arrangement in relation to the taking of enforcement action against properties owned by senior government officials or celebrities.

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

Between late May and early June 2011, when UBWs became a topical issue among the media, the Chief Executive reminded various Secretaries of Departments and Directors of Bureaux to review whether there were any UBWs in the properties they owned, and requested that if necessary, they themselves should engage authorized persons to inspect their properties and seek professional advice.

Secretaries of Departments and Directors of Bureaux, as owners, have the obligation to properly handle the UBWs of their properties. Besides, since the relevant legislation is enforced by the professional department concerned in an impartial manner according to established policies, it is neither necessary nor suitable for the Chief Executive to intervene in their follow-up actions. As such, he did not request the Secretaries of Departments and Directors of Bureaux to report to him after inspection. The fact that he reminded the Secretaries of Departments and Directors of Bureaux to review whether their properties had any UBWs reflected the importance he attached to the issue. Secretaries of Departments and Directors of Bureaux also have a clear understanding of their own responsibilities.

Measures to Help Hong Kong Enterprises to Explore Business Opportunities on the Mainland

18. **DR LAM TAI-FAI** (in Chinese): *President, a total of eight supplements have been signed since the Mainland and Hong Kong signed the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA) in 2003 to gradually implement the market liberalization measures under CEPA. Yet, quite a number of small and medium enterprises (SMEs) and members of the professional service sector in Hong Kong have reflected to me that the situation of "big doors are open, but small doors are not yet open" in fact still exists in the Mainland market, and they face considerable difficulties in exploring business opportunities on the Mainland. In this connection, will the Government inform this Council:*

- (a) *whether it has assessed the actual situation of "big doors are open, but small doors are not yet open" faced by various Hong Kong industries on the Mainland; if it has, of the details; if not, the reasons for that;*
- (b) *given that some SMEs have reflected that the Mainland company registration procedures are complicated and time-consuming, whether it knows such procedures and the time generally required for vetting and approval on the Mainland; if it knows, of the details; if not, whether it will seek an in-depth understanding of the matter;*
- (c) *given that some SMEs have reflected that before applying for registration for the commencement of business in some Mainland cities, they need to set up an office and provide its detailed address to the local registration department but the address may only be used by the company which applies for registration and may not be shared use by several companies, hence creating investment risks for the company which applies for registration, whether it knows the details and whether it has discussed the solutions with the Mainland;*
- (d) *given that some tax professionals in Hong Kong have reflected that the rules and regulations made by the State Administration of Taxation are subject to different interpretations in different cities, whether it knows the details and whether it has discussed the solutions with the Mainland;*

- (e) *given that some members of the accounting profession in Hong Kong have reflected that there are still certain restrictions on the scope of the business they may develop on the Mainland and they encounter difficulties in employing Mainland accountants, whether it knows the details and whether it has discussed the solutions with the Mainland;*
- (f) *given that some SMEs providing construction and related engineering services in Hong Kong have reflected that the thresholds for company registration and qualification assessment in certain Mainland cities are very strict, whether it knows the details and whether it has discussed the solutions with the Mainland;*
- (g) *given that some members of the legal profession have reflected that there are certain restrictions on the scope of the practice to be set up by Hong Kong law firms on the Mainland and they cannot employ Mainland practising lawyers, whether it knows the details and whether it has discussed the solutions with the Mainland;*
- (h) *given that some members of the medical profession in Hong Kong have reflected that there are strict regulations and restrictions on the practice of medicine, setting up medical clinics or renting Mainland medical facilities by Hong Kong private medical practitioners in Mainland cities, whether it knows the details and whether it has discussed the solutions with the Mainland;*
- (i) *whether it knows the difficulties faced by Hong Kong pharmaceutical manufacturers in registration on the Mainland; if so, of the details and whether it has discussed the solutions with the Mainland;*
- (j) *given that some members of the insurance industry in Hong Kong have reflected that it is still difficult for Hong Kong insurance brokers to provide services in Mainland cities at present, whether it knows the details and whether it has discussed the solutions with the Mainland;*
- (k) *whether it has assessed the progress of the mutual recognition of various professional qualifications between the Mainland and Hong Kong; if it has, of the details; if not, the reasons for that; and*

- (l) *whether it has any plan to further lower the threshold to enter the Mainland market and strengthen the mutual recognition of professional qualifications between the two places?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in

Chinese): President, our consolidated reply to the various questions regarding Hong Kong enterprises exploring business opportunities in the Mainland is as follows:

- (a) The Government attaches great importance to the effective implementation of the CEPA. Over the years, relevant Policy Bureaux and departments maintain close liaison with trade associations and professional bodies of the service sectors concerned through various channels in order to understand the concerns of the trade. As gathered from the trade, implementation problems may be encountered in certain service sectors, including delay in the promulgation of the Mainland rules, regulations and/or implementation details, ambiguous application procedures, differences in the regulatory regimes governing professional services between the two places and complicated supporting measures which involve cross-industry or nation-wide administration, and so on.

We have maintained close liaison with the Mainland authorities at central, provincial and municipal levels to actively follow up on problems encountered by Hong Kong enterprises in using CEPA benefits and to reflect the views of the trade.

- (b), (c), (d) and (i)

Hong Kong enterprises doing business in the Mainland have to follow the procedures and pay relevant taxes in accordance with the Mainland rules and regulations. According to the understanding of the offices of the Hong Kong Special Administrative Region (HKSAR) Government in the Mainland, the time and application procedures required for business registration in the Mainland, including whether it is necessary to set up an office before the

registration of business, and so on, may vary depending on factors such as the industry and scope of business concerned.

The HKSAR Government will continue to monitor the Mainland policies that are of concern to Hong Kong enterprises and keeps the trade informed of the latest information. We also maintain close contacts with the relevant Mainland authorities, and reflect and follow up with them the views and suggestions of Hong Kong enterprises on Mainland policies affecting them. If any individual enterprise encounters problems, it can provide the specific details of its cases for the offices of the HKSAR Government in the Mainland to reflect to and follow up with the relevant Mainland authorities.

(e), (f), (g), (h) and (j)

Since the signing of CEPA in 2003, eight supplements to CEPA have been concluded between the Mainland and Hong Kong. In service sectors like accounting, construction, legal, medical and insurance, and so on, over the years both sides have adopted a building block approach to achieve progressive liberalization of CEPA measures, including expansion in business scope, relaxation in geographical location restrictions and reduction in equity share restrictions. Both sides will continue negotiations under the existing mechanism to strive for further expansion and better market access conditions for Hong Kong enterprises and professionals. When using the benefits under CEPA in the Mainland, Hong Kong enterprises and professionals still need to follow the Mainland laws in registration for practice and operation. In this regard, as mentioned in part (a) above, the HKSAR Government will liaise closely with the Mainland authorities at central, provincial and municipal levels, to reflect views of the trade on the existing restrictions and take follow-up action as appropriate.

(k) and (l)

On enhancement of mutual recognition of professional qualifications and further liberalization, Hong Kong and the Mainland actively promote exchanges among professionals of the two places under

CEPA. This includes striving to allow Hong Kong professionals to take Mainland qualification examinations to obtain relevant professional qualifications in the Mainland. At present, people from over 40 Hong Kong professional or technical disciplines under various service sectors can sit for the professional qualification examinations in the Mainland. At the same time, Hong Kong and the Mainland have reached mutual recognition agreements for various professional qualifications or made arrangements for mutual exemption of some examination papers under CEPA in the construction, securities and futures, accounting and real estate sectors.

The HKSAR Government will continue to pursue mutual recognition of professional qualifications under CEPA, and will maintain close liaison and communication with various professional bodies and encourage them to have exchanges with their Mainland counterparts.

We will take account of the needs of the trade to continue to liberalize trade in services through CEPA, including further lowering of entry threshold into the Mainland market, with a view to promoting integration and sustainable development of the two economies.

Regulation of Charitable Organizations

19. **MR PAUL TSE** (in Chinese): *President, it has been reported that an organization in the name of "Hong Kong Society of Healthy Family" had been issued with 120 temporary hawker licences (THLs) by the Food and Environmental Hygiene Department (FEHD) within a year, and on various occasions sold goods in public places for fund-raising purpose nearby the MTR Ngau Tau Kok Station, but the funds raised were not put into donation boxes. It has also been reported that neither the Companies Registry nor the Business Registration Office has any information on this organization, no webpage or means of contact of this organization can be found on the Internet, and the person-in-charge of this organization has also refused to disclose its financial report and address. In this connection, will the Government inform this Council:*

- (a) *whether it has investigated how the aforesaid organization handles the funds raised;*
- (b) *of the policies and measures (including verification of financial reports) in place to prevent charitable organizations selling goods in public places for fund-raising purpose from embezzling the funds raised and ensure that such funds are used for charitable purpose; whether there is any co-operation and co-ordination among government departments to prevent any organization from obtaining money fraudulently by false charity sales; and*
- (c) *of the number of THLs issued to charitable organizations by the FEHD in each of the past three years; and the criteria for vetting and approving the applications?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, as far as fund-raising activities are concerned, currently there is no statutory definition of what constitutes a charity or a charitable purpose, nor is there a single piece of legislation for governing charities in Hong Kong and the use of donations. A charity can be established in different forms, including a trust body, a society established under the Societies Ordinance (Cap. 151), a corporate registered under the Companies Ordinance (Cap. 32), an organization established under a Hong Kong statute, and so on. Hong Kong is a caring society and the community is supportive of charitable causes. The Administration strives to provide a friendly environment with administrative procedures kept to a minimum to facilitate charitable organizations to mobilize community resources for their fund-raising activities. At the same time, the Administration needs to ensure that such activities do not cause nuisance or inconvenience to the public, and that the interests of the donors are safeguarded.

The Administration's consolidated reply to the three parts of the question is set out below. For any collection of money or sale of badges, tokens or similar articles for charitable purposes in public places, an organization has to apply in advance for a permit from the Social Welfare Department (SWD) under the Summary Offences Ordinance (Cap. 228). Organizations issued with the permit are required to submit an audited report of their activities to the SWD within 90 days upon completion of the activities. The audited report should state, among

others, the purpose as well as the income and expenditure of the fund-raising activities. The organizations are also required to publicize the audited report and retain the relevant documents for public inspection. If any organization is found to have seriously breached the permit conditions or been involved in illegal acts in the past, the SWD will not approve the permit application of that organization and will inform relevant departments, with a view to preventing and combating fraudulent fund-raising activities.

If it involves the sale of goods in public places for raising funds, a charity or non-profit-making organization also has to submit an application to the FEHD. The FEHD will consider issuing a THL with validity not exceeding one month under the Hawker Regulation (Cap. 132AI) to allow the licensee to conduct selling activities in public places. Upon receipt of an application for THL for sale of goods for fund-raising purpose, the FEHD will consider the nature of the organization and consult relevant departments. The THL will be issued only if the relevant departments do not raise any objection. Generally speaking, the FEHD only issues THLs to charitable or non-profit-making organizations only, namely:

- (i) charitable institutions which are exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); or
- (ii) registered/enrolled non-profit-making organizations under the Laws of Hong Kong, for example, companies registered under the Companies Ordinance (Cap. 32), societies registered under the Societies Ordinance (Cap. 151) and trade unions registered under the Trade Unions Ordinance (Cap. 332), of which the FEHD will verify the Memorandum and Articles of Association to ascertain that the organization is non-profit-making in nature.

As far as THLs are concerned, the FEHD is mainly responsible for monitoring hawking activities and environmental hygiene issues to ensure that the licencees comply with the Hawker Regulation (Cap. 132AI) and licensing conditions while conducting the relevant activities. Since the applicants are charitable or non-profit-making organizations, the FEHD currently does not prescribe any requirement on the use of the funds raised or the submission of reports to the FEHD. Nevertheless, upon receipt of complaints or if the selling activities are suspected to be incompatible with the charitable/non-profit-making

nature, the FEHD will liaise with the departments concerned and take follow-up actions. The organization mentioned in this question is registered under the Societies Ordinance (Cap. 151) and is also a charitable institution exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112). The FEHD is now following up on the fund-raising activities of the Hong Kong Society of Healthy Family in relation to the THLs granted, and has referred the case to the Hong Kong Police Force and the Inland Revenue Department for follow-up actions.

The numbers of THLs issued by the FEHD to charitable/non-profit-making organizations in 2009, 2010 and 2011 are 909, 724 and 1 184 respectively.

After reviewing the applications for THLs in recent years, the FEHD will strengthen co-operation with the relevant departments and study whether in future applicant organizations should be required to submit financial reports of the funds raised, and so on, to the Government within a specified period of time after completion of the fund-raising activities, and to allow public inspection of such reports, with a view to increasing the transparency of their fund-raising activities.

Abolition of District Council Appointment System

20. **MR FREDERICK FUNG** (in Chinese): *President, the Chief Executive undertook in mid-2010 that the Government would submit to the Legislative Council legislative proposals on the abolition of the District Council (DC) appointment system in autumn of the same year. Subsequently, the Secretary for Constitutional and Mainland Affairs indicated that the local legislative arrangements regarding the Chief Executive and the Legislative Council elections in 2012 should be dealt with first before addressing the issue of appointed DC members. In mid-September last year, without any consultation, the authorities announced that the number of DC members to be appointed in the fourth term of DCs in 2012 would be reduced by one third, while the remaining appointed seats would be abolished over one term or two terms, and complete abolition would be no later than 2020. In this connection, will the Government inform this Council:*

- (a) *given that in reply to a question raised by a Member of this Council on 19 October last year, the authorities indicated that there were*

views in the community in support of the abolition of all appointed seats in one go while others believed that appointed seats should be abolished in phases, why the authorities decided that DC appointed seats be abolished in phases in the absence of any public consultation; of the justification for abolishing appointed seats in phases; why the authorities do not opt for the abolition of all appointed seats in one go;

- (b) why the authorities opt for reducing the number of DC appointed seats by means of reducing the number of appointed DC members instead of instituting legislative amendments; whether they have assessed if such arrangement will allow the Government of the next term to decide once again to appoint the full slate of the 102 DC members; if they have, of the assessment result; and*
- (c) whether the authorities will submit legislative proposals in connection with the way forward for the remaining two thirds of the appointed seats; if they will, of the timetable and specific details; whether the authorities will ultimately abolish the DC appointment system completely by means of legislative amendments, that is, repealing provisions in the District Councils Ordinance (Cap. 547) which stipulate that the Chief Executive may appoint a maximum of 102 persons as DC members?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Chinese): President,

- (a) Over the past few years, there have been discussions in the community regarding how the issue of DC appointed seats should be dealt with. The views expressed are diverse. Some supported the abolition of appointed seats in one go while others believed that appointed seats should be abolished in phases in recognition of the important contributions made by appointed members to the community work.

After considering views from different sectors, the Administration announced in September 2011 that the DC Appointment System

could be abolished in phases by going through a transitional period. We reduced one third of the number of appointed members in the fourth term of the DCs which commenced on 1 January 2012, that is, appointing only 68 members instead of 102. We also indicated that after the DC election in November 2011, we could embark on further public discussions as to how the DC Appointment System should be dealt with. At the same time, we made it clear that the Government had an open mind on whether the remaining 68 appointed seats should be abolished over one term or two terms.

Subsequently, we published the Consultation Paper on the District Council Appointment System on 20 February 2012 inviting the public to express their views on how to abolish the remaining 68 appointed seats. In the Consultation Paper, we state that our inclination is to abolish all the remaining 68 seats in one go by 1 January 2016. We consider that this is more compatible with the pace of constitutional development in Hong Kong, including the continued democratization of the Legislative Council Election and the changes in the role of appointed DC members in the Legislative Council Election and the Chief Executive Election Committee Subsector elections.

(b) and (c)

Section 11 of the District Councils Ordinance provides that the Chief Executive may appoint as members of a DC, a number of persons not exceeding the number specified in Schedule 3 to the Ordinance. The Chief Executive is not required by the Ordinance to appoint all the 102 appointed seats.

We are now inviting public views on how to abolish the remaining 68 appointed seats. The consultation period runs from 20 February to 20 April 2012. The Administration will consider the views collected during the public consultation, including which proposal should be adopted and how the relevant legislative work should be handled. We will then formulate a final proposal, which would be provided to the next term of Government to decide on the way forward.

BILLS**First Reading of Bills**

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

CONSTRUCTION INDUSTRY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012

TRADE DESCRIPTIONS (UNFAIR TRADE PRACTICES) (AMENDMENT) BILL 2012

TRADE DESCRIPTIONS (AMENDMENT) BILL 2012

CLERK (in Cantonese): Construction Industry Legislation (Miscellaneous Amendments) Bill 2012
Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012
Trade Descriptions (Amendment) 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.

CONSTRUCTION INDUSTRY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012

SECRETARY FOR DEVELOPMENT (in Cantonese): Deputy President, I move the Second Reading of the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill). The object of the Bill is to amend the Construction Industry Council Ordinance (CICO) and the Construction Workers Registration Ordinance (CWRO) to, through effecting the organizational

amalgamation of the Construction Industry Council (CIC) with the Construction Workers Registration Authority (CWRA) and the streamlining of other administrative procedures, enhance the operational efficiency of the CIC and the Construction Workers Registration system.

The amalgamation of the CIC with the CWRA will become another important milestone of Hong Kong's construction industry. In January 2001, the Construction Industry Review Committee (CIRC) completed a comprehensive review of the local construction industry and proposed, among over 100 recommendations, the setting up of a statutory co-ordinating body for the industry

(Mr Albert CHAN stood up)

DEPUTY PRESIDENT (in Cantonese): Mr CHAN, is it a point of order?

MR ALBERT CHAN (in Cantonese): Deputy President, I am afraid this Council does not show much respect to the Secretary because I am the only one who is sitting here, listening to the Secretary's speech, though I just arrived in a hurry. Despite the size of the Chamber of the Legislative Council, I am the only Member here. I think that Members do not show much respect not only to this Council, but also to the Secretary. Hence, I hope the Deputy President can summon Members back to the Chamber.

DEPUTY PRESIDENT (in Cantonese): You are complaining that a quorum is not present, right?

MR ALBERT CHAN (in Cantonese): Actually, I do not wish to use this expression, but I am afraid that it is out of order

DEPUTY PRESIDENT (in Cantonese): We can obviously see without doing a headcount that a quorum is lacking. Clerk, please ring the bell to summon Members. Mr CHAN, please be seated.

MR ALBERT CHAN (in Cantonese): Let us see what the Deputy President will decide to do.

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

DEPUTY PRESIDENT (in Cantonese): A quorum is now present. Secretary for Development, please continue.

SECRETARY FOR DEVELOPMENT (in Cantonese): Deputy President, Honourable Members, I move the Second Reading of the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill). The object of the Bill is to amend the Construction Industry Council Ordinance (Cap. 587) (CICO) and the Construction Workers Registration Ordinance (Cap. 583) (CWRO) to, through effecting the organizational amalgamation of the Construction Industry Council (CIC) with the Construction Workers Registration Authority (CWRA) and the streamlining of other administrative procedures, enhance the operational efficiency of the CIC and the Construction Workers Registration system.

The amalgamation of the CIC with the CWRA will become another significant milestone of Hong Kong's construction industry. In January 2001, the Construction Industry Review Committee (CIRC) completed a comprehensive review of the local construction industry and proposed, among over 100 recommendations, the setting up of a statutory co-ordinating body for the industry to spearhead reforms and act as a bridge to enable the Government and the industry to hold negotiations and reach a consensus on important matters having an impact on the construction industry, with a view to sustaining momentum to achieve continuous improvements across the construction industry. The CIRC also supported in principle the implementation of a worker registration scheme by way of legislation. Subsequently, the CWRO and the CICO were passed by the Legislative Council in July 2004 and May 2006 respectively, followed by the establishment of the CWRA and the CIC in September 2004 and February 2007.

Over the past couple of years, the two statutory industry organs have made relentless efforts in promoting and upgrading the development of the industry. The major results achieved by the CIC since its establishment include its

amalgamation with the Construction Industry Training Authority (CITA) and the establishment of the Construction Industry Training Board (CITB) in January 2008 to monitor the training and trade tests provided for construction workers. The CIC is also responsible for drawing up manpower training and development strategies for the industry, launching new training programmes to address the manpower demand problems facing the industry, conducting research and development programmes, and issuing a number of guidelines covering such major areas as the safety of construction sites, environment and technology, manpower training and development, construction procurement, project subcontracting, and so on, with a view to enhancing the operation of the construction industry and promoting improvement measures for upgrading the standard of the industry.

As regards the registration of construction workers, the CWRA commenced the registration in December 2005 and implemented in September 2007 the Phase One Prohibition barring unregistered workers from carrying out construction works. Since the commencement of registration of construction workers on 29 December 2005 by the CWRA, around 287 000 construction workers have been registered as at the end of January 2012.

After years of efforts made by members of the CIC and the CWRA, the two organs have matured in operation. Hence, we consider it necessary to further enhance the organizational structure of the construction industry. In fact, when the Construction Industry Council Bill was tabled to the Legislative Council years ago, the authorities already made it clear that the legislative intent was to enable the co-ordinating body of the construction industry to eventually take up training of construction personnel, workers registration and other self-regulatory regimes. On training for construction personnel, in January 2008, the CIC amalgamated with the then CITA and established the CITB to take up the training functions and powers previously discharged by the CITA. It is now time for the CIC to amalgamate with the CWRA to enable the former to act as the single industry co-ordinating body. The actual amalgamation arrangement will be similar to the arrangement adopted for the amalgamation of the CIC and the CITA. In other words, a new body, to be named as the "Construction Workers Registration Board" will be set up under the CIC and, upon the amalgamation, take over the registration functions and powers previously discharged by the CWRA.

This proposed amalgamation carries strategic significance. The manpower development of the construction industry as a whole, from the assessment and formulation of development strategies to the training of construction personnel, trade tests for construction workers, and registration of construction workers, are closely connected. To put a better integrated statutory organizational structure in charge of all these matters is conducive to nurturing a quality construction workforce to support the implementation of various quality infrastructure projects. As the Government is currently pressing ahead at full steam the infrastructure development programme to complement Hong Kong's socio-economic development, strengthening the manpower resources of the construction industry is indeed a matter of great urgency. There is a need for us to introduce this Bill at an early date to effect the amalgamation of these two statutory bodies.

We are convinced that, following the setting up of a single statutory body for the construction industry through the amalgamation to take charge of construction matters, there will be better demarcation of powers and responsibilities as well as better coherence in delivering the construction workers registration policy and other construction-related policies. Furthermore, the amalgamation can achieve synergy, streamline the structure, and facilitate deployment of resources and sharing of information as well as handling matters related to manpower assessment, training, trade tests and registration through a unified system, thereby enhancing the efficiency and effectiveness of the CIC and the workers registration system to benefit both workers and stakeholders.

Furthermore, a number of measures will be implemented through this Bill to enhance the operational efficiency of the CIC and cater to the interest of construction workers.

First of all, in order to reduce the number of cards a worker has to carry day to day, we propose that the construction worker registration card issued under the CWRO may store and display information of other construction-related cards/certificates issued by other authorities. On workers registration, we propose that the period for renewal of registration be extended from three months to six months. Furthermore, prior to formal registration, in order to provide against circumstances beyond the control of the workers concerned, we propose extending the provisional registration period for more experienced workers. We also propose revising the number of workers unions' representatives in the

statutory boards under the amended CICO and CWRO from two persons to three persons (except the Objections Board which is not concerned with workers).

Moreover, provisions will be included in the Bill to ensure the continuance of the employment contracts of staff of the CWRA Secretariat following the amalgamation until their natural expiry.

To complement this legislative exercise, we briefed the Panel on Development of the Legislative Council on 23 November 2010 and 28 June 2011 on the proposed amalgamation of the CIC with the CWRA and the details of the amendments to the CICO and the CWRO. The relevant proposals were supported by the Panel. During the period between November 2010 and May 2011, we also consulted the two statutory bodies, including the staff of the CWRA, trade associations and workers unions, on the aforesaid proposals. They supported the relevant proposals and have been expecting early amalgamation of the CWRA with the CIC.

Deputy President, the construction industry, being one of Hong Kong's major industries, provides more than 280 000 job opportunities. The introduction of this strategic plan will be conducive to strengthening the manpower of the industry and the healthy and sustainable development of the industry overall. This is not only the expectation of every construction worker, but also the common aspiration of the CIC, the CWRA and industry stakeholders. It is also a major milestone ensuring the smooth implementation of infrastructure development in Hong Kong. I implore Members to support the Bill and hope that the deliberations on it can be completed and the Bill passed at an early date.

I so submit. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Construction Industry 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.

**TRADE DESCRIPTIONS (UNFAIR TRADE PRACTICES)
(AMENDMENT) BILL 2012**

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I move that the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 be read the Second time.

The object of the Bill is to enhance the tackling of unfair trade practices. Unfair trade practices will directly harm the financial interest of consumers and may cause psychological harassment to them. In general, the information in the hands of the consumers is relatively small in amount and they do not have the resources, capabilities or time to verify the authenticity of the information provided by the traders and they may not be able to find reliable information to help them make an informed choice of a certain product. Also, some unscrupulous traders may even impose some undue pressure on the consumers such as subjecting them to bombardment over a long period of time, withholding the properties or proof of identity of the consumers, and so on. All these are done with a view to affecting their consumption decision. To curb such practices and enable the consumers to use their free will and make an informed transactional decision with an adequate amount of accurate information, we have made a host of legislative proposals aiming at protecting consumers in many aspects so that they will not be harmed by unfair trade practices.

We have proposed many new offences. The first one is on trade descriptions. The existing Trade Descriptions Ordinance is the main instrument targeting unfair trade practices. According to the Ordinance, anyone who applies a false or materially misleading indication of any of the specified aspects of any goods in the course of trade or business commits any offence and is liable to a maximum fine of \$500,000 and imprisonment for five years. The Ordinance has also specific provisions prohibiting anyone from adopting a method other than clear and easily comprehensible display of price indications for units of measurement. This is the commonly used trick of confusing units of weight such as the catty and the tael. Offenders are liable to a maximum fine of \$500,000 and imprisonment for five years.

The Customs and Excise Department is tasked with enforcement of the Ordinance. In the case of the practice of mixing up the catty and the tael as used in traditional Chinese medicine and dried seafood stores, the Customs will not

only handle and investigate complaints but also take the initiative to inspect such stores according to the result of the risk assessment conducted by it. It will also join hands with the police to launch undercover operations. Since March 2009, the Customs has conducted more than 1 900 inspections of these traditional Chinese medicine and dried seafood stores and prosecutions were instigated on nine occasions. At the end of January this year, the Court convicted two traders and imposed a fine on them. The Customs will continue with its enforcement action actively to protect the consumers.

The most obvious shortcoming of the existing Ordinance is that it is only applied to trade descriptions and display of price indications for goods. The trade descriptions regarding services provided by traders to consumers are not regulated by the Ordinance. In view of this, we suggest that the scope of application of the Ordinance be expanded to prohibit traders from applying false trade descriptions to the services they provide to consumers. In addition, the current definition of "trade description" in respect of goods is too restrictive, in the sense that pertinent descriptions (such as price indications) are not subject to regulation. We propose to expand the definition of "trade description" in relation to goods to the effect that false indications of any matters related to goods will be prohibited. We also propose to define trade descriptions in relation to services in the same manner.

The second new offence is misleading omissions. If consumers are to make an informed choice, they must be able to get hold of critical information. On this premise, we consider that businesses should have the primary responsibility of presenting to consumers accurate, truthful and pertinent information in respect of their products. After taking reference of the practices in the United Kingdom and places in the European Union, we propose to add the offence of "misleading omissions" to the Ordinance. We propose that when determining whether a commercial practice is a "misleading omission", consideration should be given to all the features and circumstances of the commercial practice and such features and circumstances may include the written or spoken language used in promoting sales. A commercial practice is a "misleading omission" if it omits or hides "material information", provides material information in an unclear or ambiguous manner, or if it fails to identify its commercial intent and as a result, it causes or is likely to cause the average consumer to make a transactional decision that he would not have made otherwise. Such a practice is commonly called "planting a decoy to trap

consumers". A trader or any person acting in the name of the trader who engages in relation to a consumer in a commercial practice that is a misleading omission commits an offence. We also propose to set out the definition of "material information" in the Ordinance and factors determining whether a practice is a misleading omission.

The third offence is "aggressive commercial practices". Consumers' freedom of choice is likely to be undermined when they are under undue influence or high-pressure practices, and as a result, their consumption behaviour may be affected. Typical practices under this category include the withholding of the properties or credit cards of the clients or forbidding them to leave the premises in question. In order to combat such tricks, we propose to add new provisions to the Ordinance to prohibit the use of aggressive practices in consumer transactions. Specifically, we propose that, as in the case of the United Kingdom, a commercial practice shall be considered as aggressive if, in its factual context, taking into account all relevant circumstances, it significantly impairs (or is likely to significantly impair) the consumer's freedom of choice through the use of harassment, coercion or undue influence and it hereby causes him to take a transactional decision that he would not have taken otherwise. A trader or any person acting in the name of the trader who engages in relation to a consumer in a commercial practice that is aggressive commits an offence.

We also propose to include a list of the factors which must be taken into account when determining whether a practice uses harassment, coercion or undue influence. These factors include the timing, location, nature and persistence of the practice, the use of threatening or abusive language or behaviour, and so on. I believe the proposed new offence can effectively combat these unfair trade practices which are a cause of widespread public concern.

The fourth offence relates to the practices of bait advertising and bait-and-switch. Bait advertising is a trade practice that has become a public concern because it also undermines the interests of the consumers. The feature of this trade practice is in brief, the trader advertises or promotes products at bargain prices or on very favourable terms but the promoted item is in fact used as a bait to attract consumers so that the trader has the opportunity to switch their attention to more expensive and not so sought after products in various guises such as saying that the product is out of stock or even making derogatory remarks about the original product. In the end, the consumers will find that the product

they have purchased may be more expensive or has less value for money. Consumers who have this experience will not only waste their time or resources (as they may have to queue up for a long time) and they may also make a hasty transactional decision which they will regret.

We therefore propose to create two offences in the Ordinance to combat such practices. The first is bait advertising. Modelling on provisions in Australia, this offence prohibits a trader from advertising for the supply of products at a specified price if there are no reasonable grounds for believing that he will be able to offer for supply those products at the price for a reasonable period and in reasonable quantities, having regard to the nature of the market and the nature of the advertisement. To ensure that businesses acting in good faith would not be inadvertently caught, we propose that it is a defence if the advertising in question has clearly stated the period or quantity of the supply of the product and that the stated undertaking is fulfilled. In addition, we also propose that additional defences be provided. In the absence of proof to the contrary by the prosecution, a defendant will be entitled to be acquitted if he can adduce sufficient evidence to raise a case that he has taken immediate remedial action acceptable to the consumer (such as replenishing the stock or offering equivalent goods or services on the same terms).

We also propose to prohibit the practice of "bait-and-switch". This offence prohibits a trader from making an offer to sell a product at a specified price with the intention of promoting a different product through any of the defined tactics (such as refusing to show the product to a consumer and showing a defective sample).

The fifth offence is the practice of wrongly accepting payment. Pre-payment for goods or services is becoming an increasingly popular form of consumption. Consumers and businesses stand to benefit from this mode of consumption, as consumers normally enjoy discounts and the cash flow of businesses can be improved. Many problems may arise, however, when traders with no intention or ability to supply the contracted products trick consumers into pre-payment. Due to the information asymmetry or restraints in resources, capability or time, consumers may not be able to ascertain whether businesses have the *bona fide* intention and capability of supplying the pledged goods or services. In fact, complaints about traders receiving pre-payments when there is

already a risk of closure and consistent over-subscription of services have given rise to widespread public concern.

We propose to create an offence in the Ordinance to tackle such a practice. Specifically, modelling on provisions in Australia, we propose that a trader commits the proposed offence of "wrongly accepting payment" if, at the time of accepting payment for a product, he intends not to supply the product or to supply a materially different product. A trader also commits an offence if there are no reasonable grounds for believing that he will be able to supply the product within the period specified or within a reasonable period.

We propose to make available additional defences for this proposed offence. If the defendant can adduce sufficient evidence that he has successfully procured a third party to supply the same or equivalent products acceptable to consumers, he will be entitled to be acquitted unless the contrary is proved by the prosecution.

Deputy President, currently, the application of false description on goods is liable to a maximum fine of \$500,000 and imprisonment for five years. Considering the nature of the newly created offences, we propose that the maximum penalties should also apply to the proposed new offences.

Even though additional defences as mentioned are available, our policy intent lies in the offences created in the Bill, that is, applying false trade descriptions to services, misleading omissions, aggressive commercial practices, bait advertising and bait-and-switch, and wrongly accepting payments (with respect to the inability to supply a product). As a general rule, there is no need for the prosecution to prove the *mens rea* in the defendant (such as "knowingly", "disregard the actual circumstances of the case" or "deceit") as elements in the mental state when the said crimes are committed.

In common law, the proof of *mens rea* requirement is essential in handing down a judgment that someone has committed a criminal offence. But the Court has all along recognized that this presumption in law can be waived under certain circumstances. These include matters of social concern arising from the laws enacted on the offences concerned, as well as proof of a greater alertness among the people as a result of the waiving of the *mens rea* requirement in these offences which in turn deters people from committing acts in contravention of the

law and hence the objects of the law in question can be effectively achieved. These unfair trade practices will undermine consumer rights and confidence and honest traders are also affected. Our proposals are expected to make the traders more alert and they will be deterred from breaking the law. At the same time, the proposals will help combat unfair trade practices in the market which are common and will tarnish the reputation of Hong Kong. These proposals will enhance consumer protection and hence are essential to achieving the objects of the law.

Traders should have a good knowledge of the goods and services they supply and they have the responsibility to take reasonably prudent measures and exert due diligence to avoid obtaining unlawful benefits from consumers. Section 7 of the existing Ordinance actually provides for the offence of applying false trade descriptions on goods and there is also no requirement for any proof of the *mens rea*. There is no need to prove the *mens rea* in the defendants for similar offences of unfair trade practices in Australia and the United Kingdom. It is our view that waiving the presumption of *mens rea* is in line with our aim to enhance consumer protection.

Apart from these new offences, the Bill also takes an enforcement approach to aim at tackling unfair trade practices on consumers more effectively.

We propose that the Customs be tasked to enforce the proposed offences, with concurrent enforcement powers to be conferred on the Telecommunications Authority and the Broadcasting Authority in respect of the trade practices of holders of telecommunications and broadcasting licences. This will make good use of the expertise and enforcement experience of both Authorities in regulating the industries concerned.

Doubtless traders who use unfair trade practices should be subject to criminal sanction. However and under certain circumstances, consideration should be given to the nature of the act (such as its severity and impact on the consumers or society), whether there are previous records of conviction, the prevalence of the practice in question, the nature of the trades involved, and so on. We consider that the enforcement agencies should be given more tools of regulation to address the needs of different situations so that they can take commensurate and appropriate action.

Taking reference of the situation in the United Kingdom and Australia, we propose to set up a compliance-based enforcement mechanism to encourage compliance by the traders and facilitate quicker settlement of disputes with consumers. Under the proposed mechanism, the enforcement agency is empowered to seek undertakings from traders suspected of deploying any unfair trade practices to stop and not to repeat an offending act, and, where necessary, seek injunctions from the Court for the purpose. The enforcement agency should act according to the circumstances of the case and will issue guidelines on enforcement action. Such guidelines will be released to the public and the enforcement agency concerned will in the course of formulating such guidelines invite participation from members of the public, including groups advocating consumer rights and the industries concerned. This mechanism is expected to be able to deliver quicker and better settlement of disputes with consumers and together with criminal sanctions imposed, the rights of consumers can be better protected.

Currently, the Ordinance empowers the enforcement agency to inspect any goods and enter any non-domestic premises for the purpose of ascertaining whether the offence under the Ordinance has been or is being committed. This power does not cover inspection of books or documents. The enforcement agency may do so only if it has reasonable grounds to suspect that an offence has been committed. As a general rule, such power is adequate. But as there are provisions in the Ordinance which require traders engaged in the sale of specified goods such as gold or gold alloy to keep invoices or receipts issued to consumers for a period of not less than three years, and to provide specified information thereon related to the transactions, the enforcement agency should be empowered to ascertain whether the traders have complied with the relevant requirement. We propose therefore to amend the Ordinance to empower the enforcement agency to inspect books and documents that are required to be kept under the Ordinance without being subject to the reasonable suspicion test.

The Ordinance also seeks to enhance consumer protection from another perspective. To facilitate aggrieved consumers in seeking restorative justice and in addition to enforcement action from the Government, there should be a self-help remedy available to consumers. We propose that an express right be created under the Ordinance to allow any person who suffers loss or damage because of conduct which constitutes the current offence of false trade descriptions of goods or any of the proposed offences that is directed to him to

institute private actions for damages. We also propose that when convicting a person of any of the offences, the Court may order the convicted person to compensate any person for financial loss resulting from the offence.

In view of the presence of sector-specific regimes, we propose that certain sectors should not be brought under the ambit of the Amendment Ordinance. Specifically, they are the financial services sector, because there are well-established regulatory regimes under the auspices of the Securities and Futures Commission, the Hong Kong Monetary Authority and other financial regulatory bodies; the property sector, in view of the separate regime now being proposed by the Transport and Housing Bureau on the sale of first-hand residential properties; and professional practices regulated by regulatory bodies established or sanctioned by statute.

Deputy President, apart from protecting the consumers, the Bill is expected to tackle unfair trade practices and we hope that a level playing field can be maintained to encourage healthy competition among businesses. With respect to the proposals made in the Bill, we have issued a document earlier to consult the public and the Legislative Council Panel on Economic Development. On the whole, the proposals have gained extensive support. I will work closely with Members in the scrutiny of the Bill in the hope of seeing its early passage.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Trade Descriptions (Unfair Trade Practices) (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.

TRADE DESCRIPTIONS (AMENDMENT) BILL 2012

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Deputy President, I move that the Trade Descriptions (Amendment) Bill 2012 be read the Second time.

In June last year, Hong Kong signed a number of arrangements/agreements of trade liberalisation (ATLs) with some countries of the European Free Trade Association (EFTA) that is, Iceland, Liechtenstein, Norway and Switzerland. The objective of the Bill is to bring in line provisions on rules of origin with the individual ATLs so that Hong Kong goods would stand a greater chance of obtaining preferential tariff treatment in entry to the markets concerned.

In general, ATLs provide that for a product to enjoy such preferential tariff treatment, it should be manufactured or produced in a place to which the ATL applies. Under the existing Trade Descriptions Ordinance (TDO), goods are considered to have originated in a certain place where the last process that substantially changes the materials used takes place. This "process-based" principle is commonly referred to as the "last substantial transformation" rule.

As for our ATLs with the EFTA states, apart from the "process-based" rules of origin, it contains an alternative set of rules of origin for conferral of preferential tariff treatment known as "value-based" rules. The rules are based on the proportion of the "enhancement in value" attributable to the place(s) to which an ATL applies and measured against the total value of the finished products. The more likely beneficiaries are products which undergo in Hong Kong processes that add high value (such as assembly in tandem with product design), relative to the costs of the materials used for producing the goods. The "value-based" concept of origin rules is beneficial to the development of the service industries in Hong Kong, such as product design, testing and certification, as well as various kinds of professional, commercial and logistics services.

The place of origin of goods is a kind of trade descriptions. We propose to incorporate the "value-based" rules into the TDO so that traders in Hong Kong may enjoy preferential tariff treatment by simply marking or describing goods for export under ATLs as having a Hong Kong origin.

The Bill has eight clauses covering the following:

A major clause of the Bill provides for the "value-based" concept on top of the existing origin rules, covering our ATLs with EFTA states and allows flexibility to accommodate possible changes or refinements and similar agreements which Hong Kong may enter into with other countries in future.

This forward-looking approach is based on our view of what may happen in future and various circumstances that may arise.

In another clause, traders are provided with a link to details of the rules of origin under individual ATLS by means of a Schedule specifying the relevant ATLS. The Secretary for Commerce and Economic Development may amend the Schedule by notice published in the Gazette. The public notice concerned shall be scrutinized by the Legislative Council. We also propose to add another clause to renumber schedules to the TDO.

In addition, we propose three other clauses to effect minor changes to the existing TDO and improve the text. There are two other standard clauses to set out the short title to the Bill and the numbering of the amended provisions.

Upon amendment, the Trade and Industry Department will publish a notice to provide details of the provisions to the traders. The Department will also issue guidelines on what should be done to obtain the preferential tariff treatment concerned.

The legislative proposals obtained the support of the Legislative Council Panel on Trade and Industry in last July. Both Members and the industries hope that the legislative exercise can complete early so that traders can benefit from the opportunities brought about by the relevant ATLS.

With these remarks, Deputy President, I hope Members will support the early passage of the Bill. Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Trade Descriptions (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.

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second reading debate on the Banking (Amendment) Bill 2011.

BANKING (AMENDMENT) BILL 2011**Resumption of debate on Second Reading which was moved on 21 December 2011**

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

(No Member indicated a wish to speak)

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, I move to resume the Second Reading of the Banking (Amendment) Bill 2011 (the Bill).

The Bill seeks principally to amend the Banking Ordinance (BO) so as to provide for the implementation of the Basel III regulatory reform package issued by the Basel Committee on Banking Supervision (the Basel Committee) in December 2010. According to the Basel Committee's transitional timetable, implementation of the new Basel III standards should begin from 1 January 2013, with the requirements being phased in over the following six years to achieve full implementation by 1 January 2019.

Through the implementation of Basel III, we seek to improve the local banking sector's ability to absorb shocks arising from financial and economic stress, thus reducing the risk of spillover from the financial sector to the real economy.

Also, as a major international financial centre and a member of the Basel Committee, it is important that Hong Kong commits to adopting and implementing Basel III in a timely fashion. The implementation of Basel III will ensure that the capital and liquidity frameworks for authorized institutions

(AIs) in Hong Kong are consistent with international standards and that our AIs will not be disadvantaged *vis-à-vis* their peers overseas.

Currently in Hong Kong, locally incorporated AIs are required to maintain a minimum capital adequacy ratio of 8% and all AIs are required to maintain a minimum liquidity ratio of 25%, as provided for in the BO. The Basel III regulatory package introduces a broader, and more technically complex, set of regulatory capital and liquidity requirements.

We propose, in the Bill, to build upon the existing rule-making powers of the Monetary Authority (MA) to prescribe the methodology for calculation of AIs' capital adequacy ratios and the accompanying disclosure requirements, which have worked effectively to date. We propose to include liquidity as well as capital requirements within the ambit of the rules and to include the various Basel III ratios and buffer ranges into the rules alongside their calculation methodologies.

The rules will be subject to negative vetting by the Legislative Council and this approach will cater for the highly technical nature of the Basel III requirements on the one hand, and address the need for timely response to international requirements on the other. Also, it is similar to the approach adopted by other comparable local legislation and those overseas jurisdictions which, to our knowledge, table the calculation of their banks' capital and liquidity requirements before their parliaments.

Internationally, there is now much greater expectation of timely implementation of international standards by individual jurisdictions at the national level. This is due to fears of contagion arising from global interconnectedness and of regulatory arbitrage as well as level playing field concerns. We must ensure that our regulatory framework is swiftly responsive to international requirements and capable of being adapted to new situations and new requirements expeditiously.

The proposed rules for the implementation of Basel III will only be made by the MA after consultation with the industry. Also, in line with the established practice, we will brief and consult the relevant Legislative Council Panel on the draft rules before tabling them at the Legislative Council for negative vetting. This procedure allows for consideration by the Legislative Council in an effective and expeditious manner and should enable us to comply

with international timelines for the implementation of Basel III. It provides the most appropriate balance in terms of satisfying the need for scrutiny and due process against the need for flexibility and timely responsiveness in regulation.

Turning to some other specific elements of the Bill, we propose to broaden the scope of the present Capital Adequacy Review Tribunal and rename it the "Banking Review Tribunal" so as to better reflect and accommodate the new Basel III standards. The Tribunal will be the designated forum to hear appeals against decisions by the MA to vary capital or liquidity requirements for individual AIs, or to require remedial actions by individual AIs when they have failed to comply with the capital or liquidity requirements applicable to them.

We also propose that specified decisions made by the MA under the new capital, liquidity and disclosure rules should be reviewable by the proposed Banking Review Tribunal.

Also, we have taken the opportunity to propose an amendment to section 106 of the BO to require an AI to notify the MA of any criminal proceedings instituted against it, in addition to civil proceedings, if those criminal proceedings materially affect, or could materially affect, its financial position.

Having regard to the comments raised by the Legal Adviser to the Legislative Council when scrutinizing the Bill, I will be moving certain Committee stage amendments for tackling some drafting and technical points.

Deputy President, I call for Members' support for the passage of the Bill, including the Committee stage amendments which I will be moving shortly, in order to put in place the legal framework for implementing Basel III in Hong Kong in line with the Basel Committee's timetable. As a major international financial centre and a member of the Basel Committee, it is important that Hong Kong implements Basel III to safeguard the resilience and competitiveness of our banking system.

To ensure a smooth migration to the new capital and liquidity standards, the MA will maintain its ongoing dialogue with the banking industry to ensure AIs' readiness for the implementation of Basel III.

Thank you, Deputy President.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Banking (Amendment) Bill 2011 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

CLERK (in Cantonese): Banking (Amendment) Bill 2011.

Council went into Committee.

Committee Stage

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

BANKING (AMENDMENT) BILL 2011

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Banking (Amendment) Bill 2011.

(Mr WONG Yuk-man stood up)

DEPUTY CHAIRMAN (in Cantonese): Mr WONG, what is your point?

MR WONG YUK-MAN (in Cantonese): Deputy Chairman, in respect of this Bill, Members should be allowed to speak, right?

DEPUTY CHAIRMAN (in Cantonese): When I asked Members if they wished to speak, no Member indicated a wish to speak.

MR WONG YUK-MAN (in Cantonese): You did not ask

DEPUTY CHAIRMAN (in Cantonese): I did.

MR WONG YUK-MAN (in Cantonese): because I was prepared to speak.

DEPUTY CHAIRMAN (in Cantonese): When I asked Members earlier if they wished to speak, no Member indicated a wish to speak, and so I called upon the Secretary for Financial Services and the Treasury to speak.

MR WONG YUK-MAN (in Cantonese): Sorry, I did not hear you. In other words, you had asked if Members wished to speak before the Secretary spoke, right?

DEPUTY CHAIRMAN (in Cantonese): Right.

MR WONG YUK-MAN (in Cantonese): You had asked before the Secretary spoke. OK, thank you.

CLERK (in Cantonese): Clauses 1, 2, 5, 6, 7, 9 to 17, 19, 20 and 21.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 2, 5, 6, 7, 9 to 17, 19, 20 and 21 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4, 8 and 18.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the amendments to clauses 3, 4, 8 and 18 read out just now, which are also set out in the paper circularized. The following are technical amendments to the Chinese rendition of certain words in the Bill with a view to ensuring consistency and reflecting more closely the meaning of the relevant words in the English text.

We propose to amend the definition of the Basel Committee in section 2 of the Banking Ordinance as set out in clause 3(5) by using the Chinese rendition "銀行業監管標準" instead of "銀行監管標準". The purpose of the amendment is to ensure consistency between the Chinese rendition of the word "banking" as appearing in "standards of banking supervision" in the proposed definition and that of the word "banking" in the proposed sections 60A(3)(b), 97C(3)(b) and 97H(3)(b).

As regards the amendment to the proposed section 97H(4)(a)(ii) as set out in clause 8 of the Bill, the purpose is to reflect more accurately the meaning of "20% or more, but not more than 50%" in the English text. The proposed amendment adopts a similar Chinese rendition to that currently used in the definition of "minority shareholder controller" in section 2 of the existing Banking Ordinance.

In addition, concerning the proposed amendment to the proposed section 97M(8) as set out in clause 8 of the Bill, it seeks to clarify that for the purposes of approving and issuing any code of practice under the proposed section 97M(1), or withdrawing any approval of any code of practice under the proposed section 97M(5), any requirement under those sections for the Monetary Authority (MA) to consult any person does not operate to prevent the MA from consulting any other person. The amendment addresses the need to include a reference to section 97M(5), in addition to a reference to section 97M(1), in the proposed section 97M(8).

Amendments are also proposed to each of clauses 3(5), 4(1), 8 and 18(3) of the Bill to change the Chinese rendition of the word "liquidity" from "流動資產" to "流動性" in order to reflect better the nature of the risks and regulatory requirements concerned and reduce any potential for misunderstanding.

At the same time, an amendment is proposed to add clause 18(1A) in order to amend the Seventh Schedule to the Banking Ordinance so that the Chinese rendition of "流動資產" for the word "liquidity", as appearing in section 7(a) of the Schedule, will be replaced by "流動性" for the sake of consistency.

Deputy Chairman, the above amendments have been proposed having regard to the comments raised by the Legal Adviser to the Legislative Council, for which I would like to express my gratitude. These amendments have been submitted to the House Committee for consideration and Members have raised no objection. I hope Members will support these amendments.

Proposed amendments

Clause 3 (see Annex I)

Clause 4 (see Annex I)

Clause 8 (see Annex I)

Clause 18 (see Annex I)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 3, 4, 8 and 18 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 3, 4, 8 and 18 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 18A

Fourteenth Schedule amended (affairs or business of authorized institutions specified for purposes of definition of manager).

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the Second Reading of new clause 18A.

For the same reason of the previous amendments, a new clause 18A is proposed to amend the Fourteenth Schedule to the Banking Ordinance so that the Chinese rendition of "流動資產" for the word "liquidity", as appearing in the definition of "財政管理", will be replaced by "流動性".

Deputy Chairman, the above amendment to include the new clause has been submitted to the House Committee for consideration and Members have raised no objection. I hope Members will support this amendment.

Thank you.

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 18A be read the Second time.

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

(No Member indicated a wish to speak)

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That new clause 18A be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 18A.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move that new clause 18A be added to the Bill.

Proposed addition

Clause 18A (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 18A be added to the Bill.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Long title.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy Chairman, I move the amendment to the Long Title in the Chinese text. Same as the previous amendments to change the Chinese rendition of the word "liquidity", an amendment to the Long Title is proposed so that the Chinese rendition of "流動資產" for the word "liquidity" appearing in the Long Title will be replaced by "流動性" for the sake of consistency.

The amendment has been submitted to the House Committee for consideration and Members have raised no objection. I hope Members will support this amendment.

Thank you.

Proposed amendment

Long Title (see Annex I)

DEPUTY CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the amendment to the long title moved by the Secretary for Financial Services and the Treasury be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

DEPUTY PRESIDENT (in Cantonese): Bill: Third Reading.

BANKING (AMENDMENT) BILL 2011

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, the

Banking (Amendment) Bill 2011

has passed through Committee with amendments. I move that the Bill be read the Third time and do pass.

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Banking (Amendment) Bill 2011 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): I now put the question to you as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Banking (Amendment) Bill 2011.

MOTIONS

DEPUTY PRESIDENT (in Cantonese): Motions. Proposed resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) Regulation 2012 and the Poisons List (Amendment) Regulation 2012.

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

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

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

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

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

Arising from an application for registration of 12 pharmaceutical products, the Pharmacy and Poisons Board proposes to add the following 12 substances to Part I of the Poisons List and the First and Third Schedules to the Pharmacy and Poisons Regulations:

- (a) Cabazitaxel; its salts; its esters; their salts
- (b) Clofarabine; its salts; its esters; their salts
- (c) Degarelix; its salts
- (d) Eculizumab
- (e) Febuxostat; its salts; its esters; their salts
- (f) Fingolimod; its salts; its esters; their salts

- (g) Lacosamide; its salts
- (h) Liraglutide
- (i) Natalizumab
- (j) Prucalopride; its salts
- (k) Ticagrelor; its salts; its esters; their salts
- (l) Vernakalant; its salts

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

We propose that these amendment regulations take immediate effect upon gazettal on 2 March 2012 to allow early control and sale of the relevant medicine.

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

With these remarks, Deputy President, I move the motion.

The Secretary for Food and Health moved the following motion:

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 3 February 2012, be approved —

- (a) the Pharmacy and Poisons (Amendment) Regulation 2012;
and
- (b) the Poisons List (Amendment) Regulation 2012."

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

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

DEPUTY PRESIDENT (in Cantonese): Proposed resolution under the Criminal Procedure Ordinance and the Interpretation and General Clauses Ordinance to approve the Legal Aid in Criminal Cases (Amendment) Rules 2012.

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

**PROPOSED RESOLUTION UNDER THE CRIMINAL PROCEDURE
ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES
ORDINANCE**

SECRETARY FOR HOME AFFAIRS (in Cantonese): Deputy President, I move the Resolution standing in my name on the agenda.

The Legal Aid in Criminal Cases Rules (LACCR) are made under section 9A of the Criminal Procedure Ordinance (Cap. 221). Rule 4 of the LACCR sets out the list of circumstances in which legal aid in criminal cases may be granted but does not expressly cover appeal cases which do not involve a conviction. The Administration has decided to amend Rule 4 of the LACCR to expand the scope of legal aid in criminal cases so that even if the defendant is not convicted, legal aid can still be granted in appeal cases dealt with by the Court of First Instance, the Court of Appeal and the Court of Final Appeal if the applicant passes the means test and the merits test.

Rule 21 of the LACCR sets out the fees payable to lawyers in private practice engaged to undertake litigation work in respect of criminal cases on behalf of the Legal Aid Department. Having reached an agreement with the two legal professional bodies on the revised fee structure and the fees payable to assigned solicitors handling criminal legal aid cases, the Administration has decided to amend Rule 21 of the LACCR to introduce additional items of remuneration and set the fee level for work done by counsel and solicitor in criminal legal aid work, with a view to improving the payment structure of the criminal legal aid fee system. Having taken on board opinions of the Legal Adviser of the Legislative Council Secretariat, we have proposed a number of technical amendments jointly as set out in the Resolution circularized to Members.

We informed the Legislative Council Panel on Administration of Justice and Legal Services of the legislative amendments in April 2011. Under section 9A of the Criminal Procedure Ordinance, the Criminal Procedure Rules Committee has made the Legal Aid in Criminal Cases (Amendment) Rules 2012 in order to implement the legislative amendments. The Criminal Procedure Rules Committee was chaired by the Chief Judge of the High Court and its members comprised representatives from the Department of Justice, the Legal Aid Department, the Hong Kong Bar Association and The Law Society of Hong Kong. The amendment rules require the approval of this Council by resolution.

(THE PRESIDENT resumed the Chair)

I invite Members to support the Resolution.

Secretary for Home Affairs moved the following motion:

"RESOLVED that the Legal Aid in Criminal Cases (Amendment) Rules 2012, made by the Criminal Procedure Rules Committee on 19 January 2012, be approved, subject to the amendments as set out in the Schedule.

Schedule

Amendments to Legal Aid in Criminal Cases
(Amendment) Rules 2012

1. Rule 5 amended (rule 4 amended (legal aid for accused persons and appellants))
 - (1) Rule 5(1), new rule 4(1)(c) —
Delete
"the offence"
Substitute
"any offence".
 - (2) Rule 5(1), new rule 4(1)(c)(i) —
Delete
"in relation to that offence"
Substitute
"arising out of or connected with the charge".
 - (3) Rule 5(4), new rule 4(1)(f) —
Delete
"the offence"
Substitute
"any offence".
 - (4) Rule 5(4), new rule 4(1)(f)(i) —
Delete
"in relation to that offence"
Substitute
"arising out of or connected with the charge".
 - (5) Rule 5(6), new rule 4(1)(h) —
Delete
"the offence"

- Substitute
"any offence".
- (6) Rule 5(6), new rule 4(1)(h)(i) —
Delete
"in relation to that offence"
Substitute
"arising out of or connected with the charge".
2. Rule 7 amended (rule 21 amended (solicitor and counsel fees))
Rule 7(1), Chinese text, new rule 21(1), after "實際" —
Add
"地".
3. Rule 8 amended (Schedule added)
Rule 8, Chinese text, new Schedule, Part 1, section 3 —
Delete
"獲被"
Substitute
"獲".

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

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

DR MARGARET NG: President, I declare interest as counsel who may be instructed by the Director of Legal Aid from time to time.

I rise to support the Resolution. The effect of the proposed amendments to the Legal Aid in Criminal Cases Rules is twofold. It corrects an oversight whereby a defendant who is not convicted is prevented from obtaining legal aid in an appeal by the prosecution, and it introduces improvements to the existing fee structure and rates for counsel and solicitors doing legal aid work.

The correction of the oversight need only to be pointed out to be universally supported.

The amendment on fees had, on the other hand, taken years and a great deal of tough negotiation. I am glad that consensus was reached in the end, but I believe that the process and the reasons should be properly explained and recorded for the public interest and as a basis for the next steps to be taken.

Under the present system, in criminal legal aid cases, counsel and solicitors are assigned to a defendant by the Director of Legal Aid and their fees are prescribed by the Legal Aid in Criminal Cases Rules. The fees, structure and rates have been fixed many years ago and are seriously out of date. The last change of any significance was in 1992, when a biennial review was introduced to allow these fees to be adjusted in the light of changes in consumer prices and the difficulty, if any, in engaging solicitors or counsel.

The existing fee structure is unfair and unrealistic to counsel. Under the existing system, counsel is paid a "brief fee", and if the court hearing extends beyond the first day, a daily "refresher" from the second day onwards. His preparation work is not otherwise recognized. For many years now, criminal cases have become more complex, and preparation work takes more and more time, particularly given the usual requirement of the court for full written submissions. Days and even weeks of preparation thus go unpaid. Moreover, thorough preparation has the merit of shortening the hearing before the court, with the absurd consequences that counsel is paid less for the case.

The situation with solicitors is similar. A good solicitor makes an enormous contribution to preparation, and yet his work is not given proper recognition in his fees. Moreover, while counsel is paid for the time he spends in conference, the solicitor is unpaid.

Another problem in the existing fee structure concerns additional fees over and above the standard fees for cases of exceptional length and complexity. Under the existing system, when he is assigned a particularly difficult and complex case, counsel cannot be sure that he will receive additional fees for the work. He has to wait until the end of the trial to apply for a certificate from the court, before he can hope to be paid properly. Surely this is unique in any kind

of professional practice, that one has to take on work without knowing whether one would be properly paid.

By comparison, when the Department of Justice engages counsel in private practice to conduct its prosecutions, there is a marked brief, stating the fees for the work, and additional fees for cases of exceptional complexity can be discussed and agreed beforehand.

The proposed amendments to the Rules substantially remove these problems. Both counsel and solicitors are allowed additional fees for additional preparation work. Solicitors will be paid for conferences. Marked briefs will be introduced, counsel or solicitor can review the bundles of documents before they accept the assignment, and the Director of Legal Aid can approve additional fees for cases of exceptional complexity without requiring a court certificate.

I understand that the proposals are acceptable to the two professional bodies. I believe it is only fair to the profession and entirely consistent with the public interest for this Council to approve these amendments.

President, the amendments also encompass improvements to the rates of fees for solicitors, though the Bar is content to leave the level of counsel's fees to a later stage.

The case for solicitors' fees is overwhelming. Under the existing system, expressed in hourly rates, solicitors are paid \$300 an hour for District Court work, \$425 an hour for the Court of First Instance, and \$570 an hour for the Court of Appeal.

These are hardly professional fees. They were set in a day and age when solicitors were supposed to be a privileged class earning high fees, and as a contribution to the community take on a few cases on legal aid at what might be considered a nominal fee. Since then, the world has changed. Solicitors offering legal services, like any other business, have to face stiff competition and cut their profit margins. Meanwhile, as we take human rights more seriously, in particular the right to legal representation in criminal proceedings, legal aid has expanded to become the main provider of legal representation in criminal cases. Criminal legal aid work has long become a normal, indeed substantial part of the work of a criminal practitioner. The stark reality is that few counsel or solicitors

can afford to continue on these levels of fees. These changes are not unique to Hong Kong. They are prevalent in England and elsewhere as well.

The Administration argues that legal aid work is meant to be a public service, and that in any case there has been no shortage of solicitors taking on legal aid work at the present low fee levels. But these are poor reasons. A concession in the fees for the public interest should nevertheless be reasonable in all the circumstances, and the Administration should ask whether a good number of good solicitors are interested and able to offer their services, not whether there is anyone at all to take on the work.

The amendments now proposed represent a significant step forward in the right direction. Under Rule 21 as amended, solicitors' fees in hourly rate terms are: \$620 an hour for the District Court, \$740 an hour for the Court of First Instance and \$1,000 an hour for the Court of Appeal.

These levels are still a great distance from realistic rates giving due recognition to the true value of the work, even as concessionary rates. The Law Society has understandably resisted them as unreasonable. The objection is not just for the actual level but of principle. In the Law Society's view, it is necessary for the Administration and the Law Society first to agree what is the principle according to which criminal legal aid fees should be fixed, and the starting point must be that they should be on par with civil work. In this, the Bar agreed. The Administration is unable to accept this, not as a matter of principle but of practicality: because, under the current civil taxation rate scale, the party-to-party rates for High Court proceedings are \$1,600 to \$2,000 per hour for a newly admitted solicitor and \$2,400 to \$3,000 an hour for a solicitor with five to six years' experience. However, the Administration is prepared to continue the discussion with the Law Society on the question of principle and on further improvements of the levels of fees. It is only on this understanding that the Law Society accepted the present proposals.

President, members of the Panel were in general of the view that future reviews of fee rates must be based on mutually accepted principles. There were also concerns among members that the Administration should pay regard to the principle of equality of arms between prosecution and defence.

I believe unsatisfactory though it is, the proposed increase must go ahead. Many criminal practitioners have privately expressed to me their anxiety for the increase to be implemented as soon as possible so that they can benefit from it. They have been kept waiting long enough, and some improvement is better than none. The Bar has indicated that they are content to have the fee restructure implemented first, and the question of fee levels discussed at the next stage. They, too, should not be kept waiting any longer.

Reviewing the chronology, we have reason to be dismayed by the Government's tardiness and repeated delay:

- The two professional bodies asked for a review of the structure of criminal legal aid fees in 2003;
- In answer to an oral question I asked in this Council in May 2005, then Chief Secretary Donald TSANG agreed to the review — that was nearly seven years ago;
- Between December 2005 and June 2009, the matter was discussed in the Panel on Administration of Justice and Legal Services six times;
- Broad consensus on fee structure was reached between the professional bodies and the Administration in February 2007 — that's five years ago;
- The Law Society raised the question of level of fees then because restructuring without actual improvement was meaningless;
- The Administration's proposals were revised in June 2009; and
- On 17 April 2011, the Panel was informed that draft legislation was about to be completed, and intended to be put before this Council by Resolution in May/June 2011. The Resolution is by now seven to eight months behind schedule, and nine years since the profession had made its request.

I am grateful to members for their agreement not to require further scrutiny of the Amendment Rules by forming a subcommittee, for the reason that the

proposals have already been closely monitored in every detail in the Panel, and moreover vetted and approved by the Criminal Procedure Rules Committee chaired by the Chief Judge of the High Court.

This is only one chapter closed. The next step is to pick up from where we left off. Namely, the modern principle for remuneration of criminal legal aid, for solicitors and for counsel. Criminal justice is worth no less than civil justice; indeed, it is of even greater gravity because it concerns the liberty of the citizen. That is why the profession is always prepared to make a concession, or in many cases complete waiver of their fees. But there is a vital public interest involved: that the quality of representation should not suffer for the lack of solicitors or counsel of appropriate experience available on legal aid fees.

Thank you, President.

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

MS AUDREY EU (in Cantonese): President, before coming to my speech, I would like to declare an interest. I am a barrister who may handle criminal cases involving legal aid. But actually, I have really handled very few such cases. I remember that when I started to work as a barrister in 1978, I did handle criminal legal aid cases. The then remuneration was \$400 per day for court work while the remuneration for handling through a case was more than \$1,000. Of course, after so many years, things are very different now, and I seldom handle criminal legal aid cases or prosecution cases. I remember I have never undertaken any prosecution cases although I have handled civil legal aid cases.

The Rules under discussion today involve criminal legal aid. As the structures of criminal legal aid and civil legal aid are very different, we can see that over the years, solicitors and counsels who have handled criminal legal aid cases are most dissatisfied with the system as mentioned by Dr Margaret NG in her speech earlier.

Let us take a look at our structure first. According to Article 35 of the Basic Law, "Hong Kong residents shall have the right to confidential legal advice,

access to the courts, choice of lawyers". Here I must highlight "the right to choice of lawyers", and "for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies". Article 39 of the Basic Law also mentions the International Covenant on Civil and Political Rights (ICCPR). According to Article 14 of the ICCPR, it is clearly guaranteed that everyone involved in criminal and civil proceedings shall be entitled to a fair hearing. Article 14(3) has also clearly stated that if the party concerned does not have sufficient means to pay for a lawyer, he shall be entitled to legal assistance through a public advocate, who will serve as his defence lawyer paid by public money. The Hong Kong Bill of Rights Ordinance, which was enacted before the reunification, also clearly stipulates that the ICCPR will be applicable to Hong Kong people. Therefore, it is crystal clear that there should be enough public money for our legal system to pay the costs of legal representation or legal aid for parties involved in criminal cases.

The legal aid system of Hong Kong was set up in 1967, while the existing system of criminal legal aid began in 1992. Since then, moderate upward adjustment in the payment structure will be made biennially in the light of Consumer Price Index with little change to the system itself. Over the years, those legal practitioners who have handled criminal legal aid cases have repeatedly pointed out the problems in the system.

As Dr Margaret NG also pointed out in her speech just now, if your solicitor or counsel can reduce the time required for hearing your case in court by a more efficient way, the payment for him will be significantly compressed or he may even operate at a deficit. Therefore, in view of such a situation, many people have requested changes and engaged in discussions with the Government since 2003, but the latter, however, has been dragging its feet for many years.

Let us take a look at the statement of Russell COLEMAN, Chairman of the Bar Association, at the Ceremonial Opening of the Legal Year 2011. In commenting on the unfairness of our system, he cited many examples. For instance, if you work as a duty lawyer for half a day — as we all know, if you work as a duty lawyer in the Magistrates Courts, you have to undertake very simple jobs, for example, to make pleas for mitigation on behalf of your client if he does not plead guilty. To undertake such work, you do not have to make a lot of preparations, and you can earn a half-day pay simply by being present in court. This is precisely the work of a duty lawyer.

However, if you are a very experienced solicitor or counsel, you have to read a lot of documents in order to prepare a notice of appeal, in which you have to state the reasons or justifications for the appeal. You must read a lot of transcripts related to what happened during the hearings and a lot of legal documents which may take you three to four days. However, the pay for preparing a so-called notice of appeal to state the grounds for appeal is just equal to the fees you earn for working as a duty lawyer for half a day.

Thus, we can see that there are a lot of very strange, unreasonable and unfair phenomena in the system. These are also the reasons why so many legal practitioners urge for changes to the system. Furthermore, I remember that Law Society launched a one-month boycott in 2009 because of the Government's continuous procrastination. In this one-month protest, lawyers refused to handle any criminal legal aid cases.

The Research and Library Service Division of the Legislative Council Secretariat submitted a report entitled "Legal aid systems in selected places" in June 2009. In the report, it is pointed out that the per capita expenditure on legal aid in Hong Kong and Scotland or Wales is \$75 and \$430 respectively. In other words, the expenditure in Hong Kong is less than that in other places by 80%. Besides, the per capita expenditure on criminal legal aid is as low as only \$11.8. From this, we can see that such an amount is equivalent to 8% or not even 10% of that in the United Kingdom. On the criminal legal aid front, I remember that Mr Huen WONG, the former President of Law Society, said that the hourly rate of lawyers is worse than that of plumbers.

Hence, we can see that their request dates back many years. Although the discussion on the issue commenced in 2003, there has been a lot of procrastination. The Government finally reached an agreement with Law Society and the Bar Association only recently. As pointed out by Dr Margaret NG in her speech earlier, the legal profession remains dissatisfied with the present system even after amendment. However, in any case, even though they are unhappy, it is better than no amendment at all. Therefore, they have reluctantly accepted the Government's present proposal.

HO Hei-wah, director of the Society for Community Organization, once pointed out, and I quote to this effect, that "Our antique standard fee for legal aid is set at such a low level that it is difficult to engage senior legal practitioners.

As a result, legal aid is reduced to be second-class legal services, thereby compromising judicial justice at the end of the day." Therefore, I would like to respond to the statement upheld by the Government all along. The Government said that it does not matter because even though the fee is low and the system is unfair, there are always people who are prepared to undertake the work. This is exactly how the Government's tendering system operates — the award goes to the lowest bidder. There are always people who are prepared to undertake the work no matter how low the price is although the quality is questionable. When it comes to the tendering system which grants the award to the lowest bidder, many people will understand that it will lead to many sequelae.

Similarly, the same principle applies to legal services. When the price is set at such a low level that quality or ordinary lawyers or legal practitioners are reluctant to undertake legal aid work, it may cause dire consequences to the entire judicial system, especially criminal cases involving the personal freedom of the parties concerned.

Thus, today, I have made this special speech to raise this point clearly to the Government, hoping that this kind of criminal legal aid can be given a reasonable deal. Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, the Rules were enacted in accordance with section 9A of the Criminal Procedure Ordinance (Cap. 221). The amendments are mainly divided into two parts and the relevant amendments are limited to criminal legal aid. We consider it worthy of support in principle.

The threshold of legal aid in Hong Kong is too high while its scope is too narrow. Therefore, many people, particularly the middle class, find it not easy to access legal aid services. This will have a direct bearing on whether justice can be done. According to statistics, in around 35% of the High Court cases and 47% of the District Court cases, at least one of the parties is unrepresented because they are not eligible for legal aid. This will give rise to injustice, thereby undermining the rule of law and reflecting the serious deficiencies of the system.

Even though the authorities launched a pilot community lawyer service scheme last year with a view to providing free legal advice to unrepresented

litigants, this can hardly take the place of the function of legal representation in a particular case. At the Ceremonial Opening of the Legal Year 2012, Geoffrey MA, the Chief Justice of the Court of Final Appeal, appealed that more resources be allocated by the Government to enhance legal aid services. It shows that the problem is very serious. We hope that the amendments proposed by the Government represent only the beginning of a reform and measures to improve legal aid services will be implemented gradually.

Our offices in the districts have always received requests from the public seeking assistance in writing letters or applying for legal aid. Very often, most of these cases ended in failure. A recent case makes me feel particularly helpless. In an incident involving Caritas Medical Centre in which a patient died as a result of delay in rescue two years ago, my office and Mr Albert CHAN's office had been rendering assistance to the victim. But after the Coroner's Court ruled that it was a natural death, the victim could not even apply for legal aid to initiate civil proceedings to claim compensation. In theory, victims in similar situations should be eligible for legal aid so that they can make an attempt to claim compensation from the Hospital Authority through civil proceedings. However, even this is not feasible.

Tomorrow is the deadline and the file of the case is still on my desk. I will give him a call later although I do not know what to say. Let me talk about something which may be related to some colleagues, that is, the Rules which are being examined. On the part concerning fees for solicitors and counsels, we note that some provisions do not apply to Senior Counsel. For example, in new rule 21(8), which provides for the Director of Legal Aid's power to re-determine the legal fees for solicitor or counsel under certain circumstances, and in item 3 of the Schedule which is on the calculation of legal fees for solicitor or counsel who represent more than one defendant or appellant, it is stipulated that Senior Counsel is excluded.

However, there is no provision in the Rules which is correspondingly applicable to Senior Counsel. Does this mean that there is no similar provision relating to the legal fees of Senior Counsel? If yes, what are these provisions? What are the justifications of such an approach? I cannot find any answer from the amendment.

President, I so submit.

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 Home Affairs to reply.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I thank Members for their views and professional background information. Let me give a brief response.

Before preparing the Legal Aid in Criminal Cases (Amendment) Rules 2012 (the Amendment Rules), the Government already accepted the suggestions of the two legal professional bodies to conduct a review of the fee structure and fee level of criminal legal aid. We have consulted various stakeholders and adopted the following criteria in conducting the comprehensive review:

- (a) the fee system for defence lawyers handling criminal legal aid cases will be broadly similar to that of prosecution lawyers;
- (b) as Ms Audrey EU said, we will strive to bring items of remuneration for solicitor and counsel on par with each other; and
- (c) with factors such as the objective conditions and the burden on the public purse having been taken into account, assigned legal aid lawyers will be properly rewarded.

The current Government has not been dragging its feet in this matter. After the completion of the review and reaching an agreement on the revised fee structure and fee level with the two legal professional bodies, the Administration informed the Panel on Administration of Justice and Legal Services of its proposed legislative amendments in April 2011, and submitted the draft Amendment Rules to the Criminal Procedure Rules Committee, which made the Amendment Rules on 19 January, 2012.

Under the Amendment Rules, fees for undertaking criminal legal aid work have been significantly increased. The lawyers' remuneration will be increased by around 120% to four times depending on the levels of court and the individual cases concerned. The Administration will also review the criminal legal aid fees after the Amendment Rules have been implemented for two years.

I implore Members to support the motion in order to expedite the implementation of various improvement measures proposed in the Amendment Rules.

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

(Members raised their hands)

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

(No hands raised)

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

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): There are a total of six Members' motions today.

First Member's motion. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Rating (Exemption) Order 2012.

I now call upon Mrs Sophie LEUNG to speak and move the motion.

PROPOSED RESOLUTION UNDER SECTION 34(4) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MRS SOPHIE LEUNG (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

At the meeting of the House Committee on 10 February 2012, Members decided to set up a subcommittee to study the Rating (Exemption) Order 2012.

The Subcommittee held its first meeting on 23 February 2012. In order to give the Subcommittee ample time to complete its deliberations and report to the House Committee the results of such deliberations, on behalf of the Subcommittee, I move that the period for scrutinizing the said subsidiary legislation be extended to 28 March 2012.

I urge Members to support the motion.

Mrs Sophie LEUNG moved the following motion:

"RESOLVED that in relation to the Rating (Exemption) Order 2012, published in the Gazette as Legal Notice No. 14 of 2012, and laid on the table of the Legislative Council on 8 February 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 28 March 2012."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mrs Sophie LEUNG 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 that 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. Ms Miriam LAU will move a motion under Rule 49E(2) of the Rules of Procedure to take note of Report No. 13/11-12 of the House Committee laid on the Table of the Council in relation to Places of Public Entertainment (Exemption) (Amendment) Order 2011.

According to the relevant debate procedure, I will first call upon Ms Miriam LAU to speak and move the motion, and then call upon the Chairman of the Subcommittee formed to scrutinize the relevant item of subsidiary legislation to speak, to be followed by other Members. Each Member may only speak once and may speak for up to 15 minutes. Finally, I will call upon the public officer to speak. The debate will come to a close after the public officer has spoken, and the motion will not be put to vote.

Will those Members who wish to speak please press the "Request to speak" button.

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

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

MS MIRIAM LAU (in Cantonese): President, in my capacity as Chairman of the House Committee I move a motion under Rule 49E(2) of the Rules of Procedure as printed on the Agenda to enable Members to debate the Places of Public Entertainment (Exemption) (Amendment) Order 2011 in Report No. 13/11-12 of the Reports of the House Committee on Consideration of Subsidiary Legislation and Other Instruments.

President, the Amendment Order is made by the Secretary for Home Affairs by virtue of section 3A of the Places of Public Entertainment Ordinance (PPEO) to amend the Places of Public Entertainment (Exemption) Order to add new exemption provisions so that the venues managed by the Legislative Council Commission shall not come under the regulation of sections 4 and 11 of the PPEO and to provide for the definition of "Legislative Council Commission" in new section 2A.

The Legislative Council Commission is a body corporate established under section 3 of the Legislative Council Commission Ordinance (Cap. 443). Its duties include the provision of administrative support and services to the Legislative Council via the Legislative Council Secretariat and also the provision of office areas to Members of the Legislative Council and the Secretariat.

As the Deputy Chairman of the Commission, I now speak briefly on behalf of the Commission on the deliberations relating to exempting the Legislative Council Complex from the regulation of the Ordinance.

The Legislative Council Complex is the first purpose-built complex for the legislature of Hong Kong. The Complex provides much more space and complete facilities and services to Members, Secretariat staff, the media and the public. This enhances public engagement and public understanding of the work of this Council and members of the public can express their views to the Council in a more confident manner. In this way, they can help Members better monitor the Government and improve the legislative proposals. These facilities and services include guided educational tours, mock Council debates, exhibitions, and so on.

At the beginning of 2010, the Commission agreed to provide a series of educational facilities along the tour route of the guided tours in the Complex. These include a Video Corner to show videos introducing the various aspects of the Council, an Exhibition Area to stage exhibitions on the work of the Council, a Memory Lane to display information and exhibits about the historical development of the legislature, as well as a Children's Corner which aims at making youngsters understand better how the legislature functions. In early 2011 the Commission also agreed that the services of guided educational tours and story-telling activities for children would be provided to members of the public upon the commissioning of the Complex and on open days of the Complex thereafter.

The Legal Service Division of the Secretariat advised in July 2011 that some of the educational activities to be held at the Complex might fall within the meaning of "public entertainment" as defined in the PPEO and as the occupier of the Complex, the Commission may also be bound by the PPEO. Unless exemption is granted under section 3A of the PPEO, there may be a need to apply for a licence for a place of public entertainment (PPE).

In response to the concern expressed by the Legal Service Division, the Secretariat consulted the views of the Home Affairs Bureau on whether the proposed educational activities fall within the meaning of "public entertainment" as defined in the PPEO and whether the Complex is subject to the requirement for a PPE licence for conducting activities therein. Meetings were held with the Administration to discuss the relevant matters. In addition, the Secretariat has also sought the views of the Architectural Services Department (ArchSD) on whether the facilities and architectural aspects of the Complex complied with the mandatory requirements under the PPEO for licensing purpose. According to the advice of the ArchSD, premises (buildings or part of buildings) subject to the PPEO must meet specific architectural and fire services installation requirements under the Code of Practice for Fire Safety in Building issued by the Buildings Department. However, as the Complex was not built for the purpose of public entertainment in general, no provision was made for the Complex to comply with the requirements of the Code of Practice in the original design. The ArchSD further advised that while the existing fire services installations could be modified to meet the requirements for licensing purpose if required, certain architectural aspects of the Complex would not comply with the requirements under the Code

of Practice, such as the width and height of the steps in the fire escape staircases and the width of the exit routes.

After discussions, the Home Affairs Bureau advised that it was prepared to introduce an exemption order to grant exemption to the Commission to conduct "public entertainment" activities at the Complex. However, the Commission is required to carry out mitigation measures and put in place other safety and contingency arrangements at the Complex to ensure that the Complex is a safe place to conduct public entertainment activities. In addition, reviews should be conducted on a regular basis to ensure that the relevant preventive measures are adequate.

When the matter was discussed in the Commission in December 2011, Members agreed that various kinds of proposed activities should be carried out in a prudent manner and that the Commission should make adjustments to retain flexibility in relation to the type, scope and scale of activities to be held at the Complex.

The Amendment Order was published in the Gazette on 30 December 2011 and came into operation on the same day. A subcommittee was formed by the House Committee on 6 January 2012 to scrutinize the Exemption Order. Subsequently and on 13 February 2012 the Subcommittee wrote to the Commission asking it to provide copies of the related correspondences, showing the details of the dealings of the Commission with the Administration on exempting the Commission from applying for a licence of a PPE for activities defined as "public entertainment" under the PPEO. The Commission agreed in its meeting on 14 February 2012 to the request of the Subcommittee. The Secretariat has provided a background brief to the Subcommittee on the deliberations made by the Commission on the exemption issue.

President, I so submit. Thank you.

Ms Miriam LAU moved the following motion:

"That this Council takes note of Report No. 13/11-12 of the House Committee laid on the Table of the Council on 29 February 2012 in relation to the subsidiary legislation and instrument(s) as listed below:

<u>Item Number</u>	<u>Title of Subsidiary Legislation or Instrument</u>
(1)	Places of Public Entertainment (Exemption) (Amendment) Order 2011 (L.N. 183/2011).

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

MS CYD HO (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Places of Public Entertainment (Exemption) (Amendment) Order 2011, I wish to report on the deliberations of the Subcommittee.

The Amendment Order seeks to amend the Places of Public Entertainment (Exemption) Order (Cap 172, sub leg D) to add a new exemption to enable venues managed by the Legislative Council Commission to be exempted from the regulation of sections 4 and 11 of the Places of Public Entertainment Ordinance (PPEO). Hence the Commission does not have to apply for a licence of a place of public entertainment for activities to be held at the Complex in which members of the public are admitted. The Amendment Order also provides for the definition of "The Legislative Council Commission".

The Subcommittee has held a total of four meetings with the Administration and carefully examined the Amendment Order and issues concerning the scope of regulation and implementation of the principal ordinance (that is, the PPEO), as well as listening to the views presented by deputations.

With respect to the view of the Administration that the Complex may be a place of public entertainment for the purposes of the PPEO and that the Complex falls within the definition of "place of public entertainment" covered by the PPEO, Members have expressed concern in general. It is the view of Members that activities proposed by the Commission to be held at the Complex are related to the work of the Council and for civic education purposes. Hence they should not be considered as public entertainment activities which fall within the scope of "public entertainment" under the PPEO. Some Members are concerned about the issue of the constitutionality of applying the PPEO to the Council.

The Subcommittee noted that the Commission had discussed the exemption proposed by the Administration and agreed to conduct the proposed activities at the Complex in a prudent manner. To allay public concerns over the applicability of the PPEO to the Council and to pre-empt any doubt about the Commission's compliance with the PPEO, as well as saving the trouble of making applications for a licence of public place of entertainment for every activity the Commission proposes to hold, Members do not recommend repealing the Amendment Order.

However, in the course of scrutinizing the Amendment Order, Members have expressed concern about the scope of the PPEO and enforcement issues. Some Members consider that under the PPEO, "entertainment" only includes any event, activity or other thing specified in Schedule 1 to the PPEO; it is neither defined nor clearly differentiated from activities not meant for amusement. Members in general have expressed concern about the wide scope of "entertainment" as specified in Schedule 1 to the extent that not only the activities proposed by the Commission to be conducted at the Complex but also almost all activities to which the general public is admitted. These activities include lectures and talks conducted on a university campus, exhibitions and story-telling events held on school open days, public processions in which speeches and dramas may be delivered and exhibits may be displayed, and promotional activities conducted on streets by election candidates or persons who have declared an intention to run in an election. The Administration has explained that whether an activity is "entertainment" for the purposes of the PPEO depends on the form of the activity but not the intention of the activity. Members are worried that the PPEO licensing regime is too wide in scope and it may undermine freedom of speech and expression enjoyed by the public.

Another major concern of Members is that the scope of "place of public entertainment" under the PPEO is too wide. Members note that the applicability of the PPEO is not restricted by whether or not a place is delineated. The Administration has explained that depending on evidence, a street or a place may become a "place of public entertainment", if an activity which is specified in Schedule 1 to the PPEO and is a "public entertainment" to which the general public is admitted is carried on therein or thereon.

President, given the wide scope of coverage of the PPEO and extensive discretionary powers vested in the Administration, abuse of power and selective

enforcement may arise. Members in general have called on the Administration to review the PPEO, including narrowing down the scope of "public entertainment" and "place of public entertainment" therein. In particular, to better protect the freedom of expression and right to demonstrate, activities not intended for leisure such as public rallies and processions in which exhibitions, dramas, lecture and story-telling, and so on, may be conducted, should be excluded from the PPEO. Members also consider that before the PPEO is so amended, the Administration should grant exemptions to more groups apart from the Commission from the regulation of the PPEO. In addition, Members note that the Administration and the West Kowloon Cultural District Authority (WKCDA) have undertaken to encourage street performances in the West Kowloon Cultural District (WKCD). In view of this, Members have called on the Administration to communicate with the WKCDA on the applicability of the PPEO to the arts and cultural activities to be conducted on the streets or in public spaces of the WKCD.

Members note that in view of the fact a judicial review case and an appeal case in connection with the PPEO will be heard in the Court later, it is the view of the Administration that the results of the trials and the judgments concerned must be taken into consideration before deciding on the question of whether the PPEO should be amended. Nevertheless, the Administration has pledged that Members' concern and suggestions will be conveyed to the relevant Policy Bureau. The Subcommittee has also agreed that matters concerning the review of the PPEO will be relayed to the Panel on Home Affairs for follow-up.

President, I will now speak on my personal views.

The scope of regulation of this Ordinance covers speeches and story-telling and this is therefore a piece of law aiming at an outright suppression of the freedom of speech. When we do not suggest that the Amendment Order be repealed only because we do not want to give the public a wrong impression that the Legislative Council can be above the law and not abide by the law. But this does not mean in any way that the Subcommittee agrees with this method of making amendments. We do not agree at all that the scope of that Ordinance should cover making speeches and story-telling.

President, I raised an oral question in December and urged the Administration to disclose the background regarding the inclusion of making

speeches and story-telling in the scope of this Ordinance. At that time, Secretary TSANG Tak-shing advised that he could not find any such background information. In this connection, I wish to thank the Legal Adviser of this Council in particular and I have an impression that the files and minutes of meetings kept by this Council are enormously helpful to Members in policy studies and delving into the past. According to the verbatim record of proceedings of the former Legislative Council in October 1951, when the then Acting Attorney General spoke on the amendment to the Ordinance, he stated that the amendment of 1951 was in tune with the times.

At that time movies were shown in public places and people did not go to a make-shift theatre to watch Cantonese opera, but they loved to go to watch movies screened by the Government in public places. President, maybe you would recall that as well. When we were just a small kid — you might be a teenager — at that time the Health Department people would bring a portable screen to parks or other public places to show some movies to teach people not to spit or keep the public places clean. Although those were only promotional and educational activities on municipal health, the people enjoyed watching these movies. It was because they did not have too many chances of watching a real movie. It was because of this new form of entertainment that the authorities thought that the Ordinance should be amended.

Another reason for the amendment then was that the Acting Attorney General was worried that football fans would be unhappy if they could not buy tickets to watch a football game. If a large crowd was unable to buy football tickets and watch a football game, they would easily be affected by some in the words of the Acting Attorney General, the fans would be "inflamed by the wrong sort of partisan spirit". So they would easily be incited. That would pose a threat to public order. Therefore, the legislative amendment was purely in conformity with the colonial style of government.

Coming back to the modern society nowadays, if we would consider the law from the perspective of keeping abreast of the times, it should have been dumped a long time ago. This is because in a modern society, the freedom of speech has become a norm in our life. We cannot make use of that Ordinance to require anyone who wishes to make a speech or tell a story in a public place to apply for a licence from the Food and Environmental Hygiene Department or else it will be considered an offence in law.

What the Ordinance is doing is only to define "entertainment" by the form of the activity in question. There is absolutely no consideration of the intention behind that activity. We should know that making a speech can be a kind of entertainment. The talk show presented by the comedian WONG Chi-wah at the Cultural Centre can definitely be regarded as entertainment. Tickets for these shows were very popular. But making a speech in the Legislative Council is for the purpose of promoting some messages, or it is a kind of activity to educate the public. This can never be regarded as a kind of entertainment. President Jasper TSANG once said that some people had the impression that the Legislative Council resembled a circus. So maybe it would be appropriate for us to get an exemption on grounds of a circus show as listed in Schedule 1.

Activities held in the Legislative Council are not meant to entertain the public. We are explaining our position on certain public policies to the students and members of the public who come here. And we want to educate the public, too. This is an attempt by the Government to impose a law enacted to facilitate colonial rule in the past on the Legislative Council of today and in the course of doing so, the Council is exempted from compliance with that law. This is in effect treating the Council as an entertainment body and affirming this draconian law on suppressing the freedom of speech which dates back to the colonial past. A side-effect of such an attempt is to subject many activities to regulation, but these activities do not carry any trace of entertainment. Nor can they be regarded as any kind of leisure activity. Such kind of regulation is absurd to the extreme.

In the course of scrutinizing the Amendment Order, we have asked the Government what those organizations which have applied for such licences are. We are told that these organizations include electronic games centres and the Disneyland theme park. As the legislative body in our constitutional framework, should the Legislative Council be placed on the same footing as the Disneyland? What is more ridiculous is even Loke Yew Hall of the University of Hong Kong has to apply for this sort of entertainment licence. The same goes for The Chinese University of Hong Kong, the Baptist University, and so on. This is an insult to the intellectuals. Admittedly, there are times that plays will be performed at the Loke Yew Hall, but there are more occasions on which speeches will be given by some celebrities, including people like the Nobel Prize Laureate Aung San Suu Kyi who recently had a video chat with the students in

Loke Yew Hall. It is because of this ridiculous law which is totally detached from the reality that such absurd things can still be found in Hong Kong.

Even though the Secretary has said many times that the purpose of this law is to safeguard public order and there is no intention to clamp down on the freedom of speech, we want to make it explicit enough that this Government is not to be trusted because of its deplorable track record. It is full of such bad deeds. Off-hand examples are the prosecution of some members of the Falun Gong sect by invoking the Waste Disposal Ordinance to stop them from staging a protest outside the entrance of the Liaison Office of the People's Republic of China in Hong Kong. In 2010, the PPEO was invoked to demand that a licence be applied before an exhibition could be held. Mr LEE Cheuk-yan was arrested on the spot outside the Times Square. And he was arrested two times, one time a day. As many as 13 people were supposed to be prosecuted and to date 12 have been acquitted and only a person known as LEE Yiu-kee is still under prosecution.

It is rightly said that when those at the top love something, those at the bottom will do their best to please them. In 2011, a front-line policeman invoked a provision in that Ordinance on regulating dances and terminated a meeting by some gay group on the street. So the Government is abusing this sort of power and acting in a totally unrestrained manner. It makes selective and political prosecutions. There is no way we can be convinced that this Government will exercise any sort of self-control. I will never believe that the Government will only use that Ordinance to regulate real honest-to-goodness entertainment. So we must amend this Ordinance and draw a definition for "entertainment" which suits this modern society of ours, and to protect the freedom of speech and right of expression conferred by the Basic Law and the Bill of Rights on the people of Hong Kong.

When the Secretary says that he wants to use that law to safeguard public order, a host of laws will instantly come to our mind because these laws have vested enough powers in the Government to safeguard public order. If an activity is to be held indoors, we have the Fire Services Ordinance, the Buildings Ordinance and other pieces of legislation regulating cinemas. If an activity is to be held outdoors, there are the infamous Public Order Ordinance and the Police Force Ordinance. Such laws have given the police many powers and they should suffice to stop any assembly which may obstruct public access.

President, the law will not only affect the dissemination of political messages and curb our freedom of speech, and many activities we do every day will come under its regulation. Examples are the open days held by schools, or when tourist guides talk about local history to the tourists on the street. All of these activities may land people in a violation of the law if no licence is obtained. This law which does not conform to the norm of modern living should be amended. I ask the Government not to cherish any unreal hopes that this sort of colonial laws can put a clamp on the freedom of speech in Hong Kong.

DR MARGARET NG (in Cantonese): President, the Legislative Council is the legislature of the Hong Kong Special Administrative Region and entertaining the public is not part of our duties. The Legislative Council Complex located at the Tamar site is a purpose-built building housing the Legislative Council and offices of Members for the purpose of discharging public duties. It is a venue for the political assembly and Members' offices, not a place of public entertainment. Members of the public have the right to enter any parts of the Complex because it is stipulated in law that all our meetings must be held in public. In order that members of the public may be acquainted with the nature and work of the Council, we hold a variety of educational activities, including talks, visits, or even open days. All these activities are an important part of the duties discharged by us and they are not public entertainment. The Legislative Council Commission is a statutory body set up for the provision of secretarial and other administrative and management support to the Council. Its duties include the management of the Legislative Council Complex. The Commission is not a company running a business of public entertainment.

However, in the view of the Administration, the educational activities organized by this Council fall within the meaning of "public entertainment" as defined in the Places of Public Entertainment Ordinance (PPEO) and as members of the public are admitted to these activities, these activities are regarded as "public entertainment" according to the provisions of the PPEO. Under the law, the venues in which these activities are conducted are regarded as "places of public entertainment". Any person who runs or uses such a place shall apply for a place of public entertainment licence from the Secretary for Home Affairs in accordance with the requirements stipulated in the PPEO. Any person who organizes such activities without a licence commits a criminal offence.

But how can the law defy common sense? In the view of our Legal Adviser, judging by the language of the provisions alone, there is indeed a good possibility. The Commission should comply with the PPEO and apply for an exemption from application for a licence in order to allay any public misapprehension that this Council might violate the law or that this Council is not bound by the law.

President, with due respect to the professional advice tendered by the Legal Adviser to this Council, I agree that the public should not be led to suspect that this Council is above the law and hence an application for exemption in accordance with the law should duly be made. There are, however, two points that I must point out.

First, the Places of Public Entertainment (Exemption) (Amendment) Order is a piece of subsidiary legislation enacted under section 3A of the PPEO. Apart from venues managed by the Leisure and Cultural Services Department or the Home Affairs Department, venues exempted under this piece of subsidiary legislation also include clubs with a valid liquor licence issued under the Dutiable Commodities (Liquors) Regulations and ballrooms with a licence issued under the Miscellaneous Licences Ordinance. In this respect, the same conditions apply to our Complex and these premises.

Second, the criteria for granting licences or exemption for places of public entertainment are whether or not facilities in these venues comply with standards of public safety. According to the information provided by the Secretariat, the Complex complies with the safety requirements for a place of public entertainment in all except one item. And the item I am referring to only involves some technical specifications regarding fire escape staircases found in the regulations. This was also mentioned by Ms Miriam LAU earlier. Judging from the nature of the activities we organize and the locations in the Complex where these activities are conducted, there is no question of any threat being posed to safety.

The rationale underlying this Exemption Order is that the Complex should meet all safety requirements. But since the Complex is built for the express purpose of holding activities organized by this Council, the application for a licence is totally frivolous.

President, why are there so many papers written in bureaucratic language and why do we have to undergo the pomp and bombast of setting up a subcommittee to deliberate on the matter and even propose a debate in this Council today? The reason is that there are serious problems with the principal ordinance. Just imagine what is more absurd than treating an educational activity to introduce the Council to the public as public entertainment and the absence of a licence issued by the home affairs authorities as a breach of the law? Just what other activity for the public which is perfectly normal does not come under the purview of the Secretary to sanction or grant approval?

Since the meaning of "entertainment" includes making a speech or story-telling, I have asked the representative from the Administration in the course of deliberations whether or not a licence for a place of public entertainment should be applied beforehand when a public forum or seminar is to be held in the lecture theatre of a university. It is all too obvious that countless talks open to the public are held by a countless number of groups every week in the lecture halls of various sizes in the tertiary institutions in Hong Kong. If no application is made for a licence of a place of public entertainment, is there any chance that a criminal offence has been committed? The reply from the Administration's representative is that an application for a licence should be made, or else there may be a breach of the law and a charge can be pressed. They also affirmed that this is the policy as enforced by virtue of the PPEO. In my opinion, if this is the effect of any piece of legislation, the law itself must definitely run counter to common sense and the principle of the rule of law.

I understand that at times the scope prescribed by a law has to be very wide to give great powers to the authorities. That whether or not this kind of law can gain the trust and support of the people would rely on whether the authorities can impose self-control, be prudent in exercise and stay away from any suspicion of abuse. Unfortunately, the authorities have not adhered to this principle and on the other hand, they have made repeated attempts to invoke the PPEO to crack down on the freedom of speech, namely, staging processions or demonstration. The public has good reasons to believe that these are not isolated incidents. As a matter of fact, processions or demonstrations which may pose a threat to social order or public security are addressed by relevant laws. Ms Cyd HO has just mentioned many of them. Why then do we have to resort to the control exercisable under the PPEO? Is it because there are defences under other laws

or there are stricter requirements and no defence is available if a charge is laid on the ground of unlicensed entertainment?

President, there is really no way we can amend or repeal any provision in the principal ordinance by virtue of the Exemption Order we seek to pass today. Our speeches are made for the purpose of putting our concern on the record and to make sure that the matter will be followed up by this Council in future.

Thank you, President.

MS EMILY LAU (in Cantonese): President, the Places of Public Entertainment Ordinance (PPEO) was enacted in 1919 and the objective at that time was to protect the safety of members of the public at places of public entertainment. The PPEO has undergone a number of amendments since then. The aim of the amendment on this occasion is to exempt the venues managed by the Legislative Council from the regulation of the PPEO. The concern of Members and the public has been aroused as a result. It is thought that the PPEO is most outdated and there is a possibility that it will be invoked arbitrarily by the authorities to carry out selective and even political prosecutions. Therefore, we have conveyed many concerns during the deliberations in the Subcommittee and we hope that this outdated piece of legislation can be reviewed and amended. However, the officials representing the Administration advised that nothing could be done at present and pointed out that the scope of the amendment on this occasion was very narrow, confined to only exempting the venues managed by the Legislative Council. I am very worried because once the Legislative Council is granted an exemption, then what about other groups? Will these groups demand that they should be granted the same exemption?

During the course of discussions, we found that there is a real possibility that many other groups should also be granted the same exemption because they should not come under the regulation of the PPEO. Ms Miriam LAU has pointed out just now that the Legislative Council will conduct activities that may be seen as a breach of the PPEO, such as guided educational tours, or story-telling sessions for kindergarten pupils or other school children and role-play activities, and so on. There are two rooms for use by kindergarten children at the ground floor of the Legislative Council Complex and the function room on the fifth floor can be used by university students and primary and secondary school students as

well as officials for role-play activities so that the students can have a taste of what it is like to be in politics. Then there are also video shows on information about the Council, and exhibitions may be organized and groups may be invited to come here to give performances in music, dance or drama to facilitate their better understanding of the Council. All these activities may constitute contraventions of the law. Frankly, Hong Kong is a big place and it is not only in the Legislative Council that all these activities or facilities are provided. Today, we get a secure exemption, but it is likely that people may think we are doing this as an attempt to come clean of any complications in future.

President, actually we have discussed such matters in the meetings of the Legislative Council Commission and in the end we noted that after the Secretariat staff have examined the relevant papers, it is found that some of our activities or facilities may constitute contraventions of the law. President, I think you will remember that there are things like the number of fire service installations failing to meet the requirements, the number of steps in the fire escape staircases are not enough, the exit routes are not wide enough, and so on. But the authorities have said that nothing can be done and any change will entail major works. In view of this non-compliance of the facilities of this Council with the requirements, we might as well apply for an exemption. But the problem is that one will never know the number of groups that should make such an application because there are many groups which offer the abovementioned kinds of activities and facilities and they may contravene the law, too.

The Administration has also told us that a total of 1 400 temporary licences were issued in 2010. The number of such licences issued in 2011 was a bit less, being 1 300. These licences are issued not just to public organizations and, as some Honourable colleagues have pointed out, the universities also have to apply for exemptions. In the case of your alma mater, President, that is, the University of Hong Kong (HKU), only the Loke Yew Hall on the whole campus of the University has ever applied for a licence. That is bad enough. Last week I attended a debate competition in the Sun Yat-sen Plaza of the HKU just outside the University Library and I do not know if an exemption was granted for that activity. I am really lucky if no exemption was given and I was not arrested because of that. If this is the way the authorities are handling such matters, we would be very worried. For it turns out that even this Council has to apply for an exemption, what about other groups which are in similar circumstances to ours? If all groups, be they large or small, have to apply for exemption, then

how can Members of this Council find the time to discharge their duties? Now we are already very busy, thanks to the executive authorities. In that eventuality, do we have to deal with applications for exemption from all sorts of groups and organizations? This is ridiculous.

Moreover, the PPEO has not clearly explained and defined what is meant by "entertainment" and we may think that certain activities are entertainment and more exciting activities are more entertaining. There is no definition for "place" either. A place of entertainment is not one to which admission is allowed only by the purchase of a ticket. It is because of this that an incident arose in May 2010 in which it was alleged that the display of the Goddess of Democracy statue outside the Times Square in Causeway Bay by the Hong Kong Alliance in Support of Patriotic Democratic Movements in China was unlawful. At that time, the Alliance was alleged to have violated the law because it did not apply for a licence of a place of public entertainment. The Alliance said in defence that the activity was not an entertainment but something of a very solemn nature, namely to mourn for those people killed in the massacre on 4 June. The people from the Alliance had never expected that they would be arrested for holding such an activity.

When things like these happen, how can people feel assured and convinced? There are many things that are closely related to the freedom of expression and the freedom of assembly. But the authorities prefer to handle things this way. In case problems really arise, laws like the Public Order Ordinance and the Police Force Ordinance can be invoked for the making of arrests. But on that occasion, arrests were made on the ground of failing to obtain a licence for entertainment. In 1991 when the Hong Kong Bill of Rights Ordinance was enacted, it was pointed out by the authorities that the standards found in that Bill would be used to examine all laws to see if there were conflicts with the Bill. I am sure this PPEO must be one of those laws which have slipped through the net. And there could be many other laws as well. The authorities have submitted a report to the Human Rights Committee of the United Nations on the implementation of the International Covenant on Civil and Political Rights in Hong Kong. A hearing may be conducted next year on that report. And now we may have another matter that should be reported to the United Nations.

I hope that an undertaking can be made by the Secretary on behalf of the Administration to make it clear that a review will be made of this outdated piece of legislation expeditiously. I also hope that this law will not be subject to any abuse and become an instrument of arbitrary political prosecution. Even if the law is not amended, I would hope that the law-enforcement officers, especially the policemen who often stop people on the streets to check their identity cards or the staff from other enforcement agencies will not arrest people willfully because there is no definition for the meaning and scope of "entertainment". I hope that the law-enforcement officers will know what are the freedom of speech, freedom of expression and freedom of assembly guaranteed and assured for the people of Hong Kong under the Basic Law, the Hong Kong Bill of Rights Ordinance and various international human rights covenants. I hope that the law-enforcement officers will not accuse people arbitrarily and make arrests for conduct of entertainment activities in a place of entertainment without getting a licence. I hope that the enforcement agencies will know clearly where the line should be drawn even if the law is not yet amended, hence ensuring no infringement of the basic human rights of Hong Kong people. The most important thing, however, is that a review and an amendment of the law should be made as soon as possible.

President, we often carry allusions to the core values of Hong Kong on our lips. Actually, the core values of Hong Kong are the rule of law, equality before the law and full protection of the basic human rights of the people. When we have found that a piece of legislation can be so absurd, outdated and ridiculous as this, we must urge the authorities to admit that this is a real problem. All enforcement agencies should not act arbitrarily by virtue of this law, and the Administration should conduct as soon as possible a review of this law and amend it.

I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, as Members have repeatedly mentioned the incident concerning the forceful seizure of replicas of the Goddess of Democracy statue suffered by the Alliance two years ago, I certainly cannot make no response for I am a representative of the victimized organization. But I would like to recap some history first of all.

Many friends who have conducted activities on the streets with us are also in this Chamber, and I believe we had never heard of a public entertainment licence until two years ago when I first came across it. Buddy, we have organized street activities for decades. Apart from giving speeches on the streets every day, we have also organized singing, dancing and all kinds of activities, including exhibitions and display of art works, every day. However, President, we have never thought of the requirement of a licence under the PPEO. Neither have I been reminded of the need to apply for a licence until such an incident suddenly occurred. What is this incident? Two years ago, we tried to display a replica of the Goddess of Democracy statue at the Times Square on the eve of the candlelight vigil commemorating the 20th anniversary of 4 June incident. Upon our arrival there, the police were very nice. Looking back at what happened on that day, I wonder if the police were "setting up a trap" because from the very beginning, they led the way for us so that we could transport the replica to the Times Square. Upon our arrival, they also told me where our vehicle should be parked before assisting us to place the statue at the right location. They were very co-operative. In retrospect, I am not sure whether the police aided and abetted me in breaching the PPEO. When all arrangements had been made and the statue erected, we suddenly found that officers from the Food and Environmental Hygiene Department (FEHD) had arrived. President, we found it strange because our activity had nothing to do with the FEHD. Why did the FEHD staff come? It transpired the FEHD officers came to give us a warning on the ground that we had not applied for a public entertainment licence. We said that we had never applied for such a licence before and they had no justification to suppress our freedom of expression. We were also perplexed because they mentioned a public entertainment licence, which should be related to entertainment, while our exhibit was related to the Tiananmen Massacre which was not an entertainment activity in all senses. The work of art we were going to display is a symbol of protest rather than entertainment. Why was our demonstration regarded as an entertainment? Nevertheless, they dismissed my argument and reiterated the relevant requirement under the PPEO. They maintained that without a license, our activity was banned, the exhibition was prohibited and the statue should be removed immediately. We declined to remove the statue, and our non-compliance had invited the arrival of the police. We were surrounded by almost 100 police officers and 13 of us, including me, were manhandled onto a police car and then driven to a police station. Needless to say, what followed were routine procedures.

The next day, thinking that they had no reason to deny us our freedom, we got another replica of the Goddess of Democracy statue because the first one had been confiscated. They had forcefully confiscated our Goddess of Democracy replica as I said earlier. After they had seized the bigger statue, we got a smaller one of around 8 feet tall the next day. Three years ago, we also displayed the Goddess of Democracy replica at the same location and nothing happened. However, in this incident, they came instantly and gave us a warning before confiscating the statue. Two seizures had taken place and the smaller one was seized in the second encounter.

After the two replicas of the Goddess of Democracy statue had been confiscated, the police certainly claimed that we had caused obstruction in the course of performance of their duties and they would consider whether prosecution would be initiated. We were not charged with this offence. But eventually, we were prosecuted in accordance with the PPEO. At the first hearing, the Judge ruled that we were guilty. We argued that as the Times Square is a public venue, people can enter it without a ticket and everyone can go there. Moreover the concept of "place" seems to imply that the entrant is required to carry a ticket. But in refuting our argument, the Judge said that the law is very loose and any place will fall within the definition in the law as long as it is open to the public who can pass by regardless of whether they carry an admission ticket or not. As for the definition of "entertainment", the Judge explained that an exhibition falls within one of the items of entertainment under the law and we had to apply for a licence. The ruling was so simple that we lost the case. Certainly, we lodged an appeal because, in our opinion, the incident as a whole aimed at suppressing people's freedom of expression by means of the PPEO.

I learnt of the existence of a public entertainment licence only two years ago. However, the Legislative Council is no better than us, or even worse than I am, because the Legislative Council learns of it only now. Therefore, President, when we examine this legislation today, the Legislative Council has been in breach of it for decades. Everyone can imagine why we have to apply for an exemption for the new Legislative Council Complex. Is there any difference between our activities in the old Legislative Council Building and those in the new Legislative Council Complex? Have we not made any speech in the old Legislative Council Building? Is it because the old Legislative Council Building not a public place? If the same definition is applied, the result will be the same.

Therefore, the old Legislative Council Building has been in breach of the relevant law for decades. Put it more precisely, the old Legislative Council Building has been in breach of the law at least since 1985 when it was first put into such use and no prosecution has ever been initiated. Neither has this requirement come to anyone's notice. President, perhaps the Legislative Council has learnt of this only today after we have been charged with the offence. I wonder whether the Legislative Council came to realize it only after we have been charged. I do not know why the Legislative Council has suddenly received a wake-up call and realized that it is necessary to apply for a licence.

So, everyone considers it extremely absurd. From the perspective of violating the law, the Legislative Council has been in breach of the law since 1985 and today a rectification is made and exemption is granted. Does this mean that the whole piece of legislation is absurd and unreasonable? Even the parliamentary affairs of the Legislative Council are regarded as a public entertainment. President, should such a definition be applied, I think all people in Hong Kong will have to apply for at least 100 licences every day. Has this ever occurred? Certainly not. According to the data read out by Ms Emily LAU just now, only 1 000-odd licences have been applied at most. However, are there 100 people making speeches every day? The answer is certainly in the positive. Are there 100 people performing on the streets? It is certainly yes. President, if you are free tonight, you can go to Sai Yeung Choi Street in Mong Kok and walk down the street from one end to the other, then you will find that there are at least 10 groups of people singing or performing. Have they applied for any licence? I do not mean that the Secretary should go there and drive them away. Please do not have any misunderstanding. If the Secretary wants to drive them away, the first one to be prosecuted is Donald TSANG. Does the "Act Now" Campaign not an entertainment? Although I have asked this question time and again, the Secretary has not given any reply. I have asked him many times why Donald TSANG in the Government could launch the "Act Now" Campaign in which slogans were chanted and speeches made in public places though he had not applied for a public entertainment licence. And he was not prosecuted.

In view of the fact that Chief Executive candidates often go out to solicit support on the streets, may I ask the Secretary whether any of them has ever applied for a public entertainment licence? I am sure the answer is in the negative unless you tell me the otherwise. Mr Albert HO is one of the

candidates, is it not? As for LEUNG Chun-ying and Henry TANG, have they applied for a licence? The answer must be in the negative. Apart from making speeches in their campaign offices every day, they will come out of their campaign offices occasionally to give comments on some issues with countless people surrounding them. As these are also public entertainment and public speaking, have they applied for licences? Certainly not. Given that the Government has also frequently held ribbon-cutting ceremonies on the streets, has any application for licence been lodged for such activities?

President, I would like to point out that the law can be invoked in an arbitrary manner, which is most undesirable. When the Government wants you to apply for a licence, then you have to do so. If it does not make any request, everyone will keep silent. This reflects the absurdity of the law. Nevertheless, the Secretary has refused to repeal it on the ground that a judicial review and an appeal are still being processed. I think the law should be repealed rather than requesting the Legislative Council to apply for an exemption. In my opinion, the Legislative Council should not apply for an exemption. However, an application has been lodged. But I think the law itself is problematic and the Government has not complied with the PPEO in respect of many activities it has organized. The Government knows that if people are required to strictly abide by the PPEO, even it itself cannot do so. Given that there are so many such activities in Hong Kong, how enforcement can be effected? Furthermore, does the Government want to tighten up the control? In practice, it does not really want to. Insofar as many other forms of entertainment, speeches and exhibitions are concerned, the Government could not care less. But why did the Government suppress us by invoking the PPEO in respect of some politically-related activities, such as the protest against the 4 June massacre and the demand for ending one-party dictatorship by the Alliance, as well as the display of the Goddess of Democracy replicas to express such views? Does the Government want to tighten up its control on us? President, this is obvious. Hence, I think the PPEO should be repealed, rather than requesting the Legislative Council to apply for an exemption.

I so submit, thank you, President.

MR LEUNG YIU-CHUNG (in Cantonese): President, as a general rule, agencies which are granted an exemption under an ordinance will be very happy

because they will not have to be subject to the regulation of the law. But as a Member of this Council, I will definitely not be happy because of the exemption on this occasion. President, on the other hand, I will feel very much ashamed. This is because, as Members of this lofty legislature, we have been contravening the law for years but our acts are not exposed and the Government does not arrest us. Even last week, both Ms Emily LAU and I were still acting against the law because we were leading some guided tours in the Complex and telling stories about the Council.

We were acting in breach of the law even two days ago, because this exemption law was not yet passed. President, we feel so ashamed, not just for ourselves, but for the entire Council. All Members of this Council should feel ashamed. It turns out that we as lawmakers are acting in contravention of the law. We have not turned ourselves in, nor does the Government pay attention to that. It looks on as we break the law, but it allows us to do so openly. It is aware of this because when this piece of legislation was under discussion, it knew that it was precisely about the granting of an exemption to this Council. The Government knew about it but it did not arrest us. What does that mean? When the legislature acts in breach of the law, the law-enforcement agency knows it but does not care, it is really most ridiculous. It is unreasonable, too. President, this state of affairs is a big problem.

Rightly as Ms Emily LAU said just now, this piece of law affects not only the Legislative Council but also many other groups, society itself and many public places. We are not trying to come clean of this, but we hope that everyone in society will be treated fairly and lawfully. But even if this law is passed today, there are still organizations that will continue breaking the law, only that the Government will enforce the law selectively. This is most unfair and unreasonable indeed.

Mr LEE Cheuk-yan said just now that when the Alliance was holding an exhibition, the Goddess of Democracy statue was forcibly removed and the organizers of that exhibition were charged. President, I am also a member of the Alliance and for many years ever since the year after the 4 June incident in 1989, the Alliance would hold seminars every year in public places before it staged a protest march. And in the Youth Festival every year, I would hold some seminars next to the Cultural Centre. But it turns out that those were unlawful activities. It is fortunate that no enforcement action was taken. And so we

keep on holding this kind of activities. We do not know if we should make an application in future. In any case, I do not think we will make any application because this forms the basis of the freedom of speech.

This basis of the freedom of speech which is a cause for our struggle is, to our great surprise, regulated by a piece of legislation which is in violation of the freedom of speech. This is all too ridiculous. I do not think we will make such an application for such a licence. So what we want to do today is to tell the Government that it should not exercise its so-called discretionary powers. What does it mean if the authorities are really doing that? It means that as long as some organizations will not do anything to disturb public order, they should be left alone. I do not think that this law should be tolerated and allowed to exist because of this reason. On the contrary, I think that the principal ordinance should be amended substantially.

Ms Cyd HO made a brilliant account of the history of this Ordinance earlier. She said that every amendment made in the past was done in the name of keeping it abreast of the times. These past attempts to amend the law were made during the British Hong Kong era, but they represented adjustments made to catch up with the progress of society. But it is unfortunate to see that this law has not been really subject to any review after the SAR Government has been in place for more than a decade. Now when we as Members of this Council want to remind the Government actually, Ms Cyd HO has just told me that the reason why the Government wants to conduct this amendment exercise is because last year she noticed the problem and brought it up for discussion. So the Government knows that even this Council has been acting in contravention of the law for years. This accounts for the proposal to amend the PPEO.

It turns out that the Government has been so insensitive and apart from failing to move together with the times, it is so insensitive. I do not know if the Secretary would feel ashamed sitting here and listening to accounts of the past given by Members. As a policy secretary, he is obliged to pay attention to every relevant piece of legislation, consider the needs of the times and decides whether or not any amendment should be made to cope with the development of society.

We have spoken so much today and we have highlighted the problems. But as some Honourable colleagues said earlier, the Government is employing a delaying tactic, saying that the matter will only be handled after the two court

cases are finished. I think that is unreasonable. The Government should not put up an excuse like this because all along there are problems with the principal ordinance. The Government is well aware of this fact. Therefore, an Amendment Order is proposed by the Secretary today. Why should this be made an excuse and why is it said that there are still two more cases to handle and so the review should be postponed?

Why can an effort be made to keep abreast of the times? A review can be conducted at the same time when we wait for the judgment. Why does it not do this and wait and procrastinate instead? Does the Government fear that should anything happen during this interim, it will not be able to take enforcement action selectively? Does the Government fear that if a review is conducted now, no enforcement action can be taken selectively? Is the Government afraid of that? If not, then the Secretary should really face up to this problem squarely. It is the wish of people in society that there should be freedom of speech, and with this idea in mind, there is no way the Secretary can evade the issue. He should work on it and besides proposing an Amendment Order, he should also undertake a review of the principal ordinance to see how it should be made to keep abreast of the times. This is what he should do.

So President, it is only with reluctance that we accept this Amendment Order today. But apart from reluctance, I must point out that we are not trying to come clean of this. This point must be made clear to the public. We do not think we can get away with that. As Ms Emily LAU said earlier, now that we are given an exemption, the public will also apply for an exemption. But things are not as simple as applying for an exemption. This is because they will point a finger at us and ask why we only care for ourselves. They will say that the lawmakers will only care about themselves instead of others. Can we take this blame? How are we to explain this to the people? No, I do not think we can.

Members have also said that it turns out that many universities are breaking the law. How bad! The universities are breaking the law, only that the Government is not enforcing the law. This is most unreasonable. President, it is a great problem when a government knows well that someone is breaking the law but it chooses not to enforce the law. What will happen to these academic institutions once the law is enforced? From now on, no stories can be told and no speeches can be made. And no discussion on any academic issue can be made either. This is therefore really ridiculous. Lastly, I wish to say that the

Secretary should really rein in the horse at the precipice and he should never sit back and wait. He must amend the law as a matter of urgency so that we can feel assured and our freedom of speech can be protected.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Members have already spoken. I now call upon the Secretary for Home Affairs to speak.

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, on 23 December last year I put my signature on the Places of Public Entertainment (Exemption) (Amendment) Order 2011 to exempt the places managed by the Legislative Council Commission (the Commission) from the regulation of sections 4 and 11 of the Places of Public Entertainment Ordinance (PPEO).

The reason why the Home Affairs Bureau agrees to this amendment is purely to complement the work of the Legislative Council such that it can be exempted from the requirement under the PPEO to obtain a licence and that it can hold activities in the newly commissioned Legislative Council Complex such as guided educational tours, and so on. Originally I wished to inform Mr LEUNG that the Amendment Order had come into effect on 30 December 2011 by publication in the Gazette, but he has just left the Chamber. President, I learnt from the newspaper that you have led these guided tours for members of the public who came to visit the Complex and other kinds of educational activities and exhibitions will also be held. We believe the Commission will take all measures necessary to ensure public safety as it has always done.

After the Amendment Order was submitted to the Council on 11 January this year, the House Committee formed a subcommittee for it. Four meetings were held by the Subcommittee and our colleagues attended these meetings and gave replies to questions raised by Members. Members have expressed their

views on matters such as the definition of the term "entertainment" and the scope of application of the PPEO, and so on. I am grateful to Ms Miriam LAU who has proposed a motion on the report on the deliberations as well as Members who have spoken earlier. We are glad to listen to their views. However, as some Members have pointed out, the amendment this time is to a piece of subsidiary legislation, not principal ordinance. The aim of the principal ordinance is to protect public security. This is because a large number of people would gather in a place of public entertainment and it is essential that their safety should be protected. Moreover, the Court is scheduling the hearing of an appeal case and a judicial review case related to the PPEO. It is therefore not appropriate for us to comment on the question of whether the PPEO should be amended or even discuss the direction and scope of such amendment.

President, I so submit.

PRESIDENT (in Cantonese): According to Rule 49E(9) of the Rules of Procedure, I will not put any question on the motion.

PRESIDENT (in Cantonese): Third Member's motion: Proposed resolution under the Legislative Council (Powers and Privileges) Ordinance.

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

**PROPOSED RESOLUTION UNDER THE LEGISLATIVE COUNCIL
(POWERS AND PRIVILEGES) ORDINANCE**

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 meeting on 17 February 2012, the House Committee discussed how to follow up the allegations of conflict of interests in the West Kowloon Reclamation Concept Plan Competition (the Competition), involving Mr LEUNG Chun-ying as a member of the Jury and one of the participating teams, T. R. Hamzah & Yeang. The House Committee agreed to hold a special meeting on 24 February and invited the Chief Secretary for Administration to

co-ordinate the attendance of officials and provide all documents and information related to the allegations.

On the day of the special meeting, that is, 24 February, the Administration provided the House Committee with an information paper with 17 attachments and, led by the Secretary for Home Affairs, four other government officials attended the special meeting.

The documents provided by the Administration to the House Committee include the completed official Registration Form submitted by T. R. Hamzah & Yeang in June 2001 and a list of the members of the participating teams submitted in September, the declaration of interests form submitted by Mr LEUNG Chun-ying on 25 February 2002, a letter from Mr LEUNG to the Competition Team dated 11 March which explained the role played by the company related to him, namely, the DTZ Debenham Tie Leung Limited (DTZ), in connection with the entries for the Competition, as well as a summary of the voting records of Mr LEUNG in the voting process prepared by the Administration.

Although the Administration has provided some details of the entries for the Competition and the details of the assessment to enable members to gain a better understanding of the allegations of conflict of interests, members cannot fully get hold of all the facts about the allegations of conflict of interests, nor can the doubts of the public about the allegations be resolved simply with the information provided by the Administration and the replies given by the government officials to members' questions at the special meeting. For example, why were the declaration of interests forms not required to be submitted to the jurors until two days prior to the commencement of the adjudication process? What was the degree of involvement of DTZ in respect of the entry concerned? Had T. R. Hamzah & Yeang obtained any consent from DTZ before listing it as a "Property Adviser"? Why are there no minutes on the adjudication process? The disqualification of the T. R. Hamzah & Yeang entry was such an important decision but there is no record whatsoever of the discussions leading to the making of the disqualification decision, nor is there any information showing whether or not the participants were formally notified of the results of the Competition. Moreover, the Administration only provided the voting summaries in relation to Mr LEUNG Chun-ying. However, without any information on the record of voting of other jurors, members can hardly make a

comparison to determine whether or not there was any difference between Mr LEUNG Chun-ying's voting preference on the entry concerned and other jurors' voting patterns.

The West Kowloon Cultural District (WKCD) will not just be a hub for the Hong Kong's future cultural development in the region; it also involves an investment of \$21.6 billion in public funds. After three rounds of public consultation, the project has reached a critical stage. The Town Planning Board (TPB) has already deliberated on the development plan for the WKCD submitted by the West Kowloon Cultural District Authority (WKCDA). The WKCDA would launch design competitions for a number of signature facilities in the WKCD after the TPB has approved the development plan.

In order to uphold Hong Kong's reputation in holding international competitions and to enable the WKCD development to proceed without any interminate allegations, it is necessary for the Legislative Council to conduct an investigation to clarify the facts, regardless whether or not Mr LEUNG Chun-ying is running in the Chief Executive Election.

The Legislative Council always deals with all public affairs in an objective, impartial and just manner. Before making a decision on any claims or allegations, the Legislative Council must treat all affected persons in a fair manner and give them opportunities to explain and provide information.

In the special meeting of the House Committee held on 24 February, Members unanimously agreed that the Legislative Council should appoint a select committee to study Mr LEUNG Chun-ying's involvement as a member of the Jury in the Competition, and related issues. It was also agreed that the select committee, in the performance of its duties, should be authorized to exercise the powers conferred by section 9(1) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) (P&P Ordinance).

The Administration has furnished additional documents and information on the adjudication of the Competition last evening (28 February), among which are letters issued by the Administration to Mr LEUNG Chun-ying, T. R. Hamzah & Yeang, and LWK & Partners (HK) Limited to seek their consent to make public the relevant information in connection with the allegations about conflict of interests. On the question of whether or not members consider the relevant

information sufficient for clarifying the allegations, it will be up to members to make their own judgment.

President, next, I will talk about the views of the Liberal Party on invoking the P&P Ordinance to investigate matters relating to the WKCD. I believe that since the WKCD is a development project of great importance, we must ensure that the whole design competition and voting process must be consistent with the principle of fairness and impartiality. We cannot give others an impression of unfairness in handling the Competition or let any party suffer any gross injustice. In particular, the accusations on this occasion are very serious, involving the declaration of interests by one of the jurors and his relationship with a participating team, so the public hope that they can obtain the information relating to the adjudication and the relevant records at that time to ascertain the truth of the matter, if there was any intention of a cover-up and if this is only an unfounded allegation.

In fact, the person in question — that is, Mr LEUNG — has stated time and again that he has never opposed to making public the information on the Competition and adjudication at that time, saying that if Legislative Council Members are interested in learning about the situation back then, he would be happy to sit down and talk about the role played by him in the incident. This being so, we cannot see why he must be prevented from coming forth to give a clear and complete account. Ever since Mr LEUNG was accused of omissions in the declaration of interests in the Competition, he has not had the chance to come here in person to take questions from Members. This would precisely give him a chance to speak in his own defence, which I think would be a fair course of action.

For this reason, the Liberal Party supports this motion, so that a select committee of the Legislative Council can exercise the powers conferred by the P&P Ordinance to investigate thoroughly a series of questions relating to integrity and transfer of benefits arising from the "WKCD incident".

President, I so submit.

Ms Miriam LAU moved the following motion:

"That this Council appoints a select committee for the purpose of studying Mr LEUNG Chun-ying's involvement as a member of the Jury in the West

Kowloon Reclamation Concept Plan Competition, and related issues; and that in the performance of its duties the committee 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 that Ordinance."

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, last Friday my colleagues and I were invited to attend a special meeting of the House Committee. We tried our best to answer questions raised by Members. I also made it clear in the meeting that the Government did not agree that the Legislative Council (Powers and Privileges) Ordinance be invoked to appoint a select committee to conduct another investigation into this Competition held 10 years ago.

At that time we appointed a Professional Advisor with experience in organizing international competitions to give advice on procedural matters, compliance with the Competition conditions and submission requirements as set out in the Competition Document, in order to ensure that the arrangements in the Competition were consistent with the international practice. The Jury comprised 10 local and international experts. The role of the Jury is to adjudicate the conceptual proposals in accordance with the assessment criteria set out in the Competition Document. To ensure fairness and impartiality, the Administration respected the autonomy of the Jury in assessing the entries and making decisions. It was stated in the Competition Document that the assessment process was to be carried out in strict confidence and the Organizer should not disclose the details of the assessments. This practice of maintaining confidentiality was consistent with international practice. As Hong Kong is an international city and such kind of international competitions will be organized in the future, so it is imperative to uphold the integrity and reputation of Hong Kong as an organizer of international competitions.

I appreciate the concern expressed by Members in connection with this incident. But we have to adhere to our pledge of maintaining the confidentiality

of the relevant information. This is especially the case when the Competition involved more than 100 commercial entities from all over the world and the large amount of information provided by the entrants in which confidentiality must be maintained. The SAR Government issued a press release on 8 February in response to public concern expressed, and we have carefully struck a good balance between confidentiality and public interest. I have to stress once again that any disclosure of information should be relevant and proportionate to the subject of public interest. If the legislature which comprises members from various parties and political groupings is to invoke privileges to revoke this pledge of confidentiality, it will deal a serious blow to the commercial reputation and future development of Hong Kong.

If Members believe that the related information should be further disclosed, the Government will give serious consideration to the idea and, as we have responded to the request made by Members in the House Committee last Friday, certain symbols can be used to list the voting records of members of the Jury in each round of the Competition. After consent is obtained from Mr LEUNG, T. R. Hamzah and Yeang, and LWK & Partners (Hong Kong) Limited, we will disclose the documents and letters in relation to the allegations of conflict of interests. We have also responded to questions raised by Members on the minutes of meeting of the Executive Council and the terms of reference of the Technical Panel.

The SAR Government team will continue to adhere strictly to political neutrality and uphold justice and impartiality in the Chief Executive Election. We will adopt a fair and honest position in dealing with the public concern about the Competition. We have disclosed the information related and proportionate to the matter. In our opinion, there is absolutely no need to invoke the Legislative Council (Powers and Privileges) Ordinance to appoint a select committee to investigate the incident.

We would be happy to co-operate with the Legislative Council and continue to handle the matter on the premise of striking a balance between considerations of confidentiality and public interest and upholding the international image of Hong Kong.

With these remarks, President, I oppose the motion.

(Mr Paul CHAN stood up)

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

MR PAUL CHAN (in Cantonese): Point of order. I wish to seek a clarification on one point first.

President, the 60 Members of this Council are all members of the Election Committee responsible for selecting the Chief Executive. Last Friday, in the special meeting of the House Committee, many Honourable colleagues declared that they were the nominees of various Chief Executive candidates and some Honourable colleagues may have even contributed money as well as efforts to support the Chief Executive candidates of their choice. For this reason, a conflict of roles may exist insofar as this motion is concerned.

Therefore, President, may I ask you to clarify if it is appropriate for Members who have nominated individual Chief Executive candidates to remain in the meeting and take part in the voting when this motion is put to vote? Or should we allow only Members who have not nominated any Chief Executive candidate to vote on this motion to ensure fairness and independence?

Thank you, President.

PRESIDENT (in Cantonese): According to the Rules of Procedure, a Member shall not vote upon any question and shall withdraw when a vote is taken only if he has a direct pecuniary interest in it. This is the only requirement on voting by Members. I remind Members that if any of them knows that he has a direct pecuniary interest in a question on which a vote is taken, he must withdraw from the meeting.

(Ms Miriam LAU stood up)

MS MIRIAM LAU (in Cantonese): President, I wish to make a declaration. I have nominated Mr Henry TANG, but I have not contributed any money or effort.

PRESIDENT (in Cantonese): On the debate on a question, if any Member has a direct or indirect pecuniary interest in the question under debate, it is necessary for the Member concerned to declare the nature of his interest.

MR LEE WING-TAT (in Cantonese): President, first of all, I declare that I have nominated Mr Albert HO as a Chief Executive candidate. I also wish to point out that I do not have any direct or indirect pecuniary interest relating to this motion.

President, the Democratic Party and I support invoking the powers under the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to investigate this "WKCD incident". We have to investigate this incident because it involves major public interest considerations. Firstly, this incident involves a design competition for a project to build a cultural district at a cost of \$20 billion in the West Kowloon reclamation area and secondly, the person involved was a Member of the Executive Council and subsequently, he also became the Convener of the Executive Council. Did he take all steps to declare his interests and avoid inviting suspicions? I believe the results of the investigation will serve as fairly valuable reference in the discussion on the reporting systems of the entire Government, the Executive Council and the Legislative Council.

President, when releasing the relevant information, the Government has adopted its usual approach of "squeezing toothpaste out of a tube". First, it provided very limited information three weeks ago, then, it provided more information in the House Committee meeting last Friday and finally, late last night, it provided this set of information. However, President, after reading all the documents, I find them inadequate for answering all the questions in my mind, the major reason being that these documents are only the ones that can be provided by the Government but those that can answer important questions are actually not in the hands of the Government. Moreover, some information can be provided only by witnesses invited to attend meetings or mandated to attend them. Moreover, we can determine whether or not their evidence is credible and make a judgment only by looking at how they answer the questions.

Let me give several examples. Today, many friends in the mass media said that the Government had provided the record of the entire voting process. However, I told reporters that the core of the question does not just lie in the

discussions on the shortlisted entries and the process of voting on them in those few days, rather, they also cover many queries voiced in society now. For example, was Mr LEUNG Chun-ying unaware throughout the whole course that his company had joined the participating team of Dr Kenneth YEANG? In the document submitted by this participating team to the Government, the name of DTZ Debenham Tie Leung Limited (DTZ) was listed. So far, President, after reading all the documents, I still have no idea who included this name in the competition document. Sorry, President, but if the Secretary knows, I hope he can tell me because after reading all the documents, I still do not know who did it.

Mr LEUNG Chun-ying said that he had not been aware of this and the Malaysian architect also issued a statement in the *South China Morning Post* saying that he had not filled in the declaration form. In that case, did the other team members of the participating team put it down? There was a company called LWK, so did it put down DTZ's name in the document? This is not mentioned in the statement made by LWK, so if the name was indeed put down by it, then did this company called LWK put it down with or without the consent of DTZ? President, I am not clear about this either.

The third question. A few days after omitting to declare his interests, Mr LEUNG Chun-ying wrote a letter to the then Secretary for the Jury, Mr Eric JOHNSON, saying that he had learnt from his secretary that the names of four employees in his company had appeared in the Competition Document and one of them was even a Director. Mr LEUNG said he had no idea why the names of four employees in his company had appeared in the competition team of Dr Kenneth Yeang from Malaysia, and one of them was even a Director, that is, not an ordinary employee. In that case, why did his name appear in it? After reading all the documents, I still could not find the answer.

What I mean is that when giving their replies or explanations later on, can the government officials concerned say with dead certainty that the Government has already provided all the documents, that the information is already sufficient, so there is no need to conduct any investigation and that all questions have been answered clearly? No matter what, I hope he can at least answer these three questions from me. After reading all the documents, I still could not find the answers. The reason is that it is necessary to obtain some relevant documents from Mr LEUNG Chun-ying's company before these questions can be answered. At the same time, I may have to invite or mandate those four employees of the

DTZ to attend hearings so that we can question them to obtain information. Of course, it will also be necessary to summon people from the LWK.

President, of course, I know that it is actually very difficult to find answers to a lot of questions simply from the information provided by the Home Affairs Bureau on several occasions. Yet, we also know that many political parties or Legislative Council Members will surely cite the ground that the Government has already provided information in arguing against invoking the powers under the P&P Ordinance. If these people really change tack in this way, I hope they can answer the three questions raised by me just now. If the Secretary wants to allay my concerns, I also call on him to enlighten me as to how I can find the answers to the three questions raised by me just now without obtaining additional information and summoning the relevant witnesses.

President, recently, I could see Mr LEUNG Chun-ying coming out to answer the queries about the "WKCD incident" almost every day. Mr LEUNG Chun-ying is very smart, so when answering questions, often, he does not tell lies, only that he does not answer the whole question. I learnt from press reports that when reporters asked him if his company had any interest in the Competition, Mr LEUNG replied in a very clever way, saying that he and his company did not have any pecuniary interest in the Competition. President, he did not lie, but neither did he give a full answer. What reporters asked him was whether or not he had any interest but his answer was that "he had no pecuniary interest". The scope of "interest" is broader than "pecuniary interest", that is, one can have interests in many matters but not direct pecuniary interests. Recently, I have even heard a story about you, President, which also shows that Mr LEUNG is very clever in answering questions. The day before, a reporter asked Mr LEUNG Chun-ying if he had called President Jasper TSANG to raise questions. When Mr LEUNG answered the reporter in public, he said, "I did not call President Jasper TSANG to advise him against standing in the election." President, after listening to this remark, what is your conclusion? Is it he did not call you? Or did he call you but did not talk about standing in the election and talked about other things instead? Therefore, when we listen to other people's replies, we have to listen very carefully and it also explains why I say that Mr LEUNG has all along been evading questions, not telling the whole truth. The reason is that often, he will shift the focus of questions and give only part of rather than all the information.

President, the third point is: I wish to comment on the explanations and justifications given by Mr LEUNG in response to reporters' questions about the WKCD. He said that his company was large and he did not pay a great deal of attention to matters relating to his company, that he was not deeply involved in its daily operation and that the head office of his company was in Central but many of his colleagues worked in Quarry Bay, so how could he know what they were doing? This sounds quite justified, making one think that it is only right that he was not in a position to know. However, on second thoughts, is it true that he was not in a position to know? Or did he only deliberately put himself not in the know?

Why did I ask this question, President? Anyone holding any public office would know that if he wants to continue to do business, it is very important that they avoid inviting suspicions. They must avoid situations which are likely to arouse suspicions. Of course, in a company, a professional body, a law firm, an engineering firm or surveying firm, there are always many directors and business partners, so it is not possible for its person-in-charge to know the work of each business partner, but since Mr LEUNG is such a smart person who became the Chairman of the Asia Pacific Region of DTZ, he would surely know that if he could not monitor what the employees in his organization were doing every day, he had to design a system, so that the employees would know what kind of public offices he was holding. Then, they had to avoid or whenever the Directors or the so-called project managers, who were responsible for planning, undertook a task, at least, they had to notify Mr LEUNG of the name list, so that he would know in advance if he had to avoid inviting suspicions in some cases. President, in fact, this is common sense, and it can be done easily. The DTZ calls a Board meeting every month, so if his Directors had prepared a list for the monthly meeting, stating, for example, that they were involved in a project of the City University of Hong Kong, in the WKCD project or other projects, so that Mr LEUNG could take a look at it in the Board meetings, he would have known in which projects they could not get involved and had to declare interests, or in which ones he should not play any part, so as to avoid inviting suspicions.

I find this very strange because last week, when I listened to Mr LEUNG answering reporters' questions, I heard him say that from this incident, he had learnt that when serving as an adjudicator of any competition, he should have sent an e-mail to notify his Directors or employees. I thought, "Is this convincing?" He had been a Member of the Executive Council ever since 1997 and

subsequently, he became the Convener of the Executive Council, so why did he realize that he could have used such a simple and easy method to solve this problem of being involved in a conflict of interests only now, after a full 15 years? Since Mr LEUNG Chun-ying is so smart, why has he never done such a thing in the past 15 years? Is the system suggested by me just now very complicated? In fact, it is not. The Board can have a discussion, or whenever there is any job or service as an adjudicator of any competition or the chairman or member of any statutory body, he can send notices to his partners, Directors and project managers, and that would do. President, is that very complicated? Is sending an e-mail very difficult? Is my idea a particularly bright one? I think this idea from LEE Wing-tat is not particularly bright and since Mr LEUNG is so smart, why has he never done this in the past 10-odd years?

Therefore, President, actually, I feel very doubtful as to why he did not even use such a simple method. Would it be very difficult for the company to get any business and avoid a conflict of interests after adopting it? Did someone think that it was preferable not to do such a thing, so that the Directors, partners and subordinates can continue to get business, whereas he can tell people that he does not know about such things? He told reporters he was unaware of these matters, only because he did not want to know and he did not want to establish a system, and that is why he did not know.

President, there was another comment that I found very strange. He told reporters in reply, "I, LEUNG Chun-ying, am an Executive Director of and the Chairman of the Asia Pacific Region of DTZ. The Government and the public all know about this, so what is the reason for not declaring my interests? There is no incentive for me to refrain from declaring my interests. Moreover, all people know that I did not declare my interests. No matter if I declare my interests or not, I cannot hide anything from them." At hearing this, I felt a chill down my spine, President. Why? Our requirement is that the more powerful someone is, the clearer the declarations made by him must be. Sometimes, the information declared by them has to be even more than what is required of them. The reason is that since he has extensive powers, he cannot tell people that since everybody knows LEUNG Chun-ying, how can people not know simply because he did not make a declaration? I wonder if Mr LEUNG wants to tell Legislative Council Members what to do: Many people know that Ms Emily LAU's rating puts her among the 10 most popular Members. This is also the case for Ms Audrey EU. According to this principle and rationale, why is it necessary for

Members like Ms Audrey EU, Mr Alan LEONG, Mr Albert HO and Ms Emily LAU to make declarations? Don't we all know that their ratings have made them the 10 most popular Members? Don't we know that they are Legislative Council Members? At hearing his remark, I felt a chill down my spine. Is this his excuse and reason for not even writing down the name of his own company when he made declarations?

President, I have only very little speaking time left, but I think that the various questions raised by me just now are significant rather than minor ones, and answers cannot be found from the information provided by the Secretary. The truth of this incident will come out and the public will know about this only if witnesses are summoned to give evidence.

Thank you, President.

MS LI FUNG-YING (in Cantonese): President, before I voice my views on this resolution, first of all, I have to make a declaration. I am a member of the Election Committee that selects the Chief Executive but I did not nominate anyone to stand in this Chief Executive Election. Apart from me, there are 12 members of the Election Committee coming from the Federation of Hong Kong and Kowloon Labour Unions (HKFLU), to which I belong, and five of them have nominated Mr LEUNG Chun-ying. This is because the HKFLU allows the representatives of its member trade unions to decide freely whether or not to make nominations and whom to nominate as candidates.

In the past three weeks, a series of incidents relating to the Chief Executive and the Chief Executive Election have happened in Hong Kong. Like a depth charge, they have ripped the entire society apart. The mass media made a series of allegations against the centre of power in society, revealing a lot of intimate details. Not only are they related to the interests of the parties concerned, they also involve the exercise of public power. Almost overnight, it looks as though Hong Kong were no longer the place that we are familiar with and proud of.

One example is the resolution moved in this Council today to invoke the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to investigate the involvement of one of the candidates standing in the Chief

Executive Election, Mr LEUNG Chun-ying, in the West Kowloon Reclamation Concept Plan Competition, and related issues. Put more simply, this is a matter of a conflict of interests.

Last week, when the House Committee of this Council discussed the question of whether or not the powers under the P&P Ordinance should be invoked to conduct a relevant investigation, I did not hear many voices of opposition. This situation is in sharp contrast to those of the past, in which Members' proposals to invoke the P&P Ordinance would invariably be hotly debated in the legislature. I have never seen such a situation in my many years of service in the legislature, and this Legislative Council did not look like the one that I am familiar with.

President, the fourth Chief Executive Election is now in full swing. Should the Legislative Council invoke the P&P Ordinance during an election to investigate one of the candidates? This is a question that must be answered in the discussion today. The polling day of the Chief Executive Election is 25 March, less than a month from today. In principle, I do not agree with invoking the P&P Ordinance to establish a select committee to investigate any candidate during the time leading up to the Chief Executive Election, such that public power can be prevented from interfering with the election and the fairness of the election not be affected. The latter is something to which we attach great importance and strive to uphold. I believe that if a precedent is set, it will lead to countless adverse consequences. Whether or not we support a certain candidate is one thing, but to objectively influence the fairness of an election with the exercise of public power is quite another.

In December 2008, this Council passed a resolution to invoke the P&P Ordinance to authorize the establishment of the Select Committee to look into matters relating to the employment taken up by Mr LEUNG Chin-man after leaving office. I was elected the Chairman of the Select Committee and I still remember clearly the operation of the Select Committee, in particular, the attitude of various members of the Select Committee towards observing strict neutrality. I remember that one of the witnesses summoned was a member of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Mr LAU Kong-wah of the DAB was also a member of the Select Committee. Apart from declaring his interests, he also withdrew from the relevant hearings attended by that witness as well as from the relevant discussions on the preparation of the

report of the Select Committee, so as to ensure that impartiality was maintained and also seen to be maintained in the operation of the Select Committee.

Now, a total of three persons have become candidates in the fourth Chief Executive Election and many Members of this Council are their nominees. If this Council decides to establish a select committee to conduct an investigation into a certain candidate, may I know how it can be ensured that the operation of the select committee will be fair and objective and that the public will also consider it to be fair and objective?

Here, I must strongly condemn the Government as it has to be held responsible for the decline and collapse of the electoral culture in Hong Kong.

In the final analysis, the reason for discussing the question of whether or not to invoke the P&P Ordinance to investigate the performance of a certain Chief Executive candidate in the adjudication process of the West Kowloon Reclamation Concept Plan Competition is that the Government did not take into account the sensitivity of this matter in times of an election, then cited the ground of responding to the enquiries of the mass media to selectively release information dating back to a decade ago. This move resulted in speculations among the public about a cover-up in the declaration of interests by Mr LEUNG Chun-ying and problems with his integrity. Subsequently, the Secretary for Constitutional and Mainland Affairs still defended the move, saying that the SAR Government would not interfere with any election and would uphold the impartiality and credibility of elections strictly. He also stressed that the information released by the Government Information Service was founded on facts.

President, I cannot accept the explanation of the Secretary for Constitutional and Mainland Affairs. Apart from the fact that the information released by the Government is not the whole truth, more importantly, the Government also chose an extremely sensitive time and took the initiative to disclose a bygone incident that is unfavourable to a certain Chief Executive candidate. This is just like the "unauthorized cellar" incident involving Mr Henry TANG. Had the people in the know disclosed Mr Henry TANG's act of building an unauthorized structure when the Government was clamping down on such structures, this would have been one thing, but to disclose it many months

later, when various parties are fighting at close quarters in the Chief Executive Election, is a different matter altogether.

It is only now that the SAR Government made public the incident of an alleged conflict of interests involving Mr LEUNG Chun-ying that happened a decade ago. The objective effect of this move is no different from that of disclosing the "unauthorized cellar" incident by people in the know on Mr Henry TANG only at the final stage of nomination for participation in the election. No matter what explanations the Government offers, they cannot change the fact that the electoral situation has been influenced.

President, it is most regrettable that the resolution today represents a further effort to exert objective influence on the electoral situation.

It was only last week that this Council debated the motion "Reiterating Hong Kong's core values". At that time, many Members gave high-sounding speeches here, saying that they had to feel the pulse of Hong Kong's core values, but actions speak louder than words. Today's resolution, on a more serious note, represents a challenge to our resolve to defend Hong Kong's core values. Do we agree with interference in the election by the Legislative Council using its public power? This will cast the shadow of narrow partisanship on the "imperial sword" of the P&P Ordinance, thus making the already deplorable election degenerate into an even sorrier state. The key to the door is in our hands.

We are now in the final run-up to the Chief Executive Election. This is definitely not the appropriate time and place for this Council to talk about an investigation into any candidate. The Chief Executive Election will be concluded on 25 March and even if it is necessary to have a re-election, the latest date for it will be 6 May. I dare assert that if this Council decides to establish a select committee to investigate the "WKCD incident", it would not be able to complete a responsible investigation and reach a conclusion before the polling day.

I understand the concerns of the public about this incident, but in order to uphold the legitimacy in exercising the public power of the Legislative Council, it is absolutely worthwhile for us to wait for two more months. After the conclusion of the Chief Executive Election, we can still discuss today's resolution again.

President, lastly, let me quote the maxim of a great French Enlightenment thinker, VOLTAIRE, who said, "I disapprove of what you say, but I will defend to the death your right to say it.". Similarly, I do not necessarily think that a certain Chief Executive candidate is the right person for the office, but I will do my utmost to defend the fairness and impartiality of the election and accept the outcome of such an election.

Now, it is true that the system for the election of the Chief Executive leaves much to be desired, but this definitely is not a justification for us to trample on an unsatisfactory system further, thus making it even more unsatisfactory.

President, I so submit.

MR WONG YUK-MAN (in Cantonese): President, the candidate for the office of the Chief Executive, Mr LEUNG Chun-ying, was exposed to have omitted to declare his interests relating to DTZ in the West Kowloon Reclamation Concept Plan Competition (Competition). Moreover, during the adjudication of the entries, he voted for the entry from the company with which he was associated in five of the six rounds of voting, so there is great suspicion of a "deferred transfer of interests". In this incident, major public interest is at stake, so the doubts must be dispelled and responsibility must be ascertained. Therefore, the People Power supports invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to investigate this incident.

A decade has passed since the incident but the Government has selectively released information unfavourable to Mr LEUNG Chun-ying. Back then, it harboured Mr LEUNG Chun-ying but now, it is biased in favour of the TANG camp. All along, the P&P Ordinance has been esteemed as the "imperial sword" of the Legislative Council but little has it occurred to us that it would become a tool in the internal struggles within the pro-establishment camp. The loathsome nature of politics and the depravity of politicians are really contemptible.

Absolute power corrupts absolutely. Donald TSANG used his power for private gains and his greed is insatiable. His corruption extended to the domains of the sea, land and air but on his own behaviour, he only said, "All along, I have

abided by the rules but this still falls short of the public's expectation", so he is downright shameless.

As regards the establishment of an independent commission to review the mechanism for the declaration of interests, this is only an attempt to divert attention. In fact, these things did not happen only recently. We cannot help but wonder why they were exposed only now.

Of course, what must also be mentioned is the scandal relating to the other Chief Executive candidate, Henry TANG. Henry TANG wants to contest the office of the Chief Executive, yet he still harboured the hope of escaping detection by carrying out large-scale unauthorized building works underneath his residence at 7 York Road, Kowloon Tong. After being exposed, he offered all sorts of lame excuses on several occasions in an attempt to muddle through. By the time a mountain of evidence had built up against him, his reputation was already in tatters. It turns out that Hong Kong has already become so rotten.

A small-circle election caused an unprecedented rupture within the pro-establishment camp and the internecine conflicts are just as fierce as those of triad societies. Had people in the pro-establishment camp not exposed the skeletons in one another's cupboards and all sorts of shady acts, the general public would still have been kept in the dark.

How possibly can a small-circle election command any credibility? Ultimately, it was our venerable President who is the most astute. When you announced your decision not to run in the election, you said to this effect, "The legitimacy of the Chief Executive returned under this mechanism has been seriously eroded. I believe this is an issue that we must face up to, and this is also an issue that the Central Government must face up to. I also hope that the Central Government will understand that what happened lately has made the demand of Hong Kong public on electing the Chief Executive by universal suffrage even stronger.". As the saying goes, "Performing in a show is not as good as watching one and when taking office, one should already think about stepping down". President, in deciding not to go into the muddied pool of politics, you are really very astute.

How deplorable the small-circle election is. First, ultimately, the outcome of the election will still be manipulated by Beijing and the power still rests firmly in its hands. Given Beijing's ability, eventually, it will manage to co-ordinate

with consortia that are fairly influential. To the candidates, they certainly have to lobby for the votes of Election Committee (EC) members but more importantly, they have to secure the terminal blessing of Beijing. President, the influence of the DAB in this regard is the greatest. However, the DAB does not have any say, and it has to act on the dictates of Beijing in all matters.

Second, rather than a contest of political platforms and beliefs, this election can be described as a naked power struggle between the camp of local communists headed by LEUNG Chun-ying and the business camp headed by Henry TANG.

Third, the so-called nomination process is just a kind of open ballot that can be used to settle old scores later. Throughout the world, there is no election like the Chief Executive Election in Hong Kong, with a constituency consisting only of 1 200 EC members and a nomination threshold of 150. If, for example, you have secured 400 nominations, you have to make the list public. LEUNG Chun-ying secured almost 300 nominations, Henry TANG secured almost 400, the pro-democracy camp secured almost 200, so the total is about 900 and the relevant lists have all been published. Buddy, this is polling by open ballot.

Therefore, to friends of the DAB or Hong Kong Federation of Trade Unions (FTU) who have not made any nomination, do not think that you can vote by secret ballot. How can there be secret ballot? One can tell which candidate you have voted for by looking at which candidate has won. Buddy, how can this be called secret ballot? This is the most naked and absurd so-called election in the world.

Fourth, precisely because the prerequisite of being elected as the Chief Executive does not lie in the approval and support of the general public but in avoiding arousing the opposition of mainstream society, and given this rule of the game, how possibly can this so-called Chief Executive Election not degenerate into the farce of muckraking?

Why don't Hong Kong people ask themselves why they do not have the right of nomination? Why can we not nominate candidates by a joint signature of electors, as is the case in Taiwan? Hong Kong people, we ought to be ashamed of ourselves.

In the past, when democracy in Taiwan was experiencing its birth pains, it was the subject of ridicule for conservatives on the Mainland and in Hong Kong, but little did they realize that this was only an inevitable stage in the maturation of democracy. In contrast, it is the present small-circle election of the Chief Executive and a series of related scandals that are truly the ultimate farce. They also attest to the dominance of one country over two systems and the utter failure of progressive democracy and expose the deep-rooted collusion between the Government and business.

In the late 1980s, the Martial Law in Taiwan, the Republic of China, was abolished and in the mid-1990s, full direct elections were introduced. At the same time, the democratic movement in Hong Kong was budding but because of the totalitarian nature of the Communist Party of China (CPC) and the passivity and timidity of the mainstream pro-democracy camp, as well as the relinquishment of principles by the mainstream media and the use of public institutions for private purposes, it was contained on all fronts.

Boycott the small-circle election and end the sham election. In 2010, Mr Albert HO of the Democratic Party betrayed voters and the supporters of the democratic movement by having private negotiations with the CPC and accepting the pseudo constitutional reform proposal, thus ruining the future of the democratic movement in Hong Kong. Subsequently, he took part in the small-circle election, making the hollow claim that he wanted to throw into relief its absurdity, styling himself as a breath of fresh air and criticizing the faults of Henry TANG and LEUNG Chun-ying, so this is really revolting. Mr Albert HO is hoisting the banner of "declaring war on hegemony", but may I ask him if he has defined the issues? How is he going to declare war? What actual benefits will this bring to the advancement of democracy? More often, Mr Albert HO is only playing the role of a current affairs commentator.

If we browse the electioneering website of Mr Albert HO, it would not be difficult to appreciate his flair in self-glorification, and he is even cherishing the fond hope of picking up the good bargain of becoming the Chief Executive, so this is really laughable

PRESIDENT (in Cantonese): Mr WONG, has your speech not deviated from the question under debate?

MR WONG YUK-MAN (in Cantonese): President, I am talking about invoking the P&P Ordinance to investigate the incident of the Competition and the crux of this matter lies in the small-circle election. Therefore, I will continue to talk about the absurdity of the small-circle election, then go on to tackle the question.

President, please excuse me for continuing to talk about another matter to throw into relief the question.

Mr Albert HO's popularity rating has all along been trailing behind that of the others. It was only after Henry TANG was exposed to be involved in a series of scandals that his popularity dropped to a level comparable with Mr Albert HO's. Why is the popularity rating of Mr Albert HO so low? The only explanation is that the mainstream supporters of the pro-democracy camp do not approve of his participation in this small-circle election at all, only that the Democratic Party has not grown tired of this game.

By taking part in the small-circle election, what can be achieved at the most is to give Henry TANG or LEUNG Chun-ying setbacks. It is only by boycotting the small-circle election that opposition can be posed to the system *per se*. This is such a simple rationale, but why do people in the so-called pro-democracy camp not understand? In order to get the minimal benefit of continued media exposure, they are willing to become the flowers in the toilet of loathsome politics and continue to obscure Hong Kong people's goal of campaigning for democracy. The Democratic Party is very despicable. To take part in the small-circle election only highlights the absurdity of the Democratic Party.

At present, the electoral contest for the office of the Chief Executive has already become most ugly. What the Democratic Party should do the most is to boycott the small-circle election and withdraw from it immediately. Otherwise, EC members from the pro-democracy camp should all choose to withdraw from the election *en masse* without voting for Mr Albert HO, so as to boycott the small-circle election unequivocally.

On 15 February, members of the Civic Party accompanied Mr Albert HO, the Chief Executive candidate from the pro-democracy camp, in submitting the application to stand in the election. The party leader, Mr Alan LEONG, said he fully understood the heavy responsibilities shouldered by Mr Albert HO at present, as TANG and LEUNG had turned the Chief Executive Election into a

mud wrestle, so he hoped Mr Albert HO could emerge unsullied from the filth, creating a brave new world for Hong Kong. At hearing this, I could not help but feel an involuntary shudder. The year before, after the Democratic Party had entered the secret cellar of the Liaison Office for negotiations, it had already jumped into a cesspit, so I call on the gentlemen in the Civic Party not to misjudge the situation.

Unless we burst out, we shall perish in silence. The People Power believes that the constitution in Hong Kong needs immediate and fundamental reform and the introduction of universal suffrage. It can no longer follow the original timetable. We advocate that the small-circle election be terminated immediately. Those in the SAR Government should resign collectively and the Legislative Council should be dissolved at the same time. A caretaker government should be established to maintain daily administrative operations. In half a year to a year's time, a constitutional conference led by representatives of the public and constitutional experts should be established to amend the Basic Law, so as to confer the greatest degree of autonomy on Hong Kong people. After the task of constitutional amendment is completed, elections by universal suffrage of the Chief Executive without screening of nominations and the Legislative Council by "one person, one vote" should be held. At the same time, the allegations of power abuse, corruption and decadence against Donald TSANG, LEUNG Chun-ying and Henry TANG should be investigated thoroughly and equitably.

The Hong Kong public should no longer remain silent, be resigned to their fate or stand on the sideline. The People Power will mobilize the masses to wage a struggle against this absurd and unjust small-circle election. It is only by amassing a sufficient number of people to take to the streets and turning our demands into reality through actions that the fate of "this city is dying" can be turned around.

All along, the People Power has opposed small-circle elections and insisted on the election of the Chief Executive by "one person, one vote". In the farce of the Chief Executive Election that has unfolded thus far, the behaviour of the candidates has been a disgrace, so this self-deceptive small-circle election should end immediately. At the same time, the SAR Government should hold an

election of the Chief Executive by universal suffrage right away, so as to return the right of universal suffrage to Hong Kong people.

Recently, the dictator in Syria ordered a massacre of the people and news reporters, and two war correspondents were killed. Recently, I watched a feature report of the CNN. The host, in paying tribute to the two reporters killed, asked, "Is truth always the first casualty of war crime?" Today, this Chief Executive Election is a loathsome war, a kind of war crime and to the people, there is not the slightest element of universal suffrage. The candidates are giving this election great fanfare, behaving like scoundrels on the rampage and clowns performing shows, sullyng our eyes and insulting our intelligence. This is a war crime.

In the crime of the vying for the office of Chief Executive, truth is the first to fall victim. In order to defend the last vestige of dignity of the Legislative Council and support the function of oversight performed by the people's representatives in this representative assembly, who are responsible for exposing wrongdoings, muckraking and preventing corruption, I support the motion. I so submit.

MR RONNY TONG (in Cantonese): President, before I entered the Chamber, I was still very indecisive, wondering if I had to speak or if I should speak. However, on entering the Chamber just now and hearing the latter part of Ms LI Fung-ying's speech — sorry, I did not hear the first half of her speech because I was having a meeting upstairs — I felt that some issues must be addressed properly.

All along, the speeches given by Ms LI Fung-ying in this Chamber have been quite balanced and to the point. However, I cannot agree readily with the comments made by her just now. She said that if we invoked the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to look into the matters relating to one of the Chief Executive candidates, this might give people a wrong impression of us being partial to another candidate.

President, such a claim depends on from which Chief Executive candidate's point of view she looks at this matter because the views of both parties are both justified. President, all along, in public functions and through the press, Mr

LEUNG Chun-ying has been asking the Government to produce all the documents and he even said that if more information or documents could be made public, it may be proven that there is no problem with his integrity and he may even be vindicated.

I think that if invoking the P&P Ordinance can really remove the mistaken thinking about the integrity of a Chief Executive candidate, certainly, we should do so. However, from this point of view, some people may also think that if the P&P Ordinance were not invoked to investigate Mr LEUNG Chun-ying, this means that we were being partial and they might even think that the FTU or the DAB wanted to let him get away with it. So isn't this unfair to Mr Henry TANG?

No matter if we invoke the P&P Ordinance or not, we would still induce the impression of being partial to one party. Of course, it depends on on which side we are standing. Therefore, I think that in the final analysis, this factor is completely neutral, that is, it is not significant enough to influence our decision on exercising the powers. Rather, we have to adopt a fundamental principle as the foremost consideration in deciding whether or not to exercise our powers to discharge our responsibilities.

President, what is this fundamental principle? The Chief Executive Election this time around may inspire even less confidence than those of the past. Of course, on Yuk-man's comment just now that this Chief Executive Election is not an election at all, I agree with it in some measure. However, be it small-circle election, big-circle election or even medium-circle election, there is always an electoral process. One important element in this process is to let Hong Kong people — although they do not have the right to vote — understand clearly the integrity, probity and ability of the Chief Executive candidates in various ways.

President, the incidents that have happened in the past fortnight and the news reports about the incumbent Chief Executive have convinced me that if the SAR Government is not in good hands and someone who is not so suitable is allowed to become the Chief Executive, this would cause us great miseries.

The mistakes made by the Chief Executive have completely disgraced him and it can be said he only have himself to blame. However, he has also made all

of us feel ashamed of ourselves and turned Hong Kong into a laughing stock in the international community. If we have a means to learn clearly about the true face of a Chief Executive candidate but does not make use of it and refuse to find out the truth for the Hong Kong public, so as to avoid all such instances at an early stage, not only would we fail to meet our own expectations, we would also fail to meet the expectations of Hong Kong people and the next generation.

Therefore, the prime consideration is: Since we have the powers to ascertain the black and white of this matter, we should exercise them, rather than fearing that we may be seen as being partial to one of the parties, and cite this as an excuse for not exercising the powers.

President, the second important consideration is: Since there are still doubts surrounding the facts and the truth, I find it necessary to clear them. Although clarifying the doubts may not necessarily be unfavourable to Mr LEUNG Chun-ying, of course, it is also possible that doing so would be unfavourable to him. For example, in the documents that have been made public, there is a declaration form submitted by Mr LEUNG Chun-ying and we find one point therein most puzzling, that is, in the declaration form, he declared that he was not a director or member of any participating company and signed to confirm this. However, this is obviously at variance with the facts.

Why did such a situation arise? Was it an inadvertent mistake, as he claimed? The declaration form is a solemn document and no matter if it has legal effect or not, and whether it would lead to legal consequences or not, it is still a solemn document. If he can make an inadvertent mistake even in handling such a solemn document, in the future, when he deals with a host of solemn matters of the SAR, would the same kind of inadvertent mistakes and even instances of dishonesty happen? Members need feel concerned about this and investigate this clearly.

President, we can see that during the adjudication process, Mr LEUNG Chun-ying indeed showed particular preference for the participant that was allegedly associated with him in the several rounds of voting. Mr LEUNG Chun-ying said that if all the information, minutes and discussions on voting were made public, Members would know the voting preferences of all 10 jurors who had taken part in the voting and find that he had not been partial.

President, this being so, why do we not invoke the P&P Ordinance to compel the Government to produce all those documents, so as to give Mr LEUNG Chun-ying a chance to prove his innocence? The reason for doing so is that at present, the *prima facie* evidence is really unfavourable to him and indicates that he may have been partial.

Some people also pointed out that Mr LEUNG Chun-ying could not possibly have been partial because he could not tell which entry among the more than 100 entries belonged to whom. President, many ordinary members of the public think if what he said is true, of course, this claim would hold water. However, is it really difficult for him to be partial? The participant who was associated with him could actually tell him in advance how his entry looked like, and this is possible. If Members believe in Mr LEUNG Chun-ying, they can choose to do so and it would not be necessary to conduct an investigation. However, if Members have doubts, I believe the best way is to put all information under broad daylight and let all Hong Kong people make a judgment.

President, I appreciate the difficulties of the Government. Since the Government is bound by the contracts it entered into with the participants, it may not be able to make public all documents. However, if the Legislative Council invokes the P&P Ordinance, the SAR Government will have to produce all the documents and at the same time, it can also be exempt from such legal obligations, so this is also desirable for the Government. Therefore, I do not understand why the Government is willing to release partial information but dares not or is unwilling to provide full information for all Hong Kong people to judge the truth together.

President, based on the foregoing two important reasons, I think that as Legislative Council Members, representatives of public opinion and members of this representative assembly, we should exercise our due powers to find out the truth for Hong Kong people and perhaps even vindicate Mr LEUNG Chun-ying.

President, all kinds of excuses, for example, that Members have read a number of documents or do not want to be partial to a certain party, or various explanations will ultimately be scotched automatically because we can see through the underlying thinking of various excuses or explanations easily.

President, here, I can only call on Honourable colleagues, including those of the DAB and FTU, to support this motion because without their support, this motion cannot be passed. If they do not support this motion, I think many Hong Kong people would consider them to be partial or that, for some political reasons, they are unwilling to let Hong Kong people know the truth. In that case, this would be a very sad thing for Hong Kong because the incumbent Chief Executive is already like that. If the legislature is also like that, what hope can Hong Kong people hold?

Thank you, President.

MR LAU KONG-WAH (in Cantonese): President, Mr Ronny TONG said earlier that he had not listened to Ms LI Fung-ying's speech in full. I feel somewhat sorry for him. If he could manage to listen to her full speech, I think he should sing praises of her, as it is not easy for her to say "no" to this motion amid such a strong public resentment and bad political ambience.

Mr Ronny TONG mentioned a lot of contemplations and political tactics just now. In handling this incident, I At the caucus meeting of the DAB this morning, I also expressed the idea that it would be extremely complicated for us to handle this incident. We should put aside not only our political contemplations, gains and losses, but also certain tactics of political struggle, with a view to making analysis and judgment in an objective and cogent manner. As for the question of whether the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) should be invoked, the DAB has along adhered to the principle of calling a spade a spade, making our judgment on the basis of facts. And there is no exception for this incident. I put forth this point at the meeting of the House Committee held five days ago. At the same time, we also requested the Government to provide more information, in particular those crucial and critical parts. But the Government was so slow that it did not submit the requested information until last night. I had glanced through it and gave a briefing and analysis on it to our caucus this morning.

President, there are in fact only two core questions regarding the whole incident. First of all, was there any omission? Second, did Mr LEUNG practise favouritism in the "WKCD incident" 10 years ago? As for the first question about omission, from the objective point of view, he did not declare his

interest at all. It was an objective fact. Of course, he had explained publicly that he did not know that DTZ was involved in the Competition, nor did he know the name of that participant in the process of adjudication. This was also a fact. But some commented that as the name of the company to which Mr LEUNG belonged was included in the application of Kenneth YEANG's team, there should be certain "collaboration" among LEUNG Chun-ying, DTZ and Kenneth YEANG's group. At least, it was the case superficially. However, from another angle, if these three parties had really engaged in "collaboration" after thorough and detailed deliberations, Kenneth YEANG's group should not have included the name of DTZ in its application. Rather, he could simply cover it up and LEUNG Chun-ying could then vote for his group. But why was the name included in the application? For this reason, we should consider the two sides of a coin.

Regarding the second question about favouritism, as stated in Annex IV to the paper for the House Committee meeting disclosed by the Government for the first time, Mr LEUNG Chun-ying cast his vote for the entry submitted by Kenneth YEANG's group in several rounds of voting. On the surface, he only showed preference for this entry and favouritism was obviously involved. At that time, I queried the Government how we could analyse the voting inclination of other jurors in case only that of Mr LEUNG Chun-ying was provided. The Secretary was also present at that time. This explained why I said that all adjudication results should be provided even if symbols were to be used. As expected, after reviewing the votes cast by the 10 jurors — some Members might not have had the time to glance through it and so, I have to give a detailed description here — we noted that Round 1 to Round 3 of the voting was to select the winning team. Among the 10 jurors, seven including LEUNG Chun-ying only voted for their favourite entries. Seven out of the 10 jurors had such a voting pattern. Mr LEUNG Chun-ying's voting pattern was not uncommon. Rather, it was a most normal practice.

Round 4 and Round 5 of the voting was to select the second prize winner. Among the 10 jurors, five had their favourite entries in mind and voted for them in these two rounds of voting. Such practice was indeed most normal. On the contrary, it would be strange if their favourite entries were different in each round of voting. I had reviewed all the information. As we can see from Round 4 and Round 5, LEUNG Chun-ying was not among those five members. Therefore, I think there is nothing unusual in the whole process of adjudication.

I have joined a number of investigation committees before. Such information will be reviewed with due care and an analysis can be easily made. Therefore, in my opinion, if LEUNG Chun-ying had the so-called special preference and favouritism, is there any favouritism on the part of those seven jurors as well? In terms of logic, I think this argument is not substantiated.

Under such circumstances, two core questions have become clearer. But is it necessary to seek further information? Some information may be supplementary in nature, while some may require imagination in interpretation. There is no problem at all. I think we can continue to follow up this incident and request further information in the relevant panel. As suggested by some Members, the incident relating to Henry TANG's unauthorized building works has been referred to the Panel on Development for follow-up. Similarly, this incident can be referred to the Panel on Home Affairs for follow-up. I think in doing so, there will not be any question of double standards, as consistent standards are adopted in this Council.

In fact, this incident happened 10 years ago. We are now in a sensitive period as the Chief Executive Election is in progress. Many Members have spoken just now and Ms LI Fung-ying has also mentioned this point. Obviously, this incident can be used as a political tactic, or even an election strategy. But the DAB does not wish to be involved in these political struggles. Regrettably, however, I think many Members who support Mr Henry TANG or Mr Albert HO will vote for the proposed resolution under the P&P Ordinance, and the resolution may eventually be passed today. However, it is not the case that we have some other considerations because of the likely passage of the proposed resolution. We should act in a pragmatic manner and cast our vote based on the analysis made. I do understand the voting inclination of some Members, in particular in such an atmosphere with the approaching of the election. This is one of the reasons why I said earlier that Ms LI Fung-ying's speech should command our praises.

President, I have never stood in any Chief Executive Election before. But I have taken part in the Legislative Council Election for 20 years. The Chief Executive Election, with such a high profile, is in troubled times now. Some Members even describe it as a dirty election with hideous tactics, which is not what we wish to see. However, from my experience gained in elections over the past 20 years, I think attacks and smears always exist in elections, and we should

therefore learn lessons from them. First of all, those who are engaged in politics should act with extreme caution at all times. Second, during elections, there are always candidates who believe that they can secure more votes by smearing others. But from my own experience, I can tell you that this may not necessarily be the case. Third, I think members of the public may not like malicious attacks, nor elections of poor quality. Therefore, I urge The nomination period ends today. I wonder if Regina IP has She has not submitted an application. I only wish that the three candidates can have a clean election environment, under which they can return to the basics and address the public's aspirations. These words come from my heart.

As for invocation of the P&P Ordinance, we think it should be invoked as necessary. During this four-year term of the Legislative Council, I have taken part in the work of two investigation committees. Both of them were set up in accordance with the P&P Ordinance. Therefore, I will not resist it. However, I think it should not be invoked unless there is such a need or it is necessary to do so at this stage. We are all public officers, and we have powers. We should be cautious in exercising such powers, in particular those special ones. This is our mindset.

Given that Members present here are all public officers, there is no difference between those working in the executive and us. Also, the public's aspirations and perceptions towards them and us are the same. While criticizing or commenting on the possible conflict of interests involving some public officers working in the executive, have we, being Members of the Legislative Council and public officers, considered such problem on our part as well? While criticizing or commenting that someone working in the executive are always not cautious enough, should we, being Members of the Legislative Council and public officers, be cautious in exercising this power?

Thank you, President.

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

MR LEUNG YIU-CHUNG (in Cantonese): President, Mr LAU Kong-wah said earlier that Members must carefully weigh the possibility of conflict of interests

when invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance).

I wish to tell Mr LAU Kong-wah that I am neither a member of LEUNG Chun-ying's camp nor one of Mr Henry TANG's, not to mention Mr Albert HO's. I have not nominated any candidate. I can also openly say — in fact, I said this already in the past — that I will not participate in the polling of this small-circle election. Therefore, on that note, there is absolutely no conflict of interests.

However, I still support today's motion in the hope that, by invoking the P&P Ordinance, an investigation can be conducted into LEUNG Chun-ying's involvement — we cannot assert any — in an incident of conflict of interests. What are the reasons? President, most importantly, although I strongly oppose this small-circle election, and I boycott this electoral system by adopting an attitude of not making any nomination and not casting any vote, it is still my belief that since this small-circle election exists, we cannot act like ostriches. As I said once before, we should not act like ostriches to deny its existence. Meanwhile, its existence and consequences will affect the lives of the 7 million Hong Kong people being ruled in the next five years. Therefore, we cannot ignore this incident. We cannot ignore this fact. Although I oppose, protest against and boycott the small-circle election, I still yearn for a relatively fair, just and open electoral system, because its existence has such a significant bearing on us that the operation of society in future and everyone's life will also be affected.

Many Members, including Mr LAU Kong-wah, said earlier that this attempt to invoke the P&P Ordinance may be a tactic to deal a blow to the other camp. However, I am meaning to say that this investigation is not an act to deal a blow to anybody, nor intended to be one, but aimed at affirming the innocence of the person in question, provided that he is innocent. This is the most important point. We should not look at things through tinted glasses and expect that the outcome must have a negative impact on the person concerned. The outcome may be positive instead. Why should we perceive the issue in a negative light? From the positive perspective, it is a chance to prove his innocence. I believe that the person concerned is also willing to do so, because if he is aggrieved, he would also wish for a channel to prove his innocence. Otherwise, he would have no way to redress his grievances, which is also unfair and unjust to him.

Therefore, by invoking the P&P Ordinance, we mean to provide a platform for any aggrieved party to have an opportunity to speak and explain himself. This is our purpose. We should not put on tinted glasses and look at this approach as aimed at exposing others' personal secrets, confidences and "black materials". We should not see things with such an attitude.

Moreover, we all know that the Legislative Council has on a number of occasions invoked the P&P Ordinance to deal with various incidents. What is the purpose then? The purpose is to uncover the truth. This is the most important point. I do not always participate in select committees. I participated in one many years ago, shortly after the reunification, in connection with an incident related to imported workers working at the airport. We wished to look into the lives of imported workers and the exploitation they suffered. At that time, many imported workers complained to us, but the employers denied those complaints. With a wish for clarification and understanding of the incident, we set up a select committee to investigate this case in order to understand the very truth and distinguish the party that was telling the truth from the one that was lying.

Hence, if we only look at things through tinted glasses, thinking that such an investigation will definitely deal a blow to others, this very thought is a bias. Such an argument is neither reasonable nor fair. In the past, such a phenomenon has never occurred in any incident, because we could all participate to present the facts of an incident without being one-sided, regardless of being on the pro or con side, unless the incident is one-sided itself. One-sidedness would not occur otherwise.

Moreover, in the course of our investigation, more often than not the meetings will be open to members of the public so that they can have a direct and clear understanding of the whole case, so I believe that such an approach should be viewed from a positive rather than a negative perspective. Furthermore, we believe that mutual respect is essential. If we do not respect each other, and both sides hold biased views, then it makes no sense to talk about anything.

Yet, the thrust of the issue is that, as many Members may say this time, the situation has worsened to such a state because the conflict of interests in the election brings about the exposure of "black materials" and mutual attacks, which upset everybody. Ms LI Fung-ying said that the previous attitude adopted

towards dealing with issues related to the invocation of the P&P Ordinance was different from the present. This time everybody seems to be caught in a whirlpool. However, I do not think that the issue should be viewed this way. As some Members said earlier, I think that the so-called exposure of "black materials" does not occur only in a small-circle election. Even if there is universal suffrage, who dare say it will not occur? During the direct election for the geographical constituencies of the Legislative Council, there were also exposures of "black materials". The only difference lies in the depth and intensity. Do you think there was not any? The same would happen, so I find it pointless to bring up this issue for discussion against all sensibilities.

It is unquestionable that the "WKCD incident" occurred 10 years ago, but had it not for the current election, nor the exposure of "black materials", today's situation would not have arisen, and we may not have been able to invoke the P&P Ordinance to conduct an investigation. This point is correct.

Anyway, things have happened. Instead of closing our eyes to ignore their existence, we have to face them. Therefore, we should look at the issue from a positive rather than negative perspective. We should also do so with a mentality of seeking the truth. No matter right or wrong, a conclusion can be drawn, hopefully to uncover the truth. These are the attitudes and principles on which I insist.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): As Members are all aware, five Members, including me, resigned to trigger a "de facto referendum" in 2010. After the by-election, I quoted a poem by WANG Anshi to express our feelings. It read, "At a wall corner some plum trees grow; Alone against cold white blossoms blow. Aloof one knows they aren't the snow, As faint through air soft fragrances flow." Despite the snow, which was so heavy that the blossoms should have been crushed to death, the fragrance can still be smelt. Now, two years after that, these Members, who were accused of "stirring up trouble" by resigning to be re-elected, are still hoping that Hong Kong people can speak with their own votes and state clearly whether or not they prefer universal suffrage. "Aloof one knows they aren't the snow, As faint through air soft fragrances flow."

It is useless even if you suppress me. This is the origin of the current replacement mechanism.

Today, I can see that the Chief Executive Election is full of human "excrement" hurled between the two candidates. As a result, this Council has a constant headache in disposing of the "excrement". I once joked that it would be better for us to invoke the P&P Ordinance after everything is disclosed. It now turns out that we have to invoke the P&P Ordinance to deal with Donald TSANG when the hurling of "excrement" between the two candidates is still going on. Donald TSANG was very "smart" in making an indirect declaration through the media by "disclosing" the number of times he had been treated to abalone and taken private jet trips to prevent himself from getting into big troubles.

The poem I recited just now reminds me of the circumstances today. I have also written a poem myself, which is not as good as the one composed by WANG Anshi. My poem reads, "A few gather to form a clique; Pigs and dogs together they stick. They're clearly faeces, no mistake; Their distant stench this way snakes." It really stinks! What are we supposed to deal with today? We have to deal with whether Mr LEUNG Chun-ying has engaged in corruption. In her speech just now, Ms LI Fung-ying pointed out that we should not do so because public power would be turned into an election tool of abuse. She was right. But the point is: Why is this election so deplorable? Why is it becoming increasingly deplorable?

President, you should have had the experience of taking part in a small-circle election and casting votes. This you should remember. As far as the first election is concerned, everyone knew that TUNG Chee-hwa would definitely be the Chief Executive immediately after the shaking of hands for more than 10 seconds. Who dared to reveal scandals? Even if Mr TUNG had 10 buckets of "excrement", some people would still help him dig a hole and bury them because "Grandpa" said that he was capable for the job.

Hence, the election at that time was indeed a race between gentlemen because of the remarkable united front work done by the Communist Party of China, which had led people into believing that all four candidates would have a chance, including Simon LI, Peter WOO, and the then Chief Justice YANG Ti-liang. Everyone believed that the election was fair, just and open. I have no idea who told them that they had a chance and could definitely secure enough

nominations to enter the "horse" race. This explains why no one hurled "excrement", right?

The Selection Committee for the first-term Government comprised 400 members in total, and there were four candidates. As all the candidates believed they could win, there was no need for hurling "excrement". I recall that Simon LI did not stay and went to Happy Valley after he was defeated in the first round of polling. He was then confronted by a reporter with this question: "Simon LI, being one of the candidates, why did you go to Happy Valley?" His reply was, "The horse race there was fairer." Of course, "horse rigging" can be found all over the world. Both Peter WOO and YANG Ti-liang were misled, too. Why am I citing this example? In fact, these words did not come from my mouth. They are the words from the memoirs of LO Tak-Shing, the inventor of the separate voting system. He almost ran for his life and retreated once he knew he had no chance in the small-circle election. These are his own words. I guess Members must have read his memoirs not his memoirs. They were recorded in a book written about him by his secretary.

Why am I citing this example? Even if we are in a cesspit, we still have to find out who hurled the "excrement", right? The Legislative Council is here not to serve the candidates; it is here to monitor the Government. The persons involved, be it LEUNG Chun-ying or Henry TANG, are part of the Government. One of them, formerly the convenor of the Executive Council, took orders from just a few persons but was in command of millions of people. The other one, formerly a Secretary of Department, took orders from just one person but was in command of tens of thousands of people.

I have nothing more to say about Henry TANG. He was so stupid that he "pooed in his dining place" by continuing to dig a hole in his own home. He is really beyond cure. There is indeed no need any investigation.

The question before us is that LEUNG Chun-ying does not have the habit of "pooing in his dining place". One thing he has done is According to my memory, collusion between TUNG Chee-hwa and businessmen was at its peak when the WKCD plan was conceived. Now, some people are talking about their fond memories of TUNG Chee-hwa. Have they ever wondered why the share prices of OOCL had ballooned? Why would the Cyberport incident have happened?

Now the question before us is that Mr LEUNG was his Chief of Staff when a single tender was prescribed by Mr TUNG Chee-hwa for the WKCD project. As the Chief of Staff, Mr LEUNG took orders from just one person but was in command of tens of thousands of people, and so his integrity and conduct must be closely watched. The same goes for the President. Your integrity and conduct must be closely watched, too. Hence, I advise you against running for the Chief Executive office because you are not shameless enough. Your decision is thus very smart.

Concerning the investigation to be conducted into LEUNG Chun-ying today, many people have asked why it has to be conducted now but not earlier or later. President, the answer is very simple — I do not understand why all Members of the Legislative Council are behaving like an idiot — the investigation should be conducted upon the exposure. President, just like you, you will seek help from a locksmith immediately when you cannot open the door upon returning home. When someone cannot open a door, he or she will not wait for two days before seeking help. Likewise, no one will get a locksmith to open a door when there is no problem with it, unless he has gone out of his mind.

We cannot be blamed for this. The small-circle election is to take the blame because of its ugliness. President, you have done the right thing for deciding not to run in the election, or else I will feel sorry if you are to be probed in the future. Even if you have not done anything, someone will definitely hurl "excrement" at you. I know this is saddening, but what options do we Members of the Legislative Council have?

Now LEUNG Chun-ying and the Government have their own versions of the story. What did LEUNG Chun-ying say when the Government released the information? He said that the information must be made public, for otherwise it would be improper. However, the Government said that it could not be made public because commercial secrets were involved. If consent had to be secured, it would take a very long time because more than 100 competing teams were involved. Later, when we asked him again if he would give consent, he disagreed to disclosing only the information concerning him. Under such circumstances, what can we do? Who will perform the task if we do not conduct the investigation? Members can ask Secretary TSANG Tak-sing. He is really caught between a rock and a hard place. Everyone knows what LEUNG Chun-ying has done. He cannot keep it secret by hiding it in a chamber.

Should he be reluctant to tell us clearly, we will have to dig out the truth like "squeezing toothpaste out of the tube".

After all, the truth remains a mystery. Can we refrain from conducting an investigation? Can we let the public question us for failing to conduct an investigation? Like the incident involving Donald TSANG, many people say that he will "finish" in a few months, so what is the point of probing him? What is the crucial point? The point is that whether or not an investigation should be conducted. The targets of our investigation are all big shots — I recall that Members of the Legislative Council are apparently in the ninth position on the Precedence List of the HKSAR, that is, number nine, right — all the people under our investigation are above us. It is the hope of the public that we can uphold justice and stand up to conduct an investigation and speak for them. Our current discussion is not simply about the arrest of an old hawker selling fried bean curd on the street, it is about a model. As political models, they have made serious mistakes, and yet they still want to gain more powers. If we do not conduct an investigation, can we do justice to members of the public?

Having said that, some people were coaxed by the 400-strong Selection Committee for the first-term Government into running in the election. When it came to the second term, TUNG Chee-hwa did not let others stand in the election by making public all the 700 nominators. President, you were one of them. "Old TUNG" had got more than 700 nominations. There came "Ah TSANG" for the third term — now we have everything, including abalone — the third term was better with the introduction of a debate. The people of Hong Kong really believed that progress had been made. Now, we have big trouble for the fourth term, for it has turned out to be plagued with mutual attacks and smearing campaigns. We have often been accused by the DAB and the FTU of smearing the Government: "Long Hair", your only purpose in joining this Council is to smear the Government — I already stated a long time ago that I was here to prove injustice. Nevertheless, I am not as remarkable as they are. How can I manage to do this? Without the help of the National Security Bureau, how can I dig out their "black materials"? The information was exposed by them of their own accord!

The DAB has often advised us to trust the Government. During our discussion on whether there was a need to monitor the Chief Executive, the DAB said that there was no need to do so because the Chief Executive had no superior.

As the Chief Executive is even more honourable than we Honourable Members, is there any point in probing him? It is alright so long as he takes care of himself. Has he not taken care of everything? He has taken care of a penthouse in Shenzhen as well as wining and dining. President, you were a maths student, and so would you please enlighten us. His boss, "Ah TUNG", had a role to play in the major monopoly of the WKCD, whereas LEUNG Chun-ying was at that time the convenor of the Executive Council, also the "number one horse" of "Ah TUNG". Why should we not conduct an investigation? If we do so, we might even find that "Ah TUNG" is involved.

President, it is now 2012. In the election bribery involving CAO Kun in 1923 — I believe you are aware of this incident — he had got himself some "piglet parliamentary members" by first bribing the speaker and then the parliament members for their votes. Today, is the situation not the same in Hong Kong? In Hong Kong today, some people can even describe our act of catching "corrupt officials" for the public as an act to use public power to serve our private purpose. This precisely highlights the injustice and shamelessness of the small-circle election. We are told by Mr Albert HO that his purpose of standing in the small-circle election is to manifest its injustice and shamelessness. Now some people have already committed such unjust and shameless acts, so he should get away from this cesspit quickly!

President, I support conducting an investigation to get to the bottom of the matter.

MR ALBERT CHAN (in Cantonese): President, I would like to give Mr LAU Kong-wah a reminder while he is still here. Regarding his earlier remark that the DAB is "calling a spade a spade", I would like to ask him to recall how the DAB followed the conducting baton waved by the Government in support of its replacement proposal by heading in the direction signalled by the Government. When the DAB was called upon to support the Government's motions, it had continued to change its stance. By "calling a spade a spade", he actually means that the DAB will act according to the Government's instructions and decisions. The DAB will simply follow the Government in deciding to say "yes" or "no". This is the way the DAB has behaved in dealing with political and public affairs in this Council. Just as the case with the replacement proposal, the DAB will act accordingly when it is called upon by the Government to render support.

It is the same case today. The passage of the motion today on invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to probe LEUNG Chun-ying will be opposed by not only the Hong Kong Government, but also the Secretary later, to be followed by Mr LAU. It is very simple, right? Previous voting records clearly show that he is a Government loyalist, a royalist. The Liaison Office of the Central People's Government in the HKSAR has already waved its conducting baton but, as they pointed out, the TANG supporters might not dance to the movements of the baton this time around, though the pro-China camp of the pure pedigree will definitely continue to dance to its tune.

President, our debate today is about invoking the P&P Ordinance. In fact, at the two previous meetings held by the House Committee, I found similarities between some of my comments and those of Ms LI Fung-ying and Mr LAU Kong-wah with regard to the recent performance, behaviour and comments of certain political scoundrels — in particular, the members of a certain political party are now missing. They would go missing whenever "Yuk Man" or I was speaking. Members of the DAB are better than these people; they would still sit here to listen to our speeches even though they hold different views. Certain political parties claiming to belong to the pro-democracy camp, however, would always disappear from this Chamber whenever "Yuk Man" or I was speaking. Let us wait and see if they will also vanish after the 2012 election.

I strongly condemn those political parties with political scoundrels treating this Chamber as an election venue. It is also very clear that the underlying motive of those who support or even propose this motion today has political motives, electioneering agendas. Certainly, with regard to discussions conducted in the Chamber, it is already clearly stipulated in the Rules of Procedure that we are not supposed to impute any motive to any Member. Nevertheless, from political analyses and the seriousness or otherwise of Members' comments on, for instance, the performance of certain candidates or issues involving public interest or major political interest, such as the incidents involving LEUNG Chun-ying and the Chief Executive, we can see, given their comments, stances and tunes, that certain political scoundrels and Members of certain political parties treat the Chief Executive less stringently and more leniently than LEUNG Chun-ying, even though the Chief Executive's involvement in corruption or suspected violation of rules is absolutely more serious than LEUNG Chun-ying by 100, 1 000 or even 10 000 times.

Hence, we can see why they are so strict with certain people but so lax with others. Obviously, they have their political inclination, and one of the reasons for such inclination is the election. It is also pretty obvious that they wish to take advantage of this motion to use the Legislative Council as a political venue to attack the opponent(s) of the candidate supported by their political party. Nevertheless, I hope the DAB, royalist Members and Members with an obvious political stance and the pure pedigree will understand that, though some people may be ill-motivated or evil-minded, we must evaluate and deal with the motion question independently to determine whether it is indeed necessary. They should not negate the value of and need for the motion question because they support a certain candidate and their opponents are targeting the candidate they support. As a member of this Council, Members must defend its dignity and responsibilities, for one of its major and sacred responsibilities is to monitor the Government's administration and ensure the accountability of the executive.

This Chamber is also accountable for dealing with the corruption issue involving Donald TSANG. In fact, the People Power already pointed out unequivocally on our Internet radio station as early as Monday that the impeachment mechanism had to be activated. I wonder if Mr Paul TSE had heard the remarks "Yuk Man" and I made on the radio that he proceeded immediately on Tuesday to request Members to make a joint submission. This was why, when he approached us, we told him unequivocally that we would support the submission in principle because we had already stated our position very clear on Monday evening.

Hence, insofar as the issue involving LEUNG Chun-ying is concerned, we will definitely pursue accountability without any hesitation. On accountability, I think that not only LEUNG Chun-ying personally is accountable for the omission, the executive should also be held accountable for why it has taken more than 10 years before the information is disclosed. The executive must be held accountable because they are harbouring and defending some irregularities. Certainly, Members also understand and can obviously see that certain conducting batons are being waved behind the scene. There is also an apparent political motive and significance behind the disclosure of such information. Why is this matter, never disclosed, exposed only at this sensitive moment? Nevertheless, the leaking of such information has made it necessary to uncover the truth for justice to be done.

Just now, Mr LAU Kong-wah was most remarkable. He can already draw a conclusion after attending only a few meetings and obtaining several documents. He said that after reading all the documents and raising certain questions, he was absolutely clear that there were no irregularities, and so he had concluded that there was no need for an investigation to be conducted. Could he jump to the conclusion that there were no irregularities, though he had only obtained some of the documents? The purpose and significance of setting up an investigation committee is to gain access to all the documents and information in a more comprehensively manner and request the persons concerned to attend the meetings held by the committee to give an account and explanation through answering questions and the accountability process. Mr LAU must have extraordinary political wisdom and competence for he managed to come to such a definite conclusion on the strength of just one-sided information. This explains why both the DAB and Mr LAU Kong-wah have been able to ascend in the political structure so quickly within such a short period of time. They must be more remarkable than others in some way. Hence, I think that his speech earlier can be used in the future as a sample in textbooks about political figures to make people realize how one can fully exploit his political wisdom, particularly one of the duties of a royalist, through the delivery of such speeches.

President, if it is decided that an investigation should be launched into the LEUNG Chun-ying incident, I think that three motions should be proposed in the meeting today. First, a motion on probing LEUNG Chun-ying; second, a motion on the need to conduct a joint investigation on collusion between the Government and business as well as the small-circle election conducted under the political structure; and third, a motion proposing impeachment of our Chief Executive. Today, these three motions should be dealt with at one go. Nevertheless, as time is running out, I wonder if there is any chance for 15 Members' signatures to be collected by the end of March to activate the impeachment procedure because political accountability involves whether anyone has abused his power or breached public trust in him and abused his public authority through concealing certain information.

When I was a student, I had closely watched the Watergate incident throughout the two years from 1972 when a break-in into the headquarters of a certain political party was covered in the press and the media to the day President NIXON was forced to step down. In every interview he had given during the two years, he refused to admit any wrongdoing and assume responsibility. Even

on the day he stepped down, he still refused to assume responsibility for the incident. That was how a political figure behaved. In fact, NIXON's performance and relevant speeches delivered in connection with the Watergate incident during the two years are almost identical to LEUNG Chun-ying's reply and Donald TSANG's remarks. It is thus evident that people with power and in a high position often believe that they are invincible. Five or six years ago, some colleagues very close to Donald TSANG — they had eventually left — told us that Donald TSANG had refused to listen to people beside him as he already regarded himself as an emperor. It was similar to the case with Antony LEUNG, who was suspected of violating the rules years ago. I have been told that he had been reminded by some government officers over the car purchase issue. He had failed completely to respect the public procedure and insisted on doing what he wanted probably because he had come from the private sector. Although his original intention might not involve saving a few dollars, so to speak, he was indifferent to some of the rules that had to be observed by public policies and public figures or public officers.

The same goes for LEUNG Chun-ying and Donald TSANG. LEUNG Chun-ying was a member of the Executive Council for 14 years. With regard to this "WKCD incident", I think that the period during which he participated in public administration was just the tip of the iceberg. If we continue to pursue the case and find out the number of times he failed to make declaration in discussions over issues in the Executive Council or whether he had made declarations during the decision-making process of certain committees, I believe we will find dozens, if not hundreds, of such cases, right? Hence, this "WKCD incident", as I speculate and suspect, might just be the tip of the iceberg. Such being the case, the truth will be drowned and concealed forever without a comprehensive investigation and an in-depth understanding.

President, under the conducting batons waved by the DAB and the Government, I believe the motion today might not be passed, but that will only reflect the ugliness of this small-circle election which is devoid of democracy.

The forced resignation of NIXON was attributed to the elected Congress, which activated the investigation procedure and then the impeachment mechanism to eventually compel this populated elected President to step down. But unfortunately, I have been criticizing this small-circle election over the years for the mutual harbouring and transfer of benefits and mutual protection and

concealment when problems arise. Hence, the motion question proposed today has precisely enabled us to see in this Chamber the ugly face of small-circle politics.

MR VINCENT FANG (in Cantonese): First of all, President, I declare that I have already nominated a Chief Executive candidate.

It was extraordinary for the Legislative Council to hold debates twice this month on whether or not the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) should be invoked. What warrants our concern is that the two debates were attributed to the Government's lack of transparency and messy and murky way of handling things. Although the term of the current Government will soon come to an end, the Government should still review properly its attitude in and way of handling these two incidents and make rectifications, or else the chances of the Government being challenged by the Legislative Council will become higher and higher.

The Chairwoman of the Liberal Party unequivocally stated in her speech earlier that the Liberal Party supports the setting up of a select committee and the invocation of the P&P Ordinance to probe matters relating to the West Kowloon Reclamation Concept Plan Competition (Competition). As pointed out by us during the previous debate on whether or not to invoke the P&P Ordinance to obtain documents relating to the two power companies' tariff increases, we will support the use of this "imperial sword" if public interest is at stake.

This so-called "West Kowloon-gate", triggered by the election of Hong Kong's next Chief Executive, is absolutely closely related to the whole territory and the general public. Nevertheless, the Government has been evasive in handling this incident. First of all, when the Chief Executive candidates were seeking nominations, the Government took the initiative to announce that one of the candidates might have failed to declare interests during the selection process of the Competition a decade ago. Although the press release was issued upon the Government having been requested to respond to enquiries, anything might have an impact on the election as it is a sensitive time, and so Members inevitably wish to get to the bottom of the matter. In particular, the person involved in the "West Kowloon-gate" has requested the Government to make all the documents

public to clear his name, and even expressed a willingness to appear before the Legislative Council to explain clearly to Members his role in the incident.

Unfortunately, the Government has once again shown that it is not willing to co-operate with the Legislative Council until the very last minute. Like a father giving pocket money to his child, the relevant department eventually released the documents bit by bit when the problem had to be urgently dealt with and more and more Members supported the deployment of the "imperial sword".

We were only told by the Government three hours before the holding of a special meeting by the House Committee last Friday that documents could be obtained through this Council, and one document was issued last night. As I was not in Hong Kong, I did not attend the meeting. According to my colleagues' remarks and what I have gathered after reading the documents, however, it appears to me that the documents submitted cannot illustrate that Mr LEUNG was in breach of integrity during the assessment process. On the contrary, it was revealed that the Government initially wished to cover up the incident.

As the case now stands, the initiator (the SAR Government which was responsible for issuing the press release initially) is obliged to provide further information to the Legislative Council to prove that the press release initially issued was fully justified, or else the Government must have an ulterior motive. Hence, the Government must "defuse the bomb" by itself.

President, my support for invoking the powers conferred by the P&P Ordinance to probe the "West Kowloon-gate" incident has nothing to do with which Chief Executive candidate I support. Coupled with the public doubts aroused by the incident, the Government is indeed obliged to dispel the queries.

I so submit. Thank you, President.

MR ALAN LEONG (in Cantonese): President, the West Kowloon Cultural District (WKCD) development project, which already cost \$21.6 billion a decade ago, is absolutely a "fat piece of pork". As this incident happened nearly a decade ago and the information involved is quite complicated, Hong Kong people find it relatively incomprehensible why the Legislative Council should request a

decade later that an investigation committee be set up to bring up old scores again. I must make it clear, however, that the Civic Party supports the motion today because we wish to discuss the system, not the integrity of a particular Chief Executive candidate, and point out the importance of returning the right to know to Hong Kong people.

President, before I go on, I must make a declaration because I have already nominated one of the candidates, Mr Albert HO. President, as I pointed out just now, since the matter is not simply a personal integrity issue and that the WKCD project is a key project, the public is entitled to the right to know if the Government's style in dealing with the entire incident and its handling of the WKCD project in this manner will apply to other projects involving major public interest as well.

President, it is not difficult to find from the disclosed documents some suspicious issues of which we cannot have a full and clear picture. For instance, we have heard Mr LEUNG explain that he had declared that he was not a director or major shareholder of any firm when completing the declaration form because he thought he was only required to make a declaration if he was the major shareholder or director of a competing firm. Nevertheless, a closer look reveals that someone who was not a major shareholder or director of any firm should have selected the item following the one picked by Mr LEUNG. Given his understanding, he should have selected D rather than C. So, it is very strange that he should have selected C. Was it a deliberate omission or just a slip?

Certainly, Mr LEUNG has also said that everyone knows who is the shareholder and even the Asia-Pacific chairman of DTZ. Hence, he thinks that it is not a big deal for him to have filled in the form incorrectly, and that everyone knows he is the chairman and shareholder of DTZ without him stating it in the form. If such logic is sound, many similar forms will not need to be completed for it is a well-known fact. What has really happened behind his selection which is apparently incomprehensible?

We have also read a letter written by Mr LEUNG on 11 March and addressed to the secretary of the panel, Eric JOHNSON, in which he listed more than 30 companies with which he was associated as a director. Nevertheless, a disclosure in that letter has provided much food for thought. According to the disclosure, a secretary of DTZ faxed the resume of three senior staff members of

DTZ to the Malaysian firm on 25 September 2001. Should DTZ really provide land evaluation to this firm without pay, why should it have faxed the resumes of its executive director, director or manager to that firm? Will people associate such an act with Mr LEUNG's co-operation or collaboration with this Malaysian firm?

Mr LEUNG has explained that the secretary responsible for faxing such information was not working in his office, for his office was in Central whereas the secretary's office was in Quarry Bay. For a sizable firm with rules and a sophisticated system, there must be an internal notification mechanism preventing the occurrence of conflicts within the firm as a result of one of the partners securing some business and the other partner also being commissioned by a business rival. It is hardly acceptable that a secretary would have unknowingly faxed the resumes of senior staff members because he or she was not working in the same office.

President, these have given rise to many doubts. Coupled with the Government's failure to give information in the documents provided the adjudication process on the 25th, 26th, 27th and 28th, no one have any idea about the adjudication of other jurors on the Malaysian firm. During the discussion, did anyone make vigourous efforts in speaking for this firm? No one can tell as we cannot access the relevant records. Saying that such information must be kept confidential, the Government has expressed concern that it has to bear certain legal liability should such information be disclosed. Given the significance of this matter, we can put the Government's mind at ease by exercising the powers conferred on us by the Legislative (Powers and Privileges) Ordinance (P&P Ordinance).

To this day, the explanation offered by Mr LEUNG — considering that the Competition was at that time the talk of the town, it was absolutely not just an ordinary works project. Even if it was, a sizable and major surveyors' firm would have an internal notification mechanism, not to mention a key project of the town. It is even more unconvincing. President, having read the documents, I find that there are indeed many dubious points, and the whole picture cannot be revealed. It is really necessary to address these doubts, and Hong Kong people should be given back the right to know.

President, according to a list completed by Dr Kenneth YEANG, we actually know that, in addition to LWK & Partners, Davis Langdon & Seah and DTZ, which was not declared by Mr LEUNG Chun-ying, two other British companies, including Benoy Limited and Battle McCarthy, were also partners of DTZ. Among others, the projects launched by Benoy Limited in collaboration with DTZ included iSQUARE and Wanxiang City in Shenyang, Liaoning. Although Battle McCarthy collaborated with DTZ less frequently, the former had included the latter on its webpage as one of its partners. In other words, besides the firm to which Kenneth YEANG belonged, other members included on the list have actually collaborated with DTZ, that is the firm to which LEUNG Chun-ying belonged, in many ways. This has given rise to even graver concern about whether there was any secret dealing.

President, in addition to the queries listed just now, we certainly are concerned about the votes cast by Mr LEUNG for the Malaysian firm in numerous rounds of voting. Despite his absence in the first round, his vote was actually given to that firm according to the information provided by the Government. Hence, he had actually voted for the firm in each and every round of the voting. What was his underlying motive in voting in this manner? An investigation committee, if set up, should be able to sort out the interwoven relation.

President, the approach of the SAR Government in handling the "WKCD incident" has indeed raised eyebrows. Why could the Government have concealed for 10 years the suspected conflict of interest arising from a \$21.6 billion project before its abrupt announcement prior to the Chief Executive Election? Was the Malaysian firm informed of the reasons when it learnt that it was disqualified? If yes, did it raise any objection? If it did not raise any objection, why? Was it because the firm had a pretty clear idea of what would happen, only that it was trusting to luck in the hope of getting passed, and it would not make it public in a high profile even in the event of a failure? Or were there any other reasons? President, there is a string of questions.

Certainly, it is reported in the community that the then Secretary for Planning and Lands, John TSANG, even demanded at one time the Competition be axed altogether and started afresh. Why did Mr John TSANG make such a decision? Was he informed of some violations which were so serious that the entire project had to be pulled down and started afresh? We may also ask: Why

did the Government only leave the file closed after the incident? Why did it not take any follow-up action? It is also said in the community that the then Chief Executive, TUNG Chee-hwa, was suspected of harbouring his favourite.

President, all these issues, which are targeting the style of the SAR Government, have given rise to doubts as to whether there was any secret dealing or whether the incident was handled in a way devoid of transparency and justice. Hence, insofar as this incident is concerned, the public absolutely has the right to know whether a Chief Executive candidate, or someone who might become the leader of Hong Kong, has integrity problems. Moreover, the incident also involves the fairness, openness and impartiality of Hong Kong's systems and its reputation. President, many international competitions of this kind will be organized in the future. If the SAR Government connived at jurors hiding the truth and practising favouritism, does it still have integrity in governance? Hence, I reiterate that the Civic Party agrees that it is necessary to invoke the P&P Ordinance and call on the Government to fully disclose relevant documents to the Legislative Council in the hope that the truth can be uncovered.

President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, under the small-circle election, a new problem has now emerged and that is, the reign of "black terror". Of course, "black terror" has nothing to do with the public; only "white terror" involves the people because if the freedom of speech is suppressed, all Hong Kong people will become gravely worried, and "white terror" will reign over society. But what happens now is the emergence of a strange phenomenon called "black terror" under the small-circle election, as everybody is vying to dig up "black materials" to attack their rivals.

President, I heard that you are also a victim of such "black materials". I have learnt from the newspapers that LEUNG Chun-ying had phoned you to tell you that he would not expose "black materials" about you. I do not understand why he had to call you twice to tell you that he would not expose these "black materials". What was the purpose of his remarks? President, I was extremely shocked on learning this, because when he made it a point to ring you to tell you expressly that he would not expose the "black materials", did he intend to intimidate you? Of course, President, you do not have to answer this question,

but is it true that he does have "black materials" about you and so, he phoned to tell you that he would not expose those "black materials"? If he does not have any "black materials" about you, what is his purpose in calling you and telling you that he would not expose the "black materials"?

Such "black terror" has really given me the creeps, and even you, President, have been implicated in it for no reason. As things have developed to such a sorry state, the nasty sides of the small-circle election have been revealed to the fullest. I hope that when the public stand aside and look on all this, they can give it more thoughts. Even though we look at all this as a farce, as we are like watching a soap opera every day, and no sooner had a scandal ended than another scandal came to light, what we are talking about now is the election of the future Chief Executive. The Chief Executive-elect will have an important bearing on the development of Hong Kong in the next five years. If the Chief Executive-elect has a problem with his integrity, how will this affect the future development of Hong Kong? This is why in this debate today, we have to discuss whether the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) should be invoked to investigate the "West Kowloon-gate" which precisely involves a Chief Executive Election candidate, namely, LEUNG Chun-ying.

Why does the Labour Party certainly support that an investigation be carried out? Because if no investigation is conducted, there is no way for Hong Kong people to find out whether an issue of integrity was involved and whether Mr LEUNG Chun-ying, who did not make a declaration of interest when he handled the Competition, attempted to conceal his interests with the purpose of making the greatest gains for his company or himself. This is an issue which involves integrity.

Mr LAU Kong-wah said earlier that the DAB did not wish to be involved in the electioneering. But let us not forget that this is not about getting involved in the process. Rather, it is in the interest of the future of Hong Kong that an investigation should be conducted to ascertain whether these candidates for the Chief Executive Election were involved in any integrity problem, and this is in the interest of the development of Hong Kong in the next five years. Should we still have to put on airs and graces and wash our hands off this in order not to be dragged into the electioneering? What Mr LAU Kong-wah has said earlier is interesting. He said that the public do not like "black materials", and that this is

his observation from his participation in many elections. But do the people have a choice? Not at all. If the people can make a choice, and considering the fact that certain Chief Executive Election candidates know only to sling mud at their rivals, they might think more carefully about how they would vote. Mr LAU Kong-wah has made comments on this election as if it is a true election but it is, in fact, a bogus election, a small-circle election, and worse still, in such an election, slinging mud at the rivals might really work, because the more savagely the rival's reputation is smeared, the more likely the rival's popularity will be dragged down, hence putting greater pressure on members of the Election Committee (EC). Such being the case, everyone is competing with each other to sling mud at each other, causing EC members in the small circle to fight with each other and sling mud at each other's camp to see who will fall down first. The small-circle election in Hong Kong has degenerated into such a sorry state and so, Mr LAU Kong-wah was indeed carrying coals to Newcastle when he commented on this election as if it is a true election. All it takes now is precisely the skill to sling mud at each other.

Therefore, when Mr LAU Kong-wah remarked that the DAB did not want to get involved in it and so, the P&P Ordinance should not be invoked to conduct an investigation, I must ask: Does he care about whether or not there is a problem concerning the integrity of a Chief Executive Election candidate who stands a chance of becoming the next Chief Executive? Can we simply neglect this? If this person, who is not elected by us but by EC members, has no integrity, would Hong Kong people not be doomed to the greatest misfortune then? Of course, you may argue that this sort of small-circle election is rotten in the first place, and I do not take exception to this. But even though this is the case, the people still want to know the true cause of their death. This has nothing to do with EC members or the candidates, just that the people at least want to know the cause of their death. For instance, if it is found after investigation that the two candidates, namely, Henry TANG and LEUNG Chun-ying, are both "black", we would at least rest in our graves, knowing the cause of our death. The small-circle election will definitely doom us to the greatest misfortune but on this issue, we still owe the public an explanation and we should clearly find out for the public whether the Chief Executive Election candidate has any problem with his integrity.

With regard to this incident of "West Kowloon-gate", from all the information provided by the Government and the replies given by LEUNG

Chun-ying, there are actually many questions that need to be clarified. There are some known and confirmed facts. The first fact is that LEUNG Chun-ying admitted that he had not made a declaration. Secondly, he had favoured the design entry submitted by Kenneth YEANG almost from the beginning till the end, especially as he already indicated his support in the first stage and threw weight behind Kenneth YEANG's design in most of the votes taken subsequently. This is the second fact. Thirdly, in making the competition submission, Kenneth YEANG named DTZ as Property Adviser and provided four names in this connection. This is also a fact.

With regard to these facts, what do we need to probe? What is the most important information we need to find out? Indeed, there are several doubtful points concerning these facts. The biggest doubt is that LEUNG Chun-ying had categorically denied that he knew anything about it. Is this true? He argued that he is the Asia Pacific Chairman of DTZ and as many projects were handled by his company, how could he possibly know all of them? If we can invoke the P&P Ordinance, we can put questions to his employees. In fact, a secretary of DTZ did fax over some information to Kenneth YEANG on 25 September 2001. The details have been crossed out here but it says that the information was the brief CVs of two persons and two other persons of DTZ. These four persons were the Executive Director, Director and two Managers, and the relevant information also stated that these four persons were "key personnel who work on the project", which means the key persons involved in this project.

If his employees or his Executive Director, who is not just an ordinary employee, was involved, and if his senior administrative staff had given the names of these four persons to Kenneth YEANG for him to put down on his submission, were these four persons definitely in the know? I think they definitely knew it, because after providing the information of these four persons at the request of Kenneth YEANG, it was unlikely that these four persons knew nothing about it and since they knew it, would they not tell LEUNG Chun-ying? As we all know, LEUNG Chun-ying was a member of the Jury, and since their boss was a member of the Jury and when the company's name was added to the relevant documents of one of the entry designs, does it stand to reason that they would not inform their boss of this?

By invoking the P&P Ordinance, we can invite these four persons to come before us and we can then ask them whether or not they had told LEUNG

Chun-ying this. A most important point about the P&P Ordinance is that they would commit perjury if they lied after taking an oath in the Legislative Council. The advantage of invoking the P&P Ordinance is that it can help us find out the truth by investigating whether or not these four persons had refrained from telling their boss about it, which is the biggest question in this matter.

There are, in fact, other questions about what LEUNG Chun-ying had said. For example, he claimed that he had never seen the design in question. Then, did the four persons from DTZ who were involved in this project see it? As they were named in the entry design, did they see the design? If they did, did they tell LEUNG Chun-ying about it or did they show it to LEUNG Chun-ying? All these questions warrant probing. If it is found out after investigation that he did see it or he did take part in it, the next question that we must ask cannot be clearer. Why did he not make a declaration? We, of course, do not know the answer, and we cannot say here that we know the answer, and this is why the P&P Ordinance has to be invoked to conduct an investigation.

Another issue requiring investigation is LEUNG Chun-ying's often claim that no pecuniary interest was involved. This man is really so good with words. He said that no pecuniary interest was involved, but how do we know whether other interests were involved? It is because he only said that pecuniary interest was not involved. I found that political figures nowadays are so good at leaving some room between the lines in a bid to prove, in a reverse way, that they did not lie. I hope Members can forgive me for saying something outside the scope of this topic that even I myself do not know whether it is proper to say it or not. Bill CLINTON did claim that he did not have sexual relation with LEWINSKY. The way that he lied was to use the phrase of "no sexual relation" to express his view that certain behaviour is not considered sexual relation, in a bid to prove that he did not lie. This is his logic. People engaging in politics now only have to add some words in their speeches and everything they said will become specious, and it all depends on their own definition. When it is said that no pecuniary interest is involved, it means that no interest in the form of money is involved, and it is another matter as to whether other interests are involved. So, concerning many remarks that have been made, we really must listen to them more clearly.

If no investigation will be carried out, how can we find out about the relations between DTZ of LEUNG Chun-ying and the architectural company of

Kenneth YEANG? Was any undertaking involved? LEUNG Chun-ying said that they did not make any undertaking on how they would participate in this project in future. Is that true? Four persons from his company were named in the entry design and the company was said to have taken part in this project, but he said that no agreement had been made between them on how the project would be developed. Can this be the truth? An investigation is required to clarify these points. For this reason, President, if no investigation is conducted, how can we know whether or not LEUNG Chun-ying's integrity is problematic? I think if we really have in mind the well-being of Hong Kong, it is impossible not to pursue these issues concerning the integrity of a candidate in depth.

On the other hand, another issue of integrity is also involved and that is, the integrity of the Government. From this incident we can see that the Government has made a bizarre move of disclosing this matter only a decade later. Why did it not voice it a decade ago? At a meeting of the House Committee I questioned the Government whether it was covering up for LEUNG Chun-ying back then. Did TUNG Chee-hwa purposely shield LEUNG Chun-ying then? This is also a question that needs to be clarified. The Government has suddenly flinched now and it does not want us to investigate the "West Kowloon-gate". Is it because the Government had done something wrong too? Is it because the Government was suspected of having covered up for LEUNG Chun-ying in the first place and therefore, it does not want us to carry out an in-depth investigation? The reason is that there will not be any problem in disclosing only LEUNG Chun-ying's failure to declare his interests but if an in-depth investigation is further conducted, the Government would be found to be at fault in covering up for LEUNG Chun-ying then. How could the Government take no follow-up action and simply disqualify Kenneth YEANG's design in the Competition in order to cover up for the convenor of the Executive Council who had acted against the law in not declaring his interests? This is another problem, and as long as an investigation can be carried out, we can find out the role played by the Government in this incident.

Lastly, in view of this small-circle election, I think the first and foremost thing that the people should do is to take part in the rally to be held at 3 pm on 3 March, because this small-circle election has become increasingly "black". Thank you, President.

MR CHIM PUI-CHUNG (in Cantonese): President, with regard to the West Kowloon Cultural District, I personally expressed resolute opposition against the single-tender procedure more than a decade ago. It is because I think this lot is worth thousands of billion dollars, but I really have no idea how much it is worth now. Judging from recent land prices, it should have a very high value and it is not surprising at all if it is really worth thousands of billion dollars.

President, I have always opposed that the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) be rashly invoked by the Legislative Council because the P&P Ordinance is an imperial sword that the Legislative Council should deploy only as the last resort. Of course, insofar as this incident is concerned, President, I have to declare an interest. I am one of the nominators of Mr Henry TANG who is a candidate for the election, but no pecuniary interest is involved.

President, the SAR Government and the Secretary have clearly stated opposition to the Legislative Council invoking the P&P Ordinance. I personally think that if an investigation into a case will adversely affect a candidate, this can certainly be said that there is a conflict of interest on the part of the candidate or the persons involved. But from this incident, President, we can see that the Government has actually stated its opposition and with regard to the reasons of its opposition, firstly, perhaps it is because over 160 entry designs were submitted in the Competition and so, there were too many submissions; secondly, perhaps it is because of the need to uphold confidentiality. Therefore, I personally think that if we passed the motion to invoke the P&P Ordinance, this Council must, as in the case of the two power companies — of course, the P&P Ordinance is not invoked to deal with the two power companies — But in any case, we must make an undertaking that if the infringement of confidentiality regarding other contestants is involved, the inquiry must be conducted in a manner that affords greater protection.

President, on this issue, we must understand one thing. I have never made any contact directly, but I have seen from the media and from various ways that Mr LEUNG Chun-ying had categorically said that he had not engaged in any improper conduct in this incident. So, like some Members, I think we should find out the facts for him to do him justice. President, of course, I personally think that if this motion is passed today, in such a short period of 25 days, it is unlikely for the whole matter to be resolved. Certainly, we

MR ANDREW CHENG (in Cantonese): A quorum is lacking.

MR CHIM PUI-CHUNG (in Cantonese): Members do not come in and this is why it is lacking

MR ANDREW CHENG (in Cantonese): I would like more people to listen to your speech.

MR CHIM PUI-CHUNG (in Cantonese): OK, thank you.

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

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

PRESIDENT (in Cantonese): Mr CHIM, you may go on.

MR CHIM PUI-CHUNG (in Cantonese): President, let me first thank my fellow townsman.

As I mentioned just now, Mr LEUNG Chun-ying had said openly on many occasions that he absolutely would not have done anything wrong or committed any mistake. Under such circumstance, although our colleague, Ms LI Fung-ying, said earlier on that it would be unfair for some people to attack another candidate, since nobody has admitted having made any mistake, how will our discussion be unfair to any of the candidates? Therefore, this allegation or concept is primarily not founded.

To me, what I am more concerned about or have a greater interest in is not the election involved in this incident. What I consider most important is that whenever the Legislative Council invokes the P&P Ordinance, is it that it will

always threaten the people or institutions concerned? Certainly, what we have done recently to the two power companies is a case in point. I very much hope that Members will be very careful in exercising this power, and I strongly believe that our colleagues have the competence to do this and the ability to guard the gate.

In principle, I absolutely think highly of Mr LEUNG Chin-ying who is so "英明" (meaning intelligent and brilliant) — as his Chinese name also carries the character "英" — I, therefore, strongly propose that this power be invoked appropriately. As regards the length of time required for conducting the investigation and the result of the investigation, let history bear witness to it. As the saying goes, "real gold fears no fire". I firmly believe that the Government and the persons concerned will be treated reasonably in the process.

At this point, I would like to take the opportunity to talk about the Chief Executive Election. It has been 15 years since the reunification of Hong Kong and there have been four Chief Executive elections altogether, covering three terms of the Chief Executive because a by-election was necessary in the second term. Of course, some friends in the so-called pan-democratic camp or people who have an axe to grind consider this a small-circle election. But we must understand that the law has indeed provided for such an arrangement. What Mr LEUNG Yiu-chung said earlier is very reasonable. Although I do not usually share his political opinions, we have to support views that are reasonable. Mr LEUNG said that although he had not nominated any candidate and he did not want to express his support to anyone, he absolutely supported and accepted this so-called small-circle election. Under such circumstances, other people may seize the opportunity to take advantage of the situation — of course, in politics, there will always be people taking advantage of the situation, and the President has also taken advantage of the current situation slightly, not greatly though. *(Laughter)* There are other Members who have always I do not mean to criticize the President, just that I wish to cite an example. President, please do not So, in this incident, there are other Members

(Mr LEUNG Yiu-chung raised his hand in indication)

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

MR LEUNG YIU-CHUNG (in Cantonese): Mr CHIM Pui-chung has misunderstood part of my speech. Can I clarify it?

PRESIDENT (in Cantonese): Please put on the microphone. I cannot hear you.

MR LEUNG YIU-CHUNG (in Cantonese): I am sorry, President. As Mr CHIM Pui-chung has wrongly understood the contents of my speech, I need to make a clarification.

PRESIDENT (in Cantonese): If you wish to make a clarification, I will let you do so after Mr CHIM has finished his speech.

MR LEUNG YIU-CHUNG (in Cantonese): Thank you, President.

MR CHIM PUI-CHUNG (in Cantonese): I was just giving you a compliment. I did not criticize you. I just said that you supported it.

President, some colleagues have been consistently taking great advantage of the situation. It all boils down to one's skill in playing politics and one can blame nobody. Anyone who is good at it can get more votes from society for himself; anyone who is not good at it becomes a "dead dog" in the end. So, we must understand that we absolutely must support this electoral system. I have said so much mainly to make sure that Hong Kong people understand this point.

This is the fourth Chief Executive Election now. The Chairman of the DAB, Mr TAM Yiu-chung, indirectly admitted earlier that our colleague, Mrs Regina IP, is not qualified to be a candidate for this election — please correct me if I am wrong — and so, there are only three candidates now. Today is the last day of the nomination period of the Chief Executive Election, and the election will be held on 25 March, which is 25 days from now. In these 25 days, the three candidates have to compete with each other in terms of their abilities, including the ability to sling mud at others. No matter what abilities they have,

they must — and of course, where the law permits — exert themselves to give play to these abilities. We, being citizens of Hong Kong, must understand that the election involves three parties. It is because the Central Government has stated that the Chief Executive-elect must be acceptable and credible in the eyes of the public. Therefore, although the public do not have any direct influence on the election, they can express their views indirectly. To whom are these views intended to show? They are to be shown to the Central Authorities, not to the three candidates. The coming election will revolve around three forces. One is the expression of views by the public, and the second and most important force is the voting preference and final inclination of the 1 200 members of the Election Committee (EC) who will cast a true, sacred vote on 25 March.

President, of course, there is also the wish of the Central Authorities, for the right to appoint rests with the Central Authorities. Any candidate must ultimately have the recognition of the Central Government disregarding how high the number of votes obtained by him, and we trust the Central Authorities will make a decision in line with the voting result of EC members. Therefore, we, being members of the general public, can only choose from the three candidates the one who better meets the people's aspiration and expectation. Of course, if the candidates have made mistakes or shown inadequacies in certain aspects, the outcome is that not every one of them can score 100 marks.

President, as I have said before, the Chief Executive Election is not meant to return a saint. There is no denying that in this world, no person or candidate is qualified to say that he or she is a 100% saint. But as I have said, a lady who joins the Miss Hong Kong or Miss Asia pageant may seem to be ordinary and far from outstanding during the contest but after winning the title, everybody will find that there are reasons for her to stand out.

Of the three candidates, our colleague, Mr Albert HO, stands a smaller chance but sometimes, nothing is absolute in this world and we must wait until the end when the facts will tell us the truth. Therefore, we, being members of the public, can only choose from the three candidates the one that we consider better but may not be absolutely the best.

This election also involves our debate today about invoking the powers under the P&P Ordinance. I personally hope that at this final stage, if we can

find out all the facts through this incident, and at this stage when Mr LEUNG Chun-ying is catching up at full throttle or has actually secured support, if all the questions and doubts can be clarified, it would be even more honourable to him.

As for the view expressed by some members of the community, that Members of the Legislative Council, especially Members who have nominated a candidate, should abstain in the vote on this motion debate, I personally think that this is an alternative way to blatantly infringe on the powers of Members of the Legislative Council. Members of the Legislative Council are absolutely subject to the relevant legislation and rules. It is not the case that we can do whatever we want to do, and the President has also made certain rulings earlier on. In this connection, any nonsensical comments made outside this Council on the reasonable exercise and use of the powers by Members of the Legislative Council absolutely will not put any pressure on us. Under such circumstances, while I originally intended to abstain in the vote on this motion because this would be fairer, I will support this motion if I am in this Chamber at the time of the vote, but I cannot guarantee that I will definitely be in the Chamber then.

President, I so submit.

PRESIDENT (in Cantonese): Mr LEUNG, do you wish to clarify a part of your speech which has been misunderstood?

MR LEUNG YIU-CHUNG (in Cantonese): President, Mr CHIM Pui-chung said just now that my speech was sensible and reasonable but then, he added a line, saying that I supported the small-circle election. However, in my speech I had never said that I supported the small-circle election. I said that I would not make any nomination and I would not vote in the election mainly because I have to protest against the small-circle election. He may have misunderstood my remarks. I think even though we oppose the small-circle election, we cannot act like an ostrich because this small-circle election does exist after all, and it has a bearing on the future elections and the candidate who wins in the election will also have a bearing on the governance of Hong Kong in the next five years. Under such circumstances, and despite that the small-circle election is so unreasonable and so much against the principle, I think it has to be conducted in a fair, impartial and reasonable manner. Therefore, I think if a candidate is

wronged, he should be given the opportunity to make clarifications, and if we can successfully invoke the Legislative Council (Powers and Privileges) Ordinance, we should also give the candidate the opportunity

PRESIDENT (in Cantonese): Mr LEUNG, you have already explained the part of your speech that has been misunderstood.

MR LEUNG YIU-CHUNG (in Cantonese): to explain the issues over which he thinks he has been wronged. Therefore, what I mean is that I support I do not support the small-circle election, but I support invoking the P&P Ordinance.

MR CHIM PUI-CHUNG (in Cantonese): President, this is a matter of each person having his own way of expression and each person having his own understanding.

MS CYD HO (in Cantonese): President, I will make a declaration before all else. I have nominated Mr Albert HO to take part in this unjust small-circle election. I hope that his participation will bring to light the ugliness of the small-circle election, but it seems that the other two candidates have even outshined him in this regard.

Recently, we have seen most tragic developments in the small-circle election. Many covert dealings — alleged acts in breach of rules or even in breach of the law — have been disclosed by the media. Some of the information is very specific. For example, regarding the case of Henry TANG having unauthorized building works in his luxurious residence, we can see from pictures that there are two skylights at the bottom of the swimming pool, and for this reason it is impossible for him to hide it or deny it. As a result, the Buildings Department can immediately enter his house to conduct an inspection to follow up the case. This has given play to Hong Kong's core value of equality for all before the law. It will not be the case that Henry TANG is allowed to override the law because he used to be the Chief Secretary for Administration or he is currently running in the election and may become the next Chief Executive.

This is our core value. I have said this in response to Ms LI Fung-ying whom I very much respect.

Also, there are rumours involving LEUNG Chun-ying about possible transfer of benefits during the adjudication process of the West Kowloon Reclamation Concept Plan Competition. Up to this moment, the information revealed by the relevant reports has not been sufficient for drawing a conclusion to establish a case of conflict of interest on his part, but the information has already caused the public to reasonably suspect that this had happened indeed. The West Kowloon Cultural District (WKCD) involves colossal interests. If the Legislative Council sets hurdles for itself and refrains from conducting an investigation into his involvement in this incident because he is contesting the Chief Executive Election, is it not tantamount to telling us that officials are immune from penalty? Does it mean that a person who runs in the election can be exempted from questioning and from the law? If so, this is actually damaging the core value of Hong Kong.

For this reason, my colleagues from the Labour Party and I consider that the Legislative Council should perform our duty by exercising the powers to summon witnesses and conduct an investigation conferred by the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance), in order to inquire into whether there is any integrity issue concerning LEUNG Chun-ying.

Although the information revealed so far is not yet sufficient for us to reach a definite conclusion, Mr LEUNG did attempt to gloss over this conflict of interest, and this is what we have seen very clearly over the past fortnight. Why do I say so? Because Mr LEUNG reiterated that the consultancy fee was actually very small in amount, that he did not charge any fee at all, and that it is common in the industry to provide preliminary and rough information on land value for free and this is a standard practice in the industry. Besides, there are other reports pointing out that the reward for the champion of this Competition was very small as it was only \$3 million, which cannot be considered an interest by any standard compared to businesses involving huge sums of money in this industry and so, nobody would be driven by this \$3 million to engage in "race-fixing" or "king-making" by making Kenneth YEANG's design the winner.

However, we must point out here that the WKCD actually involves interests amounting to hundreds of billion dollars, and Mr CHIM Pui-chung even

said earlier that it is worth thousands of billion dollars. Apart from the Government's provision of \$21.6 billion approved by the Legislative Council, the WKCD involves far greater interests. This approved provision of some \$20 billion is allocated to the West Kowloon Cultural District Authority for the development of cultural facilities and its operational expenditure. But on this site measuring 42 hectares in the entire WKCD, there will be luxurious hotels, Grade A commercial premises and luxurious residential properties. Moreover, as for the land lots surrounding the WKCD, it was already known in 2002 that on these sites where property development projects would be and had been carried out, the residential flats would all cost sky-high prices.

We have seen that the price of the penthouse unit in some luxurious residential buildings can be as high as \$20,000 per sq ft, and it can cost as much as over \$40 million for just one penthouse unit. This is why some people said that in comparison, the \$3 million reward for the winner of the competition cannot in any way be considered an interest and so, there is no question of conflict of interest. Don't be silly! I mean, do not treat us Hong Kong people as fools. The interests involved are tremendously huge, especially as the winner of the competition can take part in the planning of the WKCD, and nowadays when information is wealth, how can the real interests to be involved amount to just a few million dollars? So, even though we have yet been able to prove an attempt of "race-fixing" or "king-making" on the part of Mr LEUNG in the adjudication process, we have seen very clearly that Mr LEUNG has made use of his expertise to gloss over the interests involved in the WKCD in such a way.

We have read the two batches of documents provided by the Government but some doubts have yet been dispelled. First, apart from the written declaration made by Mr LEUNG, at the meeting convened by the Chairman of the Jury on 25 February 2002, the first item handled was interest declarations. The Chairman of the Jury had collected and read all the declaration forms the day before the meeting (24 February), and this was the first issue handled on 25 February. We would like to know whether or not LEUNG Chun-ying attended this part of the meeting when the declarations of interest were handled. Did he say personally that he was not associated with any of the companies which had entered the Competition, or did he excuse himself from this part of the meeting?

However, when we raised these questions at the meeting of the House Committee last week, we found that there were no minutes of these meetings. Moreover, there were no minutes of some discussions during the meetings, including the details of discussions in the many rounds of vote taken, and whether or not the person alleged to have acted against the rules attempted to influence other jurors during the discussions. As these discussions of the meetings have not been put on record, there is a need for us to summon those people who attended the meetings, so that we can put questions to them and ask them to explain in person to the public through open hearings what exactly happened at that time.

Another doubt that the documents cannot resolve is that the senior management of DTZ did have contact with the entrant concerned. An example is that their curriculum vitas had been faxed over to Kenneth YEANG's company. But on the question of whether DTZ has a system for handling matters relating to these declarations of interest or contacts with clients, the Administration has not given any explanation.

Some supporters of Mr LEUNG argued that had there really been an intention to cover things up, the name DTZ would not have been filled onto the registration form of Kenneth YEANG. But the fact that someone had filled in a certain name does not mean that the person named did not deliberately cover things up. These are two different matters. This is why we also need to put questions to Kenneth YEANG. We need to ask him why he would fill in this information and for what reasons he named DTZ as a consultant in his submission.

President, about 25 minutes ago we learnt from our pagers that the Government has provided the third batch of documents to us and we were told to go downstairs to get them. But I dare not leave the Chamber as I was waiting for my turn to speak and so, I have not yet read those documents. Mr LAU Kong-wah has already drawn a conclusion and said that he had read all the documents. He said that he had read all the documents when he came in this morning. But now, it happens that there is still something that he has not read. Since he has not read all the documents, is the conclusion drawn by him an hour or so ago of not seeing the need to invoke the P&P Ordinance right or wrong? Furthermore, we question why the Government would still release documents while we are having a debate here. What exactly is the role of the Government?

If it is said that we Members exercising this power is tantamount to meddling in the electioneering dispute in favour of a certain camp, we must also ask whether this attitude of the Government is neutral and whether it has attempted to show favour to one of the candidates.

Recently, "muckraking" has really become the order of the day, and some people have questioned why Donald TSANG favoured the canopy design exclusively. We had expressed a lot of views during discussions on this design, because the canopy design is pleasant to the eyes but of little practical use. Although the canopy is claimed to be able to reduce the temperature and provide a shelter against the rain in the WKCD, the canopy is actually an open design and it is basically impossible for the canopy to perform these functions of reducing temperature or providing shelter against the rain, and what is more, the repairs and maintenance costs more than \$3 million annually. Most importantly, the Technical Panel already voted down Norman FOSTER's design and considered it technically not feasible. But there are reports alleging that Donald TSANG alone salvaged this rejected design. As such, did he manipulate the situation single-handedly, and did he attempt to give a boost to the consortium behind Norman FOSTER? In fact, these inside stories and materials should all have been disclosed a decade ago for the public to see clearly and understand all the facts. Why should they be withheld until today and used as materials to attack each other only when a power struggle is going on?

I believe Members in the democratic camp do not stand on TANG's side or LEUNG's side, and the polling of this small-circle election will take place on 25 March. Even if this motion is passed today, it is true that there will not be sufficient time for investigation. In spite of this, the democratic camp supports the exercise of this power because we consider it imperative for the public to know whether there is any problem with the integrity of this person returned by the small-circle election who will govern Hong Kong in the next five years.

Even if the democratic camp supports today's proposal of conducting an investigation, the election result will not be affected. Why? President, as you have said, there is a "heavenly god" beside the ears of members of the Election Committee (EC), and we are segregated from this "heavenly god", we are not attracted to each other, and he does not speak to us. But the final decision is made by this "heavenly god". Furthermore, we can see that these 1 200 EC members actually have no bottom line. While Henry TANG is suspected to

have acted against the rules and even the law, he could still obtain over 300 nominations. This man surnamed LEUNG is suspected to have conflicts of interest and likewise, he could obtain some 290 nominations. The democratic camp can hardly exert any influence on the overall situation and should not make a choice between two candidates who are either bad or worse. We support that an investigation be conducted into the entire incident and witnesses be summoned because we hope to find out for the public whether there is any problem with the integrity of the Chief Executive to be returned by this privileged clique.

As I said earlier, it was only half an hour ago that the third batch of documents was made available to us. We do need to investigate the role of the Government, too. Why would they be shielding each other in the process back then? Who gave this instruction and exerted an influence to make sure that nobody would reveal this matter? Is it that the persons involved in this matter unquestionably heeded their superior's instruction and accepted this situation of officials shielding each other with no bottom line on morals and no integrity to speak of? Why are these unlawful deeds revealed only after people in the pro-establishment camp have shielded each other for a decade? Over the past decade, in what position is public interest placed by public officers? When have they ever attached importance to public interest? We need to investigate all these issues to find out the truth.

President, according to many reports and rumours, the Central Authorities are said to be very worried about many people taking to the streets on 1 July after Henry TANG is elected. Here, we Members of the democratic camp who are cut off from the "heavenly god" must openly state this: Do not fantasize that no people will take to the streets. Now that the struggle for powers in the small circle has become so scandalous, at 3 pm on 3 March, in the Victoria Park there will be many enraged people coming forth to condemn this small-circle election which is full of shady acts.

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

DR PRISCILLA LEUNG (in Cantonese): President, in ancient times when the kingdom of Chu and the kingdom of Han were contending with each other, XIANG Zhuang performed a sword dance at the Hongmen Banquet. It has been

known hitherto that XIANG Zhuang performed the sword dance not to entertain the guests, but for the purpose of killing LIU Bang.

Today, this Chamber of the Legislative Council has apparently been turned into the scene of the Hongmen Banquet. Some Members very much hope to immediately perform a swordplay with this imperial sword of the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance). Many people in the community have already said to me that Members are performing this "swordplay" with the purpose of eliminating LEUNG Chun-ying.

I think the Legislative Council should remain neutral and impartial. It is inappropriate to intervene in the Chief Executive Election, and we should not, just as the public have said, degenerate into tools for attacking enemies in politics. Moreover, the P&P Ordinance is the last resort and the imperial sword of the Legislative Council.

Regarding an incident that occurred a decade ago, the Government has disclosed the relevant information partially and this obviously is related to the next Chief Executive Election. It is even more infuriating that the Government has been releasing information on this incident in a way like "squeezing toothpaste out of a tube". The Legislative Council is suddenly turned into a wrestling ring for the Chief Executive Election, and I think the Government should take all the blame and cannot shirk its responsibility. In this incident, the Government has again come to its senses only at the eleventh hour. Why had it been refusing to provide the relevant voting records and minutes of meetings? It was not until Members proposed invoking the P&P Ordinance that the Government disclosed the information bit by bit. The approach taken is completely the same as what it did in the case involving the two power companies on the last occasion.

With regard to the previous case involving the two power companies, I supported Ms Miriam LAU's amendment. That is, while the P&P Ordinance could be invoked, it is necessary to respect commercial operation and keep commercial information confidential. Compared with the previous incident involving the two power companies, I think there is one additional element in this incident and that is, the Chief Executive Election. If, during the Chief Executive Election, the P&P Ordinance is invoked to investigate a Chief Executive Election

candidate, the public will question in no time why we do not at the same time conduct an investigation on another Chief Executive Election candidate.

When we make a decision on whether or not the P&P Ordinance should be invoked to investigate a certain incident and particularly when this happens during an election, we should take more issues into consideration. In this term of the Legislative Council, I have joined only one committee tasked to investigate a special incident and that is, the Subcommittee set up to investigate the Lehman Brothers incident. I remember that Mr Albert HO had disclosed his interests relating to the Lehman Brothers incident and subsequently, he had to resign from the Subcommittee because of these interests. Earlier on, Ms LI Fung-ying also cited examples that in the Select Committee to inquire into the case of LEUNG Chin-man, some members had also withdrawn from meetings under certain circumstances.

On the question of whether or not we should appoint a select committee that can exercise the powers conferred by the P&P Ordinance, I think what we need to consider is not whether Mr LEUNG Chun-ying would wish that more government information can be released through this committee. Besides, we should not push for the publication of the investigation results before the Chief Executive Election (that is, before 25 March). Once we have this in mind, the credibility of the conclusions drawn by this committee that can exercise the powers conferred by the P&P Ordinance is set to be questioned.

Indeed, I trust that colleagues will try their best not to be biased during the investigation but in terms of procedure, and particularly on the principle of natural justice in law, if political rivals, or open and direct competitors, or even people of two competing camps have become members who will investigate the case, any reasonable third party will easily think that these members will be biased in conducting the investigation. Regarding this principle, there have been countless cases in law before. These members should withdraw from meetings, especially as they are openly in opposition to each other. Therefore, I think this point is worthy of consideration by colleagues.

The powers conferred by the P&P Ordinance are the biggest powers that can be exercised by the Legislative Council, and they are almost equivalent to the court's right to summon witnesses. In exercising this power, I think the Legislative Council and members of the select committee must not only be

impartial, but also seen as impartial by a reasonable third party. This is an instance of procedural justice.

Let me make a declaration here. I have not nominated any candidate for the Chief Executive Election. As for the Kowloon West New Dynamic with which I am associated, over five members have nominated Mr LEUNG Chun-ying and over seven members have nominated Mr Henry TANG. We basically allow members and consultants of the Kowloon West New Dynamic to make their own choice on the nomination of candidate.

In considering whether or not we should appoint a select committee that can exercise the powers conferred by the P&P Ordinance, I have taken into account what the terms of reference of this select committee should be, which Members of the Legislative Council can join it, and whether a conclusion must be reached before 25 March. In fact, Members who have joined a select committee before will know that with such a pressing time frame, hardly would our conclusion be convincing and hardly would a reasonable third party think that the investigation is objective and impartial.

Therefore, let me reiterate my position here: If the incident does not happen during the Chief Executive Election, I will absolutely support that the P&P Ordinance be invoked. However, as this incident now involves the Chief Executive Election, I can only abstain in the vote.

President, I so submit.

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

PROF PATRICK LAU (in Cantonese): President, first of all, I declare that I was a member of the Jury of the West Kowloon Reclamation Concept Plan Competition (the Competition). Before all else, I would like to ask the President whether it is appropriate for me to speak on this occasion and whether I can vote later on. This is very important to me.

PRESIDENT (in Cantonese): According to the Rules of Procedure, insofar as the question of the debate is concerned, a Member who has a pecuniary interest, whether direct or indirect, in the question shall not speak on it, except where he discloses the nature of that interest. When a vote is to be taken and if a Member has a direct pecuniary interest in the question to be put to the vote, he shall withdraw from the meeting and cannot vote on the question. Apart from these rules, the Rules of Procedures have no restriction on Members in respect of speaking and voting.

PROF PATRICK LAU (in Cantonese): I can only tell you, President, that the Government gave me a pen after I served as a juror in the Competition. Other than this, I was not remunerated or given any other reward.

Of course, the Competition was held a decade ago and should there be other pecuniary interest involved, I would not have understood it. So, actually, I think no pecuniary interest is involved. This is just a feeling.

Will I have an opportunity to take part in competitions relating to the West Kowloon Cultural District (WKCD) project? I hope I can take part in these competitions. I, being an architect, have this right. So, I have to explain this to the President first. If I will not be able to take part in competitions relating to the WKCD project, then I should not be speaking here.

To me, this is a very difficult decision. I will continue with my speech if the President allows me to.

PRESIDENT (in Cantonese): Prof LAU, all you need to consider now is whether or not you have a direct or indirect pecuniary interest in this question about whether or not the Legislative Council (Powers and Privileges) Ordinance should be invoked to set up a select committee.

PROF PATRICK LAU (in Cantonese): Fine. In that case, I think I can go on with my speech, because insofar as this question is concerned, a decision will be made today, and I have had no pecuniary interest in it; nor does it involve the future situation. Therefore, I would like to speak on it.

In fact, like you, I also consider the current situation of the Chief Executive Election most unsatisfactory. Of course, I am referring to the use of "black materials" to attack the two candidates. I have heard many Members mention the Chief Executive Election, but I am not going to say a word on it.

As you know, President, I am an advocate of architecture competitions. I am very enthusiastic about promoting architecture competitions. Whenever the Government comes to this Council, I will call for the organization of architecture competitions. To an architect, it is most important to be able to ultimately win an architectural design award. So, in making a speech in this debate, I hope I can enable Members to understand the importance of architecture competitions as well as their fairness and impartiality. These are what I wish to say most instead. If what we are discussing now did happen in the Competition, it means that the Competition was not fair play but black-box operation, and I would be gravely worried. An architecture competition is meant to give young architects an opportunity to bring their talents into play. It is also a way to enable architects to continue with their work, which is most important. President, in a city, if there is not any architectural design which we consider to be good, it means that the architects have made no contribution at all. So, the most important part in architecture competitions is creativity and design; seldom is money involved. Of course, after an architect has won in a competition and has been offered employment, he will have an opportunity to further take part in that construction project, which is also the ultimate objective of competitions.

President, I have worked in the construction industry for many years. I have been an adjudicator in many architecture competitions and I have also participated in many architecture competitions. You may recall that my most heartbreaking experience came in the architectural design competition held for the third university, that is, the architecture competition organized for The Hong Kong University of Science and Technology (HKUST), in which our team emerged the winners and as you also know, it finally transpired that we could not participate in this project. It was certainly a major blot on the competition. The HKUST was subsequently found to be built at a cost exceeding the budget substantially. The Legislative Council, therefore, invoked the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to summon a number of parties concerned to uncover the truth. Now, I can also access all the relevant reports in the Library of the Legislative Council. The Legislative Council invoked the P&P Ordinance to obtain reports, in order to conduct an investigation into the incident and look into the issues relating to the competition and most importantly, whether we had been treated fairly. As for the result, it

baffles me that although three of the six Members agreed that there were problems on the part of the Government in this incident, these three Members considered it reasonable for the Government not to award the contract to us.

Certainly, I felt greatly disappointed. But the point is I must uphold the continuity of architecture competitions. If, in that architecture competition, there were adjudicators who made an assessment improperly, I would consider it a big problem. So, in this respect, I think it is very important to find out the truth.

President, I have kept this to myself for a decade. It is very difficult to remember everything on the strength of memory of what happened a decade ago. I was a juror at that time, and I know all the more clearly now that it is very important for the entire Competition to go through clear procedures to avoid any conflict of interest. This is why the jurors should not know anything about the entry designs, and this is most important. If a juror knows it, he would not be considered as making his assessment properly and impartially. So, insofar as an architecture competition is concerned, it is most imperative that the adjudicators should not know of their association with the entrants. I am an architect, and as all the entrants belong to my industry, I would say that I am in a most vulnerable position. If anyone mentions his design to me, I actually will not take up the role as an adjudicator. I understand very well the ethics required of an adjudicator, and I must strictly observe them.

Members have already obtained a lot of information and so, I have said so much to the media because I hope everyone can clearly understand that an architecture competition goes through a very detailed process which is fair and impartial. President, you and I have been the judges of the arts competition in the Legislative Council, and as you may recall, when we selected the artworks for the Legislative Council, all that we had considered were arts-related factors of the artworks, or the suitability of the artworks for the Legislative Council, and so on. There was entirely nothing to do with whether or not we know the artist concerned. And we should not know actually. Therefore, the architects had all remained anonymous throughout the adjudication process, and we would not know which architects had entered the competition. It is only under this principle that we can select the best piece in a fair and impartial manner.

Regarding the problem now, the Government had not provided much information before and I could only rely on my memory of what happened a decade ago. But as more and more documents have now become available, I can remember what happened more and more clearly. If I am asked whether or

not any juror might know the identity of any entrant, I think this is a very serious problem. I am not saying that a certain juror knows a certain person but anyone who has read these documents will have this doubt and if there is this doubt, we have to find evidence and clarify it.

As far as I understand it, the P&P Ordinance empowers Members of the Legislative Council to demand the Government to provide all necessary and relevant documents. This is the first point, and this can throw light on what happened. Most importantly, we can ask all relevant persons to attend the hearings when necessary. The point is that they will take an oath and must tell the truth, and if they lie, they will be sanctioned by law. Therefore, this is the best way to make all witnesses tell the truth, and this can enable us to find out whether or not any juror had made his choice improperly in this incident. This is a very important point, and what I would like to say is that I wish to maintain the architecture competitions in Hong Kong.

As you know, President, I have always promoted architecture competitions. Even though I have had an unpleasant experience in the case of the HKUST, I will still continue to promote them. If these problems do exist, I would feel very sad. To me, it does not matter anymore as I have been an architect for a long time, but this is important to young architects. If they have spent a long time on their architectural work but are then disqualified for no reason, it would be a very sad thing to them.

President, it was precisely because of the principle of confidentiality that I could not say openly why one of the good entries was disqualified. This is a big problem, and if, in an architecture competition, assessment is made by having regard to pecuniary interest or any relation, we should not become adjudicators. This is a moral principle that we all understand. So, insofar as this incident is concerned, I think we should return justice to the persons concerned. The P&P Ordinance has this merit which, I think, is enormously important.

However, as I am one of the persons involved, it is very likely that I will be summoned as a witness by the select committee in future. If I make a decision today, will other people think that I am wrong? I can only leave it to people's judgment in future. I have thought long and hard about how I should vote or whether I should withdraw from the meeting. This is why I asked for the view of the President as I wished to clarify it. If it is appropriate for me to stay in this meeting and vote, I will certainly stay and give an account of the situation of architecture competitions.

I hope that this does not have any bearing on the Chief Executive Election but now, this just cannot be avoided because of the timing. Had it not been a time of the Chief Executive Election now, this incident would have been buried. I have kept it to myself for a decade and I had never talked about it until I have this opportunity to say a few words on it now. This is where the problem lies and so, I hope that the President can appreciate my situation. I will stay and vote if you consider it suitable, and if you think that I may be summoned as a witness in future You understand the entire system of the Legislative Council better than I do. I hope you can give me an instruction and, insofar as I am personally concerned, I hope to stay and vote.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, I originally did not plan to speak at this time but having listened to the speeches of a number of colleagues, I would like to briefly express my views. Members have declared their interests, and I also wish to make a declaration. I have not nominated any candidate for the Chief Executive Election. Among the several candidates contesting the election, as I mentioned before, I am most familiar with Mr Albert HO, as we always listen to each other's speeches in this Council. So, here, I wish to say a few words that I personally consider to be fairer comments.

I have read the latest documents provided by the Government to the Legislative Council only today. I think the greatest concern to most people is how the nine jurors voted in the six rounds of voting, and I think Prof Patrick LAU shares this view, too. I have noticed that LEUNG Chun-ying actually cast a vote in only five of all the six rounds of voting, but he selected some entries on the day before the first round of voting. After he had selected these entries, the other jurors made a decision the next day at the time of voting that since Mr LEUNG was absent, if other members voted for these entries, one more vote would be added to reflect Mr LEUNG Chun-ying's vote. This was a decision taken for the first round of voting. Therefore, LEUNG Chun-ying had voted in all the six rounds of voting.

Apart from the first round of voting, in the other five rounds of voting LEUNG Chun-ying voted for a total of four times for the entry which is our concern now. I have noticed that among the nine jurors, another one had voted for this entry as many as five times. As far as I can see, among all the entries, the entry concerned was the only entry which was put to the vote in all six rounds

of voting. Besides, two other members had voted for this entry twice in the six rounds of voting. This is broadly how they had voted. If we look at it just from this angle, Mr LEUNG Chun-ying was not the only person who had voted for this entry for five times.

The first prize winning entry had been put to a vote in a total of three rounds of voting. I have noticed that of the nine jurors, four voted for this entry thrice, whereas Mr LEUNG Chun-ying did not vote for this entry in these three rounds of voting. If I, as an outsider, look at these figures alone, I find it very difficult to point out that Mr LEUNG Chun-ying's voting preference was in any way different from that of the other members, because the other members had also voted for the same entry for many times, including the entry for which Mr LEUNG Chun-ying had voted.

As regards the first prize winner, some jurors had voted for this entry in all the three rounds of voting. But some members did not vote for this entry in certain circumstances or voted for this entry in certain circumstances. Therefore, I think these members actually had varying ways of voting. If there are queries about Mr LEUNG Chun-ying not voting for the first prize winner in the three rounds of voting, I can point out likewise that while the second prize winner had been put to a vote in a total of four rounds of voting, one of the members voted for the second prize winner only once in the four rounds of voting. This is proof that there were, in fact, a lot of variations in the ways of voting by members. From this, it is very difficult to point out that Mr LEUNG Chun-ying's way of voting was peculiar.

Of course, I have heard many colleagues suggest today that the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) should be invoked to probe into this matter further. I think if the P&P Ordinance were invoked, more evidence would be required and more people might probably be summoned to give evidence. It would be necessary to study boxes and boxes of documents and after studying them, it would be necessary to further study whether or not the investigation could continue. This would be like continuously searching through heaps of documents and the evidence given by some people for some traces and clues. But what would be the outcome? What advantages would there be? Frankly speaking, I really have no idea.

I am a simple person, and I believe, in whatever we do, we must make a judgment based on common sense. What is common sense? Sometimes I think if I were the person in charge of a company with hundreds of employees, it

would be impossible for me to know with whom each of them has come into contact or spoken on the telephone or exchanged e-mails every day. Under such circumstances, even though I am the highest person in charge of the company, I would not be able to know what each of my employees is doing. I heard many colleagues say that it was impossible that he knew nothing about it, but this is often the case in reality, especially to people who hold many public offices. Frankly speaking, sometimes it is indeed difficult to take care of one's own business.

On the point that he was late in the submission of the form, frankly speaking, I have just been reminded by my colleagues in the hospital today that I am late in filling out a form. Many people have had this experience, not to mention the very short deadline of two days. On the point about filling in incorrect information, I believe most people also have had this experience. I dare not name any person in this connection but at least, I myself have had this experience. I often have to fill in information again after getting it wrong, and this is an experience of many people, too.

However, if each such mistake or omission becomes a reason for pursuing responsibility or investigation or persecution in future, what will become of this world? This makes me think of my patients. I have two types of patients. One type of them are patients who make associations in their mind because of a remark or a gesture or a movement, thinking that this gesture or remark is an allusion to him. For example, when he overhears two strangers talking to each other on the street about how good last night's episode of a drama series was, he would think that these two persons are alluding to him in their chat and that they are actually saying that his life resembles the leading character in the drama series. This patient will even suspect that they have been following him every day in order to know about his daily life. On other occasions, he may come across other strangers who said that he has done something wrong and then, he will think that these people are speaking ill of him, that they are accusing him of doing something wrong and that they want to do something to him. What illness do these people suffer from? It is paranoia.

As for the other type of patients, they always suspect that they have a medical condition. They suspect that they have heart disease or they suspect that they have cancer. When they have a digestive problem, they suspect that they have cancer, thinking that inside their belly there is an incurable disease. When they suspect that they suffer from an incurable disease, they go to see the doctor and when the doctor confirms that they do not have any problem after

examining them and performing basic tests on them, they will feel very happy. But two days later, they will again suspect that they are sick and that the doctor has failed to examine them comprehensively and so, they will further ask the doctor to carry out more tests on them. The doctor, reluctantly though, may perform on them tests that are actually unnecessary and when the report shows that they do not have any problem, they will be happy for two days but then, they will become worried again. However, they may not go to the same doctor this time and instead, they will seek assistance from other doctors. Eventually, they will take more and more tests over and over again, but they will consider all the test results unacceptable, thinking that there must be mistakes and omissions. What illness do these patients suffer from? It is hypochondriasis, which means that a person always suspects that he suffers from an illness.

So, if a person has made a presumption beforehand, then, whatever he sees will be tinted, the colour of bias. Therefore, I think we should set aside our bias and treat this matter with a relatively neutral attitude. Continuous investigation and fault-finding remind me of the witch hunt in Medieval Europe. I have no idea why, at that time, Christians believed that there were witches in the world who had dealings with the Devil and that they had plotted to do harm to the world. Therefore, they searched everywhere for these witches. At that time, people with minor psychiatric disorder or people whose behaviour was a bit different from that of the ordinary people were most miserable as they were caught as witches, and Members will know what happened to them in the end. They were burnt at the stake. That was the witch hunt.

Continuous fault-finding and persecutions also remind me of McCarthyism in the 50s of the last century. At that time, United States Senator Joseph McCARTHY suddenly cautioned about communist influence in the United States and set up the House Un-American Activities Committee to conduct investigations into the communist activities as referred to by him. Even Charlie CHAPLIN, who is known to us all, was accused of being a communist by him. Eventually, CHAPLIN was hounded and then escaped to Britain. Moreover, many scientists, artists and politicians were also pursued and persecuted as communists by Mr McCARTHY, and many people even died.

Today, now and here in Hong Kong, do we wish to backtrack and walk this path that others have walked before and tasted its bitterness, a path that others have regretted taking and sworn not to take ever again? In fact, I do not wish to name and criticize any colleague but at the last meeting of the House Committee, I heard Mr James TO make a remark, and there is something that I must say about

it. I very much respect Mr TO in many aspects but insofar as this incident is concerned, I really must get it off my chest. He mentioned that LEUNG Chun-ying filled in wrong information on the interest declaration form and pointed out that it is a criminal offence to fill in wrong information on this form and that this should be reported to the police for investigation and arresting him.

This reminded me of an incident and that is, Mr TO was actually in a similar situation a few years ago. There was the incident of Target Link Limited then and with regard to his possible involvement in transfer of benefits, he explained that he was too busy and so, he had forgotten or omitted some procedures. Insofar as this incident is concerned, I believe Members will not pursue any further because that was really just an omission. Very often, as I said at the outset, human beings are human beings, and sometimes we will really forget and omit something, and especially when we are busy, we may have omitted something.

But I wish to point out that Mr James TO is a Christian, and when I was a child, I heard that the Bible says: People see the speck of sawdust in other people's eyes, but consider not the beam that is in their own eyes. Based on this verse, I very much wish to ask: Should we live as human beings in such a way? Should we take a fairer, impartial and more reasonable attitude towards other people's negligence and mistakes? I think if colleagues want to continuously — especially at the time of an election — If they want to continuously hound and persecute their political rivals with the approach of the witch hunt or McCarthyism, I hope Members can come to their senses, because the voters will soon grow tired of this game. I think we should abandon this practice. Taiwan has already abandoned this practice, and their election now is conducted by comparing each other's platforms, convictions and track records. If we remain at this stage or even continue to backtrack, I am afraid that on this path to democratization we are not moving forward but retrogressing. Meanwhile, if colleagues insist on treating other people in such a way, I urge them to treat themselves by applying the same standard.

I so submit.

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

MR PAUL CHAN (in Cantonese): President, first of all, I would like to declare that I am one of the nominators of Mr LEUNG Chun-ying in the Chief Executive Election. Furthermore, I was appointed as a member of the Board of the West Kowloon Cultural District Authority in the second half of 2008.

Like everybody else, I am also very concerned about the incident concerning the declaration of interests in respect of the West Kowloon Reclamation Concept Plan Competition (the Competition) as it is related to the integrity of a Chief Executive candidate. Although I am a nominator and supporter of Mr LEUNG, I have always reminded myself that I should be fair and impartial in dealing with any matter. I should base my judgment on facts and listen to the views of different people from different perspectives rather than biased opinions.

Yesterday (28 February), I published an article entitled "Looking at the allegations of conflict of interests in respect of the Competition from a professional viewpoint" in *Ming Pao Daily News*. In that article, I tried to analyse whether Mr LEUNG has made any mistake or omission in the declaration of interests relating to the Competition from four aspects, namely, the chronology of events, queries, declaration of interests and the filling out of the interest declaration form. If the answer is yes, whether he has deliberately hidden some information or committed omission due to oversight, or owing to other reasons. According to the information disclosed by the Government and responses from various parties, as well as the information papers submitted to the Legislative Council one hour ago, which have been digested by me in order to find out the facts and circumstances, I consider that Mr LEUNG has not deliberately hidden anything in respect of declaration of interests relating to the Competition and his integrity is not in question. Because of the time constraint, I cannot explain all the points I raised in the article. But I would like to highlight some important issues in order to illustrate my views.

Regarding some queries by the public, I have made some observations which have been pointed out in my article as follows. President, the first one is about the allegation of deferred reward.

Paragraph 16 of the General Conditions of the Competition Document published in April 2001 states the restrictions on qualification, and I quote, that "all those likely to be in conflict of interest are excluded from the Competition including but not necessarily limited to members of the Jury any person at continuous and close professional association or partnership" (end

of quote) Paragraph 44 of the General Conditions adds that the submission of a participant may be disqualified for failing to abide by the rules. Besides, the list of jurors has also been set out clearly in paragraph 8 of the General Conditions. Therefore, it is impossible that both T.R. Hamzah & Yeang and Mr LEUNG did not know that a violation of regulations would lead to disqualification and the relevant entry would never be selected as winner. If there was any arrangement for deferred reward, I believe T.R. Hamzah & Yeang will not fill in the name of DTZ as its property consultant in an open manner, thereby leading to a query of conflict of interests.

President, the second query is about the terms of reference of the Technical Panel. Its terms of reference include its recommendations as to which entries should be disqualified for failing to meet the competition requirements in specific non-technical aspects. In this connection, the Technical Panel had recommended to disqualify 12 entries, which, however, did not include Dr YEANG's. However, as Dr YEANG had set out clearly in his company's entry documents that DTZ was its property consultant, why did the Technical Panel not discover that it was a violation of the restrictions on qualification? If not because of the oversight of the Technical Panel in this regard, the entry concerned would have been disqualified and could not enter the selection stage by the Jury and hence there would not be any discussion on the issue today.

President, the third query is that while the Technical Panel had given an account on how conflict of interests would be dealt with and the principle of confidentiality in paragraphs 8 to 10 of its report, there is no similar paragraph in the Jury's report. According to the statements of the Home Affairs Bureau and Mr LEUNG, in the morning of 28 February after Mr LEUNG had reported to the Chairman of the Jury that there was conflict of interest in respect of Dr YEANG's entry, the Jury held a discussion on the matter and disqualified T.R. Hamzah & Yeang in accordance with the General Conditions. What did this imply? Did the Jury think that this, as a trivial matter, could be dealt with in accordance with the General Conditions of the Competition and it was not necessary to raise the alarm and therefore did not include it in the report? Or had someone shielded Mr LEUNG as speculated by the public?

President, let us look at the composition of the Jury which comprised a total of 10 people. Five of them are overseas individuals, including the highly respected architectural professional Lord ROTHSCHILD, who was appointed as Chairman, and three other internationally renowned university professors, in addition to some local members including chancellors and professors of

universities. Would such people be instructed to shield someone so easily? President, the allegation of having shielded someone is a serious query to the personality and integrity of all jurors.

President, the fourth query is about the voting record of the Jury. First of all, the author of each entry is given a number and the jurors did not know who the author was. Moreover, they did not give scores during the voting process. In other words, no juror could give a very high score to an entry and very low score to another in order to affect the voting results. Each juror would only cast one vote to one entry and thus the influence of each vote on the result would be equal. Some people have pointed out that Mr LEUNG's vote for T.R. Hamzah & Yeang's entry through to the end aroused suspicions. I have exchanged views with some architects, who consider that it is very common in the selection of such artistic creation that a juror will vote for an entry through to the end if the juror likes it very much. In fact, according to the documents released by the Government, including the papers provided in this morning and afternoon, we can see that in the selection of the first prize winner, another six jurors, apart from Mr LEUNG, out of the 10 jurors in the Jury voted for the same entry from the beginning to the end. In other words, there are a total of seven jurors, rather than Mr LEUNG alone, who have shown special preference for a particular entry.

Besides, in the selection of the second prize winner, Mr LEUNG voted for another entry and only he himself knew the reason for it. However, as there were many rounds of voting in which jurors would discuss and exchange views, it is not sure whether Mr LEUNG had changed his mind during this process after drawing reference from the views of other jurors.

President, in the selection of honourable mentions after the first and second prize winners had been chosen, nine out of the 10 jurors had voted for the entry of T.R. Hamzah & Yeung. Perhaps, this is because of some outstanding features of T.R. Hamzah & Yeung's entry rather than the personal bias of some jurors.

President, regarding the declaration of interests, my observations are as follows.

According to Mr LEUNG, regarding the facts that DTZ had provided information of land premium to a quantity surveying company and T.R. Hamzah & Yeung had filled in the name of DTZ as its property consultant in the competition entry form, he was not in the know before the selection process was completed in the afternoon of 27 February, 2002. Is this convincing?

President, I have noted some facts as follows. First, Mr LEUNG and Dr YEANG said that they did not know each other. Second, a subordinate of Mr LEUNG had provided land premium information to a quantity surveying company. It was said that no fee had been charged since the information provided was only a rough estimate and therefore not a formal engagement of business between the parties concerned. After checking, I found that this is quite common in the surveying sector. As this is not an engagement of business, no record was made in the DTZ's registry of business.

Third, owing to the above situation, Mr LEUNG did not know that it was necessary to make a declaration of interest when filling out the declaration form as he had not discovered any business related to West Kowloon after thumbing through the business registry of his company.

Fourth, regarding the fact that the staff of DTZ had emailed the curriculum vitae of the four high-ranking officers of the company and the company profile to T.R. Hamzah & Yeang, Mr LEUNG said he was not in the know because he and his staff were not in the same office, apart from the fact that the matter had not been recorded in the business registry as it had not developed into a business.

President, concerning the filling out of the declaration form, I have some observations as follows.

When filling out the declaration form, Mr LEUNG chose the item indicating that he was not a director or major shareholder of any company. According to his response, he considered that he was required to declare any company which might have possible conflict of interests in respect of the Competition rather than any company. Perhaps he had some misunderstanding. However, the fact that Mr LEUNG is the chairman and shareholder of DTZ is a long-standing fact in the public domain and he would not be so stupid as to try to hide it. Regardless of whether he might have some misunderstanding in filling out the form or he was simply careless, any allegation that he has deliberately hidden his capacity as director and shareholder of DTZ is relatively farfetched in my opinion.

President, let us consider the background of requiring the jurors to fill out the declaration form. The Competition was announced in April 2001 with the deadline for submission of conceptual proposals on 29 September in the same year. Meetings of the Jury were convened from 25 to 28 February. However, the Organizer wrote to members of the Jury requesting them to make declaration

of interest until Thursday, 21 February 2002 and declaration forms were required to be returned on or before Saturday, 23 February. Mr LEUNG submitted his late return on Monday, 25 February. But according to the Home Affairs Bureau, among the 10 jurors, a total of two were late in submitting the declaration forms. At present, we do not know the specific time when jurors were requested by the Government to complete the declaration form. But in any case, the schedule is actually very tight for jurors to return the declaration forms in just two and a half days. Having engaged in public service for so many years, I appreciate that many people in public service are very busy and may not be able to put aside their office work immediately so as to deal with such matter. Regarding such an important matter, I instead query why it had been procrastinated for so long and was handled in such a hurry by the Government.

President, after the publication of my article, I have received some responses from many friends in the sector, and some of them shared my views. Let me quote some of their responses which reflect the views of the sector. A friend advised me to read the article entitled "Maladministration of the Government, benefit of the doubt given to Mr LEUNG" in the press yesterday written by Joseph WONG, the former Secretary for Civil Service and the incumbent Visiting Professor of the Department of Public and Social Administration of City University of Hong Kong. In the conclusion of his article, Mr Joseph WONG considered to such effect that "so far, the Government has not produced any evidence to show that there is any integrity problem in respect of LEUNG Chun-ying." My friend in the sector also considers that the allegation in respect of LEUNG Chun-ying's integrity was too far-fetched. Some friends in the sector have also told me that although they are not LEUNG Chun-ying's supporters, they hope that I will veto today's motion because they do not want to see a Chief Executive candidate being treated and commented so unfairly.

President, in this connection, Ms LI Fung-ying has advanced some viewpoints to which I very much agree. She queried whether the Legislative Council should investigate a Chief Executive candidate by invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) when the fourth Chief Executive Election is in full swing. In particular, regarding the allegation of conflict of interest in connection with the Competition, there is no evidence to show any problem in the integrity of Mr LEUNG Chun-ying insofar as the information and facts are concerned. Therefore, to set up a select committee at this stage by invoking the P&P Ordinance is to exert influence on the fairness of the election by use of public powers. In particular, as 32 of the

60 colleagues in this Council today have nominated different candidates, how can we ensure the impartiality and objectivity in operation of the select committee in future and that it is seen to be so by the general public? In her speech, Ms LI Fung-ying has highlighted the true ulterior motive behind today's motion.

President, 32 colleagues in this Council have declared that they have nominated different candidates. Even though you have clarified that according to the Rules of Procedure, only Members who have a direct pecuniary interest cannot vote, I think everyone in this issue — I should not say everyone — I should say that Members who have nominated candidates nonetheless have a conflict of roles in this issue. Therefore, do the voting results reflect fairness of proceedings?

President, to my understanding, most of the Members who have nominated different candidates will not withdraw from voting on the ground that they have nominated a candidate, thus giving rise to conflict of roles. Therefore, when it comes to the vote on this resolution, I will stay in this Chamber but will not cast any vote in order to indicate my position towards this resolution. Thank you, President.

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

MR PAUL TSE (in Cantonese): President, please allow me to make a declaration first. I am a member of an advisory committee under the West Kowloon Cultural District Authority. Besides, I have not nominated any candidate in the Chief Executive Election so far.

President, I have listened very carefully to Mr Paul CHAN's speech just now. He has spent a great deal of time on it which contains a lot of details. He has studied a lot of details in a meticulous manner probably because he is a professional accountant. But I would like to remind Mr Paul CHAN that what we can see now is evidence only on the surface and it is not appropriate for us to deliver any closing remarks at this stage. It seems that Mr Paul CHAN should give his analysis in his closing remarks after hearing all evidence and reading all documents instead of looking into so many details when many parts of a puzzle or jigsaw, so to speak, are still missing. In doing so, we will only be wasting our time and efforts on making partial analysis and the conclusion will only be misguided.

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

Deputy President, the second point I wish to raise is that many colleagues, regardless of whether they support the motion or not, have tended to support or oppose the motion or abstain from voting on the ground that the Chief Executive Election will be held on 25 March. However, Deputy President, from the perspective of logistic arrangement and operation, I believe even if the motion were passed by this Council, the arrangements for hearings or relevant procedures for a select committee could not be made so expeditiously that a conclusion can be drawn. Therefore, I believe even if there is any impact, not to mention whether a select committee can be set up or not, the relevant parties, including Mr LEUNG, will not be affected to such an extent that they have to testify or answer questions, or even affected by any conclusion which may be favorable or unfavorable to them. I think that logistics-wise, this will not constitute any material impact in terms of timing. I am sure that Members who are concerned about the impact of a select committee on the Chief Executive Election can feel a little bit relieved.

As for the third point I wish to raise, Deputy President, Dr Priscilla LEUNG just now put forth some reasons to explain why she originally supported the setting up of a select committee by invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) but refrained from doing so because of the Chief Executive Election. However, I wish to highlight one point. Certainly, we are unable to make any determination without taking into account some factors. But relatively speaking, we should not support or oppose this motion because of some political reasons, or on the ground that an election will be held, or we support a certain Chief Executive candidate. Similarly, we should not fetter the exercise of powers which should be exercised because there will soon be an election. A theoretically neutral or politically neutral option should not be rejected simply because an election will be held, thereby resulting in a situation where someone who should be investigated can deploy a most powerful weapon or even a shield to block this option. I consider this not a reasonable argument.

As regards Dr PAN Pey-chyou's speech, I could hear his analysis on the basis of reasoning. If we have the slightest understanding of world affairs, we will know that things are always beyond reasoning regardless of whether they are

litigations or commercial disputes. Otherwise, there will not be any disputes at all. If we cannot find any loophole in all lawsuits, they will not be brought to court with a view to solving the disputes because there will be no dispute if things happen in a reasonable way. Unreasonableness is often found in cases which are brought to court and both parties have their own justifications which may be merits to one party but demerits to the other. Under such circumstances, there is a case to answer.

The incident this time around is probably a similar example, in which there is some irrationality. For instance, why did the entrant which clearly knew that the person-in-charge of DTZ was a juror, fill in the name of DTZ in its papers? However, will there be a situation where two wrongs will not make a right? We may have added something which should not be added on some occasions and omitted something which should not be omitted on the other. Or, we have become tight-lipped while we should be outspoken. As a result, everybody is confused. Precisely for the sake of the public's right to know, for the sake of doing justice to all the parties concerned, or even upholding Hong Kong's reputation in hosting international competitions, we have to conduct an investigation when we have sufficient *prima facie* evidence. Moreover, we should make comments only after we have conducted an investigation, read all the documents and heard all witnesses' evidence produced under oath which will bear criminal liability.

Deputy President, according to the report, there were 29 countries or a total of 31 regions including Hong Kong and Macao participating in the Competition, with 161 entries in total. Certainly, as Prof Patrick LAU said earlier, the importance of upholding the international reputation and fairness of such a competition is one of the factors to be taken into account when considering whether the P&P Ordinance should be invoked or not.

Deputy President, there are also some additional points which have been raised at the meeting of the House Committee. Given the manpower and resources needed for setting up a select committee, I will not easily support the exercise of the powers under the P&P Ordinance. But I think the so-called threshold or basic requirement has been fulfilled on a number of justifications, and some of them have been mentioned by colleagues, so I will not elaborate them and only briefly point them out. But please allow me to elaborate some points which have not been mentioned by colleagues in detail.

Deputy President, first of all, the most important document is certainly the interest declaration form. I do not agree with the analysis of Mr James TO, who said at the meeting of the House Committee that as it is not clearly stated in the declaration whether Mr LEUNG is the director of the limited company or whether his company has participated in the competition, a criminal offence has been committed. In fact, as the declaration is not taken under oath or made in accordance with statutory provisions, the declaration will not lead to criminal consequences or responsibility. Regardless of whether the declaration is made intentionally or unintentionally, or whether there is negligence, the declarer will not bear any criminal liability even though there is a critical or crucial error.

However, as a person who has won our trust due to his reputation, background, ability — with focus being placed on his background as a senior Member of the Executive Council for so many years rather than the fact that he is running in the Chief Executive Election — and as a senior practitioner in the sector to which he belongs, as well as his capacity as a juror of such a large-scale competition, which will lead to such serious consequences, if he has made obvious errors or omissions in the declaration form, the issue warrants our concern.

I note that Mr LEUNG's lawyer, Raymond TANG, who was the former Chairperson of the Equal Opportunities Commission, has given explanations on behalf of Mr LEUNG at a press conference in relation to the contents of the declaration. He said that declaration was necessary only for companies which were related to companies which had participated in the Competition instead of making a declaration on all companies. He pointed out that the list would be very long if all companies had to be declared.

On that count, I am afraid I cannot fully accept the explanation of Mr LEUNG or his lawyer, Mr Raymond TANG. There are indeed three items to be declared in the declaration form, which are mutually exclusive. In other words, for the first item, if you have chosen this item to indicate that you are not a director or major shareholder of any limited company in Hong Kong, you need not read the second and third items. However, if you are a director or major shareholder of any limited company, you have to indicate in the next two items whether the company has entered the Competition, and if yes, the name of the company. These three items are mutually exclusive and it is impossible to make any mistake.

However, if you have made a mistake in respect of the first item, that is, you have deleted the first item to indicate that it is not applicable, it would mean that you do not own any company and you can pay no regard to the second and third items. You can simply ignore these two items regardless of whether you have entered the Competition because you do not own any company. However, in case you own a company, you have to provide information concerning whether your company has entered the Competition and the name of the company if it has. This is very simple. For those who are very busy or engaged in many public offices, they will find it very simple when filling out such a form. It is most straightforward like saying yes or no. If an error is made even in filling out such a form, it is not the Mr LEUNG Chun-ying whom we have known or he has been wrongly regarded as a very capable person, who has in fact purely relied on luck in his career. I do not know what kind of person he is. However, we wish to conduct an investigation.

Deputy President, why am I saying this? When omissions in the declaration of interests were revealed, Mr LEUNG submitted a letter as a remedial action, trying to give a written explanation and put up defence in relation to his omissions. In this letter, he has clearly set out 35 other limited companies of which he is a director, though he did not mention whether he is a major shareholder. He has only stated that he is a director of 35 companies. This can prove that, to Mr LEUNG's understanding at that time or almost at that time, this company does not mean the company which has entered the Competition or otherwise. In other words, it is different from his statement in a press conference on the television a couple of days ago, that declaration is required only if the company has entered the Competition or else he is not required to make any declaration. It is also different from the statement of Raymond TANG who said that declaration is only required for companies which have entered the Competition and *vice versa*. On the contrary, to his understanding at that time, he is required to make declaration on all limited companies of which he is a director or shareholder.

So, in my opinion, his act and behaviour at that time were relatively more credible than the defence or declaration he made at almost the critical moment, that is, two days ago. Certainly, I hope that I will not make the same error of Mr Paul CHAN that I criticized just now, that is, to jump to the closing remarks on the basis of the existing evidence. This is not my intention. Rather, we have to consider whether the threshold has been reached and whether there is sufficient

prima facie evidence to support the exercise of such powers by us. At the end of the day, it may turn out that he is entirely clean. However, that is a later story and we have to hear all the evidence before making any judgment.

Deputy President, there are two more points. For the sake of fairness, I must point out that these two points are originally the observations of Ms Emily LAU, to which I very much agree. First, in the report of the Jury the relevant report is quite interesting, since paragraph 19 of the report is about disqualification. It is mentioned that among the 161 entries, a total of 13 entries were disqualified for failing to meet the competition requirements in non-technical aspects. If this report is deliberately misleading, it will be most undesirable because, as we all know, among these 13 entries which were disqualified, only 12 were disqualified for failing to meet the competition requirements in non-technical aspects, with the remaining one being disqualified on the ground that Mr LEUNG Chun-ying has failed to make declaration. Hence, it is unfair to say in such a rash manner that all these 13 entries were disqualified for failing to meet the requirements in non-technical aspects. The report as a whole is misleading. If this is only a casual mistake rather than deliberate misrepresentation, we are more worried and wonder how many errors have been made in the report.

Deputy President, another point is about the report of the Executive Council, which is mentioned in paragraph 19 of the relevant documents. The declaration itself is remarkable because it has only mentioned that Mr LEUNG Chun-ying was named a property consultant by an entrant who had lost the competition. It sounds to be a neutral fact that his company had been named a property consultant by this entrant. The fact that his company was named property consultant by this entrant is not the reason leading to its disqualification. These two are totally unrelated. If this report of the Executive Council has deliberately played down the declaration, it is absolutely worthy of investigation and this is very important. However, if this is due to an inadvertent error or negligence, thus making us cast doubts on Members of the Executive Council or the approach adopted by them at their meetings, we will wonder what the Executive Council was doing. But seemingly, these mistakes would not have been committed. Or, if these mistakes were made deliberately so as to mislead the public, it is even more serious.

Deputy President, I am a little bit dissatisfied. On the one hand, Mr LEUNG Chun-ying has indicated to the media publicly in a high profile that he wanted the Government to disclose all documents, but on the other hand, he is not willing to confirm whether he agrees to the disclosure by the Government in the face of the Government's repeated written enquiries, including requests for confirmation in its letters dated 14, 16 and 24 February, in which he was required to give confirmation in respect of such disclosure. He has set out the conditions under which disclosure could be consented.

Another more important reason: so far, we have not heard any statement from Dr Kenneth YEANG to explain why such errors were made and why Mr LEUNG Chun-ying was cited as a consultant. It is even more surprising that after Mr LEUNG had learnt of the problem that his company had been "stolen", he did not pursue the matter and simply said that relevant entry had been disqualified. This is not reasonable (*The buzzer sounded*)

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

MR PAUL TSE (in Cantonese): Thank you, Deputy President.

MS AUDREY EU (in Cantonese): Deputy President, as an Election Committee member for my capacity as a Member of the Legislative Council, I have also nominated Mr Albert HO. Nevertheless, there is absolutely no direct or indirect interest or pecuniary connection. Hence, according to the Rules of Procedure, I am actually not obliged to make this declaration.

Deputy President, when I listened to the speech delivered by Mr Paul CHAN just now, I felt as if he had turned into the defence lawyer for Mr LEUNG Chun-ying, making a closing submission. He said, to this effect "With regard to this accusation made by Members, I would make this defence. As regards the accusation, I would make this defence. As for the third accusation" He was simply making a closing submission on the nine accusations *seriatim*. Finally, I found it most amusing that he quoted from an article written by Joseph WONG that "the benefit of doubt should go to LEUNG". Deputy President, you should also know when we can say "the benefit of doubt should go to

defendants". We can only say so when a person being criminally prosecuted needs to put up a defence and then indicates that there is a benefit of doubt and so requests that the benefit of doubt should go to him. If Mr Paul CHAN makes a closing submission in this manner and then says that no investigation is warranted, then I think he is at a relatively low level. Hence, Deputy President, I do not wish to respond to his speech.

On the contrary, I find it most worthwhile to respond to Ms LI Fung-ying's speech today. In fact, Ms LI is one of the Members I respect in this Chamber. Her speech was also just and solemn. She said that this was an extremely important test, particularly as core values were debated in this Council last week. She added that we would be challenging the core values should we act in this manner because of our attempt to use public power to interfere in the Chief Executive Election to some degree, particularly at such a sensitive time. Hence, I ought to respond to Ms LI.

But first of all, I would like to say that I have also taken notice of the comments made by Mr LEUNG Chun-ying, who has all along insisted that the information should be disclosed. I would also like to read a letter issued by him, for the record. The letter, written in English, was issued to the Secretary for Home Affairs on 15 February. Here I would like to quote from this letter. He said, "The public will not be content with the release of selected documents and abridged version of 'facts' or compilations made by the Government 10 years after the event as attached to your letter. The public is entitled to be provided with the primary documents and information regarding the whole process in the above competition." He also said, "The Government should disclose the voting records of all the jurors and the minutes of discussions and decisions amongst the jurors." Then, in another letter issued by him to the Secretary on 20 February, he said, "The public would only be satisfied with the full and frank disclosure of all relevant information by the Government that is in its possession, custody and control in respect of the above competition, a position which I support. I repeat my position in my earlier letter that the selected documents and abridged version of facts and compilations only made very recently on events in 2002 are not acceptable. The public is entitled to primary document and information regarding the whole process of the competition for them to make a fair assessment of the events. I repeat paragraphs 4, 5 and 6 of my earlier letter."

In other words, Mr LEUNG Chun-ying personally has repeatedly expressed dissatisfaction with the Government's approach, saying that its quotation or abridged version was simply not a full disclosure. He also requested the disclosure of "primary" documents at that time, including minutes of meetings. Hence, I would also like to tell Ms LI Fung-ying that it was actually the personal view of Mr LEUNG Chun-ying that this approach was appropriate. This explains why I was a bit surprised when I heard Mr Paul CHAN's speech, for he really gave me an impression of doing a collaborative show intended to cheat people. How could Mr LEUNG Chun-ying have made a public and written appeal for a full and comprehensive disclosure of the relevant documents, but when it came to calling on the Government to make a full disclosure to the Legislative Council and the Council to conduct an investigation, it was alleged that it was inappropriate and unfair to do so, saying that Members would be involved in conflicts of interests should they vote in support of other people or nominate other Chief Executive candidates? Did the Member not find it extremely hard to justify himself?

Second, I would also like to respond to Ms LI that many things are actually inevitable. In fact, the situation today is not up for this Council to decide. I would also like to point out that the Panel on Economic Development, of which I am not a member, is discussing the "unauthorized building works" incident involving Mr Henry TANG. Some Members have suggested that we should not vote in support of invoking the P&P Ordinance to investigate the "WKCD incident", but we can continue with the discussion in the Panel, as with the discussion on the "unauthorized building works" incident by the Panel on Economic Development. May I ask: How should we draw the line? Does it mean that discussing these issues in the Panels can prevent Members from interfering in the election and affecting one of the candidates? After the occurrence of so many incidents, newspaper reports and public discussions, the public actually has demands on us as Members of the Legislative Council. Hence, it does not mean that we can resolve this issue simply by abstaining at the vote.

I would also like to point out that the truth is very often the most neutral, for documents do not lie. Given that the Government has refused to produce all the documents, given that Mr LEUNG Chun-ying has requested the disclosure of all the documents, I as a Member who can vote consider this a good reason for me to vote in support of the motion today.

Third, I would also like to tell Ms LI Fung-ying that I very much agree with her that the Government was the initiator. She has also expressed great regret about the Government's selective disclosure of certain documents at this extremely sensitive time. I am also extremely furious about the approach of "squeezing toothpaste out of a tube". While Members are debating this motion today, I have been receiving messages saying that the Government is providing new documents for Members' access. It is absolutely inappropriate to do so.

Under such circumstances, I would also like to mention in passing, as also mentioned by many colleagues, the inconsistencies in this incident. I am extremely dissatisfied and I would like to ask: Why were there no minutes of meetings and a clear decision after the occurrence of this incident? Was the Government acting a bit like letting the matter take its own course? This entrant, who had achieved an outstanding performance in many rounds of voting, was suddenly disqualified without knowing the reasons why. Had he known what happened at that time and wished to pursue his case, he might be able to offer explanations, but simply no one told him the reasons. Such an approach really raises these questions: Was something hidden going on at that time? Do Members think that the matter has been handled satisfactorily? Is the Government really concealing something? In my opinion, if an investigation is to be launched, it should look into not only Mr LEUNG Chun-ying's role, but also the Government's failure to give a clear account of why it handled the matter in that manner.

I would like to respond to Ms LI Fung-ying on one more point, and that is, I agree very much with her that this is a lame election. Regarding her question about whether we should still give such a lame election a kick, I have actually taken notice of many reports lately, particularly the one published on 26 February saying that "The Legislative Council has vowed to bring C Y LEUNG to a public trial", as if the motion is going to be passed today. As Members are aware, it was due to the fact that journalists would, as a usual practice, ask various political parties and groupings about their voting intention, and the vast majority of functional constituency Members replied at that time that they would give their consent. The intention of directly elected Members was even clearer because, as always, the motion would be passed under the separate voting system with the support from the pro-democracy camp. This explains why all newspaper reports today share the view that this motion is going to be passed today. Certainly, we can see that many Members have made a "U-turn" today. I have also learnt

from a newspaper report on 26 February that a group of six Members, including Mr Abraham SHEK from the real estate and construction constituency, Mr Jeffrey LAM from the Economic Synergy, Mr Andrew LEUNG, Mrs Sophie LEUNG, Dr Philip WONG and Dr LAM Tai-fai, had gone to the Liaison Office of the Central People's Government (LOCPG) and stayed there for nearly two hours. Although the six Members have not disclosed the details of their meeting, it is reported — according to the press — that pros and cons were cited by officials of the LOCPG in the hope that Members could oppose invoking the P&P Ordinance to investigate LEUNG Chun-ying's involvement in the conflict of interest arising from the "WKCD incident".

Actually, how will members of the public view these reports? Are they a kind of interference? Are they interfering in the Legislative Council or the election? I am aware that Mr Abraham SHEK and Dr LAM Tai-fai have not yet delivered their speeches. Those Members I named just now can also give us an explanation in their speeches later. I believe Members hope to hear their explanations. My response to Ms LI Fung-ying is that this Council will at least conduct every investigation under the sun with no interference from behind. Hence, Deputy President, like Ms LI Fung-ying, I feel very sad. Having read the many reports lately, I felt Hong Kong has really been brought into disrepute, and we have become an international laughing stock. Some friends of mine — they are expatriates, not Hong Kong people or Chinese — have sent me emails after reading overseas newspapers and asked me what is happening in Hong Kong, for they found it even more exciting than reading a Chinese novel. Nonetheless, the small-circle election is not our choice; neither do we select these candidates to run in the election. Certainly, to a certain degree, it can be said that Mr Albert HO is our pick, but at least he is not involved in today's discussion about the P&P Ordinance.

The question under discussion today is: What can the Legislative Council do now that this incident has happened? Does it mean that the P&P Ordinance should not be invoked simply because of the incident's sensitivity as a Chief Executive candidate is involved? So, we should accept Mr Paul CHAN's closing submission and give the defendant the benefit of doubt rather than conducting an investigation. So, we should not do anything. Can we act in this manner? If the answer is in the negative, can we or should we at least exercise our only power to at least cast our vote in this Council, where there are different stances, views and angles, in the hope of urging the Government to provide more

information and documents to make it easier for the truth to be revealed before the public more abundantly.

Deputy President, I hope this is not a precedent that both Ms LI Fung-ying and I share the same feeling. I do not wish to see the Legislative Council being embroiled in the election campaign of any Chief Executive candidate because, to a certain degree, criticizing a certain candidate is tantamount to giving another one a helping hand. Neither do we wish to see any indirect electioneering. Nevertheless, there is no way we can hide as Legislative Council Members after the occurrence of the incident. Under such circumstances, Deputy President, the Civic Party supports today's motion.

DR RAYMOND HO (in Cantonese): Deputy President, in regard to this incident, first of all, I wish to make a declaration. I am a member of the Election Committee (EC) selecting the Chief Executive. I also nominated Mr Henry TANG at an early stage.

I have known both Mr LEUNG Chun-ying and Mr Henry TANG for more than 35 years, so I know and understand both of them very well. I also consider both of them to be competent. In deciding to nominate one of them, my consideration is that Mr TANG has more than nine years of administrative experience in the Government and has served as a Director of Bureau, the Financial Secretary and the Chief Secretary for Administration, so I think this is his advantage. I can only nominate one person, not two. As a member of the EC, my duty does not allow me to refrain from making any nomination, and I do not consider it preferable just to vote in due course. Recently, there has been a lot of news about the Chief Executive Election, with many turns of events and the situation is ever-changing, so it is difficult to predict the outcome in the future. It can be said that this is a situation that has never occurred after the reunification.

For this reason, I have also expressed my views to the mass media, saying that according to the existing rules of the election, even though one has nominated a certain candidate, it does not mean that one must vote for the candidate concerned in the end. It seems many people have expressed similar views because we really may have to look at the developments concerning the election in the next few weeks and the new information that can be obtained in

the future, then make a decision after careful consideration. I believe all EC members probably have similar considerations.

(THE PRESIDENT resumed the Chair)

This project of the West Kowloon Cultural District (WKCD) has dragged on for many years. It costs \$21.6 billion, so it is a colossal project. I think there are still a lot of doubts surrounding this incident. If we rely solely on reading newspapers to make a decision or draw our final conclusions, it seems this would not be fair to any of the candidates. Moreover, it would also be difficult to live up to our expectations of ourselves. I have expressed some views on these doubts to the mass media because I have worked in the construction sector for several decades, so I understand some matters in respect of the operation.

All along, Mr LEUNG Chun-ying has insisted that DTZ provided free information and valuation on the land premium to Dr Kenneth YEANG's architectural firm, so there is no question of any interest. However, my experience of many years in the sector tells me that in this kind of competitions, usually, the property consultancy would not require the architect to confirm the service charges at the stage of competition before providing such information. Of course, if the relevant entry wins, the company concerned will naturally become the property consultancy for the project. Everything is tacitly understood and it is seldom put down explicitly in any document that the contract would surely be awarded to you. I have rarely seen such instances.

According to government documents, DTZ faxed the qualifications of four of its senior staff members to Dr Kenneth YEANG's company, including those of its top-level staff members, such as Executive Directors and Directors. Surely, if, after providing free information on land premium valuation, DTZ did not intend to provide any further service in the future, why was it necessary to provide the information on so many of its senior staff members?

In fact, the practice in the industry is that if a company wants to take part in a project — not to mention such a large-scale project costing \$21.6 billion — even in the case of smaller-scale projects, discussions would also be held in the

Board to see if a tender should be put up. Will the company take part in the competition for this project? Will there be sufficient manpower? Which Director will take charge? Will the company be the sole service provider for a team? If it is, we usually use the term "exclusive", and if there are several service providers, it is a "non-exclusive" service. This is the usual practice. I have no clear idea about the details of this case. However, when the Board holds a discussion, it would know the existence of such a project, particularly given that this is such a large-scale project. I believe the companies that had the opportunity to take part in it were not that many, so a final or collective decision will surely be made by the highest level or the most senior Directors.

Therefore, even though Mr LEUNG was the Chairman of the Asia Pacific region of DTZ at that time and he may not know much about the participating companies, I still want to know the actual situation because normally, no matter what, they ought to have discussed it in the Board. On the several points raised by me just now, they may have discussed them even more than once because such a decision could not be made easily and they would have to discuss whether or not, and how, to participate. I believe this is a query that should be raised.

In making a valuation, usually, there are some designs known as conceptual designs or schematic designs, that is, the architect has some preliminary conceptual designs for the purpose of valuation, since the valuation cannot be done without any basis. This is the normal situation. Otherwise, how can the architect carry out a valuation? Even in the case of the WKCD project, it is possible that after studying various conceptual designs, it was considered that the design of Mr Norman FOSTER's company was the best, so the project was awarded to him. That was a decision based on the conceptual designs because at that stage, the detailed designs had not yet been prepared. If a detailed design is to be prepared, substantial costs would be incurred, and they can easily amount to more than \$100 million. Moreover, there was no time to prepare such detailed designs at that time.

We also have no clear idea about the details. What are the special circumstances that made Mr LEUNG totally unaware of this matter? I believe that even though Mr LEUNG did not take part in the first Jury meeting, given that there were as many as 161 entries, they would not be circulated for perusal and voting in the major meetings of the Jury, rather, a shortlist of the entries would be prepared. Eventually, no matter if 10, nine or whatever number of entries are

chosen from these 161 entries, usually, this process would take place in one or several preparatory meetings, in which all the people concerned would prepare a shortlist together before presenting it to the first Jury meeting for approval. I believe those were perhaps procedural meetings in which the shortlist was approved. Was this the situation at that time? Apparently, from the information provided to us by the Government, we cannot see if this is the case. This is very crucial information because the integrity of a Chief Executive candidate is at stake, so I believe the public ought to know as of right.

I believe that in invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to establish a select committee to investigate the "WKCD incident", the Legislative Council is following the principle of public justice. If the results of the inquiry show that Mr LEUNG has done nothing wrong, at least, he can be vindicated as soon as possible, so this is fair to him. If problems are found, it is necessary to see what and how serious they are. No matter if the problems are serious or not, I believe the public still want to know about them. In fact, all parties will stand to benefit from this, so if we can focus on a certain area within a short time — since the time frame is tight — carry out an inquiry in depth, listen to the testimonies of witnesses under oath and gather evidence, it will be possible to find out the truth of the matter.

In the past, I have also taken part in the inquiries conducted on the powers invoked under the P&P Ordinance, including those on the chaos at the airport, the substandard piling works incident and the still ongoing inquiry into the Lehman Brothers Minibonds incident. The workload was onerous. However, the collection of evidence for the inquiry into the WKCD incident may have to be carried out within a tight time frame, so it will be necessary to prescribe the terms of reference of the investigation committee or select committee very carefully to ensure that the inquiry can be completed within a short time, so that the Chief Executive Election would not be affected as a result.

The Chief Executive Election will be held soon on 25 March but we still lack the important information. If we continue to ask the Government for information but the Government does not provide it to us, time would be wasted and soon, the election period will come, so this will not be satisfactory either. I think Legislative Council Members are duty-bound to be oriented towards society and act in a fair and impartial manner, so as to help the general public know the truth of the whole matter and what happened. We also have to treat all people

fairly. If we use such methods to deal blows to candidate B in order to help candidate A, I think this is definitely not the right thing to do and this is also definitely not the attitude and mindset that Legislative Council Members should have. We should discard such thinking and deal with this matter fairly.

Mr LEUNG Chun-ying also agreed that all relevant information should be obtained as soon as possible, so that he can be proven innocent. Personally, I definitely do not wish to be partial to anyone because I also have to look at the developments of the election in the next few weeks, and Members may also have to make their final decisions in view of the developments every day. Therefore, I believe that invoking the P&P Ordinance to carry out an inquiry is a necessary task.

I so submit. Thank you, President.

MR ANDREW CHENG (in Cantonese): President, I did not see too many "paparazzi" outside, so I know the Government is confident that we will have difficulty in passing the resolution and invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) to establish a select committee to carry out an inquiry.

Several days ago, like many other Members, I thought that the motion may stand a chance of passage because Honourable colleagues from the functional constituencies had expressed their support. However, the comment made by Mr CHIM Pui-chung earlier, that he dared not guarantee he would stay here, even though he has spoken in favour of the motion, clearly shows that many Honourable colleagues from the functional constituencies are under great pressure, so even though their minds are willing, they still dare not press the "for" button to support the motion and it is even doubtful if they dare stay here.

President, this is what is so pathetic about politics in Hong Kong. It is pathetic that from the beginning to the end, for both LEUNG and TANG have decked out this election as if it was an election by universal suffrage but in fact, the public have no right to vote and those who have do not have the genuine principles and free will to make their decisions, so we can see how pathetic this is.

Concerning the incidents and the many instances of muckraking that happened in the past few weeks, just now, Honourable colleagues kept saying that this was really deplorable, disgraceful and pathetic. However, President, I wish to analyse this from another angle because there are always two sides to everything. The incidents that happened in the past few weeks are really saddening but these things also happened in the past, only that many people do not know them because the pro-establishment camp did not let the public see its internal rivalries and struggles for power and benefits, as in this case. In the past, when there was any division in the pro-democracy camp, the pro-establishment camp would say, "Why don't you learn from us? We should be more united and harmonious. If the pro-establishment camp is like you people, prone to argue over minor things, how can the pro-democracy camp administer Hong Kong? Show us your blueprint for administration!"

This time, there is a fierce struggle between TANG and LEUNG. Not only are they having a fierce struggle over their political platforms — actually, there is no fierce struggle over the political platforms because there has been little discussion on them — they are also having a fierce struggle over shady deals, which have surfaced one after another, and even the "backyard" of Donald TSANG is now on fire. How so pathetic! It is obvious that some people with ulterior motives and the people in a certain camp want to rake up the muck in the pro-establishment camp as far as possible, so as to undermine the hot favourite. In fact, we can see from these incidents that no matter how hard one wipes, one cannot wipe off one's muck and someone must already have the muck on themselves before other people can rake up the muck.

Just now, in the afternoon, I have been paying great attention to Mr LAU Kong-wah's speech. When talking about the voting intention of the DAB, he said that they would abstain because they did not want to drag the P&P Ordinance into an election that was already full of smearing. First, since this time around, it was the Government that released the information, the DAB is perhaps directing its criticisms at the Government, asking it why it wants to rake up the muck in the election. However, from another perspective, if the candidates did not create the muck in the first place, it is actually impossible for others to rake up the muck.

I still remember that at the beginning of the electoral campaign, when rumours of Henry TANG's love affairs came out, there were also rumours about

LEUNG Chun-ying being a wife beater. Members may still have some recollection of this. However, this matter fell off the radar screen in no time because there was no evidence, so nothing more could be said and no one could smear him. President, I have to stress that I do not belong to the so-called LEUNG camp or TANG camp, and I do not even belong to the HO camp because I did not nominate Mr Albert HO. I have boycotted the nomination, but will I boycott the election? This is just like someone asking me if I would vote for Mr Albert HO if he were to need just one more vote to be elected the Chief Executive. In that case, I will just wait until 25 March to see what would unfold.

I do not belong to any camp, so I only wish to say that in the election, all candidates have to face various challenges. In my political career spanning almost two decades, I have taken part in more than a dozen elections. I believe each candidate or Member who has had the experience of taking part in direct elections has to face various challenges with great vigilance every day, including the challenges from their rivals or those posed to their political platforms and integrity, so this is only normal. If other people's challenges are justified, candidates should not shy away from them on the pretext that they are smearing tactics.

Many Honourable colleagues have said that the public do not wish to see so much muckraking in the election anymore. However, President, what I have heard is that many members of the public said these developments were even more entertaining than movies. People in the pro-establishment camp who pretended to be united in the past are no longer united, so the public can see more and take a peek at what lies underneath the pro-establishment camp and what the shady inside deals are. Henry TANG owns a number of properties, so how many more cellars are there?

One valuable thing about elections is that we always put very high requirements on the probity and political beliefs of candidates. Therefore, I do not disagree completely with Dr PAN Pey-chyou's comments just now. President, I totally agree that we should be kind and forgiving to others. This principle of life can be similarly applied to family members, friends and even Honourable colleagues. However, the people in question are candidates who may govern the 7 million people in Hong Kong and there are perhaps problems

with their integrity. In that case, we should not simply look at this matter in a forgiving or less critical attitude.

President, even Jesus Christ has wrath. I say so because Dr PAN Pey-chyou made an allusion to religious beliefs just now, saying that Mr James TO is a Christian. Righteous anger means that each of us would pursue the truth according to the scale of our own principles and public justice. When there is any instance of impropriety, we have to speak out vocally, fight for just causes without turning back, instead of just contemplating them, wait and see, or dare not cast any vote. This is the most pathetic point about the deep-rooted political conflicts in Hong Kong now.

Yesterday, Mr Allen LEE kept talking to the mass media all the time. Although I somewhat disagree with him, what he said also struck a chord in me somewhat. "Brother Allen" said he had never seen such farce — "Brother Allen" has perhaps taken part in a direct election once and he probably has the experience of being tarnished. However, what he meant was perhaps he had never seen such fierce muckraking within the pro-establishment camp, and I could not agree with this more, so I even may have to applaud to show my agreement because I precisely want more in-fighting in the pro-establishment camp to occur, so that Hong Kong people could realize that they should not be so naïve. If we Hong Kong people want to campaign for universal suffrage, we have to be reborn like a phoenix rising from the ashes. In fact, the small-circle election has always been like this, only that everything was covered up, obscured from the public eye.

This time, I really have to thank Mr LEUNG Chun-ying. Although I cannot agree readily with his political views, I often say that I hope Mr LEUNG Chun-ying would be elected because I want to see how his new version of collusion between the Government and business would unfold. At present, he appears to be very commanding and awesome in all matters and agrees with a lot of proposals relating to the grassroots, but in the end, he may have to be at the beck and call of the 1 200 members in the Election Committee, in particular, the views of consortia. Therefore, in fact, the in-fighting in the pro-establishment camp and the so-called "deplorable" election this time is only natural and would occur sooner or later. I hope that as a result of this incident, the public would find this political situation disgusting, even though they have great interest in following the developments.

President, I have paid particular attention to the press conference hosted by you several days ago, and I was somewhat disappointed, because if the founding chairman of the DAB would take part in this election and lead Hong Kong with the style, beliefs and political platform of the DAB at the time of its establishment, no matter if I agree with the DAB or not, I would still feel gratified because a political party has finally achieved prominence.

Moreover, in the past, the DAB said that it only had its share of disgrace but not honour, so would this development not give it "both disgrace and honour"? If the party founder and leader of the DAB could become the head of the Hong Kong Special Administrative Region, I would look forward very much to the opportunity of criticizing the ruling party in my capacity as someone of the opposition in this legislature, and compare various political platforms in earnest. If you can lead well, of course, you will win public support and we in the opposition could only make humble criticisms. However, President, I find your decision most regrettable. I wonder if it was because Mr LEUNG Chun-ying called you twice to say that he had no black materials about you. In fact, if Members can really read this remark, they will know whether or not he has any black material. At this stage of the election, if the President really felt some pressure because of the phone conversations on those two occasions, it only shows once again how lamentable the small-circle election has become.

President, just now, Dr Priscilla LEUNG said that if a select committee was established, what time slot can be spared for its meetings? Some Members also raised this point just now. However, I found that in the weekly schedule of the Legislative Council, after the Legislative Council meeting at 11 o'clock on Wednesday, the next meeting is the Investigation Committee on Mr KAM Nai-wai's case and the work of this Investigation Committee is still ongoing. Time is still being wasted on investigating Mr KAM Nai-wai's amorous advances. However, when it is said that a select committee has to be established to investigate LEUNG Chun-ying — someone who may govern Hong Kong — some Members said that there would not be enough time. On hearing these comments, I feel pathetic once again.

The only select committee that I have ever joined was the select committee to inquire into the SARS outbreak. At that time, our work was very hard and we had to hold meetings even on Sundays. If the motion on establishing a select committee to investigate the incident relating to LEUNG Chun-ying is passed and

if no Honourable colleague considers the work hard, I will be the first one to join the select committee. Even if it is necessary to work from 7 am to 11 pm on Sundays, all for the sake of finding out the truth, I would still be willing to do so.

President, I hope Members' hearts and hands (*The buzzer sounded*) can act in concert. Thank you.

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

MR ABRAHAM SHEK (in Cantonese): President, Mr Andrew CHENG said just now there was apparently a major split in the pro-establishment camp but in fact, the pro-establishment camp has not split up, only that these gentlemen get along with others but do not necessarily agree with each other. President, you can see that here, we are voicing our own views and justifications, talking about why we support or do not support this motion on invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance). Maybe you find it funny because it is rare that a group of people would stand on your side, is it not? However, this is not funny at all. We can see from this incident that on all matters, we should support what is right and criticize what is wrong and this is actually something that a gentleman should do. We should put aside our prejudices and different views for the sake of finding out the truth of a matter.

President, just now, I heard a number of Members, including Mr Andrew CHENG and in particular, Dr Priscilla LEUNG, who is sitting next to me, say that this select committee should not be established. Not that she does not support doing so, only that there is not enough time. Just now, I asked Dr Priscilla LEUNG which Article of the Basic Law was relevant and she said it was Article 73, which says that one of our functions is to monitor the Government. Today, what we seek to look into is not just Mr LEUNG, rather, we also want to look into why this kind of thing would happen in a government department. The West Kowloon Reclamation Concept Plan Competition is an international competition and it can also be considered the first international competition organized by Hong Kong, with 116 participants coming from various countries. For this reason, we have to abide by the rules and follow the principles in holding the competition.

On this competition, did the Government or the relevant parties do a proper job in gate-keeping? We have to look into this. Just like the PAC, we will also conduct an inquiry into the Government. Members of the PAC come from various political parties and groupings, including Members from the pro-democracy camp and the DAB, as well as independent Members. We are all doing our best to monitor the Government and this is the essence of the separation of powers.

Therefore, I think if it is said that no inquiry should be conducted due to insufficient time, it seems we are not performing the functions of the Legislative Council properly. Time does not matter. We are not talking about completing the inquiry before 25 March. What sort of date is 25 March? It is not an important date. It is only the date of the Chief Executive Election and in elections, of course, there are winners and losers. In the future, there will be a new Chief Executive and in fact, there is always a Chief Executive every day, the only question is who it is. Setting aside the Chief Executive Election President, sorry, I have forgotten to make a declaration. I support Henry TANG.

President, coming back to the functions of the Legislative Council, we have the duty to conduct an inquiry. Ms LI Fung-ying gave a very good speech just now, but her reason is that we should not get involved in the Chief Executive Election, so we should not conduct an inquiry before 25 March. Why not? Is it more important for the Legislative Council to find out the truth, or is it more important to support the Chief Executive Election? Both are important and both have to be done, but it is not true that we can only do one thing or another. President, the reason why we 60 Members are sitting here is that we have the responsibility. It is for the sake of the future that we conduct an inquiry, in the hope that this kind of thing would not recur in future.

We did not make any criticism, nor did we say that LEUNG Chun-ying had aroused suspicion, or assert that there is something wrong with him, as Mr Paul CHAN claimed. We have not said anything like that. We only hope that a select committee can be given special powers to conduct an inquiry. As Prof Patrick LAU said just now, the reason for the existence of the P&P Ordinance is that without it, often, inquiries could not yield any result but if the powers under the P&P Ordinance are invoked, the people summoned will have to tell the truth under oath and they cannot lie. As the western saying goes, "Tell the truth" and in many families, mothers would tell their kids not to lie. However, we can see

that in the past few weeks, although he did not lie, he did not tell the truth either. Insofar as the PAC is concerned, often, we would say that the authorities are "mean with the truth", telling some of the truth but withholding part of it. However, once the powers under the P&P Ordinance are invoked, it would not be possible to do so and everything will have to be told. After the select committee has asked something, the people summoned will have to answer. Therefore, the P&P Ordinance is very important.

In addition, as I said just now, it was an international competition and the eyes of the whole world are trained on Hong Kong, so anything laughable must not happen. However, it turned out that 10 years later, something laughable has emerged. Prof Patrick LAU has been aggrieved for 10 years and finally, he can speak out here today. To invoke the powers under the P&P Ordinance would enable all people to see that we do not operate in a black box. Our city is world class and all world-class cities have their responsibilities. We have to do everything we need to do properly. President, no matter who is the Chief Executive of Hong Kong in the future, this must be ensured.

I sympathize with the Secretary very much. He was lambasted by the LEUNG camp as helping the TANG camp by selectively providing information. However, we cannot blame the LEUNG camp for saying so because the Secretary is acting as though he were "squeezing toothpaste from a tube" by providing information little by little. At 5 o'clock today, the Secretary provided documents to us for the third time and they are two letters written by LEUNG Chun-ying to us. Secretary, you told us to negative the motion on invoking the P&P Ordinance, but those two letters from LEUNG Chun-ying say that it is necessary to find out the truth, find out the truth, find out the truth. What is the truth? President, we have to use the P&P Ordinance to find it out.

The Secretary has deployed so many "paparazzi" and staff members here. They have to work very hard and cannot even have meal breaks, but they are still scolded. What should we do? Should we accede to the wish of the Secretary? As a Member of the pro-establishment camp, I know very well when to vote for the exercise of powers under the P&P Ordinance and we do not oppose for the sake of doing so. It is only when I hope that the truth and the facts can be uncovered that I would vote for the exercise of powers under the P&P Ordinance. President, I have voted for invoking the P&P Ordinance several times and also joined the select committees that exercised the powers under the P&P Ordinance,

including the inquiries into the substandard piling works incident and the Lehman Brothers Minibonds incident. I am also a member of the PAC and know how important it is to find out the truth because it is only by doing so that our Government can serve the Hong Kong public and its policies can be brought back onto the right track. In particular, if the instances involve the Chief Executive, no matter if the issues are major or minor, they are all very important.

President, who is qualified to talk about issues involving conflict of interests? I am. President, it is not true that I did not declare my interests. I did. I declared all my companies to the Secretariat and also made such declarations many times in the meetings of the Panel on Transport. However, on two occasions, I forgot to declare my interests when speaking on two occasions and for that, I was almost impeached. In spite of this, I still support this motion because this underlines how serious we are. On those two occasions, I did not refuse to admit my mistakes. Margaret played a part in questioning me and so did Mr Paul CHAN. However, today, he has adopted a different yardstick, just like the substandard piling works incident, in which different measurements were adopted. President, this would not do, rather, we should use the same yardstick for measurement. Therefore, President, I support invoking the P&P Ordinance to confer the power of investigation on us.

There are a number of major doubts surrounding the West Kowloon Cultural District (WKCD) incident. The first one is that being a juror — Prof Patrick LAU was also a juror — was an honour and all of a sudden, they all changed from little-known people to well-known people and the press in Hong Kong reported that they were "the 10 big shots". Apart from being someone known in universities, all of a sudden, Prof Patrick LAU also became an "Emperor of West Kowloon". LEUNG Chun-ying also became an "Emperor of West Kowloon". What qualified him as an "Emperor of West Kowloon"? Because he has social status. Prof Patrick LAU is an architect and a professor, so his status is high, whereas LEUNG Chun-ying used to be a member of the Executive Council who has power and status, so they also have responsibilities. If he were only a man in the street who has done such a thing, as Mr Paul CHAN said, he would be forgiven. However, since Mr Abraham SHEK was not forgiven, why can they be forgiven? Therefore, Members have to clearly

(Mr Paul CHAN raised his hand in indication)

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

MR PAUL CHAN (in Cantonese): President, I did not say "forgive".

MR ABRAHAM SHEK (in Cantonese): Sorry, President, I take back the word "forgive". It should be "ought to accept".

(A Member present said, "The benefit of doubt should go to the defendant")

Sorry, the benefit of doubt should go to the defendant. I thank the lawyer for the reminder. President, such was the situation. I think that being selected as one of the 10-member Jury, he has the responsibility to declare his interests for the sake of Hong Kong's overall interests.

Just now, some Members said that after looking at all the entries, some jurors favoured certain entries throughout. This is correct. Due to their ideas about aesthetics, if they like certain entries, they would favour them from the beginning to the end, so I think that even if Mr LEUNG was also like that, that was also right. However, the reason for our demanding that the powers under the P&P Ordinance be invoked is that we want him to come and explain why as the other seven jurors who chose the winning entry only voted in favour of a single entry throughout the process but Mr LEUNG chose several entries in the process, this afforded us a glimpse at something. Why was the behaviour of those seven jurors different from that of Mr LEUNG? Because they did not have any conflict of interests. We are now giving him a chance by asking the Government to produce the information. The Government wants to produce the information, but due to the existence of confidentiality agreement, it is impossible for the Government to produce other information. If we do not invoke the P&P Ordinance, how can we find out the truth? We have to fulfil the responsibilities of Legislative Council Members, that is, to monitor the Government.

The entry submitted by the participant surnamed YEANG was so outstanding — Prof Patrick LAU has also said so a number of times, so why was it eventually voted down? Was that unfair? Should we give them a chance to explain? Hong Kong is an international city, so why is such an excellent entry

voted down? Should we not occasion audience to their explanations? Moreover, the Hong Kong public also want to know the reasons.

Did the participant surnamed YEANG give rise to the wrongful accusations against DTZ by listing it as a consultancy without its consent? This is also an issue that has to be looked into. DTZ carried out some minor studies for him but did not charge any fees. Whether fees were charged or not is not an issue because if the participant surnamed YEANG had been awarded the project, he would have hired DTZ. Although this may not necessarily be the case, such a possibility existed. In addition, we also have to see why the name of DTZ, as an international company, was used arbitrarily? The architectural firm to which the participant surnamed YEANG belonged was an internationally renowned one, so why did it use some other party's name without authorization? President, this is the behaviour of a crook, so we should also investigate this clearly to do everyone justice.

If the P&P Ordinance was not invoked, nothing much could be found out in the inquiry. Moreover, it does not matter how long the inquiry would take as it is not necessary for us to complete the inquiry by 25 March. I think that so long as our ability and time permit, we should pursue the truth. Thank you, President.

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

DR LAM TAI-FAI (in Cantonese): President, I must make a declaration first. I have not nominated Mr LEUNG Chun-ying, who was involved in the incident as set out in this resolution, and I have no intention to vote for him.

Ms Audrey EU quoted just now a newspaper report last week as saying that six Members (including me) had been invited to the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) for discussions, and the resolution today might have been discussed. I certainly will not disclose the contents of our meeting to her, and our liaison activities with the LOCPG are routine in nature.

I would like to respond to Mr Andrew CHENG's remarks — I almost forgot his name since I have not seen him for a long time — he said just now that he was worried that some pro-establishment Members might not stay to cast their votes. I can assure him that I will definitely stay to cast my vote. I hope he can understand the values and principles I uphold as well as my personal style, and I also hope I will not give people the impression that I am a "marionette".

President, in respect of the West Kowloon Cultural District (WKCD) incident, the chapter for seeking truth by the media and the public was opened when the Government responded to media enquiries on 8 February. Upon the opening of the chapter, the Government and Mr LEUNG both made explanations and remarks to the public and the media. On 24 February and in the last few days, the Government, facing pressure from the public and the media, once again released more documents to the public and Legislative Council Members in a manner like "squeezing toothpaste from a tube", with the aim of, as it is believed, enabling the public and the media to accept their explanations.

On the contrary, however, the fact is not as simple as we thought. The replies and explanations given by the Government and Mr LEUNG not only failed to allay the concern of all, including the media, but also made many people believe that their remarks are too farfetched, and question the credibility and logic of such remarks. In particular, the hesitations and evasions of Secretary TSANG in the Chamber have further disturbed many people.

So far, members of the public have been showing great interest in this incident, and some of them even doubt whether anyone has been dishonest, whether conflict of interest was involved and, more seriously, whether anyone has deliberately concealed the truth.

President, there is only one truth and one fact. We all very much want to know whether anyone has been telling lies, whether public interest has been damaged, whether anyone has distorted the fact, and whether there was conflict of interest. Members of the public very much hope the Legislative Council or Members can help them sort out the fact and reveal the truth.

Unfortunately, many people are linking the issue — I am talking about the issue involving the Competition — with the Fourth Term Chief Executive Election of the special administrative region. Many also hold the view that the

incident originated from malicious smearing; it is "a storm in a teacup", a mountain made out of a molehill.

As Members, we should seek the truth from facts in our work; we should put aside political burdens and take off our "tinted glasses". With seeking the truth as the starting point, on the premise of protecting public interest, and on the basis of respecting the authenticity of the interest declaration mechanism, we should sort out the truth of the incident in a pragmatic and objective manner, rather than politicizing it.

President, some people may think, as I said just now, that the issue has been magnified and politicized. However, some also told me that certain people are trying to relegate or downplay the Competition, making people believe that it was a very ordinary competition like a cooking contest or fashion design contest. Since it involved the development of West Kowloon or even Hong Kong as a whole, the Competition was definitely not an ordinary design competition. If it were an ordinary design competition, why did the Government attach so much importance to it by engaging 10 experts from overseas, the Mainland and Hong Kong, including Prof Patrick LAU, a Member, to carry out assessment?

In fact, the winning organization would not only be rewarded with millions of dollars, but also the opportunity to get an expensive "entry ticket" for enormous interests. It can be invited to submit tender for the relevant WKCD development projects — many Members said just now that the Government has decided to inject \$20 billion into the WKCD development project — if it has the opportunity to have a share in the project, how enormous will the interests be? Exactly because of the enormous interests at stake, the public and the media very much want to know the truth and developments of the matter. And we very much understand their right to know.

President, most unfortunately, the Government's handling of the issue is very disappointing. Many Members criticized the Government just now for releasing information to the media, the public and Members in a selective manner like "squeezing toothpaste from a tube". Such information disclosure is patchy, partial, or even one-sided. I remember that even Mr WONG Kwok-kin criticized the Government for releasing information "stealthily" at the previous meeting of the House Committee. Releasing information in such a manner will only make Members read such information in a way like "blind men examining

an elephant": they will not be able to see the truth in full. Therefore, the Member concerned has proposed invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance) today to find out the truth, and I absolutely understand her good intention.

President, being eloquent does not equal to being allowed to argue fallaciously; and being articulate does not equal to being allowed to talk nonsense. There must be truth in any issue, and there is nothing that cannot be disclosed to the public. I have read all the documents, and found it most perplexing that the Government then had withheld the information on the failure of a member of the Jury to make declaration and the disqualification of a participating team due to its breach of rules. This has greatly baffled me. Why can an issue that has a bearing on the public not be made public?

On the other hand, I am also perplexed by Mr LEUNG's explanations, for he says that there was no concealment of fact or identity given the well-known fact that he was the chairman of DTZ. I trust Members must have had the experience of filling out forms when going through immigration clearance, and we have to indicate our gender in such forms. Even if everyone knows you are male, are you not required to indicate your gender as male? Even if everyone knows you are female, are you not required to indicate your gender as female? We are not allowed to refuse to indicate our gender as female or male on the grounds that everyone knows it. This is a rule we must abide by. There is no such question of concealment. This only boils down to the question of respect for rules governing declaration.

What feelings do I have now? The Government and the parties concerned have been trying to make some remarks in their own favour. Such has made me believe that there is only one truth, but different interpretations of historical facts and different explanations of the development of the issue have emerged. How can the truth be uncovered? How can we give a proper account to the public?

President, all in all, with the development of the issue so far, members of the public still feel that the Government has not been handling the issue with alacrity, and the parties involved in the incident are making different explanations. What on earth is the true picture of the issue? Besides oversight or credibility or even transfer of benefits, was there any other factor involved in the issue? As doubts abound, I and other members of the public, like other

Members, cannot know the truth. Like other Members, I also wish to sort out the circumstances surrounding the incident as well as the causes. Therefore, I support invoking the P&P Ordinance, so as to uncover the truth of the issue.

President, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, thanks to Honourable Members for their speeches.

As we are talking about a design competition held 10 years ago, there are bound to be limitations in relying solely on files and memories to reconstruct the process. Nevertheless, Members are still obliged to base on facts, not speculation, and adopt a fair and unbiased attitude in treating this old incident.

In response to the request made by Members last Friday in the House Committee, the Government already provided the Legislative Council last evening with the information on all rounds of voting conducted by all the 10 jurors on condition of anonymity. Hence, it is unnecessary, as suggested by Mr Ronny TONG just now, to invoke the (Powers and Privileges) Ordinance to obtain the same information. As regards Mr Alan LEONG's question on whether any juror had spoken specifically for a certain competing team or piece of work during the selection process, such information is not kept in the files, and there is no such 10-year-old record. Hence, even if a select committee is set up and the privileges of the Legislative Council are exercised to conduct an investigation, nothing will be dug out.

On the premise of protecting public interest and meeting confidentiality requirements, the SAR Government is committed to disclosing relevant information by all means to dispel public doubts. In the process, the SAR Government team has always sought to respond to enquiries fairly and in a professional manner.

As pointed out in my reply to an urgent question raised in the Legislative Council on 15 February, the Government will disclose to the public in accordance with its usual practice the information kept by it based on facts without any political considerations. In handling affairs relating to the Chief Executive Election, the SAR Government has absolutely maintained neutrality and acted in strict accordance with the law to ensure that the election is conducted under the principle of fairness, impartiality and honesty.

The people of Hong Kong attach great importance to the fairness, impartiality and honesty of the Chief Executive Election. I believe it is the hope of the community that all politicians, be they in the Government or Members of this legislature, speak and act in a fair and impartial manner with absolutely no bias. Similarly, they do not hope to see interference in the Chief Executive Election by executive or legislative authority.

The SAR Government has been responding to the aspirations and concerns expressed by Members on the Competition in a proactive and serious manner. We hold that it is absolutely unnecessary to invoke the P&P Ordinance to appoint a select committee to investigate this Competition which took place 10 years ago. I only hope that the stance already displayed by Members towards the Chief Executive Election will not influence their decision on exercising the privileges to probe the candidate.

With these remarks, President, I hope Members will oppose the motion.

MS CYD HO (in Cantonese): President, I wish to make a clarification. As I have received the Jury's record of voting, which the Secretary earlier said was requested by me, in both Chinese and English. As I remarked earlier, my request is the Jury's record of deliberations, through which some light can hopefully be shed on whether anyone has used his influence to affect other jurors.

PRESIDENT (in Cantonese): I now call upon Ms Miriam LAU to reply. This debate will come to a close after Ms Miriam LAU has replied.

MS MIRIAM LAU (in Cantonese): President, there is only one objective in this Council setting up a select committee by invoking the powers conferred by the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance): to find out the truth with a view to dispelling public concerns. Do Members have a grasp of the truth at present? Evident in the debate among Members today, everyone has his independent way of thinking. As for the question of whether the truth is known or whether it has been revealed, they have their own ideas. Some said that the information currently available already suffices to help them get a picture of the matter, while some would request further information.

Today, in my capacity as Chairman of the House Committee, I moved this motion on behalf of the House Committee in pursuance of the decision made last Friday. Members have to make a decision of their own as to how to perceive today's motion and how to cast the vote later on.

I would like to respond to the Secretary's earlier remarks. Between last Friday's House Committee meeting and today, the Secretary has been making an enormous effort to persuade Members not to support the motion moved by me today, not to set up a select committee, and not to invoke the powers conferred by the P&P Ordinance to conduct an investigation. He cited numerous reasons, for example, the incident happened 10 years ago; Members have to approach it in an impartial and unbiased manner; the information requested by Members — the information that he described as "relevant and appropriate" — has all been made public, and provided to Members by the Government.

Nevertheless, as several Members said today, the manner in which the Government provides information to us now is like "squeezing toothpaste from a tube". One batch of information was provided during the first discussion on the matter, followed by another batch last night. When I made my first speech around 3 pm today, the third set of documents was not yet received. It was not available until I finished the speech and saw it in my office around 5 pm. I am aware that some Members are quicker than me in reading documents, or that they know what a document is about even before it arrives, but I have some difficulties in this regard. I have not read the documents concerned, nor have I any idea of what they are about. I received them after making the speech and moving the motion, so what should I do with them? To me, this is really a hard nut to crack. The Secretary remarked that relevant information had already been made public

and submitted. But to me and many Honourable colleagues, I believe such information is still not enough.

Furthermore, the Secretary repeatedly remarked that the matter involved a lot of confidential information. Once disclosed, there will be serious consequences as well as implications on Hong Kong's international image, which we should strive to uphold. He also expressed the concern that we would request too much information. He believed that we should only request information that would bear direct relevance to public interest. In my opinion, the Secretary is too distrustful of this Council. We have set up more than one select committee throughout the years, so this is not the first time we do so. Over the years, we have set up numerous select committees to carry out inquiries, and confidential information or sensitive commercial information was involved on each of these occasions. However, the relevant committees or select committees of this Council were able to handle the information in a proper manner without causing anyone to complain that we disclosed what was not supposed to be disclosed.

I believe, the select committee that we are going to set up would be wise enough to judge what information related to public interest should be requested. I thank the Secretary for reminding Members of this. I can also assure the Secretary that if this select committee is established, Members will certainly address his concerns. May the Secretary please rest assured.

President, I so submit.

MR RONNY TONG (in Cantonese): I forgot to make a declaration. Before casting the vote, I wish to declare that I have nominated Mr Albert HO.

MRS SOPHIE LEUNG (in Cantonese): President, I declare that I have nominated Henry TANG.

MR LAU WONG-FAT (in Cantonese): President, I am an Executive Council Member, and I have nominated Mr Henry TANG.

DR RAYMOND HO (in Cantonese): President, I wish to make a formal declaration that I am a member of the Election Committee. I have nominated Mr Henry TANG, but no direct or indirect interests are involved.

MR LEE CHEUK-YAN (in Cantonese): President, I have nominated Mr Albert HO. However, I will not vote for him, as I will cast an invalid vote.

DR PHILIP WONG (in Cantonese): I declare that I am a subscriber of Mr Henry TANG. I have nominated him.

PRESIDENT (in Cantonese): Does any other Member wish to make a declaration?

MR KAM NAI-WAI (in Cantonese): President, I have nominated Mr Albert HO for the Chief Executive Election.

DR JOSEPH LEE (in Cantonese): President, I have nominated Mr Albert HO.

MR CHEUNG KWOK-CHE (in Cantonese): President, I have nominated Mr Albert HO.

MR FREDERICK FUNG (in Cantonese): President, I have nominated Mr Albert HO.

MR FRED LI (in Cantonese): I wish to make a declaration on behalf of all Members of the Democratic Party. They have all nominated Mr Albert HO.

DR DAVID LI (in Cantonese): I am a helper of Mr Henry TANG.

DR LAM TAI-FAI (in Cantonese): I have nominated Henry TANG.

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 WONG Ting-kwong rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Ting-kwong has claimed a division. The division bell will ring for five minutes.

(While the division bell was ringing, Miss Tanya CHAN raised her hand in indication)

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

MISS TANYA CHAN (in Cantonese): President, I am making a declaration now. I have nominated Mr Albert HO. Thank you, President.

(While the division bell was still ringing, Dr Margaret NG stood up)

PRESIDENT (in Cantonese): Dr NG, what is your point?

DR MARGARET NG (in Cantonese): President, I do not follow the majority, since there is basically no point in making a declaration. Nominating Mr Albert HO does not constitute any direct or indirect pecuniary interest.

MR TOMMY CHEUNG (in Cantonese): President, I wish to declare that I have nominated Henry TANG.

MR JEFFREY LAM (in Cantonese): President, I declare that I have nominated Mr Henry TANG.

MR ANDREW LEUNG (in Cantonese): I declare that I have nominated Mr Henry TANG.

(While the division bell continued to ring, Mr LEUNG Kwok-hung talked with other Members)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, the meeting is still in progress.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Mr Paul CHAN, are you not going to vote?

MR PAUL CHAN (in Cantonese): President, I am not going to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Dr David LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Vincent FANG, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Prof Patrick LAU, Dr LAM Tai-fai, Dr LEUNG Ka-lau, Mr CHEUNG Kwok-che and Mr Paul TSE voted for the motion.

Mr Timothy FOK and Ms LI Fung-ying voted against the motion.

Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Mr WONG Ting-kwong, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM abstained.

Mr Paul CHAN did not cast any vote.

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 LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr CHEUNG Hok-ming, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 28 were present, 16 were in favour of the motion, two against it and nine abstained; while among the Members returned by geographical constituencies through direct elections, 28 were present, 18 were in favour of the motion and nine abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was passed.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): Honourable Members, it is now close to 9.35 pm. We have spent six hours debating the motion put to the vote just now. I reckon the next motion would also induce a similarly long debate. For this reason, I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at twenty-seven minutes to Ten o'clock.

Banking (Amendment) Bill 2011

Committee Stage

Amendments moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	In the Chinese text, by deleting “流動資產” and substituting “流動性”.
3(5)	In the proposed definition of <i>liquidity requirement rule</i> , by deleting “流動資產” and substituting “流動性”.
3(5)	In the Chinese text, in the proposed definition of <i>巴塞爾委員會</i> , by deleting “銀行監管標準” and substituting “銀行業監管標準”.
4(1)	In the Chinese text, by deleting “流動資產” and substituting “流動性”.
8	In the proposed Part XVIB, in the Chinese text, in the heading, by deleting “流動資產” and substituting “流動性”.

- 8 In the proposed section 97G, in the Chinese text, by deleting “流動資產資源，達致與穩健和穩妥（指經考慮到與該等機構有關聯的” and substituting “流動性資源，達致與穩健和穩妥（指經考慮到與該等機構有關聯的流動性”.
- 8 In the proposed section 97H, in the Chinese text, in the heading, by deleting “流動資產” and substituting “流動性”.
- 8 In the proposed section 97H(1) and (3), in the Chinese text, by deleting “流動資產” (wherever appearing) and substituting “流動性”.
- 8 In the proposed section 97H(4)(a)(ii), in the Chinese text, by deleting “多於20%但不多於50%的” and substituting “不少於20%但不超過50%”.
- 8 In the proposed section 97I(2), in the Chinese text, by deleting “流動資產” (wherever appearing) and substituting “流動性”.
- 8 In the proposed section 97K, in the Chinese text, in the heading, by deleting “流動資產” and substituting “流動性”.

- 8 In the proposed section 97K(1), (3), (6) and (7), in the Chinese text, by deleting “流動資產” (wherever appearing) and substituting “流動性”.
- 8 In the proposed section 97M(8), by adding “or (5)” after “(1)”.
- 18 By adding—
“(1A) Seventh Schedule, Chinese text, section 7(a)—
Repeal
“流動資產”
Substitute
“流動性”.”.
- 18(3) In the Chinese text, by deleting “流動資產” and substituting “流動性”.
- New By adding—
“18A. Fourteenth Schedule amended (affairs or business of authorized institutions specified for purposes of definition of *manager*)
Fourteenth Schedule, Chinese text, section 1, definition of *財政管理*—
Repeal
“流動資產”
Substitute

“流動性”。