OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 April 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

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.

DR THE HONOURABLE PAN PEY-CHYOU

THE HONOURABLE PAUL TSE WAI-CHUN, J.P.

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

DR THE HONOURABLE DAVID LI KWOK-PO, G.B.M., G.B.S., J.P.

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

PUBLIC OFFICERS ATTENDING:

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

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

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

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

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

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Employees Retraining Ordinance (Amendment of Schedule 2) Notice 2012	49/2012
Enduring Powers of Attorney (Amendment) Ordinance 2011 (Commencement) Notice	50/2012
International Organizations (Privileges and Immunities) (Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction) Order	52/2012
Statutes of The Chinese University of Hong Kong (Amendment) Statutes 2012	53/2012

Other Papers

No. 85 ─ Education Scholarships Fund
Trustee's Report on the Administration of the Fund and Financial statements together with the Report of the Director of Audit for the year ended 31 August 2011

No. 86 ─ Research Endowment Fund
Financial statements together with the Report of the Director of Audit for the year ended 31 August 2011

No. 87 ─ Employees Retraining Board Annual Report 2010-11

No. 88 ─ Report No. 58 of the Director of Audit on the results of value for money audits - March 2012

Report No. 16/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Protection of Wages on Insolvency (Amendment) Bill 2011

Report of the Bills Committee on Lifts and Escalators Bill

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): A sufficient number of Members have returned to the Chamber after the summoning bell has been rung for more than four minutes and there is now a quorum. Questions: First question.

Express Flat Allocation Scheme

1. **MR WONG KWOK-KIN** (in Cantonese): *President, it has been reported earlier that quite a number of young or middle-aged non-elderly one-person applicants of public rental housing (PRH) seek expeditious allocation of PRH through the Express Flat Allocation Scheme (EFAS) and then apply for purchasing Home Ownership Scheme (HOS) flats or units under other subsidized housing schemes as Green Form (GF) applicants after three years. In this connection, will the Government inform this Council:*

(a) of the number of non-elderly one-person applicants of PRH who joined EFAS in each of the past five years, and among such applicants, the number, age groups, academic qualifications, and average waiting time of those who were allocated PRH units; the number of non-elderly one-person applicants allocated PRH units under EFAS in the past five years who applied to switch to ordinary

households with other family members, or applied to purchase HOS flats as GF applicants, within five years after moving into the PRH units concerned;

(b) in each of the past five years, of the numbers of inspections and home visits conducted by the Housing Department (HD) in relation to misuse of PRH, the number of units involved, and the respective numbers of one-person units and units for the elderly involved; among such inspections and home visits, of the number of surprise visits in each year; the number of cases eventually confirmed by HD as cases of PRH units being misused or left vacant; and

(c) given that more subsidized housing schemes will be available for application by the public in future, and under some of such schemes, GF applicants will have a greater chance of success in a ballot or a higher priority in the order of unit selection, whether the authorities have assessed if the aforesaid situation will become a short-cut for certain people to apply for such subsidized housing schemes, increase the waiting time for needy families, waste PRH resources and affect the fairness of these subsidized housing schemes; if they have, of the details; whether the authorities will conduct thorough investigation and step up regulation to prevent abuse of PRH resources and at the same time review the eligibility of non-elderly one-person tenants for applying for subsidized housing as GF applicants, so as to prevent the problem from worsening?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, before answering Mr WONG's question, I would like to emphasize that, for the Hong Kong Housing Authority (HA), the main purpose for launching the EFAS is to expedite the letting of less popular vacant PRH units in order to better utilize the public housing resources. At the same time, the EFAS provides eligible PRH Waiting List applicants a channel through which they may apply for allocation of a PRH unit earlier to suit their circumstances.

My reply to Mr WONG's three-part question is as follows:

(a) In each of the past five years (that is, 2006-2007 to 2010-2011), there were respectively about 7 300, 8 300, 8 500, 12 000 and 16 000 non-elderly one-person applicants under the Quota and Points System (QPS) who participated in the EFAS. Under the EFAS in these respective years, there were about 1 200, 680, 1 000, 500 and 700 non-elderly one-person applicants who were allocated a PRH unit. Please refer to Annex for the detailed figures. Over 70% of these successful non-elderly one-person applicants were over 30 years old.

Flat allocation for non-elderly singleton applicants under QPS is determined by the points they have, thus the target of the Average Waiting Time is not applicable to them. The HD does not have the breakdown on the academic qualifications of these applicants who are allocated a PRH unit under the EFAS.

In the past five years, there were 66 and one non-elderly one-person applicants who had been allocated a PRH unit under the EFAS in 2006-2007 and 2007-2008 respectively, and purchased surplus HOS flats on GF status afterwards. In the subsequent three years (that is, 2008-2009 to 2010-2011), there was no non-elderly one-person applicant who had been allocated a PRH unit under the EFAS, and purchased surplus HOS flats on GF status afterwards.

The HD does not have the statistics of non-elderly one-person applicants who were allocated a PRH unit under the EFAS and later applied to switch to general family in the past five years.

(b) To ensure the rational allocation and utilization of the limited public housing resources, the HD has formulated effective measures to detect PRH abuse cases, including vacant of flats, flats occupied by unauthorized persons, performing illegal activities in PRH flats (that is, gambling or possession of drugs) or non-domestic use (that is, commercial activities). HD's front-line estate management staff members will, through their day-to-day tenancy management works

and at least one home visit in every two years to about 700 000 PRH tenants, verify the tenants' occupancy position, and thus detect whether there is any PRH flat being abused. Should there be any doubt about the tenants' occupancy position during the home visits, such cases will be referred to the Central Team of the HD for further investigation. In addition, the Central Team will also carry out in-depth investigation on all complaints and randomly-selected cases. There are about 120 000 sitting tenants in one-person flats and Housing for Senior Citizens flats at present. These home visits are mostly conducted without prior notification. The latest round of biennial home visits has been commenced in November 2010 and will be completed in October 2012. As at end March 2012, the HD has visited about 520 000 PRH households.

Also, over the past five years, the HD has investigated an average of about 8 000 cases of suspected tenancy abuse each year, and there were on average about 400 confirmed tenancy abuse cases each year that resulted in the recovery of PRH flats.

(c) To prevent PRH tenants who were allocated their units through the EFAS to take it as a short cut to purchase surplus HOS flats, the Subsidized Housing Committee of the HA endorsed a special measure in 2007 specifying that from 2007-2008 onwards, if GF applicants who were allocated PRH units through the EFAS applied for the purchase of surplus HOS flats within three years from taking up their PRH units, they would be treated as White-Form (WF) applicants in the flat selection order and any surplus HOS flats taken up by this category of GF applicants would be counted against the WF quota.

Since the implementation of the above special measure by the HA in 2007, only one non-elderly one-person household who was allocated a PRH unit through the EFAS in 2007-2008 purchased a surplus HOS flat so far. We consider that this special measure has achieved its intended effect.

As I mentioned earlier, with a view to ensuring the rational allocation and use of the limited public housing resources, the HD

has put in place a Biennial Inspection System (BIS). Under the BIS, the HD estate management staff members will conduct at least one visit to all PRH households every two years, taking the opportunity during the visits to detect any abuse of PRH. To tie in with the visits, the HD has launched a series of publicity and educational programmes to reinforce the importance of the rational use of the limited public housing resources. We consider the existing measures to be effective. The HD, however, will review from time to time and adjust the measures available to tackle abuses of public housing resources as necessary to ensure that they can continue to achieve the intended effects.

PRH is an important benefit provided to the least well off in our community. It is important that the limited resources available are allocated to those most in need. The HA and HD constantly monitor the situation to ensure the appropriate allocation and use of these scarce resources.

Annex

The numbers of non-elderly one-person applicants under QPS who participated in the EFAS and those who were allocated a PRH unit under the EFAS in the past five years (that is, 2006-2007 to 2010-2011)

Year	*Number of non-elderly one-person applicants*	*Number of non-elderly one-person applicants who were allocated a public rental housing unit*
2006-2007	7 291	1 227
2007-2008	8 293	678
2008-2009	8 531	998
2009-2010	11 972	502
2010-2011	15 997	702
Total	52 084	4 107

MR WONG KWOK-KIN (in Cantonese): *President, according to the table annexed in the Government's main reply, the total number of non-elderly one-person applicants who participated in the EFAS in the past five years was more than 52 000, and more than 10 000 applicants participated in the EFAS in the past two years. I would like to ask the Secretary, has he conducted a detailed study on the reasons why so many non-elderly one-person applicants have shown keen interest in participating in the EFAS? Has he analysed the age and academic qualifications of these participants, so as to ensure that the EFAS can really help those applicants with urgent needs?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, all PRH Waiting List applicants are invited to participate in the EFAS and the applicant will respond in accordance with their situation. There are many applicants in terms of numbers but whenever applications are invited for expeditious allocation of PRH units, there are surplus units in the end as the flats available for selection may not meet the needs of the applicants. Certainly, the applicants have various factors for consideration. We understand that they may prefer to move to certain districts or have special requirements while they are waiting for PRH allocation. Hence, the PRH units available for expeditious allocation may not meet their needs.

We have not analysed the profile of all applicants because all PRH Waiting List applicants will be invited to participate in the EFAS.

DR JOSEPH LEE (in Cantonese): *President, the Secretary has mentioned in the last paragraph of her main reply that PRH is an important housing benefit provided to the least well off in our community. However, I am surprised to learn from part (a) of the Secretary's main reply that 30% of these applicants were aged below 30 and they were allocated a PRH flat through this channel.*

Can the Secretary tell me if there are people who have abused the mechanism to apply for subsidized housing? These 30% applicants may become well-off PRH tenants in the future. Can the Secretary provide additional data to illustrate whether people below 30 who are allocated PRH units through this channel will buy HOS flats when they become well-off tenants in the future?

Can the Secretary provide us with the relevant documents or information to ensure that public funds are used properly?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the percentage of people who first applied for the EFAS and then buy the surplus HOS flat is low, around 0.8%. In terms of numbers, it seems that not many people will, after being allocated a PRH unit through the EFAS, buy HOS flats as GF applicants. In particular, the HA has introduced in 2007 a measure that if applicants who were allocated PRH units through the EFAS applied for the purchase of surplus HOS flats within three years from taking up their PRH units, they would be treated as WF applicants. We notice that the number has actually been declining.

As regards the fact mentioned by Dr LEE that about 27% of the applicants who were allocated PRH units under the EFAS are aged below 30, we must understand that one-person applicants can apply provided that they meet the income and asset limits. Therefore, we think that the EFAS is desirable as flats that are less popular can be allocated, so as to put public housing resources to good use. In implementing this scheme, all applicants are treated equal and we will not exclude some applicants because of their age.

As I have just said in reply to Mr WONG Kwok-kin's supplementary question, not all units under the EFAS can be allocated eventually and there are residual units in each allocation. Hence, we think that the existing system is operating smoothly and there are no special cases of abuse.

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

DR JOSEPH LEE (in Cantonese): *The Secretary has not answered the part of my supplementary question on whether these applicants have eventually become well-off tenants.*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we will only conduct the first inspection 10 years after the tenants have

taken up the flats. At this stage, there are no figures indicating through which channels tenants get their PRH units and then later become well-off tenants. I will certainly reflect to the HA if it is necessary to consider the relevant information in the future.

MS LI FUNG-YING (in Cantonese): *President, the Secretary has mentioned in part (c) of her main reply that an administrative measure has been taken since 2007 under which the applicants allocated PRH units through the EFAS who applied for the purchase of surplus HOS flats within three years from taking up their PRH units would be treated as WF applicants. Mr WONG Kwok-kin has also asked in part (c) of his main question: given that more subsidized housing schemes will be available for application by the public in future, will the authorities consider and review this measure so that subsidized housing will be available for application by needy applicants, to prevent the abuse of PRH resources by the applicants under the EFAS?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we will certainly monitor the situation closely in reintroducing new HOS flats. From the sale of surplus HOS flats, it seems that the three-year threshold has been effective. We should continue to adopt this method at this stage.

However, I would like to point out, it is difficult for us to speculate on the motives of the applicants when they apply under the EFAS. It is also difficult to predict their family status, income level, as well as affordability to buy flats three years after they have been allocated PRH units. Hence, we base on objective and specific factors in allocating the units. The main factors for consideration include whether an applicant is a Hong Kong permanent resident, as well as his income and assets. If an applicant is willing to accept the allocated units, the EFAS is certainly a favourable channel. However, it is difficult for us to anticipate if the application has other motives, such as home purchase, after he has been allocated a unit through the EFAS. So, the adoption of a three-year threshold seems to be appropriate. We will pay close attention to the coupling measures to be taken when we reintroduce HOS flats.

MR LEUNG YIU-CHUNG (in Cantonese): *President, we all know that public housing resources are tight and many people have to wait for a very long time before they are allocated PRH units. Therefore, we have to watch out for abuse of PRH resources, and there is a need to do so. However, residents often find many PRH units vacant with nobody live inside. Can the HD explain why this situation has arisen?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, regarding the problems of vacant units, we should consider carefully whether the unit has been vacant for a long time or whether the unit is temporarily vacant as the tenant has to leave Hong Kong and work elsewhere. Nonetheless, as Mr LEUNG Yiu-chung has just said, if residents find it necessary to alert us that some units may be abused, they are encouraged to report to the estate offices and we will certainly conduct thorough investigations.

Besides daily monitoring by estate management staff, a central team will also conduct in-depth investigations into these cases, and we will also carry out surprise inspections. In short, we are very persistent and will rigorously investigate into cases of abuse.

MR CHAN KAM-LAM (in Cantonese): *President, may I ask the Secretary, are tenants who have been allocated PRH units under the Public Housing Allocation Policy also subject to the three-year restriction with regard to the purchase of HOS flats? Why are tenants who take up those less popular PRH units through the EFAS subject to the three-year restriction with regard to the purchase of HOS flats? Evidently, this will make those less popular PRH units even more unpopular. Is the relevant policy contradictory and discriminating against these units?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the policy is absolutely not discriminatory. In general, families will select their preferred districts — there are three major districts at present — and our pledge is that general Waiting List applicants can be allocated a PRH unit within three years. The three-year restriction concerning HOS flat is also fair to a certain extent, because an applicant under the EFAS does not need to wait for allocation like other applicants, and they can seek expeditious allocation of PRH

units. For general applicants, their application is handled on the basis of flat allocation within three years on average, and we consider that the regulation is fair. We must understand, if a person who has been allocated a PRH unit under the EFAS is allowed to buy a HOS flat as GF applicant, it may give rise to abuse or taking short cut, as stated by Mr WONG Kwok-kin in his main question. Hence, we consider the regulation of the threshold suitable, and the measure was introduced in 2007 after careful discussion by the Subsidized Housing Committee under the HA.

MR WONG KWOK-HING (in Cantonese): *President, we can see from the Annex provided by the Government that there is a low supply of PRH units which may not be able to meet the public's needs. As indicated in the Annex, there was a total of 52 084 non-elderly one-person applicants in the past five years. They have applied under the EFAS because they would like to "expeditiously" take up PRH units that are not so popular. Do they know what is meant by "not so popular"? These units may be located next to the refuse collection room or on lower floors and ……*

PRESIDENT (in Cantonese): Mr WONG, please be concise and it is not necessary to explain in detail.

MR WONG KWOK-HING (in Cantonese): *President, what I want to say is that the problem is the inadequate supply of PRH units, leading to the present situation. Hence, I would like to ask the Secretary: as there are two more months to go before her term of office ends, how can she ensure that the PRH units to be constructed by the Government and the construction of an appropriate amount of HOS flats can tally with the policy of the next-term government? The newly appointed Chief Executive or the Chief Executive-elect has stated in his policy agenda or election platform that additional PRH units will be constructed and the construction of HOS flats will resume. Now that the current-term government is unwilling to increase the number of PRH units, resulting in long waiting time for non-elderly one-person applicants, how can the Government's housing policy tie in with the housing policy of the Chief Executive-elect in this transitional period?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the information in the Annex cannot reflect the situation of housing supply, as non-elderly applicants may chose to participate in the EFAS each year. Yet, as I have just mentioned, EFAS is one of the channels for application of PRH units. An applicant can certainly choose to continue to wait for his preferred unit. Each time we launch the EFAS, not all units can eventually been allocated, there are certain number of surplus units. So, I believe this depends on the personal choice of the applicants. Regarding the supply of additional housing units, we have in fact considered this issue from different angles and through different channels. We hope to increase the number of housing units available.

At present, we will of course try to get land resources and on the premise of a balanced development, there are sites in different districts for public housing development. We will consider increasing suitably the density of public housing development and have also succeeded in building taller buildings with higher density in the planned housing estates without causing environmental impacts. We have recently announced that we will embark on the redevelopment of suitable sites to make full use of land resources. It is also our aim to construct more PRH units through various channels.

Regarding HOS flats, we have announced the presale of new HOS flats from 2014 onwards. We have already identified the sites for constructing HOS flats, and around 17 000 flats will be provided. The new Chief Executive will certainly have specific plans and I believe the HD and the HA will try their best to play a supporting role.

PRESIDENT (in Cantonese): Please simply repeat the part of your question that the Secretary has not answered.

MR WONG KWOK-HING (in Cantonese): *The Secretary has not explained how to comply with the housing policy of the new-term government and how the current-term government hands over the relevant tasks to the next-term government, so that its housing policy can meet the needs of Hong Kong people.*

PRESIDENT (in Cantonese): Mr WONG, the Secretary has already replied.

Second question.

Allegations Relating to Undue Influence of Representative Organ of Central People's Government

2. **MS AUDREY EU** (in Cantonese): *Recently, there has been wide coverage in local newspapers and international media alleging that the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) has been profoundly intervening in Hong Kong's affairs, which may have breached Article 22 of the Basic Law and deviated from the principle of "one country, two systems" and "a high degree of autonomy". After the Chief Executive Election, a foreign media organization even commented that "one country, two systems" is "the worst system, including all the others". In this connection, will the Government inform this Council:*

(a) given that it was reported that during a meeting between officials of the LOCPG and staff members of the Chief Executive's Office in a clubhouse in February this year, the Head of Research of the LOCPG severely criticized the Director of the Chief Executive's Office for not trying his best to prevent this Council from exercising the powers conferred by the Legislative Council (Powers and Privileges) Ordinance in investigating a Chief Executive candidate, whether the Government has taken any action (including giving an account of the truth to the public and condemning those actions which breach the Basic Law) regarding this incident to uphold the promise of "Hong Kong people ruling Hong Kong" as laid down in the Basic Law; if it has, of the details; if not, the reasons for that;

(b) given that some members of the Election Committee (EC members) alleged that the LOCPG lobbied votes from quite a number of EC members for one of the candidates during the Chief Executive election period, whether the Government has taken any action (including launching investigation into the incident in accordance with the Elections (Corrupt and Illegal Conduct) Ordinance, as well as summonsing the people concerned for interviews, and so on)

regarding this incident to uphold the promise of "Hong Kong people ruling Hong Kong" as laid down in the Basic Law; if it has, of the details; if not, the reasons for that; and

(c) given that it was reported that the secretary of the person-in-charge of a newspaper had received a telephone message left by the Director-General of the Department of Publicity, Culture and Sports Affairs of the LOCPG expressing dissatisfaction about the newspaper's reports which criticized the LOCPG and the Chief Executive Election, whether the Government has taken any action (including finding out the truth from the media organization concerned and condemning those actions which breach the Basic Law) regarding this incident to uphold the promise of "Hong Kong people ruling Hong Kong" as laid down in the Basic Law; if it has, of the details; if not, the reasons for that?

PRESIDENT (in Cantonese): Ms EU, as shown in the script, the term used in part (a) of the main question is "han2 pai1", but you just pronounced it as "long4 pai1".(1) I think you did not change it intentionally.

MS AUDREY EU (in Cantonese): *No, President, because "long4" is a trendy word lately.*

PRESIDENT (in Cantonese): You should put question according to the script.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, our reply to the three parts of the question raised by Ms Audrey EU is as follows:

(a) Since the establishment of the Hong Kong Special Administrative Region (HKSAR), the Central Authorities have been acting strictly

(1) "狠"(han2) and "狼"(long4) are different Chinese characters that look alike. "狠"(han2) means severe and "狼" (long4) means a wolf, but both "han2 pai1" and "long4 pai1" mean severe criticism.

in accordance with the fundamental policies of "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy" and the provisions of the Basic Law in supporting the Chief Executive and the HKSAR Government in administering Hong Kong in accordance with the law, with a view to maintaining the prosperity and stability of Hong Kong. During his meeting with the Chief Executive-elect on 11 April, President HU Jintao also reiterated that the Central Authorities will, as in the past, continue to implement the policies of "one country, two systems", "Hong Kong people ruling Hong Kong", "a high degree of autonomy", and support the Chief Executive and the HKSAR Government in administering Hong Kong in accordance with the law strictly adhering to the Basic Law.

The HKSAR Government has all along been maintaining working relationship with the Central Authorities and other Mainland departments in accordance with the Basic Law and the principle of "one country, two systems". Hence, officials of the Chief Executive's Office have working meetings with officials of the LOCPG in the HKSAR from time to time, which are entirely based on the actual operational needs.

The implementation of the Basic Law in the HKSAR is the duty of the Chief Executive and the HKSAR Government. We have never accepted, and will not accept pressure from any person.

The HKSAR Government will not comment on individual speculative reports by the media.

(b) The HKSAR Government, Elections Affairs Commission and law-enforcement agencies have all along been conducting their duties strictly in accordance with the provisions of the Basic Law and the relevant electoral legislations, regulations and guidelines, with a view to ensuring that all elections, including the Chief Executive Election, are conducted in a fair, just, clean and honest manner.

Indeed, provisions relating to illegal conduct under the Elections (Corrupt and Illegal Conduct) Ordinance have provided safeguards against corrupt and illegal conduct in the Chief Executive Election. Section 11 of the Ordinance prohibits any person to offer or solicit advantage with the intention of affecting another person's voting preference. Section 13 prohibits the use of force or duress against a person to affect the voting preference of that person or a third person. Section 14 prohibits deceptive behaviour to affect the voting preference of another person or a third party.

In a Chief Executive Election, a EC member chooses the candidate he prefers according to the preference of his/her constituency and his own free will. It is illegal for any person to attempt to make use of any measures not permitted under the law to affect the vote. The law-enforcement agencies will take serious action against the responsible person.

On the other hand, as in any other public elections, different people will lobby EC members to vote for the candidates they support. This is normal and permitted in a free society. However, the lobbying must be conducted in accordance with the law and the ultimate voting decision should be made by the member according to his own free will.

To ensure that EC members can make their choices according to their own free will, the polling of the Chief Executive Election is conducted in a confidential manner as in other public elections. Having regard to the views and concerns expressed by the public on the confidentiality arrangements on voting, we implemented the following additional measures in the Chief Executive Election completed recently:

(i) Apart from issuing letters to EC members, we have also openly reminded them repeatedly that it is strictly forbidden to communicate with other people on voting matters, to take photos and to make audio or video recording within the polling station.

(ii) The Election and Registration Office (ERO) has arranged for a large number of staff to assist EC members in voting and to monitor the voting process to ensure that no one can attempt to violate the relevant requirements.

(iii) A cover was installed on top of each of the voting compartments to further strengthen the confidentiality arrangements on site.

(iv) The CCTVs inside the polling station were either removed, switched off or diverted, and the control room was manned by the police and staff of the ERO.

We believe that the above arrangements have enhanced the confidence of EC members in casting their votes according to their own free will.

(c) Freedom of the press is the basic right of the public and the society. It is also one of the core values of Hong Kong protected by the Basic Law and the Hong Kong Bill of Rights Ordinance. Hong Kong media has been actively monitoring the Government's administration all along. It has also widely and freely commented on local and overseas news as well as the Government's policies and work.

The report mentioned in the question raised by Ms EU has never been verified. It is also inappropriate for the HKSAR Government to enquire the media concerned directly on this matter. All in all, the HKSAR Government will not comment on speculative reports by the media.

On the other hand, during the process of the Chief Executive Election, printed and electronic media have made a host of reports on the candidates and various aspects of the election. This reflects the continuous implementation of freedom of the press in Hong Kong.

The HKSAR Government will continue to safeguard freedom of the press in accordance with the Basic Law and the principle of "one country, two systems".

MS AUDREY EU (in Cantonese): *President, I wish to follow up on part (a) of the main reply. In part (a), the Secretary stated that the Government "will not comment on individual speculative reports by the media". However, regarding the media reports mentioned in part (a), names have been disclosed and they are LOCPG's CAO Erbao and the Director of the Chief Executive's Office Prof Gabriel LEUNG. The time and venue have also been disclosed. The place is a pretty open venue in Shan Kwong Road, Happy Valley. Since Mr CAO Erbao spoke arrogantly with a loud voice during the meeting, people sitting beside him could hear clearly. The relevant news was not reported for just one day and not by one newspaper. It was reported that CAO Erbao shouted that "The target will be your boss tomorrow". On the following day, negative news about Donald TSANG was unveiled. This is certainly a very important issue.*

As stated in the main reply, the Secretary said, "We have never accepted, and will not accept pressure from any person." This is questionable. Is his remark that no pressure will be accepted a tacit admission that either Mr CAO Erbao, the Western District or the LOCPG has put pressure on the Chief Executive's Office? If not …… This incident is different from the third one. With regard to the third incident, the Secretary advised that it is inappropriate for the HKSAR Government to look into the matter and enquire the media concerned even though it does involve the Director of the Chief Executive's Office. If the incident was falsely reported, is Prof Gabriel LEUNG obliged to stand out to explain publicly that this has never happened and tell the truth? If someone did put pressure on him, is he obliged to stand out to explain publicly instead of saying that "we will not accept pressure from any person" like the Secretary? Is this a tacit admission that someone has put pressure on him?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I can respond to Ms Audrey EU's supplementary question from two perspectives. Firstly, on the night before the first publication of the news report mentioned by Ms Audrey EU, I received an enquiry from the newspaper which alleged that I was also involved. When the reporter inquired about the case, stating also the date and venue, I was having dinner with my wife

elsewhere, so I denied instantly. We can tell from the details that the hearsay is just a rumour and I am not going to make further comment on other details. I had at least denied my involvement in the rumour.

In the main reply, I have stressed time and again that the Central Government, its Hong Kong Office and the HKSAR Government have all along liaised and conducted relevant working meetings under their respective purview in accordance with the principle of "one country, two systems" and the Basic Law. Regarding the responsibilities of the LOCPG, Members may learn from LOCPG's website that it is empowered by the State Council to perform various functions. Over the years, we have had working meetings and meetings with LOCPG officials based on the actual operational needs, and our meetings were conducted to jointly discuss practical issues with due respect, courtesy and protocol. This is our established practice in the past and I believe it will continue in the future.

MS AUDREY EU (in Cantonese): *President ……*

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

MS AUDREY EU (in Cantonese): *Yes, he has not answered my supplementary question. Let me repeat more clearly. Just now I asked about Prof Gabriel LEUNG, who is the Director of the Chief Executive's Office and the main figure of the incident. Sorry, I did not ask about the Secretary.*

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

MS AUDREY EU (in Cantonese): *Okay. My supplementary question is, given the seriousness of the incident and the specific media reports, is Prof Gabriel LEUNG, being an official of the Chief Executive's Office, obliged to stand out to make clarifications and tell the truth? If no pressure has been exerted on him, he should give a detailed account. If pressure has been exerted on him, the Government should also let the public know. I asked about Prof Gabriel LEUNG.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, part (a) of the main reply is my response made on behalf of the HKSAR Government, which is also a response to Ms Audrey EU's main question made on behalf of the Chief Executive's Office. I have nothing to add. As I have stated very clearly in the main reply, we will not make specific comment on the speculative reports by the media

MR ALAN LEONG (in Cantonese): *President, I wish to follow up on the fourth paragraph of part (b) of the main reply. The fourth paragraph states that, "On the other hand, as in any other public elections, different people will lobby EC members to vote for the candidates they support. This is normal and permitted in a free society. However, the lobbying must be conducted in accordance with the law." President, I wish to ask if the lobbying activities which are considered normal by the Secretary include the activities of State Council member LIU Yandong in the Bauhinia Villa, as well as the making of calls by some junior LOCPG officials to EC members to lobby votes for LEUNG Chun-ying, as Mr James TIEN has said? In the main reply, the Secretary said that "lobbying must be conducted in accordance with the law". Has he deployed someone in accordance with the law to ascertain if the lobbying activities did not involve duress and the offering of advantage?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, in the second paragraph of part (b) of the main reply, I have clearly quoted the relevant provisions, which state clearly that a person is prohibited to do the abovementioned things to another person. First, there is no definition of the term "a person", stating who is or is not included. Second, there are clear provisions that if the enforcement authorities receive the relevant reports, they will definitely take serious action against the responsible person. I have already stated the principal ordinance earlier.

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

MR ALAN LEONG (in Cantonese): *President, the part which he has not answered is whether the lobbying activities which he considered normal include what the State Council member LIU Yandong and the junior LOCPG officials have done? Before I let the Secretary reply again, I want to ask specifically if the Secretary knows the details of Article 22 of the Basic Law. Article 22 stipulates that: "All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region." I hope that the Secretary will take into consideration of Article 22 when giving a reply.*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): As I have reiterated time and again in the main reply and the follow-up replies, the SAR Government, the Central Government and its Hong Kong Office shall strictly adhere to the Basic Law and, *inter alia*, Article 22.

DR MARGARET NG (in Cantonese): *President, I wish to follow up on part (a) of the main question. In the main reply, the authorities highlighted that the lobbying activities were conducted in an open and fair manner and the Chief Executive's Office will have working meetings or meetings with officials from the Central Government, its various departments and the LOCPG. May I ask the authorities to provide information about the LOCPG officials whom they have met over the past three months and the operational needs involved? Which officials from the Chief Executive's Office were involved in the meetings? What did they discuss? Why would such issues fall under their purviews? What were the details? Do the meetings include the one held between the Director of the Chief Executive's Office Prof Gabriel LEUNG and the LOCPG official CAO Erbao in a clubhouse?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): Officials from the SAR Government, especially those from the Chief Executive's Office, have all along maintained liaison with the Central People's Government offices in Hong Kong at the working level based on the actual

operational needs. According to the established practice, we will not openly disclose the specific details of these exchanges. Nonetheless, as Members can imagine, there are cases where discussions with LOCPG officials are warranted. For instance, if State leaders visit Hong Kong, we will have to arrange with the LOCPG about the specific itineraries. Furthermore, there were also working contacts with officials from the Education Bureau or in respect of matters relating to the Education Bureau, such as students exchange programmes to the Mainland, where arrangements have to be made. As Members may aware, these are contacts based entirely on operational needs and in accordance with the principle of "one country, two systems" and the Basic Law.

DR MARGARET NG (in Cantonese): *President.*

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

DR MARGARET NG (in Cantonese): *He has not answered my supplementary question. I asked the Secretary to give an account of all the working meetings conducted over the past three months, but he has only briefed us on the part that can be disclosed. Is there still something which cannot be disclosed, including the meeting between the Director of the Chief Executive's Office Prof Gabriel LEUNG and LOCPG official CAO Erbao as highlighted by me earlier? President, I am asking the Secretary to provide a reply in writing and set out in table form all information of the past three months that can be disclosed. For information which cannot be disclosed, we will put questions to the Secretary based on the table concerned.*

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, it is our established practice not to disclose specific information in this regard.

MR TAM YIU-CHUNG (in Cantonese): *President, I wish to ask about part (a) of the main reply, which another Member has already followed up on, concerning "The HKSAR Government will not comment on individual speculative reports by the media." May I ask if this is the established attitude of the Government? If not, it will have to make clarifications on a case-by-case basis if similar cases recur. This gives rise to a question: Will the refusal of the Government to clarify speculative reports result in public misunderstanding? How should a decision be made?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): I thank Mr TAM Yiu-chung for his question. It has been the longstanding practice of the HKSAR Government, and even before the reunification, not to comment on speculative reports by the media. Officials who deal with government information and officials from other departments may receive different enquiries from the media every day. While some enquiries are related to policies, some are related to rumors or incidents being widely gossiped, and we are asked to make clarifications. It has been our established policy to provide assistance to the media by all means by making responses and clarifications according to objective facts.

As I have said earlier in response to a supplementary question, when the media asked if I was involved in the relevant meal gathering, I had made myself clear that I had not attended the meal gathering referred by the media. In this case, I would certainly respond. I also noticed that as reported in the newspaper, I had denied my part on the occasion. Therefore, the criterion deciding whether clarifications or information should be made or provided is mainly the objective facts. As for speculative reports, we will not make any further comment.

MR WONG YUK-MAN (in Cantonese): *President, may I ask the Secretary the full name of the "LOCPG"?*

PRESIDENT (in Cantonese): Mr WONG, is this your supplementary question?

MR WONG YUK-MAN (in Cantonese): *No, I will put my question after he gives an answer.*

PRESIDENT (in Cantonese): Mr WONG, you can only raise one supplementary question.

MR WONG YUK-MAN (in Cantonese): *Okay.*

PRESIDENT (in Cantonese): If you have finished raising your question, please be seated and I will ask the Secretary to reply.

MR WONG YUK-MAN (in Cantonese): *Mr Raymond TAM, have you heard of the "Hong Kong and Macao Working Committee of the Chinese Communist Party"?*

PRESIDENT (in Cantonese): Mr WONG, you can only raise one supplementary question. If you have put your question, please be seated.

MR WONG YUK-MAN (in Cantonese): *My supplementary question is very simple. As the Communist Party is ruling Hong Kong, it is inevitable that the LOCPG, also called the "Hong Kong and Macao Working Committee of the Chinese Communist Party" will intervene in Hong Kong affairs. Why did he dare not admit this? Can he tell us the kind of communication that the Communist Party has in Hong Kong? Given the hard facts, he should not always put the blame on the media ……*

PRESIDENT (in Cantonese): Mr WONG, if you have raised your question, please sit down.

MR WONG YUK-MAN (in Cantonese): *…… Is he aware of the existence of the "Hong Kong and Macao Working Committee of the Chinese Communist Party"?*

I would like him to answer me first. Being the Secretary for Constitutional and Mainland Affairs, there is no way he is not aware of it. President, can he answer this question first before I put another question?

PRESIDENT (in Cantonese): Mr WONG, you have put your question and please sit down. Secretary, please give a reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the information in hand shows that the correct name for the "LOCPG" is the Liaison Office of the Central People's Government, and I have certainly heard of it. Yet, I have not heard about the other name which Mr WONG Yuk-man mentioned.

MR WONG YUK-MAN (in Cantonese): *President, how can he work as a Secretary? Buddy, how can he work as a Secretary if he has no idea that the "Hong Kong and Macao Working Committee of the Chinese Communist Party" is tantamount to the LOCPG?*

PRESIDENT (in Cantonese): Mr WONG, please stop expressing views and sit down.

MR WONG YUK-MAN (in Cantonese): *Am I right? How can he work as a Secretary? He can simply pack his bag and go home. There is no doubt that he cannot fight against the interventions. How can he do that? We have already had a number of underground party members at this meeting.*

PRESIDENT (in Cantonese): Mr WONG, please sit down and stop speaking.

There are still four Members waiting for their turns to raise questions but this Council has spent more than 23 minutes on this question. Third question now.

Electrical Rewiring and Reinforcement Programme

3. **MR LAU KONG-WAH** (in Cantonese): *President, the Hong Kong Housing Authority (HA) implemented the Electrical Rewiring and Reinforcement (ERR) Programme in 2005 to assist residents of old public housing estates (PHEs) in replacing electrical wiring and install additional power sockets in their flats, with a view to gradually addressing the problems of ageing of wiring and inadequate sockets in the flats of very old PHEs. Some members of the public have recently reflected to me that electricity leakage incidents occurred in the flats of the Tenants Purchase Scheme (TPS) estates, and quite a number of these incidents were related to the ageing of wiring. They have pointed out that tenants in TPS estates are still tenants of the HA, and as most of them are low-income earners, it is difficult for these tenants themselves to improve the obsolete electrical installations, but ERR Programme at present does not cover TPS estates, thus such tenants need to face the threat of possible occurrence of electricity leakages. In this connection, will the Government inform this Council:*

(a) of the current progress of ERR Programme; upon completion of the aforesaid works, the lifespan of the new installations; whether the authorities have any plan in place to regularly inspect the electrical installations of the households which benefited from ERR Programme; if they have, of the interval between each inspection; if not, the reasons for that;

(b) apart from old PHEs which are currently covered by ERR Programme, whether the authorities will plan to carry out works to replace electrical wiring and install additional power sockets in the flats of all other PHEs across the territory; if they will, of the number of PHEs involved; and

(c) whether the authorities will plan to extend the scope of ERR Programme to include the rental flats of TPS estates; if they will, of the implementation timetable; if not, the reasons for that?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, before answering the Honourable Member's questions, I would like to provide some facts with regard to the background information. The HA is

committed to the progressive improvement of the living environment of the tenants of public rental housing (PRH), and has launched various maintenance and improvement programmes to upgrade the facilities of the PRH estates. The most significant of these include the Total Maintenance Scheme, the Responsive In-flat Maintenance Services and the Comprehensive Structural Investigation and Estate Improvement Programme, and so on. These programmes are all welcomed and widely supported by PRH tenants. The HA will continue to implement them.

As part of an ongoing programme to upgrade the supply capacity of the electrical systems of the domestic blocks of the PRH estates to the latest design standard so as to cope with the growing living standards of tenants, the HA has launched two separate electrical enhancement programmes, one in 1990 and the second in 2005, known as the ERR Programme and the Rewiring Inside Domestic Flats (RDF) Programme respectively. While these programmes were both to upgrade the electrical systems in the HA's PRH flats, they were independent from each other and tackled different issues.

The objective of the ERR Programme as mentioned in the question is to increase the design standard of the power supply capacity of the domestic blocks in PRH estates. The work included the replacement and upgrading of cables in communal areas outside the individual PRH flats. The ERR Programme commenced in 1990 and was completed in early 2006. We have increased the power supply capacity of the old blocks to meet the latest design standard through the programme, which allows the same to be capable to meet the peak load of PRH tenants' electricity consumption during summer. Since then, power failures due to the overloading of the power supply system have effectively ended.

The replacement of the surface wiring and associated accessories including the consumer units, lighting switches and addition of socket outlets within PRH flats is under the works of RDF Programme. We consider that the programme can upgrade the electrical installation inside the domestic flats to cope with the demand for electricity arising from growing living standard of PRH tenants. This programme is ongoing.

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

(a) The ongoing RDF Programme will cover PRH flats with surface wiring in about 100 PRH and TPS estates.

Since the launching of the RDF Programme in 2005 and up to end March 2012, the HA has completed the rewiring works in about 95 000 PRH flats in 59 PRH estates.

In the coming two years, the HA will implement the RDF Programme in PRH units in a further 11 estates; including seven PRH and four TPS estates.

After replacement under the RDF Programme, the new electrical installations have a usable lifespan of about 30 years. If tenants use the installations properly without overloading the circuit, they can be used longer. The outer sheath protection of the insulated surface-mounted cable provides high reliability on safety. Nevertheless, the integrity of its outer sheath will be checked during the general in-flat inspection of the HA's Total Maintenance Scheme conducted every five years and detailed inspection and repair work on any damaged or faulty electrical installations will be arranged on a need basis. The HA will also respond promptly to tenants' request at any time to arrange for the effective repair of electrical installations.

(b) As I have mentioned, the RDF Programme will cover rental flats with surface wiring in about 100 PRH and TPS estates. However, since electrical wiring has been installed inside concealed conduits (such wiring is commonly known as concealed wiring) in the HA's PRH flats built since mid-1990s, the RDF Programme will not cover such PRH flats.

(c) The HA has included rental flats in TPS estates in its RDF Programme and the replacement works in the first four TPS estates will commence in April 2013. These four TPS estates are Po Hong Estate, Tsui Ping (North) Estate, Tung Tau (2) Estate and Lei Cheng Uk Estate.

The electrical installation outside the flats are communal facilities and the corresponding Owners' Corporation (OC) of the concerned TPS estates is required to conduct regular inspections and to arrange maintenance for the associated installation in accordance with the

relevant statutory requirements. The HA's representatives on the concerned Management Committee will explain to the concerned OC and the PRH tenants of the aim and works procedures before the RDF work commences.

MR LAU KONG-WAH (in Cantonese): *President, such works are benevolent measures from the perspective of PRH tenants. Hence, most of them hope that the replacement cost can be met by the Housing Department (HD). According to the Secretary's main reply, the decision of whether certain PRH flats would be covered under the replacement programme was based on the type of wiring used inside the flats, that is, whether it was surface wiring or concealed wiring. But I want to tell the Secretary, there are in fact PRHs with surface wiring that have been excluded from the programme because the HD has drawn the line by the age of the PRH estates. As a result, some tenants who live in PRH flats with surface wiring cannot have the wiring inside their flats replaced as they have hoped. In this connection, I want to ask the Secretary whether consideration will be given to relax the relevant requirement, so that tenants who live in PRH flats with surface wiring will also benefit from the programme and have the wiring inside the flats replaced?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we will definitely deal with the matter expeditiously if there is any safety risk with the electrical installation. Under the present arrangement, if there is no specific request from the tenants themselves, the condition of wiring inside PRH units will be checked during general in-flat inspection of the Total Maintenance Scheme conducted every five years. In the meantime, we will of course consult tenants on various aspects, such as the replacement of electrical wiring and the installation of power sockets. In fact, many tenants have praised the HD for adopting a people-based approach in undertaking the relevant works. In case Members are aware of any specific cases, for example, particular tenants having some special needs, the relevant public housing estate offices will be happy to provide assistance.

Regarding the replacement of surface wiring with concealed wiring, such work is not part of our programme because surface wiring itself does not involve any safety problem. If used properly, it can have a lifespan of 30 years. As a

matter of fact, the replacement of surface wiring with concealed wiring can create a lot of nuisance because the relevant work involves drilling into the walls to lay the electrical conduits. This is not part of our existing policy.

Since the 1990s, all new PRH flats have been built with concealed wiring. Hence, in case where the replacement of surface wiring is needed, it will still be replaced with surface wiring because that is the more convenient option. Generally speaking, the relevant work can be completed within one day from 9 am to 6 pm, without creating excessive dust and dirt in the unit. Hence, a people-based approach has been adopted for upgrading the electrical installation inside PRH units.

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

MR LAU KONG-WAH (in Cantonese): *The Secretary has not answered my question or she has misunderstood it. I did not ask for the replacement of surface wiring with concealed wiring. But at present, some units with surface wiring cannot benefit under the programme. Does the Secretary have any plan to include these units as well?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we plan to complete the replacement of surface wiring within the next 10 years by conducting the rewiring works in phases according to the age of PRH estates. I trust Members would understand that given the resource constraints, it is impossible to complete all the rewiring works in one go. So far, we have completed the rewiring works in about 95 000 PRH flats in 59 PRH estates, and the rewiring works in the remaining units will be completed within the next 10 years. As altogether 100 PRH estates are involved, we must work progressively. If individual tenants suspect any safety risk or other problems in their flats, they are welcomed to contact the public housing estate offices concerned.

MR WONG KWOK-HING (in Cantonese): *President, thanks to Mr LAU Kong-wah for asking this oral question because I want to take this opportunity to seek help from the Secretary directly. I am referring to King Tsui Court in Chai*

Wan, which is a Home Ownership Scheme (HOS) block located within a TPS estate. As a result of water seepage from ageing cables, a minor fire and explosion broke out in the switch room of the Court in the small hours of the day before yesterday. Since then, power supply had been suspended continuously for 16 hours. While power supply resumed for a short while after the fire was put out, it was suspended again due to failure since the small hours of yesterday. So far, power supply has been suspended for a total of 40 hours. Some 3 000 households are living in this 34-storey building, and many elderly residents are now facing a minor catastrophe caused by suspended water and power supply.

Hence, I would like to ask the Secretary through the President, will the authorities fulfil their moral obligation in this incident of King Tsui Court by providing emergency assistance to the residents, given that the HD is the major landowner or developer of the Court, the residents do not have the required professional knowledge, the concerned OC does not have any experience in handling the situation, and the residents are facing the predicament of suspended water and power supply?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in case an HOS or TPS estate is involved, the relevant work must in principle be undertaken by the Management Committee of the concerned OC. Generally speaking, under exceptional cases, such as when it is necessary for us to provide professional assistance or advice, we are happy to provide the necessary assistance through the Management Committee of the concerned OC. However, the concerned OCs must take responsibility for communal facilities in the TPS or HOS estates in accordance with the relevant statutory requirements. Nonetheless, as I just said, if professional assistance, advice or information from the authorities is required, we will be happy to do so.

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

MR WONG KWOK-HING (in Cantonese): *The Secretary has only given a general reply. How come she has not answered ……*

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

MR WONG KWOK-HING (in Cantonese): *…… she has not answered in respect of the authorities' moral obligations and the provision of emergency assistance, and she has not told us how to resolve the present predicament of suspended water and power supply.*

PRESIDENT (in Cantonese): Secretary, do you have anything to add in respect of moral obligations and emergency assistance?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in this regard, we must still act in accordance with law because under the relevant statutory requirements, the concerned OC should be responsible for the relevant communal facilities. Of course, in the case of a mixed TPS/PRH estate, we, as the owner, will certainly provide support through the concerned OC. Hence, in response to the Member's request, we will contact the responsible person of the concerned OC as soon as possible. But all in all, given the clear stipulation of responsibility under the laws, we must follow up on the responsibility of the concerned OC in accordance with law.

MR IP KWOK-HIM (in Cantonese): *President, I would like to ask the Secretary whether a usable lifespan has generally been specified for electrical installations in TPS estates, including cables and in-flat distribution box? If it has, how many TPS estates are there with electrical installations already beyond the usable lifespan, but have yet to be replaced?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in fact, this question can be divided into two parts. As I just explained in the main reply, one of the programmes involved the replacement of cables and increasing the power supply capacity, and that programme has already been completed. Hence, in general, most of the power supply facilities in the housing estates have been upgraded. Since then, there are no more power failures because the standard of power supply facilities in communal areas has

been upgraded. As far as I know, except for the newer Wah Kwai Estate, reinforcement works have been undertaken to the power system of all TPS estates before the flats were put up for sale at that time. Regarding rental flats in TPS estates under discussion now, the replacement works will be undertaken in phases according to the age of the estates and subject to resources allocation. Replacement works will commence in 2013 in the first batch of four newer TPS estates, including Po Hong Estate, Tsui Ping (North) Estate, Tung Tau (2) Estate and Lei Cheng Uk Estate. As for rental units in other TPS estates, upgrading works will be undertaken progressively in phases according to the factors I just mentioned.

MR LAU KONG-WAH (in Cantonese): *President, while it is good thing that the HD will also provide assistance to PRH tenants in TPS estates, I do not know how long it will take to complete the replacement works for all rental units in various TPS estates, considering the progress of four TPS estates in two years. Given the mixed mode of occupancy in these estates, TPS owners will undoubtedly feel envious when such works are being undertaken by the authorities for the PRH tenants. Of course, as TPS owners, they should be responsible for improvement works inside their own flats. But will the authorities consider discussing with the OCs concerned before the commencement of the upgrading works, so that TPS owners who want to undertake the same works can also do so after paying an inexpensive and reasonable cost, in order to bring benefits to more owners?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, the flats under discussion presently are those with surface wiring, which were built in the 1990s or before. We plan to conduct and complete the upgrading works in all flats with surface wiring in phases according to the age of the estates within the next 10 years.

As I just pointed out in the main reply, we will notify the OCs of the relevant TPS estates before commencement of the works. If necessary, the OCs concerned can contact our contractors. Given the scale of the project, I think both sides should be able to come up with some inexpensive arrangements.

By the same token, there are some facilities inside the units which are not basic fixtures provided by the HD, such as water heater and ceiling fan, and owners who want to upgrade their electrical installations can also contact our contractors. As far as I know, say, for an ordinary water heater, an outside contractor may charge some $300 to $500 for the works, while the charge of our contractor is only $200-odd. Hence, we have already discussed the relevant arrangements with the contractors. As these are not basic fixtures, the final decision must rest with the residents themselves. Therefore, regarding the flexible arrangement just mentioned by Mr LAU, the OCs concerned are welcomed to contact our contractors, and the HD will also provide assistance in this regard.

PRESIDENT (in Cantonese): Fourth question.

Open Air Rail Sections

4. **DR PRISCILLA LEUNG** (in Cantonese): *Recently I have received quite a number of complaints from residents in the vicinity of the MTR Olympic Station, indicating that because of the open air design of the rail sections of the MTR Tung Chung Line and Airport Express adjacent to the housing estates (namely, the Central Park and the Park Avenue) in that district, and in the absence of noise barriers, the nearby residents have been suffering from excessive noise nuisance produced by trains running through the aforesaid sections for years. In this connection, will the Government inform this Council:*

(a) whether it knows, other than the East Rail Line, the total number of rail sections which adopt an open air design and are close to residential buildings at present; of the total number of complaints the authorities had received in the past three years from residents living on both sides of the open air rail sections concerning railway traffic noise;

(b) of the existing criteria based on which the authorities request the MTR Corporation Limited (MTRCL) to retrofit semi-enclosures similar to those retrofitted along the East Rail Line section near Yim Po Fong Street in Mong Kok or full enclosures along the open air

rail sections close to residential buildings for noise mitigation purpose; whether the Government has specified the distance between MTR rails and residential buildings at present; and

(c) whether the Environmental Protection Department (EPD) has sent its staff to measure the noise level on both sides of the open air rail sections of the Olympic Station near the Park Avenue; if it has, of the data so collected; whether the Government has plans to require MTRCL to retrofit full enclosures along the aforesaid sections; if it has, whether it knows the timetable for the retrofitting works?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President and Honourable Members, first, I would like to thank Dr Priscilla LEUNG for putting forth the question, and my reply to her question is as follows:

(a) Excluding the East Rail Line and the Light Rail of the MTRCL, there are a total of eight sections of railway lines which are of open track or viaduct design and close to residential buildings. Details are set out in the Annex.

The numbers of noise complaints related to running trains received by the EPD in the past three years, that is, from 2009 to 2011, are 25, 30 and 28 respectively.

(b) The Technical Memorandum under the Noise Control Ordinance (NCO) prescribes three categories of noise standards for trains in accordance with the area sensitivity rating. For the time period between 7 am and 11 pm, the standards are 60 dB(A), 65 dB(A) and 70 dB(A) respectively. In general, the noise standards are 60 dB(A) for domestic premises in rural area and 70 dB(A) for domestic premises in urban area. The standards for the time period between 11 pm and 7 am are set at 10 dB(A) lower than the relevant daytime standards.

To comply with the above statutory noise standards for trains, the MTRCL may need to adopt noise abatement measures where appropriate. The MTRCL may undertake whatever abatement measures appropriate in the circumstances. The NCO does not

prescribe the separation distance between railways and domestic premises or the design of noise barriers for railways.

All new railways must be planned to comply with the noise standards under the NCO through incorporating good design and suitable noise abatement measures in accordance with the requirements under the Environmental Impact Assessment Ordinance (EIAO).

Regarding the railways in operation, the EPD will require the MTRCL to make improvements if the noise levels of the trains are found to have exceeded the standards under the NCO. On receipt of a complaint, the EPD will require the MTRCL to consider the merits of each individual complaint and adopt measures to abate the noise from running trains as far as practicable and with due regard to the actual conditions of the rail sections involved, the technology available and the site conditions. Measures to reduce noise generated during railway operation include regular grinding of the tracks and wheels; proper maintenance of trains and rails; application of lubricant to the tracks and wheels; adjusting the running patterns of trains and reducing train speed where feasible; provision of wheel dampers; welding all the weldable track joints to reduce noise generated by wheel movements on the track; and provision of noise barriers.

Nevertheless, for the railway lines that were built before the NCO and the EIAO came into effect, such as the East Rail Line, Tsuen Wan Line, Kwun Tong Line and Island Line, there are practical difficulties and constraints in retrofitting them with noise abatement facilities. In this connection, section 37 of the NCO also stipulates that the NCO shall apply to the MTRCL only so far as is practicable and compatible with the discharge of any function or the exercise of any power or duty conferred or imposed upon it according to law.

(c) In response to earlier complaints from residents, the EPD has conducted investigations at several locations in the Olympic area in Tai Kok Tsui about the noise emanating from the open tracks. In 2003, the EPD found that the levels of train noise near the old buildings of Pok Man Street to the north of Olympic Station at night

exceeded the above statutory standards. Subsequently, the MTRCL reduced the noise level of running trains to within the statutory limits through track grinding, reducing the train speed and installing by the end of 2010 noise barriers to the north of Olympic Station. The EPD has also conducted investigations at Harbour Green, Island Harbourview and the Long Beach in response to the complaints from residents. There was no exceedance of the above statutory standards. For the housing estates located to the south of the Station (including the Central Park and the Park Avenue), noise mitigation measures had been incorporated in these developments at the planning stage, as reflected in the podium design, building layout and disposition. Measurement by the EPD staff at Central Park Block 1, the block closest to the railway in 2009 showed that the train noise did not exceed the statutory limits. Measurement was conducted by the department at Central Park again last week and there was no exceedance of the standards also. The EPD would continue to monitor the situation and check whether it is necessary to require the MTRCL to adopt further noise abatement measures.

Annex

Locations of Open Track Sections
Which are Close to Domestic Premises on MTRCL Railway Lines

Railway Lines	*Sections of Open Track*	
	From	*To*
Island Line	Heng Fa Chuen Station	Chai Wan Station
Kwun Tong Line	Kowloon Bay Station	Lam Tin Station
Tsuen Wan Line	Lai King Station	Kwai Hing Station
	Tsuen Wan Station	Tsuen Wan Depot (Tsuen King Circuit)
Tung Chung Line/ Airport Express Line	Open tracks near Olympic Station, Lai King Station, Tsing Yi Station and Tung Chung Station and Mei Foo Sun Chuen	
Tseung Kwan O Line	Near LOHAS Park Station	
West Rail Line	Kam Sheung Road Station	Tuen Mun Station
Ma On Shan Line	Tai Wai Station to Wu Kai Sha Station	

Note:

East Rail Line and Light Rail are excluded

DR PRISCILLA LEUNG (in Cantonese): *President, if the Secretary has a chance to go to Tai Kok Tsui or Yim Po Fong Street, he would have understood why I have put forth time and again oral questions about the noise nuisance there.*

I hope the Secretary will not shatter all the hopes of the residents. I have expected that the Secretary would state in his reply that the standard has not been exceeded. However, if we visit there with engineers for noise detection and stay there for one whole day, we will find the persistent noise nuisance hardly bearable. The emotions and daily life of local residents have been affected.

I would like to follow up, according to your standard …… Secretary, you also mentioned section 37 of the NCO earlier, actually the MTRCL can get away with the requirement by various means, as it is stipulated that the NCO shall apply to the MTRCL only so far as is practicable. The barrier works at Yim Po Fong Street have been left half-finished, and over the past 10 years, the same reply is given in the letters to the residents.

Will the authorities be more understanding towards the public by installing noise barriers along the Olympian City and pressing the MTRCL to complete the other half of the barrier installation works at Yim Po Fong Street by all means? The half-finished works has caused louder echoes and are more irritable; yet the works has been dragged on for over 10 years due to change of personnel of the company.

May I ask the Secretary whether he can be more understanding and install the noise barriers even though the tests conducted by the authorities indicate that the noise limits have not been exceeded?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I have to thank Dr Priscilla LEUNG for her supplementary question. I understand that noise will easily cause nuisance to residents. As I explained in the main reply, since the northern part of the Olympic Station is close to residential premises, some measures had been implemented some years ago to alleviate the problem, which include the completion of the installation of noise barriers in 2010. As for the southern part of the Olympic Station, particularly the premises above the Olympian City mentioned by Dr Priscilla LEUNG, since the premises were in

general built after the completion of the railway, the factor of nuisance has been taken into account in the planning of the premises, such as the orientation of buildings and the design of the entire housing estate …… If Members are familiar with the situation there, they will know that a large podium is included to serve as a mitigation barrier, which is evident that regard to noise nuisance has been given in the design.

However, as Dr Priscilla LEUNG has stated clearly earlier, we have to base on the same standard in noise management on the whole. If the noise level is below the standard level, we will consider the situation acceptable, and if it exceeds the standard, the Government will definitely take all appropriate actions with the MTRCL.

PRESIDENT (in Cantonese): Fifth question.

Regulation of Financial Products Involving Investment Activities Abroad

5. **MR TOMMY CHEUNG** (in Cantonese): *President, in recent years, many foreign companies have launched various types of investment products in the financial market of Hong Kong for capital financing. To avoid their savings being eroded by high inflation, many members of the public, including the elderly, purchase products with expected higher returns. Yet some of them query that after the Lehman Brothers Minibonds incident, the vetting, approval and regulation of investment products by the regulatory authorities are still inadequate, and members of the public may at any time purchase defective investment products. In this connection, will the Government inform this Council:*

(a) how the due diligence of Hong Kong's regulatory authorities in vetting and approving investment products is ensured, so as not to allow defective investment products to be launched in the market, including ensuring that the businesses which are linked to such products are not involved in criminal offences, such as fraud, and so on, both locally or abroad before the sale of such products in Hong Kong is allowed;

(b) whether it knows if the regulatory authorities have put in place an international notification mechanism to facilitate their regular monitoring of the investment products which are approved for sale in Hong Kong, and immediately inform the vendors and investors concerned to raise their alertness when the businesses linked to such products are found to be involved in criminal cases abroad and the persons or organizations involved are prosecuted, so as to enhance the transparency of the investment products and safeguard the right to know of investors; if they have, of the details; if not, whether they will consider setting up the relevant mechanism; and

(c) whether it knows, in the event that the businesses linked to those investment products which are approved for sale in Hong Kong are involved in criminal cases abroad and the persons or organizations involved are convicted, what actions the regulatory authorities take to safeguard the interests of investors; if action is not taken, of the reasons for that, and whether formulation of measures to take action under such circumstances will be considered with a view to enhancing the safeguard of the interests of investors?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, Hong Kong's regulation on investment products primarily relates to offers to the public. Regardless of whether the issuer is a Hong Kong or non-Hong Kong entity, they are regulated by the same set of criteria and mechanism.

Before the products can be offered to the public of Hong Kong, unit trusts/mutual funds, investment-linked assurance schemes and unlisted structured investment products must be authorized by the Securities and Futures Commission (SFC) in accordance with the Securities and Futures Ordinance. These products must comply with the *SFC Handbook for Unit Trusts and Mutual Funds, Investment-linked Assurance Schemes and Unlisted Structured Investment Products* (SFC Handbook) which came into effect in June 2010. The SFC Handbook was introduced by the SFC after the global financial crisis with a view to strengthening the regulatory regime of publicly offered investment products in Hong Kong. The SFC has conducted public consultation on this issue. The SFC Handbook aims to enhance the transparency for various types of products so

as to promote investor protection, including a requirement to provide product key facts statements that summarize the key features and risks of the investment products. The SFC Handbook covers areas such as duties and obligations of product providers, disclosure requirements, ongoing monitoring of the product and disseminating information to investors. Besides, the SFC Handbook also contains the new Code on Unlisted Structured Investment Products, which strengthened the regulation for these types of products. According to the Code on Unlisted Structured Investment Products, the reference assets for the structured investment products must be acceptable to the SFC, and that issuers also have to offer a post-sale "cooling-off" period for certain unlisted structured investment products and arrange for market making in accordance with the requirements, so that there will be a chance for investors to exit from the investment.

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

(a) To protect Hong Kong's investors, investment products that intended to be sold to the public will need to submit an application to the SFC for approval. Generally speaking, if the retail investment products to be sold to the public are to be approved by the SFC under the SFC Handbook, the product issuer must demonstrate compliance with the applicable eligibility requirements. If the product issuer is a subject of disciplinary proceeding or enforcement action, and that these proceedings and enforcement actions may materially affect its financial condition, status as a regulated entity, or ability to perform its regulated activity, then the product issuer's application will be rejected.

In particular, regarding unit trusts and mutual funds, fund managers must satisfy the eligibility requirements in the Code on Unit Trusts and Mutual Funds, including the requirement that the SFC must be satisfied with the overall integrity of the applicant fund managers. The disciplinary record of the fund managers and their directors is one of the key factors that would be taken into consideration. As for unlisted structured products, an issuer shall have to meet the eligibility requirements in the Code on Unlisted Structured Investment Products, including those on net asset value and credit rating, those required of a regulated entity, and that it must not be the

subject of any disciplinary proceeding or enforcement action, and so on. The reference assets to which the structured investment product is linked shall have to be acceptable to the SFC. Under certain circumstances, the SFC may request the applicant to provide a guarantor or request the products to be secured by collaterals in accordance with relevant requirements. Where the issuer is based in an overseas jurisdiction, the SFC will also conduct overseas regulatory checks as appropriate.

(b) As regards the international exchange of information, the SFC has been working closely with its counterparts worldwide concerning regulatory and enforcement co-operation. Hong Kong is a signatory to the Multilateral Memorandum of Understanding of the International Organization of Securities Commissions; around 80 jurisdictions have signed the abovementioned Memorandum. This Memorandum is an international arrangement for regulatory authorities to exchange information globally and co-operate with each other. It sets out international co-operating standards for combating breaches on securities and derivatives legislation. Moreover, throughout the years, the SFC has concluded many bilateral or multilateral co-operative agreements with different jurisdictions. With these arrangements, the SFC can seek information that are not available in the public domain, and seek their assistance to investigate evidence and documents in the Mainland and overseas.

For the disclosure requirements of the investment products, product providers must ensure that they have effective measures to disseminate relevant information and will closely monitor issues that investors must be aware of. The Code of Unit Trusts and Mutual Funds sets out that fund managers have to inform holders as soon as reasonably practicable of any information which is necessary to enable holders to appraise the position of the fund, including any material adverse change in the financial conditions or business of fund managers, and any other changes that may materially prejudice holders' rights or interests. Moreover, the SFC has set out in the Code on Unlisted Structured Investment Products that issuers must comply with continuing disclosure obligations. In particular, if an

issuer ceases to meet the eligibility requirements, or if there is any change that has a material adverse effect on the issuer's fulfillment of its commitment in connection with the product, the issuer must bring this promptly to the attention of the SFC and investors of the product.

In situations deemed appropriate, the SFC will keep in close liaison with overseas regulators for the ongoing monitoring of issues arising from overseas issuers of the retail investment products, as these issuers are regulated by the SFC Handbook.

(c) The question tapped on whether there will be actions and what actions will be taken by the regulatory authorities in the event that the businesses linked to those investment products which are approved for sale in Hong Kong are involved in criminal cases abroad, and the persons or organizations involved are convicted. It is difficult to provide a general answer, as the actions taken will depend on the actual situation of each case. Generally speaking, if there is a breach of any applicable provision, the SFC may consider whether such failure adversely reflects on a person's fitness and properness in so far as that person is a licensed corporation or registered institution, and whether the product, the offering documents and advertisements should remain authorized. The SFC may impose additional authorization condition(s) which may include restricting the further offering of the product to the public.

MR TOMMY CHEUNG (in Cantonese): *President, I beg to differ with the Secretary in part (c) of her main reply because my main question is about persons or organizations linked to an investment product which are convicted abroad, not just prosecuted but already convicted. If the persons or organizations have already been successfully prosecuted and convicted for fraud or other offences, it is a very serious matter. As such, why do we still have to hesitate or consider any further? Should we not immediately stop the sale of the investment product or at least request that the sale be stopped? For instance, if an infant formula is found to have problems, the authorities would first request the infant formula be taken off the shelves and then decide whether the product is safe for further sale when the laboratory results are available. However, when it comes to financial*

products and the persons or organizations of which have been convicted abroad, the Secretary has not made any requests to immediately stop such products from sale in the market. I have to express my dissatisfaction with her reply.

PRESIDENT (in Cantonese): What is your supplementary question?

MR TOMMY CHEUNG (in Cantonese): *May I ask the Secretary to consider the following practice: in the event of an investment product which is involved in a criminal case abroad and the persons or organizations in question are convicted, it should at least immediately stop the sale of the product and decide whether the sale of the product should resume after the completion of an investigation. The present indecisive approach which allows the investment product to remain in the market is undesirable.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I believe Mr CHEUNG is referring to a situation where a product issuer or fund manager has been convicted abroad. Under such circumstance, that is, in the event of a product issuer or fund manager who is involved in a crime, the incident will certainly adversely affect his eligibility to continue to be the product issuer in Hong Kong. As such, as I have said in part (c) of the main reply, appropriate actions may be taken by the authorities depending on the actual situation of each case, including banning or restricting this type of products from putting on the market.

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

MR TOMMY CHEUNG (in Cantonese): *President, the Secretary has not answered my question because she only said that actions "may be" taken. May I ask whether the authorities will request that the sale of the product be stopped? If an investment product or its agent is involved in a case of fraud, should the authorities stop the sale of the product and carefully examine the incident, rather than just say that actions "may be" taken?*

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, it is difficult to answer the question without the details of the case. All I can say is that the SFC will review whether the person or organization involved still meets the criteria to be the product issuer in Hong Kong, and it is certainly possible that the SFC may disqualify the person or organization from being the issuer.

MR JAMES TO (in Cantonese): *President, my supplementary question is about a common phenomenon arisen in the past few months or years that many overseas pundits have made use of the loopholes in the monitoring regime in Hong Kong to sell some overseas investment products; and the authorities cannot monitor them. I wish to ask a follow-up question in relation to Mr Tommy CHEUNG's supplementary question. For example, an entity involving an ore mine in a certain mountain in the Mainland plans to invite public investment though the entity is not yet listed on the market. The proposed investment is not in the form of a public offering or a mutual fund, but in the form of direct capital injection by investors. Another example of a recent investment plan is to sell part of a site in the United Kingdom, the land use of which is likely to change in the future. These investment plans are often packaged or sold in the form of an investment product to Hong Kong people.*

Regarding "investment products to be sold to the public" as mentioned in part (a) of the main reply, both "to be sold to the public" and "investment product" have a definition. Will the Government examine whether the definitions are applicable to the examples I have just mentioned and then review the situation so as to plug these loopholes?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, regarding investment products for public offer, as I have mentioned in the main reply just now, the authorities have a regulatory regime under which they assess the structure (including reference assets) of investment products and decide whether or not to accept the public offer of investment products. More importantly, regulatory checks will also be conducted on the

fund managers or product issuers to see whether they meet the eligibility requirements on asset values, integrity, and so on.

In respect of investment products which are not intended for public offer, though the sale targets are professional investors, the fund managers or intermediaries concerned are still required to meet the SFC's disclosure requirement in the course of sale, and they have to ascertain that their clients are eligible to be regarded as professional investors, such as whether derivative investors have experience in this type of investment product. Moreover, the licensed organizations or fund managers concerned are required to undergo an integrity check by the SFC.

Regarding the case of some unlicensed organizations which seek to sell their assets in the Mainland, packaged as an investment product, in Hong Kong, given that these organizations are not financial entities monitored by the SFC, it is impossible for the SFC to monitor their activities. In this case, the authorities will have to examine whether elements of fraud are involved in these products through other channels and mete out punishment for any irregularities identified.

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

MR JAMES TO (in Cantonese): *If the Secretary has not heard about the cases I cited, which have actually been widely reported ……*

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

MR JAMES TO (in Cantonese): …… *Will the authorities conduct a review to examine whether the examples just mentioned are covered under the present ordinance? The Secretary only said that if these cases were not covered under the present ordinance, the authorities would have to invoke other ordinances. My supplementary question is, given that the above examples are real cases of capital financing which are in fact an investment mode, tool or product in the*

broad sense, will the Secretary review whether the present legislation will cover these scopes?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, if the organizations concerned are licensed financial institutions, the SFC has a regulatory regime to monitor the practices and approaches adopted by these institutions in selling their investment products. If the organizations concerned intend to sell their products to professional investors, there is no way for the SFC to know what products the investors have purchased; and if the organizations do not fall under the category of financial institutions regulated by the SFC, they are off the radar of the SFC.

As regards the problem of different people or organizations selling products to investors in Hong Kong, if these organizations are not licensed institutions in Hong Kong, it is beyond the scope of authority of the SFC to monitor them.

MR CHIM PUI-CHUNG (in Cantonese): *President, as Hong Kong proclaims to be an international financial centre, it would not reject or prudently assess financial products of other regions or countries which are sold in Hong Kong, so long as they are authorized by the SFC.*

President, my supplementary question is as follows: if a financial product itself is doing fine, but its overseas owner has run into problems and ended up in self-liquidation, like the Lehman Brothers Holdings Inc., Hong Kong will be negatively impacted. What measures are in place so that the Government can make a distinction and point out that the product itself is in good operation, and it will not be affected by the problems related to its owner; in this way, the product can continue to be sold and investors will be better protected? A financial product and its owner are two separate entities. However, the Hong Kong Monetary Authority (HKMA) and the Government have turned the Lehman Brothers …… It was the Lehman Brothers Holdings Inc. which had filed for bankruptcy, and the Lehman Brothers-related products are in sound operation. How could they adopt the across-the-board approach and create a mess in Hong Kong? Given that the Government has authorized such entities to operate here in the first place, do the authorities have any regulatory measures to protect the

interests of investors as well as the status and reputation of Hong Kong as a financial centre?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Mr CHIM for his question. In view of the experience learnt from the Lehman Brothers incident and the financial turmoil, the SFC and HKMA have substantially tightened control on the vetting and approval of investment products, particularly on unlisted structured products. In respect of structured products or mutual funds, we have strengthened the vetting and approval of fund managers to ensure that the issuers concerned have sufficient asset support. As for some structured products, the authorities will step up the requirements on collaterals and consider whether the reference assets of these products are acceptable to the SFC.

Hence, efforts will be strengthened to monitor financial products on all fronts and only products which have undergone satisfactory product checks will be permitted to be sold. Certainly, there are other checks, which have been carried out regularly, such as whether products are sold in a proper way, whether their target customers or clients can withstand the risk concerned, and whether the banks or organizations responsible for the sale of the product have immediately informed the product investors of any sudden problems which may have arisen. With the strengthened monitoring efforts on all fronts and the enhanced standard of sale, investor protection is enhanced.

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

MR CHIM PUI-CHUNG (in Cantonese): *President, the Secretary has not differentiated between a financial product and its owner, which are two separate entities. We cannot say that when a product owner runs into problem and victimizes ……*

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

MR CHIM PUI-CHUNG (in Cantonese): …… *My supplementary question is, are there any mechanism that allows the Government to separate the operation of a financial product and the activities of the product owner, so that the product will not be adversely affected when its shareholders run into financial or other problems?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, does Mr CHIM's reference to the "owner of a financial product" mean the product investors?

MR CHIM PUI-CHUNG (in Cantonese): *President, just like the Lehman Brothers' case, the Lehman Brothers Holdings Inc. had issued a wide range of products, the organization itself and its products are two different matters.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Mr CHIM for his clarification. In respect of the Lehman Brothers incident, the Lehman Brothers Holdings Inc. is the guarantor of the products concerned. When the organization went bankrupt, no organization will continue to take up the operation of the products. In the wake of the incident, as I have just explained, persons or organizations intending to be the issuer of a financial product will have to reach a certain credit rating …… Of course, such requirement was already in place at that time, except that the "Single-A" rating of Lehman Brothers Holdings Inc. had unexpectedly dropped to "Default". However, credit rating is only the minimum requirement which an issuer has to meet.

As for structured products, as I have stated just now, regulatory authorities also require these products to be secured by collaterals. If the collateral requirement is met, the product may still have some remaining asset value in case the guarantor goes bankrupt or the product defaults. This, in a way, can strengthen investor protection. I hope my answer can reply Member's supplementary question.

PRESIDENT (in Cantonese): Last question seeking an oral reply.

Fisheries Impact Assessment

6. **MR WONG YUNG-KAN** (in Cantonese): *President, in accordance with the existing requirements for environmental impact assessment (EIA) in Hong Kong, fisheries impact assessments (FIAs) must be conducted for proposed development projects which may affect fisheries resources. Regarding such assessments and conservation of marine resources, will the Government inform this Council:*

(a) whether certain ancillary tools (for example, mathematical models) are at present required to be used for conducting impact prediction and evaluation; if so, of the difference between such tools and those ancillary tools currently used by various leading fisheries countries; if not, how the relevant organizations can make accurate judgment when examining and approving EIA reports;

(b) given that at present the Government mainly makes reference to the opinion of experts to make scientific assessments when conducting EIA, and evaluate the ecological impact of infrastructure projects in a systematic manner, of the objective means adopted by the Government to make assessment in respect of the impact of marine works on fishermen and members of the community; whether the Government will consider the views of fishermen and relevant members of the community, and regard their views as one of the important factors for consideration; if not, of the reasons for that; and

(c) whether the Government has any plan to conduct a comprehensive survey on marine resources in Hong Kong waters and prepare marine resource maps, with a view to promoting conservation of the ecosystem and marine resources; if not, of the reasons for that?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I would like to thank Mr WONG Yung-kan for his question.

(a) The purpose of the Environmental Impact Assessment Ordinance (EIAO) is to avoid, minimize and control the adverse impact on the

environment of designated projects through the application of the EIA process and the environmental permit system. As such, FIA will be conducted as part of an EIA study for a proposed development project that may affect fishing and aquaculture activities, fisheries resources and habitats, as well as aquaculture sites. On matters related to FIA, the Technical Memorandum on EIA Process (TM) stipulates that the Director of Environmental Protection shall take the advice from the Director of Agriculture, Fisheries and Conservation.

The TM under the EIAO sets out the guidelines for FIA. The FIA shall predict the potential fisheries impacts of the proposed development project based on the project profile and fisheries baseline information gathered. The nature and extent of the impacts on aquaculture and capture fisheries shall also be described and quantified. The significance of the predicted impacts of the proposed development project on aquaculture and capture fisheries shall be evaluated in accordance with the criteria for evaluating fisheries impact set out in the TM. These criteria include the nature of impact, the size of affected area, the loss of fisheries resources and production, the destruction and disturbance of nursery and spawning grounds as well as the impact on fishing and aquaculture activity. The relevant experts and departments shall make use of scientific methods and objective information to conduct the study and analysis, with a view to determining whether the FIA meets the abovementioned requirements. The Agriculture, Fisheries and Conservation Department (AFCD) notes that the use of ancillary tools or mathematical models for assessing the fisheries impact of development projects is not an international common practice. Moreover, the ancillary tools and mathematical models used for fisheries assessment in other countries may not be applicable to Hong Kong, which has different fishing practices and fisheries resources.

(b) The TM under the EIAO stipulates that the criteria for evaluating fisheries impact shall include the impact of the proposed development project on fishing and aquaculture activity, and the extent of impact on fishermen and fish farmers is one of the

considerations. Also, the guidelines for FIA set out in the TM stipulate that consultation of the local fishermen and fish farmers could help project proponents to obtain useful baseline information for conducting fisheries impact study. Moreover, the AFCD urges the project proponent to comprehensively consult the relevant fishermen and fish farmers at the early stage of the EIA study, with a view to understanding their concerns.

The EIA process is open and transparent. Members of the public (including affected fishermen and relevant members of the community) and the Advisory Council on the Environment may participate in the process and express their views on the project profile at the early stage of the statutory EIA process or prior to the approval of the EIA report. As for the FIA and related issues, the Environmental Protection Department and the AFCD will jointly consider the relevant views before finalizing the contents of the EIA study brief and deciding whether to approve the EIA report.

(c) In respect of fisheries resources, the AFCD conducted a comprehensive survey on fisheries resources and fishing operations in Hong Kong waters in 1998. Since then, the relevant data are regularly updated by various means, such as the port survey conducted in 2006 and the survey being conducted on demersal fisheries resources in Hong Kong waters.

The survey work of the Government on marine resources is extensive, including regular surveys conducted by the AFCD as well as studies conducted in collaboration with other organizations. Since 2001, the AFCD has kept monitoring the status of Chinese white dolphins. The findings indicate that Hong Kong waters are part of the regular habitats of Chinese white dolphins. Since 2000, the AFCD has collaborated with the Reef Check Foundation in co-ordinating the annual survey of Hong Kong's corals to monitor the situation of coral communities in Hong Kong waters. Recent findings indicate stable growth of corals at all the 33 survey sites. Most of the survey sites within marine parks record a high coral coverage (over 50%) and more diversified marine life.

The AFCD formed a diving team for underwater ecological survey in 2011 by recruiting internal staff who were experienced in scuba diving and ecological survey. The diving team is currently undertaking projects such as the long-term monitoring programmes for coral, reef fish and artificial reefs, and thematic studies on the health of corals and the algae diversity.

Moreover, with a grant from the Environment and Conservation Fund, the Swire Institute of Marine Science of the University of Hong Kong will launch a review of marine biodiversity and ecological surveys in Hong Kong in 2012. The objective is to conduct a study on the diversity of the local marine life and health of the ecosystems. This provides reference materials for continuous monitoring and establishes the scope and topics for a comprehensive study where necessary.

MR WONG YUNG-KAN (in Cantonese): *It seems that the Government has only responded to my question on marine resources. In fact, I hope that the Government can, as stated in the last paragraph, conduct a comprehensive assessment on marine ecosystems and the marine environment of the whole territory, given that six major reclamation projects may soon commence. We do not know how our marine environment will be affected, and the Government does not have any relevant information in hand. Therefore, I hope that the Government can conduct a comprehensive assessment as stated in the last paragraph of its reply. I would like to ask the Government of the time needed to complete the assessment, and the scope of assessment, and does it intend to have multi-front communication with the fisheries industry and marine conservationists when conducting the assessment?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the Government agrees to what Mr WONG Yung-kan has just said. As Mr WONG Yung-kan may know, we agreed to conduct the study mentioned in the last paragraph of my main reply after discussion was held among bureaux, departments, Mr WONG and scholars. The initial scope of study is expected to commence this year, and it will take about a year to complete. As stated in my

main reply, we will keep an eye on this study to see what kind of information can be collected. Where necessary, we will establish the scope and topics for a comprehensive study. Hence, our work is actually in accord with the view of Mr WONG.

MR IP KWOK-HIM (in Cantonese): *President, in recent years, the Marine Department has carried out works projects one after another, causing great destruction to the nearby waters. The livelihood of fishermen is thus seriously affected. I have previously met with some fishermen and learnt that they were considering changing their business operation, such as ecotourism and recreational fishing. Yet, they are deeply worried that the marine environment and ecosystems will be damaged given the large number of works projects. In view of this, will the Bureau consider offering assistance to workers of the fisheries industry who wish to change business?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): I thank Mr IP for his supplementary question. Over the years, both the Food and Health Bureau and the Environment Bureau have carried out the relevant work through the AFCD.

First of all, we have devised a set of policies and various compensation measures to provide assistance to fishermen when their livelihood is directly or indirectly affected by marine works which have an impact on the ecological environment, and I am not going to repeat them here. I know that the Food and Health Bureau has also introduced some measures to foster the sustainable development of the fisheries industry. For example, it has implemented the trawl ban policy but, at the same time, provided fishermen with timely assistance. When we carry out marine works, we will also try to minimize their impact on the marine ecological environment through different means, which is a kind of indirect help to the fishermen.

Lastly, concerning changing occupation of fishermen or those who were originally in the fisheries industry, we may look at an actual example. When the global geopark of Hong Kong was first established, many fishermen who originally engaged in fishing activities in waters east of Hong Kong in their own

vessels have changed their operation and engaged in tourism-related businesses, in view of an increasing number of visitors to the global geopark. Their livelihood has improved.

In view of the above, we do not only address the problems brought by marine works. The Food and Health Bureau has formulated policies to facilitate the long-term development of the fisheries industry. As for other aspects, we are willing to introduce any suitable measures to conserve the ecological environment or assist fishermen to switch their business for a living.

MR WONG YUNG-KAN (in Cantonese): *President, I would like to ask one more supplementary question. As we all know, Hong Kong is now prepared to legislate on the regulation of fishing vessels which do not have a fishing permit. At present, many Mainland fishing vessels come to fish in Hong Kong illegally. More than 200 Mainland vessels catch fish and shellfish in Hong Kong waters every day. Has the Government considered assessing the destruction of such activity to the marine environment as well? What I mean is, will it make this kind of assessment in the study which is about to be conducted?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I remember that Mr WONG had asked this question before. First of all, commercial fishing is banned in some Hong Kong waters. In our discussions on the establishment of marine parks in recent years, we have also proposed banning commercial fishing in the waters concerned. Previously, the Legislative Council had approved various regulatory measures, *inter alia*, the introduction of trawl ban in Hong Kong waters. These regulatory measures are applicable to all fishing vessels, including both Hong Kong vessels and other vessels.

Regarding the illegal fishing mentioned by Mr WONG, we will take enforcement action according to the existing legislation.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Government Records Destroyed by Office of the Chief Executive During Relocation

7. **MS CYD HO** (in Chinese): *President, regarding the 66.56 linear metres of records in total which were destroyed by the Office of the Chief Executive during its relocation to the new Central Government Complex, will the Government inform this Council of:*

(a) the titles of such records; and

(b) the dates of creation of such records as well as the dates of closing such records?

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, the required information on the 66.56 linear metres of records destroyed by the Office of the Chief Executive is given below:

Title of Record/File	*Date of Record/File Creation*	*Date of Record/File Closure*
1. Imprest/Sub-imprest Cash Book	1 April 1999	31 March 2004
2. Transfer Vouchers/Payment Vouchers	1 April 1999	31 March 2004
3. Demand Note	1 April 1999	31 March 2009
4. Mandatory Provident Funds	31 January 2001	31 March 2004

The above records have been approved by the Government Records Service for destruction in accordance with the Government's "General Administrative Records Disposal Schedules".

Research Capabilities of Hong Kong Institute for Monetary Research and Economic Analysis Division of Financial Secretary's Office

8. **MRS REGINA IP** (in Chinese): *President, will the Government inform this Council:*

(a) whether it knows, apart from the two posts of Director and Senior Manager of the Hong Kong Institute for Monetary Research (HKIMR) established in August 1999 by the Hong Kong Monetary Authority (HKMA), the staff establishment and expenditure of the HKIMR in the past year; as well as the academic qualifications and background of the HKIMR's researchers;

(b) given that the HKIMR regularly publishes quite a number of professional and academic topical reports and conducts research studies on subjects relating to financial economics (for example, the monetary policies in Hong Kong and other places in Asia, cross-border Renminbi business and the Renminbi market in Hong Kong, and so on), whether it knows if the HKMA and the Government (including the Financial Secretary's Office and the Commerce and Economic Development Bureau, and so on) share and use such data and research results; if so, of the specific details; apart from research studies relating to financial economics, whether the HKIMR regularly publishes topical reports on the trends of the real economy (for example, the impact of the Individual Visit Scheme on the industrial structure of Hong Kong, as well as the impact of the European debt crisis and the recovery of the American property market on the economic industries of Hong Kong, and so on); and

(c) given that according to government information, the Economic Analysis Division of the Economic Analysis and Business Facilitation Unit (EAD) under the Financial Secretary's Office is responsible for providing economic analyses and related advice on government policies, whether EAD had, in the past five years, regularly conducted research studies on the trends of the real economy mentioned in part (b), and published topical reports of professional and academic standards; if so, of the number of such reports published each year; the scope of the research studies and

whether the coverage was extensive enough; the current staff establishment of EAD as well as the academic qualifications and background of its staff; whether the Government will strengthen EAD's capabilities to study and analyse the trends of the real economy; if so, of the relevant plan?

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

(a) The Executive Director (Research) of the HKMA serves concurrently as the Director of the HKIMR. Apart from the Director and a Senior Manager, the HKIMR has three full-time research managers who all have a PhD degree in economics and relevant research experiences. Every year the HKIMR also invites overseas and local scholars to be its visiting research fellows.

In 2011, the total expenditure of the HKIMR was $15.75 million, of which the cost for full-time staff (including administrative and support staff) was around $5.2 million.

(b) The HKIMR liaises closely with the HKMA and relevant government bureaux and departments. For example, before the HKIMR publishes its research reports, it will, where necessary, present the research findings in seminars, to which officers from the HKMA and relevant government bureaux and departments, including the EAD under the Financial Secretary's Office and the Financial Services and the Treasury Bureau, are invited to attend, in order to share views on these findings. Some research reports are presented at large-scale international conferences convened by the HKIMR. Representatives from the aforesaid agencies are also invited to these conferences.

After a research report is completed, the HKIMR will issue an abstract to the HKMA and relevant government bureaux and departments for reference in the policy formulation process. These reports can be downloaded from the website of the HKIMR.

The HKIMR focuses its monetary research work on issues of monetary policy, banking and finance that are of strategic importance to Hong Kong and Asia. It does not publish regular research reports on the trends of the real economy.

(c) EAD under the Financial Secretary's Office provides economic analyses for government policies, monitors on a long-term basis domestic economic developments, and follows closely the external economic situations in order to assess their implications for the Hong Kong economy. In addition, EAD provides relevant economic information, analyses and forecasts for the Financial Secretary during his formulation of the annual Budget. EAD also assists government bureaux and departments in analysing the economic implications of a wide range of policies, which cover such areas as trade and commerce, labour, housing, tourism, transport, environmental protection, public utilities and fundamental infrastructure, with a view to contributing to the policy formulation process.

Meanwhile, EAD compiles and issues economic reports, on a quarterly basis, for public reference. Except in the quarter when the Budget is announced, the Government Economist holds a press conference every quarter to outline the quarterly economic performance and to give the latest forecasts on Hong Kong's economic growth and inflation. The quarterly economic reports, which can be downloaded from the government website, offer detailed discussions on the latest situations in various segments of the Hong Kong economy, and include topical articles analysing developments in the external environment and in some specific segments. Over the past five years, 97 such topical articles were published in the quarterly economic reports.

As far as its establishment is concerned, EAD is headed by the Government Economist, who is assisted by four Principal Economists, 10 Senior Economists, 13 Economists, and five Senior Analysts/Analysts on contract terms. Four among them are PhD holders, 20 with Master degrees, and the other four currently in their

postgraduate study. The Division is also filling five vacant posts for the grade.

As the global economic environment becomes increasingly complex, government bureaux and departments require more economic analyses for their work. To this end, the number of officers in EAD has increased in the past few years. For the financial year 2012-2013, three posts in the Economist grade are created for EAD to strengthen its work on economic analysis.

Regulation of Sale of Equity Interest in Power Companies

9. **MR FRED LI** (in Chinese): *President, it has been reported that ExxonMobil Energy Limited intends to sell the 60% equity interest in Castle Peak Power Company Limited (CAPCO) it holds, whilst CLP Power Holdings Limited (CLP) and China Southern Power Grid Company Limited (CSG), which is a state-owned enterprise, plan to jointly acquire the aforesaid equity interest. Members of the public are concerned about the acquisition's impact on people's livelihood and politics, and they also consider that in anticipation of the tariff increase of CLP in the coming year, it is necessary for the Government to assess the impact of the outcome of the acquisition on the regulation and improvement of the electricity market by the Government. In this connection, will the Government inform this Council:*

(a) whether it has assessed the impact of the successful joint acquisition of CAPCO's equity interest by CLP and CSG on the current and future tariffs in Hong Kong and the possibility of opening up the electricity market; if it has, of the findings; if not, whether and when such assessment will be made;

(b) whether it has any control on the sale of assets and equity interest by power plants at present; and whether it has any control over power companies in expanding the assets in their accounts by means of acquisition of equity interest;

(c) whether it knows if CLP will revise the amount of its assets upon successful acquisition of CAPCO's equity interest in order to adjust tariff;

(d) whether the SAR Government is involved in the aforesaid proposed acquisition of CAPCO's equity interest; whether it has obtained any relevant information beforehand; and

(e) given that CSG is a state-owned enterprise, whether the Government has assessed, upon the successful acquisition of CAPCO's equity interest by CSG, the changes to the previous agreements and development principles laid down by the Government with power companies, if the Government will formulate afresh the direction for the development of the electricity market, and if Hong Kong's electricity market will be subject to control by the Mainland counterparts?

SECRETARY FOR THE ENVIRONMENT (in Chinese): President,

(a) and (e)

CAPCO and its shareholders (that is, CLP Power Hong Kong Limited and ExxonMobil Energy Limited) are parties to the Scheme of Control Agreement (SCA) signed with the Government for electricity supply to certain parts of Hong Kong. The SCA has clearly set out the rights and obligations of all signing parties, which will remain intact irrespective of the change to the shareholding of any signing party. The Government will ensure that any change to the shareholding of CAPCO will not affect the operation of the SCA (including the tariff review mechanism) and CAPCO's electricity supply service to the public.

The Government will continue to perform its gate-keeping duties with a view to ensuring the supply of safe and reliable electricity at reasonable prices while minimizing the environmental impact in the production and use of energy. In considering the future development of electricity market and its regulatory framework, the

Government will adhere to the above policy objectives and discuss with the power companies before 2016 in accordance with the SCA.

(b) and (c)

As far as we understand, discussion on the change to the shareholding of CAPCO is underway, and there is yet any agreement. When details of any deal are available, we will determine the necessary arrangements to be put in place under the SCA in the light of specific circumstances.

In accordance with Schedule 1 to the SCA, "Fixed Assets" refers to the Electricity-Related investments by CLP Power Hong Kong Limited and CAPCO in land, building, plant, equipment, and capitalized refurbishment and improvement works. In general, purchase of shares does not fall within the definition of "Fixed Asset" under the SCA. Thus, any change to the shareholding of CAPCO will not affect the value of Fixed Assets in the Scheme of Control Accounts and should not carry any tariff implication.

(d) The Government, as regulator of the electricity market, has been keeping a close watch on the above discussion on change to shareholding.

Mental Health Service Plan for Adults 2010-2015

10. **MR CHEUNG KWOK-CHE** (in Chinese): *President, the recommendations made by the Hospital Authority (HA) in its Mental Health Service Plan for Adults 2010-2015 include: (1) recruiting case managers (CMs) in all the HA clusters to provide comprehensive case management for all patients with severe mental illness (SMI) considered suitable for treatment in community settings; (2) carrying out a pilot on setting up community-based multi-disciplinary mental health specialist care teams to provide a full range of psychiatric and mental health services in community settings, and provide links with Integrated Community Centres for Mental Wellness (ICCMWs) of the Social Welfare Department (SWD); and (3) implementing a new specialist out-patient (SOP) model based on multi-disciplinary care to patients, so as to improve*

waiting time, consultation time, service flexibility (particularly for evening clinics) and the range of services provided. In this connection, will the Government inform this Council if it knows:

(a) the number of CMs employed by the HA as at the end of March this year; at least how many cases each CM has to handle each year; the actual number of cases currently handled by each CM on average; apart from following up cases, whether CMs are responsible for other duties and activities;

(b) the current number of patients with SMI considered suitable for treatment in community settings according to the HA's information, broken down by various districts delineated by the HA; the estimated number of CMs that is adequate in the light of such patient number, and the number of additional CMs required to be employed for various districts to meet service demands;

(c) the number of cases referred by CMs to ICCMWs for follow-up in the past two years, broken down by various districts delineated by the HA; under what circumstances and based on what criteria CMs will refer the cases; and how they co-operate with the social workers of ICCMWs to assist the patients in their rehabilitation after referring the cases; and

(d) given that some social workers of ICCMWs have reflected that when they refer persons suffering from or suspected to be suffering from mental illness to the HA hospitals for treatment, but such persons are not given priority access to SOP services and still have to undergo general out-patient diagnosis, whether the HA will arrange direct treatment by psychiatrists for those patients referred by such social workers, so that they can receive early treatment; if not, the reasons for that, and under what circumstances and through what procedures the patients concerned will be given priority access to SOP services?

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the Mental Health Service Plan for Adults 2010-2015 of the HA sets out the objectives of the

HA's mental health service for adults and the priority of its various service areas. In order to put the above Service Plan into implementation, the HA has strived to work closely with the relevant stakeholders and service providers to launch a series of services in phases, including introducing a Case Management Programme for patients with SMI. My reply to the various parts of the question is as follows:

(a) Since April 2010, the HA has launched a Case Management Programme in three districts (Kwun Tong, Kwai Tsing and Yuen Long) for patients with SMI. The CMs under the programme work closely with various service providers, particularly the ICCMWs set up by the SWD, in providing intensive, continuous and personalized support to patients with SMI living in the community. In 2011-2012, the HA has extended the programme to five more districts (Eastern, Sham Shui Po, Sha Tin, Tuen Mun and Wan Chai) to benefit more patients. As at the end of March 2012, the HA employed a total of 155 healthcare and allied health personnel with experience in community mental health services as CMs for the provision of intensive and personalized community support to some 10 000 patients living in these districts, that is, each CM is currently providing community support to some 60 patients. In 2012-2013, the HA will further extend the Case Management Programme to four more districts (Kowloon City, Southern, Central and Western and Islands). It is estimated that an additional 40 CMs will be recruited to provide community support for about 1 900 more patients. The HA has implemented the Case Management Programme in various districts throughout the territory in phases since 2010. The CMs to be employed should have experience in community mental health services and attend on-the-job training for six months, including enhancement of case management skills and community psychiatric treatment concept. The role of CMs is to provide all-encompassing and individualized services for case subjects and their families, so as to help them reintegrate into the community. CMs' work is related to the patients being followed up. The workload varies from one CM to another, depending on factors such as patients' clinical conditions and degrees of exposure to risk in the community, and so on.

(b) The HA estimates that there are currently about 16 000 patients with SMI who are suitable for receiving intensive support under the Case Management Programme in community settings. The HA has been endeavouring to review the effectiveness and manpower situation of the Case Management Programme. The HA will also consider further extending the programme to all districts in Hong Kong in the coming few years. It is expected that this will involve over 300 CMs. The HA will continue to recruit more CMs to further strengthen its establishment. As the HA does not have the estimated number of additional CMs required for each district, it will deploy and adjust its manpower flexibly having regard to the operational needs and actual service demands of various districts.

(c) Since October 2010, the ICCMWs under the SWD have provided one-stop district-based community support services to mental patients, persons with suspected mental health problems, their families/carers, and residents in the district through 24 service points across the territory. These integrated services range from early prevention and intervention to risk management through public education, day training, counselling and outreaching visits, and so on. In deciding whether referral should be made for individual cases, CMs of the HA will take into account the needs of mental patients and whether the services provided by ICCMWs are appropriate for the actual conditions of the patients. From the commencement of the Case Management Programme in 2010 to the end of March 2012, the HA has made a total of 765 case referrals to ICCMWs in eight districts for follow-up services.

(d) Currently, a referral mechanism is in place at the HA's psychiatric SOP clinics to accept cases referred by social workers of ICCMWs through registered medical practitioners or community psychiatric services of the HA's hospital clusters. The HA's community psychiatric service teams, which comprise psychiatrists, psychiatric nurses and allied health professionals, have maintained close liaison with social workers of ICCMWs to provide professional assessments, diagnoses, referrals, outreach community support and crisis management services for community members (including mental patients and persons with suspected mental problems), so as

to bring community cases and psychiatric SOP clinics into better integration. To ensure that patients with varying degree of mental health problems are given timely and appropriate treatment, a triage system is implemented for new cases at psychiatric SOP clinics under the HA, whereby new patients are classified into the following categories on the basis of the urgency of their clinical conditions: priority 1 (urgent), priority 2 (semi-urgent) and routine categories. Factors to be considered in the triage of new cases include the patient's propensity to violence, risk of committing suicide, degree of depression and whether the patient has carers. Besides, in addition to receiving treatment at SOP clinics, arrangements will also be made for psychiatric patients to receive other services such as day hospital and community support services as required for treatment of their mental illness.

Manpower Projection to 2018

11. **MR IP WAI-MING** (in Chinese): *President, the Labour and Welfare Bureau submitted a paper to the Panel on Manpower of this Council on 16 February this year regarding the preliminary key findings of the Manpower Projection to 2018 (MP2018), which reveals that the overall manpower supply is estimated to be 14 000 people short of the overall manpower requirement in 2018 by broad education level. As early as the launch of the Qualifications Framework (QF) by the authorities, some members of the trade reflected to me that education qualification was not equivalent to actual working skills (for example, an employee with high education qualification may not be able to take up a job for vehicle maintenance), and thus it was necessary to draw up standards on work experience and specifications of competency standards (SCS) for individual job positions. In this connection, will the Government inform this Council:*

(a) in addition to education level, whether the authorities had assessed the requirements on work experience and competency standards for individual job positions of different professions when drawing up MP2018; if they had not, of the reasons for that; whether the Government will analyse the relevant work experience and

competency standards to project afresh the variances in manpower supply and demand for Hong Kong; and

(b) given that MP2018 reveals a shortfall of 22 000 people in the education category of upper secondary, craft, technician and sub-degree levels six years later, of the number of SCS-based vocational training courses to be provided by the Government in the next six years to meet the manpower shortfall?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to the question raised by Mr IP Wai-ming is as follows:

(a) The Government conducts Manpower Projection (MP) from time to time to assess the broad trends in the future manpower requirement and supply of our economy at the macro level, as well as the potential manpower balance at different education levels. It provides useful reference data for government bureaux and departments as well as other stakeholders in further studies and policy formulation.

As regards the QF, which was launched in 2008, it is a seven-level hierarchy that orders and supports qualifications of academic, vocational and continuing education sectors. Industry Training Advisory Committees have been set up in 18 industries, covering about 45% of the labour force. They are tasked to draw up SCS(1) for their respective sectors. The Government has also extended the Recognition of Prior Learning (RPL) mechanism to seven industries which have completed their respective SCSs. As the implementation of QF in Hong Kong is a long-term endeavour and its development is still at an early stage, it is not practicable at this stage to collect views and related statistics from stakeholders, including employers and training bodies, on the existing and future manpower requirement and supply using parameters with reference to QF, such as competency standards, QF levels, QF-recognized

(1) SCS, which sets out the skills, knowledge and outcome standards required of employees in the industry, provides a basis for course providers to design education and training courses that best suit the needs of the industry.

qualifications or RPL qualifications. In the absence of reliable and comprehensive manpower statistics on this front, the Government could not make any corresponding analysis of the manpower requirement and supply in MP2018.

Nonetheless, government bureaux and departments as well as other stakeholders do keep under review the manpower situation of the respective industries which they are concerned with. They may consider the feasibility of sectoral manpower studies with reference to QF as and when more relevant data become available. We will also consider the methodology and coverage of future MP exercises, taking into account the availability of data and the statistical needs of different stakeholders.

(b) According to MP2018, there will be a projected shortfall of 22 000 workers in 2018 at the broad education level that covers upper secondary, craft, technician and sub-degree, with the manpower deficit falling solely at the upper secondary level and partly offset by surpluses at the other three levels.

Based on the statistics collected from the related government bureaux and departments as well as education institutions which in turn have been reflected in the projections of MP2018, the total annual supply of workers at upper secondary, craft, technician and sub-degree levels is projected to increase by 14 800 on average in the coming years up to 2018.

In the context of QF, there are currently around 365 SCS-based courses pitched at QF levels 1 to 4 which are broadly comparable to upper secondary, craft, technician and sub-degree levels respectively. The Government will continue to extend the RPL mechanism to more industry sectors as and when appropriate. With the growing maturity of QF and continuous efforts of the Government to solicit support from the stakeholders of different sectors, it is expected that more QF-recognized programmes will be provided in the years ahead.

Celebration of Marriages in Hong Kong

12. **MR WONG SING-CHI** (in Chinese): *President, under the existing legislation, marriages may be celebrated in marriage registries by the Registrar of Marriages or deputy registrar of marriages (the Registrar), or in licensed places of worship by competent ministers according to the rites or usages of marriage observed in the churches, denominations, or bodies concerned. Moreover, practising solicitors and notary public who are eligible and appointed as civil celebrants may also celebrate marriages for wedding couples at any time and at any place in Hong Kong other than the office of the Registrar and a licensed place of worship. In this connection, will the executive authorities inform this Council:*

(a) of the respective numbers of marriages celebrated through the aforesaid three ways in each of the past three years;

(b) of the existing principles based on which the authorities grant a licence to certain place of worship to approve it as a place for celebration of marriages according to religious rites;

(c) whether the existing arrangement that civil celebrants may celebrate marriages in any place is contradictory to the policy that ministers are required to celebrate marriages in licensed places of worship; and

(d) whether the authorities will consider relaxing the aforesaid requirement, so that competent ministers may also celebrate marriages in any place?

SECRETARY FOR SECURITY (in Chinese): President,

(a) The figures of marriage registrations celebrated in marriage registries, licensed places of worship, and those by civil celebrants in the past three years are tabulated below:

	2009	*2010*	*2011*
Marriage registries	26 275	25 919	26 831
Licensed places of worship	2 823	2 774	2 849
By civil celebrants	21 979	23 925	28 203
Total	51 077	52 618	57 883

(b) According to sections 4 and 19 of the Marriage Ordinance (Cap. 181), the Immigration Department (ImmD) may license a place of public worship to be a place for celebration of marriages, and permits any competent minister of the church, denomination or body to which such place of worship belongs to celebrate marriages according to the rites or usages of marriage observed in such church, denomination or body. In issuing such a licence, the ImmD will consider the local registration particulars of the church, denomination or organization that applies for the licence, qualifications of its principal ministers, land use of the place, safety of the building and facilities of the place where marriages are to be celebrated, and so on, and may consult other government departments when necessary. At present, there are 262 licenced places of worship that have been approved as places for celebration of marriages.

(c) According to section 21 of the Marriage Ordinance, a marriage celebrated by a civil celebrant shall take place at any place in Hong Kong other than a marriage registry and a licensed place of worship. The Civil Celebrants of Marriages Scheme provides aims to provide greater flexibility in the choice of venue for marriages and the purpose of which is different from marriages celebrated inside licensed places of worship according to the religious rites.

(d) The Civil Celebrants of Marriages Scheme was introduced specifically for secular marriages, which are different from marriages celebrated by ministers according to the rites or usages of marriages observed in their respective religions, denominations or organizations. Should there be a need for the marrying parties to celebrate a marriage by a competent minister outside a licensed place of worship, an application may be made to the Chief Executive for a

special licence to be granted for that purpose under section 11 of the Marriage Ordinance.

The Government has no plan to change the relevant legal qualification requirements for civil celebrants of marriages at this stage.

Pilot Building Management Professional Service Scheme and Building Management Professional Advisory Scheme

13. **MR JAMES TO** (in Chinese): *President, in collaboration with the Hong Kong Housing Society and four property management professional bodies, the Government launched a one-year pilot scheme called the "Building Management Professional Service Scheme" (pilot scheme) in April 2010 to provide free professional advice and follow-up services on property management to about 1 600 owners of flat units in old buildings in five districts where more old buildings are located, and in November last year, it introduced the "Building Management Professional Advisory Service Scheme" (Advisory Scheme) which will last up to March 2014, so as to expand the pilot scheme. In this connection, will the Government inform this Council:*

(a) regarding the latest details of implementing the various services provided under the pilot scheme, of the number of home visits conducted by the authorities with a view to contacting owners direct and assisting them in forming Owners' Corporations (OCs); the number of buildings for which the authorities have prepared management audit reports for their common areas; the number of OC meetings attended by the authorities to provide professional advice and secretarial services, together with the number of the OCs concerned; the number of OCs which were assisted by the authorities in applying for various maintenance subsidy and loan schemes, as well as following up the repair works and tender procedures, and so on; the number of OCs which were assisted by the authorities in taking out third party risks insurance; and the number of building management training programmes or seminars, and so on, provided to office-bearers of OCs and owners;

(b) among the first category of target buildings/clusters of buildings under the pilot scheme, that is, those clusters of buildings (approximately 900 units in total) jointly selected by the participating organizations, of the number of clusters of buildings in which the Government conducted home visits, broken down by year and District Council district, and so far the number of buildings among them which subsequently formed an OC or reorganized their OCs; further, the number of cases of the Government assisting the owners in successfully co-ordinating building maintenance and repair works;

(c) of the number of buildings under the second category of target buildings/clusters of buildings under the pilot scheme, that is, those buildings identified through applications submitted by owners who were interested in joining the scheme, broken down by year and District Council district, and so far the number of buildings among them which formed an OC or reorganized their OCs after participating in the pilot scheme, and whether any of these buildings withdrew from the scheme; if so, of the details; further, the number of cases of the Government assisting the owners in successfully co-ordinating building maintenance and repair works;

(d) whether the Government has compiled statistics on the time normally needed to complete the follow-up action for a single case under the pilot scheme;

(e) given that the Government will implement the Advisory Scheme up to March 2014 and has awarded contracts through open tender to two property management companies (PMCs) for the provision of relevant services, and it has been learnt that the two PMCs are required by the Government under the contracts to form OCs for a designated number of buildings during the period of the Advisory Scheme, of the respective target numbers to be met by each company in each year, with a breakdown of such numbers by District Council district;

(f) given that the Advisory Scheme is implemented "on the basis of building clusters" to "encourage owners to learn from one another

to tackle the problem of building neglect", of the relevant implementation details; the "clusters" which are currently covered under the Scheme;

(g) of the specific details of the service of "providing training on building management to office-bearers of OCs and owners" under the Advisory Scheme; whether all owners of the eligible buildings may enjoy this service; and

(h) as it has been learnt that the Government launched the "Resident Liaison Ambassador Scheme" (Ambassador Scheme) at the same time in November last year to recruit owners or tenants aged 18 or above who live in "three nil" buildings of more than 30 years' old to participate in the scheme to assist government departments in contacting residents, whether the Government has compiled statistics on the total number of such residents participating in the Ambassador Scheme so far; if it has, of the number of such participants, broken down by District Council district; whether the Government will regularly review the effectiveness of the Ambassador Scheme; and whether the Government will step up publicity when the response is not satisfactory; if it will, of the details?

SECRETARY FOR HOME AFFAIRS (in Chinese): President, to enhance support to owners of old buildings, the Home Affairs Bureau and the Home Affairs Department (HAD), in collaboration with the Hong Kong Housing Society and four professional property management bodies, launched a one-year pilot scheme in April 2010. Expert teams comprising volunteers from professional property management bodies were formed to provide free professional advice and follow-up services on building management for owners of old buildings in five districts with a relatively large number of old buildings (that is, Yau Tsim Mong, Kowloon City, Shum Shui Po, Tsuen Wan and Central and Western). The pilot scheme enjoyed tremendous success and was well-received by owners and residents.

To further strengthen support to owners of old buildings, the HAD rolled out the Advisory Scheme in November 2011 and commissioned two PMCs to

provide professional advisory services to owners of 1 200 old buildings (about 18 000 flat units) in all 18 districts over the territory. The Advisory Scheme runs for over two years until March 2014.

My replies to the questions raised by Mr James TO are as follows:

(a) to (c)

The pilot scheme was completed in March 2011. Professional services were provided by the expert teams to over 1 600 owners of units in old buildings (including 26 owners of flat units in two buildings under the second category of buildings(1)), including paying home visits, attending meetings of owners(2), providing basic knowledge and information on building management, and assessing and producing building management audit reports to all participating buildings. Among them, the expert teams provided repair and maintenance recommendations to nine buildings (about 282 flat units), assisted the owners in applying for various maintenance subsidies and helped them co-ordinate building repair and maintenance works. In addition, the expert teams successfully formed 11 OCs for 10 buildings (about 155 flat units) and assisted two OCs in re-electing their office bearers of the management committee so that the OCs could reactivate (figures broken down by district is at Annex 1). After formation of OCs, the expert teams also assisted six OCs in taking out/passing resolutions to take out third party risks insurance. None of the buildings concerned withdrew from the pilot scheme.

(d) The time required for follow-up actions varies as to the circumstances of each building. In general, it takes approximately one year from the time to pay home visits, prepare audit reports for the common areas of the building, assist the owners in forming an OC to the time to apply for relevant subsidies. The time required

(1) Under the pilot scheme, target buildings were divided into two categories. The first category included clusters of buildings jointly selected by the participatory organizations. The second category consisted of applications made by building owners.

(2) We do not maintain figures of the home visits paid, the OC meetings attended or seminars on building management arranged by the expert teams.

for the repair and maintenance works depends upon the scope of the repair items and the complexity of the projects.

(e) For the purpose of the Advisory Scheme, Hong Kong was divided into seven regions according to the number of old buildings in each district. Open tender exercises were invited separately in respective regions for commissioning suitable PMCs to provide services. The number of OCs to be established annually in each region under the contract terms of the Advisory Scheme is at Annex 2.

(f) The Advisory Scheme is implemented on the basis of "building clusters", that is, formed by buildings on the same or nearby streets. We expect that the building clusters approach can enhance the cost-effectiveness of the Advisory Scheme and at the same time achieve modelling effect and mutual motivation among buildings in the adjacent area.

(g) Under the Advisory Scheme, the commissioned PMCs will, taken into account the circumstances and the needs of owners of the target buildings, organize suitable building management training programmes and seminars on issues such as formation and operation of OCs, building maintenance, various maintenance subsidy schemes, and so on. These training programmes or seminars are open to all owners of the buildings concerned under the Advisory Scheme.

(h) The HAD launched the Ambassador Scheme in November 2011 to recruit owners and tenants of "three nil" buildings of 30 years or above to assist government departments in contacting residents and engaging them in discussion and handling of daily building management matters. The long-term objective of the Ambassador Scheme is to enhance the knowledge and interest of the residents in building management and, through this resident network, assist these buildings in the formation of OCs to facilitate effective building management.

As at 31 March, 2012, the HAD had recruited a total of 632 "resident liaison ambassadors" (RLA), (the breakdown of the number of

ambassadors by the seven regions under the Advisory Scheme is at Annex 3). District Offices have also successfully established seven OCs in Central and Western, Wan Chai, Yau Tsim Mong, Kowloon City and Wong Tai Sin through the RLA network. The Ambassador Scheme has started to bear fruit and the results have been encouraging. The HAD will continue to promote the Ambassador Scheme to owners and tenants of target buildings in a pro-active manner in a bid to recruit more ambassadors, and will review its effectiveness from time to time.

Annex 1

The Building Management Professional Service Pilot Scheme
Number of OCs Established or Reorganized

District	*Number of OCs established or reorganized*
Yau Tsim Mong	6
Kowloon City	2
Sham Shui Po	3
Central and Western	2
Total	13

Annex 2

Building Management Professional Advisory Scheme
Number of OCs to be Established Annually by the PMCs Commissioned

Region	*Number of OCs to be established annually*
Yau Tsim Mong	18
Kowloon City	18
Sham Shui Po	18
Hong Kong Island (including Central and Western, Wan Chai, Eastern and Southern Districts)	14
Kowloon East (including Kwun Tong and Wong Tai Sin Districts)	3
New Territories West (including Tsuen Wan, Kwai Tsing, Tuen Mun, Yuen Long and Islands Districts)	3

Region	*Number of OCs to be established annually*
New Territories East (including North, Sha Tin, Tai Po and Sai Kung Districts)	3
Total	77

Annex 3

Resident Liaison Ambassador Scheme
Number of Resident Liaison Ambassadors by Region
(as at 31 March 2012)

Region	*Number of Resident Liaison Ambassadors*
Yau Tsim Mong	157
Kowloon City	134
Sham Shui Po	30
Hong Kong Island (including Central and Western, Wan Chai, Eastern and Southern Districts)	108
Kowloon East (including Kwun Tong and Wong Tai Sin Districts)	120
New Territories West (including Tsuen Wan, Kwai Tsing, Tuen Mun, Yuen Long and Islands Districts)	65
New Territories East (including North, Sha Tin, Tai Po and Sai Kung Districts)	18
Total	632

Application for Hong Kong Identity Cards by People Born Abroad to Hong Kong Permanent Residents

14. **MR PAUL CHAN** (in Chinese): *President, some Hong Kong-born citizens who are also holders of Hong Kong permanent identity cards pointed out to me that their children who were born overseas had obtained British Dependent Territories Citizen passports and Hong Kong juvenile identity cards before 30 June 1997. Their children then stayed abroad to pursue studies and returned*

to Hong Kong upon reaching the age of 18 this year and applied for adult identity cards, but their applications were refused by the Immigration Department (ImmD). In this connection, will the Government inform this Council:

(a) in each of the years since the reunification of Hong Kong in 1997, of the number of applications received by the ImmD which were similar to the aforesaid cases; among such applications, of the respective numbers of those which were refused and approved, as well as the reasons why some applications were refused;

(b) among the refused applications referred to in part (a), of the number of cases in which the applicants were successful in their subsequent applications for Hong Kong identity cards with assistance from the ImmD, as well as the reasons why such applications were successful;

(c) among the refused applications referred to in part (a), of the number of applicants who had lodged appeals to the Registration of Persons Tribunal (the Tribunal); of the respective numbers of appeal cases which were allowed and rejected, as well as the respective reasons; and

(d) how the Government will step up publicity and education to facilitate eligible Hong Kong people who were born overseas to apply for Hong Kong identity cards?

SECRETARY FOR SECURITY (in Chinese): President, according to regulation 22 of the Registration of Persons Regulations, a valid permanent identity card shall be evidence that the holder enjoys the right of abode in Hong Kong. According to section 2A(1) of the Immigration Ordinance, a Hong Kong permanent resident enjoys the right of abode in Hong Kong. Paragraph 2 of Schedule 1 to the Immigration 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 right of abode in Hong Kong;

(f) a person other than those residents in categories (a) to (e), who, before the establishment of the HKSAR, had the right of abode in Hong Kong only.

According to paragraph 1(1) of Schedule 1 to the Immigration 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.

According to Article 5 of the Nationality Law, any person born abroad whose parents are both Chinese nationals or one of whose parents is a Chinese

national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national 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 Immigration Ordinance.

Paragraph 6(1) of Schedule 1 to the Immigration Ordinance provides that a person who is not of Chinese nationality and who was a permanent resident of Hong Kong before 1 July 1997 is taken to be a permanent resident of the HKSAR under paragraph 2(d) if:

(a) he was settled in Hong Kong immediately before 1 July 1997;

(b) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong within the period of 18 months commencing on 1 July 1997; or

(c) after he ceased to be settled in Hong Kong immediately before 1 July 1997 he returns to settle in Hong Kong after the period of 18 months commencing on 1 July 1997 but only if he has not been absent from Hong Kong for a continuous period of not less than 36 months.

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

(a) Any person born outside Hong Kong to Hong Kong permanent resident who was a permanent resident of Hong Kong before 1 July 1997 and meets the relevant legal requirements and claims to be a Hong Kong permanent resident under paragraph 2(c) or 6(1) of Schedule 1 to the Immigration Ordinance may submit, in accordance with established procedures, application for verification of eligibility for permanent identity card to the ImmD. Breakdown of the number of these applications received, approved and refused from July 1997 to December 2011 by year is tabulated below:

Year	*Applications Received*	*Applications Approved**	*Applications Refused**
1997 (July to December)	4 073	3 246	38
1998	20 039	11 967	324
1999	30 288	11 310	2 426
2000	13 827	6 573	2 349
2001	13 794	5 101	2 290
2002	10 125	4 714	2 282
2003	7 970	3 486	1 803
2004	8 645	3 312	3 305
2005	9 937	3 380	4 305
2006	9 673	3 143	4 632
2007	12 063	2 793	4 913
2008	8 773	2 802	4 927
2009	8 228	2 320	4 467
2010	7 598	2 259	5 088
2011	8 533	2 393	5 334

Note:

* number of applications approved or refused in a year may not necessarily correspond with applications received in that year

(b) The ImmD only maintains statistics on applications approved or refused, it does not maintain the required statistics.

(c) According to the Registration of Persons Ordinance, any person who is refused to issue a permanent identity card may lodge an appeal to the Tribunal. The Tribunal will determine whether the person enjoys the right of abode on the facts of his case. From 2005 to 2011, among the refusal cases in part (a), there were 371 appeals to the Tribunal, among which 224 were dismissed, 77 abandoned by the applicants, one allowed, and the remaining 69 are being processed.

(d) The public may learn of information on the right of abode and identity card through the ImmD's right of abode leaflet and website, as well as GovHK. The ImmD had also publicized the relevant information in Hong Kong and overseas, particularly countries with many Hong Kong residents (for example, Australia, New Zealand, the United States, Canada, Singapore, and so on), through

newspapers, briefings, television interviews, radio phone-in programmes, and so on.

Staff Establishments of Overseas Hong Kong Economic and Trade Offices

15. **MS STARRY LEE** (in Chinese): *President, at present, 11 overseas Economic and Trade Offices (ETOs) are set up under the Commerce and Economic Development Bureau, and such ETOs are dedicated to handling economic and trade issues related to Hong Kong, attracting foreign direct investment to Hong Kong as well as promoting Hong Kong's many advantages as a regional hub and the preferred business location in Asia. In this connection, will the Government inform this Council:*

(a) of the respective volumes of trade in the past five years between Hong Kong and the various countries where overseas ETOs are set up, as well as the respective percentage changes in each year (set out in table form);

(b) of the staff establishments of various overseas ETOs in the past five years and the respective changes in each year; and

(c) of the criteria for determining the staff establishments of overseas ETOs; whether the authorities will, in the light of the volumes of trade with the countries concerned, review the current staff establishments; if they will, of the details; if not, the reasons for that?

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

(a) The volumes of trade in the past five years between Hong Kong and the countries where the 11 overseas ETOs are set up and the countries under their coverage, and the respective percentage changes in each year are listed below:

ETO	*Based Country and Covered Country*	*2007*	*2008*		*2009*		*2010*		*2011*	
		Trade Volume (in HKD million)	*Trade Volume (in HKD million)*	*% Change*	*Trade Volume (in HKD million)*	*% Change*	*Trade Volume (in HKD million)*	*% Change*	*Trade Volume (in HKD million)*	*% Change*
Berlin	Germany	129,167	147,380	+14.1	129,446	-12.2	138,297	+6.8	154,952	+12.0
	Austria	10,304	9,771	-5.2	7,694	-21.3	8,675	+12.8	9,560	+10.2
	Czech Republic	5,972	7,143	+19.6	6,276	-12.1	6,758	+7.7	7,924	+17.3
	Hungary	9,894	10,358	+4.7	7,560	-27.0	11,744	+55.3	11,085	-5.6
	Poland	5,332	6,466	+21.3	5,644	-12.7	6,814	+20.7	8,013	+17.6
	Slovak Republic	1,110	1,617	+45.7	1,304	-19.4	1,690	+29.6	1,795	+6.2
	Slovenia	733	775	+5.8	737	-4.9	850	+15.3	990	+16.4
	Switzerland [Note]	49,734	67,388	+35.5	55,932	-17.0	71,586	+28.0	104,191	+45.5
Brussels	Belgium	33,970	37,016	+9.0	33,884	-8.5	38,728	+14.3	49,832	+28.7
	Netherlands	58,619	61,351	+4.7	52,768	-14.0	61,462	+16.5	64,003	+4.1
	Luxembourg	2,146	1,527	-28.9	1,063	-30.4	1,728	+62.6	1,672	-3.3
	France	58,667	62,884	+7.2	52,265	-16.9	65,163	+24.7	81,367	+24.9
	Italy	64,938	68,095	+4.9	55,458	-18.6	63,760	+15.0	75,064	+17.7
	Ireland	11,833	12,474	+5.4	11,179	-10.4	12,289	+9.9	10,800	-12.1
	Greece	2,553	2,699	+5.7	2,094	-22.4	1,829	-12.7	1,807	-1.2
	Cyprus	417	469	+12.5	429	-8.5	387	-9.9	597	+54.2
	Portugal	2,415	2,755	+14.1	2,037	-26.0	2,414	+18.5	2,865	+18.7
	Spain	23,784	24,003	+0.9	18,386	-23.4	21,692	+18.0	24,320	+12.1
	Malta	1,863	2,300	+23.4	1,635	-28.9	1,995	+22.0	3,438	+72.4
	Bulgaria	579	774	+33.8	478	-38.2	743	+55.3	883	+18.9
	Croatia	423	426	+0.6	301	-29.3	334	+11.1	387	+15.8
	Romania	1,334	2,361	+77.0	2,124	-10.1	2,810	+32.3	3,348	+19.2
	Turkey	6,154	6,681	+8.6	6,195	-7.3	7,635	+23.3	10,034	+31.4
London	The United Kingdom	105,086	113,430	+7.9	95,847	-15.5	100,595	+5.0	107,826	+7.2
	Russia	9,915	13,059	+31.7	11,888	-9.0	19,329	+62.6	19,973	+3.3
	Denmark	11,454	12,197	+6.5	9,631	-21.0	12,433	+29.1	14,275	+14.8
	Sweden	11,828	12,210	+3.2	9,892	-19.0	11,714	+18.4	12,759	+8.9
	Norway	4,959	4,679	-5.7	3,721	-20.5	4,494	+20.8	4,569	+1.7
	Finland	12,417	12,333	-0.7	7,330	-40.6	9,669	+31.9	10,479	+8.4
	Latvia	454	711	+56.6	775	+9.0	977	+26.0	1,464	+49.9
	Lithuania	406	701	+72.5	523	-25.4	671	+28.4	1,091	+62.5
	Estonia	1,050	1,036	-1.3	558	-46.1	611	+9.4	1,148	+88.0
Washington New York San Francisco	The United States	506,970	509,992	+0.6	427,374	-16.2	511,249	+19.6	542,140	+6.0
Singapore	Singapore	245,225	250,266	+2.0	216,911	-13.0	288,386	+33.0	310,799	+8.0
	Brunei Darussalam	241	204	-15.4	131	-35.7	121	-7.3	145	+19.2
	Cambodia	4,920	4,816	-2.1	3,745	-22.2	4,733	+26.4	5,777	+22.1
	Indonesia	30,327	34,937	+15.2	34,762	-0.5	42,162	+21.3	45,357	+7.6
	Laos	105	189	+79.2	150	-20.8	238	+58.8	264	+11.2
	Malaysia	88,074	93,314	+5.9	87,174	-6.6	110,488	+26.7	117,617	+6.5
	Myanmar	1,009	762	-24.4	628	-17.6	735	+17.0	827	+12.4
	Philippines	69,720	69,549	-0.2	48,110	-30.8	56,662	+17.8	60,982	+7.6
	Thailand	86,179	95,329	+10.6	82,678	-13.3	110,831	+34.1	119,056	+7.4
	Vietnam	23,809	29,297	+23.1	34,985	+19.4	48,795	+39.5	65,729	+34.7

ETO	*Based Country and Covered Country*	*2007*	*2008*		*2009*		*2010*		*2011*	
		Trade Volume (in HKD million)	*Trade Volume (in HKD million)*	*% Change*	*Trade Volume (in HKD million)*	*% Change*	*Trade Volume (in HKD million)*	*% Change*	*Trade Volume (in HKD million)*	*% Change*
Tokyo	Japan	406,896	418,504	+3.0	345,238	-18.0	435,808	+26.0	453,756	+4.0
	Korea	172,323	167,648	-2.7	146,179	-12.8	187,383	+28.2	211,243	+12.7
Toronto	Canada	38,003	39,473	+3.9	31,842	-19.3	36,120	+13.4	38,727	+7.2
Sydney	Australia	50,689	55,275	+9.0	51,698	-7.0	54,138	+5.0	60,845	+12.0
	New Zealand	7,038	7,466	+6.1	6,527	-12.6	7,404	+13.4	8,209	+10.9

Note:

The Geneva ETO is not included in the above table because its primary role is to represent Hong Kong, China as a Member of the World Trade Organization. The Berlin ETO is responsible for promoting Hong Kong's bilateral economic and trade relations with Switzerland and seven other central European countries.

(b) The establishments of the 11 overseas ETOs in the past five years and the respective changes in each year are listed below:

ETO	*Establishment (Change by Year)*				
	2007	*2008*	*2009*	*2010*	*2011*
Berlin[1]	4	4 (0)	4 (0)	4 (0)	4 (0)
Brussels	17	17 (0)	17 (0)	17 (0)	17 (0)
Geneva	15	15 (0)	15 (0)	15 (0)	15 (0)
London	18	18 (0)	18 (0)	18 (0)	18 (0)
Washington	18	18 (0)	18 (0)	18 (0)	18 (0)
San Francisco[2]	14	14 (0)	15 (+1)	15 (0)	15 (0)
New York	14	14 (0)	14 (0)	14 (0)	14 (0)
Singapore[3]	10	11 (+1)	11 (0)	11 (0)	11 (0)
Tokyo	13	13 (0)	13 (0)	13 (0)	13 (0)
Toronto	10	10 (0)	10 (0)	10 (0)	10 (0)

ETO	*Establishment (Change by Year)*				
	2007	*2008*	*2009*	*2010*	*2011*
Sydney[4]	10	11 (+1)	11 (0)	11 (0)	11 (0)
Total	143	145	146	146	146

Notes:

(1) The Establishment figure does not include supporting staff employed by the Berlin ETO on contract terms.

(2) A locally-engaged Administrative Assistant post has been created in June 2009.

(3) A Trade Officer post has been created in July 2008.

(4) A locally-engaged Project and Research Officer post has been created in May 2008.

(c) In determining the establishments of the overseas ETOs, the Commerce and Economic Development Bureau will take into consideration the geographical coverage of the overseas ETOs, their scope of work, the extent of official liaison required, and bilateral economic and trade relations including the volume of trade between Hong Kong and the countries under the purview of ETOs. We will from time to time review the workload and establishment of the ETOs to ensure that there are sufficient staff resources to carry out the policy objectives. New demands will be first met by a redeployment of existing resources before the creation of new posts is considered.

Women's Development

16. **MS EMILY LAU** (in Chinese): *President, the Women's Commission (WoC) is responsible for advising the Government on the strategic overview over women's issues and developing a long-term vision and strategy for such issues. In "Hong Kong Women's Development Goals" published by the WoC in December last year, the WoC pointed out that resources designated for women's development in society are still inadequate, making it difficult for the WoC and*

women's groups to advance their work in this regard. Regarding the enhancement of efficiency in promoting women's development, will the executive authorities inform this Council:

(a) whether the WoC will follow the practices of the Hong Kong Advisory Council on AIDS and the Rehabilitation Advisory Committee in organizing community forums, and introduce community forums on women's issues, so as to strengthen the efforts in meeting and conducting exchanges with women's groups, explain to women's groups about its work and understand the assistance they need; if it will, of the details; if not, the reasons for that;

(b) whether the WoC will follow the practices of other committees of the Government (for example, the Committee on the Promotion of Racial Harmony) in uploading meeting documents to the committees' websites, and upload the attendance list, documents and minutes, and so on, of each meeting of the WoC to the WoC's website, so as to enable members of the public to monitor the WoC's work and enhance the transparency of the WoC's operation; if it will, of the details; if not, the reasons for that;

(c) whether the Government will allocate additional resources to assist in implementing the recommendations put forth in "Hong Kong Women's Development Goals"; if it will, of the details and the timetable;

(d) whether the Government regularly meets and conducts exchanges with representatives of the WoC and women's groups to understand what assistance they need; if it has, of the details; and

(e) given that the report on "Women and Men in Hong Kong — Key Statistics" (the report) published annually by the Census and Statistics Department (C&SD) since 2001 draws together sex disaggregated statistics and indicators from a variety of sources with a view to painting a picture of the situation of women and men in major economic and social spheres, whether the C&SD will consult more organizations (for example, women's groups and the Equal

Opportunities Commission, and so on) before conducting the relevant surveys, and hold topical discussions with more organizations after the surveys and co-operate with the WoC to step up the education and publicity work on the relevant areas and subjects?

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, my reply to the question raised by Ms Emily LAU is as follows:

(a) and (d)

To enhance mutual understanding and foster a closer partnership, the WoC meets with local women's groups and relevant non-governmental organizations (NGOs) on a regular basis to exchange views on issues of concern to women and on the work of the WoC. In 2011-2012, the WoC held six exchange sessions and meetings with women's groups and relevant NGOs. Issues discussed included future development of the WoC's Capacity Building Mileage Programme to encourage women to pursue lifelong learning and self-development, support services to ethnic minority women, compilation of sex-disaggregated data, women's leadership training, survey findings on the status of women, and support for working mothers, and so on. Besides, meetings are held from time to time with individual women's groups and relevant organizations to discuss issues related to women.

(b) The WoC holds regular meetings to discuss various women-related issues. It also invites, from time to time, representatives from bureaux and departments to attend the meetings so as to provide advice to them on women-related policies and initiatives from a gender perspective. It has been the WoC's practice to upload the agendas of meetings as well as documents authorized by the relevant bureaux and departments for disclosure to the WoC's website for public reference.

As some of the issues discussed at the WoC meetings are still at a preliminary discussion stage and information provided by relevant bureaux and departments is for internal discussion only, the WoC is not in a position to upload the minutes of meetings and documents to its website. To further enhance the transparency of meetings, the WoC will review the arrangements and consider uploading the minutes and relevant documents to its website after obtaining the consent from relevant bureaux and departments.

(c) The Women's Development Goals Report covers areas including women's participation in decision-making, health, safety, education, economics and system for development, which involve different bureaux, departments and other stakeholders. Subsequent to its publication in December 2011, the Report has been sent to the organizations concerned for consideration and follow-up as appropriate. The WoC will maintain close liaison with these organizations and review the implementation of the recommendations in due course.

(e) The report is an annual publication compiled by the C&SD listing major sex-disaggregated statistics on different areas collated from administrative records and previously published results of surveys of different bureaux and departments. It provides objective data for reference.

From time to time, the C&SD briefs relevant organizations on the key statistics in the report through various channels, for instance, by taking part in forums, briefings, workshops and meetings organized by the WoC, and different government and NGOs so as to promote application and research on gender statistics. The C&SD also takes these opportunities to discuss with the participants subjects related to gender statistics and collect their views on arrangements related to the compilation and publication of the report such as its contents, source of data and classification in order to enrich the contents of the report to better cater for the needs of users.

The C&SD considers that the existing communication channels are effective and will continue to maintain close liaison with the WoC as

well as relevant government and NGOs. The C&SD also welcomes views on the report from these organizations.

Aircraft Noise Mitigating Measures

17. **MR ALBERT CHAN** (in Chinese): *President, in reply to my question at the meeting of this Council on 16 March 2011, the Government indicated that the Civil Aviation Department (CAD) had, since October 1998, implemented a series of aircraft noise mitigating measures to minimize the impact of aircraft noise on the districts near the flight paths (including arranging for flights departing Hong Kong between 11 pm and 7 am to use the southbound route via the West Lamma Channel as far as possible, and directing flights arriving in Hong Kong between midnight and 7 am to land from the waters southwest of the airport, so as to avoid aircrafts overflying densely populated areas in the early hours; requiring aircrafts approaching from the northeast to adopt the Continuous Descent Approach when landing, and aircrafts taking off towards the northeast to reach a higher altitude within a shorter distance; and banning aircrafts which have a higher noise level, as defined in the Convention on International Civil Aviation, from landing and taking off in Hong Kong). However, I have learnt that aircraft noise during the aforesaid hours still causes nuisance to residents of quite a number of housing estates, making it difficult for them to sleep. In this connection, will the Government inform this Council:*

(a) of the monthly data recorded in 2011 and 2012 by various aircraft noise monitoring terminals on aircraft noise levels which reached 70 to 74, 75 to 79, and 80 decibels (dB) or above during the aforesaid hours;

(b) of the types of aircraft the noise levels of which reached 80 dB or above last year and the names of their operating airline companies; and

(c) whether it will further enhance the existing aircraft noise mitigating measures to reduce the nuisance caused to residents in the districts concerned; if it will, of the details?

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

(a) The CAD has 16 noise monitoring terminals. The aircraft noise events recorded by these terminals in 2011 and 2012 (up to February) by month are set out in Annex 1.

(b) The types of aircraft with noise events exceeding 80 dB in 2011 and the operating airlines concerned are set out in Annex 2.

(c) To reduce the impact of aircraft noise on the areas in the vicinity of the flight paths, the CAD has implemented a series of noise mitigating measures. Apart from those mentioned in the question, other measures include the following:

(i) to alleviate the aircraft noise impact on Tsing Lung Tau, Sham Tseng and Ma Wan, all aircraft taking off towards the northeast of the airport are required to follow the noise abatement departure procedures prescribed by the International Civil Aviation Organization so as to reach a higher altitude within a shorter distance; and

(ii) only aircraft which have a lower noise level, as defined in Chapter 3 of Volume I, Part II of Annex 16 to the Convention on International Civil Aviation are allowed to land and take off in Hong Kong.

In addition, to mitigate the noise impact on Ma Wan, the CAD had commissioned a consultant to study the current procedures for aircraft taking off at the Hong Kong International Airport to the northeast and turning south to the West Lamma Channel. The study recommended that for aircraft which can make use of the satellite navigation technology to follow a set of "Radius-to-Fix" turn procedures when making south turns so that the aircraft can follow the designated flight paths closely during the turn, thereby reducing the noise impact on Ma Wan residents. The CAD has implemented the procedures on 9 February 2012 and is closely monitoring the implementation and compiling data to analyse the impact of the procedures.

Annex 1

Noise Events Recorded by the Noise Monitoring Terminals in 2011 and 2012 (till February)
(During 2300 hours to 0700 hours the Next Day)

Noise Monitoring Terminals	*Noise Level (dB)*	*2011*												*2012*	
		Jan	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Jan*	*Feb*
1. Mei Lam Estate, Tai Wai	70 to 74	0	0	0	0	1	3	1	1	1	0	0	0	1	0
	75 to 79	0	0	0	0	0	0	0	0	0	0	0	0	0	1
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2. On Yam Estate, Kwai Chung	70 to 74	2	4	0	8	15	42	32	22	1	0	3	0	4	5
	75 to 79	0	0	0	0	1	2	0	0	0	0	0	0	1	0
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3. Yiu Tung Estate, Shau Kei Wan	70 to 74	1	0	0	3	0	1	0	0	4	2	0	0	0	0
	75 to 79	0	0	1	0	0	0	0	0	0	0	0	0	0	0
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4. Beverly Height, Cloud View Road, North Point	70 to 74	1	0	1	3	0	1	1	0	5	0	1	0	0	0
	75 to 79	0	0	2	0	0	0	0	0	1	0	0	0	0	0
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5. Fairmont Garden, Conduit Road, Mid-Levels	70 to 74	1	0	1	0	0	2	7	0	2	1	1	0	0	0
	75 to 79	0	0	0	0	0	0	1	0	0	0	0	0	1	0
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
6. Hong Kong Garden, Tsing Lung Tau	70 to 74	325	173	208	191	260	467	668	455	222	196	188	286	149	163
	75 to 79	33	11	22	17	12	36	44	21	22	19	16	48	19	13
	≥80	2	1	0	0	0	1	1	2	0	0	2	2	1	1
7. Sha Lo Wan, Lantau	70 to 74	490	397	549	439	361	189	248	291	263	295	361	423	366	485
	75 to 79	260	164	230	165	119	51	50	54	65	79	145	159	143	186
	≥80	39	26	26	22	17	3	9	1	7	10	23	19	21	21
8. Caribbean Coast, Tung Chung*	70 to 74	349	178	267	148	104	79	56	51	105	126	201	250	248	227
	75 to 79	5	17	24	11	4	14	4	0	13	9	35	9	15	13
	≥80	0	0	0	0	1	3	0	0	0	0	2	0	0	0
9. Ma Wan Marine Control Centre, Ting Kau	70 to 74	25	17	13	37	64	242	375	234	14	13	10	13	6	19
	75 to 79	4	0	0	0	0	13	9	3	0	0	2	0	1	2
	≥80	0	0	0	0	0	0	0	1	0	0	0	0	0	0
10. Park Island, Ma Wan	70 to 74	718	536	693	610	547	552	472	468	551	601	539	716	575	487
	75 to 79	219	87	158	125	126	145	146	153	181	205	177	233	146	138
	≥80	18	8	14	17	4	11	19	12	18	21	22	40	14	7
11. Tai Lam Chung Tsuen	70 to 74	46	13	17	10	12	17	20	14	31	30	36	62	22	11
	75 to 79	1	0	1	0	2	1	1	2	4	1	3	9	3	1
	≥80	0	0	0	0	0	0	0	0	1	0	0	0	0	0
12. Greenview Court, Yau Kom Tam, Tsuen Wan	70 to 74	3	7	0	9	13	57	83	41	2	0	0	0	0	2
	75 to 79	0	0	0	1	0	6	0	1	1	0	0	0	0	1
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
13. Cheung Hang Estate, Tsing Yi	70 to 74	2	4	0	30	48	118	76	62	2	0	4	0	7	13
	75 to 79	1	2	0	0	0	6	5	1	0	0	0	0	0	0
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14. Siu Ho Wan MTRC Depot, Sunny Bay	70 to 74	779	507	717	515	458	286	259	229	404	400	438	509	446	433
	75 to 79	95	58	66	29	46	32	26	25	40	24	58	44	43	32
	≥80	2	0	0	2	0	0	0	1	0	0	1	0	0	0

Noise Monitoring Terminals	*Noise Level (dB)*	*2011*												*2012*	
		Jan	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Jan*	*Feb*
15. Mount Butler Road, Jardine's Lookout	70 to 74	0	0	2	2	0	2	0	0	4	3	3	0	1	1
	75 to 79	0	0	0	0	0	0	0	0	1	0	0	0	0	0
	≥80	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16. Mount Haven, Liu To Road, Tsing Yi	70 to 74	6	1	4	4	1	19	12	8	1	0	1	3	4	2
	75 to 79	1	0	0	0	0	2	0	6	0	0	0	0	0	0
	≥80	0	0	0	0	0	0	1	1	0	0	0	0	0	0

Note:

* The noise monitoring terminal at Tung Chung was relocated from Fu Tung Estate to Caribbean Coast with effect from 1 January 2011.

Annex 2

Aircraft Types with Noise Events Exceeding 80 dB Recorded and Their Operating Airlines (From 1 January to 31 December 2011) (During 2300 hours to 0700 hours the Next Day)

Airlines	*Aircraft Type*
ACG Air Cargo Germany	Boeing B747-400
Aeroflot Russian International Airlines	McDonnell Douglas MD-11
AHK Air Hong Kong	Airbus A300-600
	Boeing B727-200
	Boeing B747-400
Air Bridge Cargo Airlines	Boeing B747-400
Air China Cargo	Boeing B747-400
Air France	Boeing B747-400
All Nippon Airways	Boeing B767-300
Asiana Airlines	Boeing B747-400
Atlas Air	Boeing B747-200
	Boeing B747-400
Avient Aviation	McDonnell Douglas MD-11
British Airways	Boeing B777-300ER
Cargolux Airlines International	Boeing B747-400
Cargolux Italia	Boeing B747-400
Cathay Pacific Airways	Airbus A330-300
	Airbus A340-300
	Boeing B747-400
	Boeing B777-300ER

Airlines	*Aircraft Type*
Cebu Pacific Air	Airbus A320
China Airlines	Boeing B747-400
China Cargo Airlines	McDonnell Douglas MD-11
Emirates Airline	Boeing B747-400
	Boeing B777-200LR
EVA Air	McDonnell Douglas MD-11
Evergreen International Airlines	Boeing B747-200
Federal Express	McDonnell Douglas MD-11
Finnair	McDonnell Douglas MD-11
Hong Kong Airlines	Airbus A330-200
	Boeing B737-300
Hong Kong Dragon Airlines	Airbus A330-300
Jade Cargo International	Boeing B747-400
Kalitta Air	Boeing B747-200
	Boeing B747-400
KLM Royal Dutch Airlines	Boeing B747-400
Korean Air	Boeing B747-400
K Mile Air	Boeing B727-200
Lufthansa Cargo	Boeing B747-200
	McDonnell Douglas MD-11
Nippon Cargo Airlines	Boeing B747-400
Polar Air Cargo	Boeing B747-400
Qatar Airways	Boeing B777-200LR
Qantas Airways	Boeing B747-400
Saudi Arabian Airlines	Boeing B747-200
	Boeing B747-400
Shanghai Airlines Cargo International	McDonnell Douglas MD-11
Singapore Airlines	Boeing B777-300ER
Singapore Airlines Cargo	Boeing B747-400
Spring Airlines	Airbus A320
TNT Airways	Boeing B747-400
Transmile Air Services	Boeing B727-200
UPS Parcel Delivery Services	Boeing B747-400
	McDonnell Douglas MD-11
World Airways	McDonnell Douglas MD-11
Private Aircraft	Boeing 737-700
	Gulfstream Aerospace Gulfstream 4
	Gulfstream Aerospace Gulfstream 5

Washrooms for Government Officials

18. **MR KAM NAI-WAI** (in Chinese): *President, will the Government inform this Council:*

(a) of the ranks of government officials (including Directors of Bureaux) entitled to the provision of a private washroom in their offices, together with a list of the Directors and other government officials concerned by rank;

(b) of the criteria adopted by the Government for determining which ranks of officials may be entitled to the provision of a private washroom in their offices; why such officials do not share the staff washrooms in the office buildings with other civil servants; and

(c) of the male-to-female toilet compartment (including urinal bowls) ratio in the new Central Government Offices?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, in considering whether private washrooms should be provided, we will consider the respective rankings of individual government officials as well as their operational needs so as to facilitate the officials concerned to take a wash and dress up for attending official functions. At present, private washrooms are provided in the offices of the Chief Executive, Secretaries of Departments, Directors of Bureaux, directorates of ranking D8 or above, and Heads of certain disciplined services departments.

The Architectural Services Department had specified in the tender document for the Tamar Central Government Offices that the number of male and female toilets should be 30% and 50% over the stipulated standards on the provision of toilets laid down in the Buildings Department's Practice Note No. 297. At present, the total number of male and female toilets in the staff offices in the Central Government Offices is 195 and 284 respectively. There are also 134 urinals in total in the male toilets. Private washrooms and toilets provided in communal areas are not included. On the basis of the aforementioned figures, the ratio of male to female toilets is about 1 to 1.5.

Measures to Promote Hong Kong's Textile and Apparel Industry

19. **DR LAM TAI-FAI** (in Chinese): *President, some members of the local textile and apparel industry have relayed to me that the industry, after several decades of robust development, has established a sound foundation in various aspects such as experience, technologies, talents, international insights and fashion sense, and so on, and Hong Kong can make good use of these advantages to develop itself into an Asian or even a global fashion centre. In this connection, will the Government inform this Council:*

(a) of the existing numbers of enterprises and employees engaged in the local textile and apparel industry and in relevant trades, as well as the industry's contribution to Hong Kong's economy;

(b) of the trade volume and the value of imports, re-exports and exports of goods of the textile and apparel industry in Hong Kong in each of the past five years, together with a breakdown by major markets, as well as the percentage of these figures in the relevant global total trade figures;

(c) whether it knows the respective numbers of factories established by the industry in the Pearl River Delta Region and other Asian regions (for example, Cambodia, Thailand and the Philippines, and so on) at present;

(d) whether there is any policy at present to facilitate the industry's development; if there is, of the details; if not, the reasons for that;

(e) of the measures in place to nurture talents for the industry;

(f) whether measures are in place to facilitate the career development of young fashion designers in Hong Kong; if so, of the details; if not, the reasons for that;

(g) whether measures had been put in place in the past 10 years to encourage the industry to invest in the areas of research and development (R&D) and innovation; if so, of the effectiveness of such measures;

(h) whether it has assessed the impact of section 39E of the existing Inland Revenue Ordinance (Cap. 112) and the 50:50 basis of tax apportionment on the upgrading, restructuring and sustainable development of the industry; if it has, of the details; if not, the reasons for that;

(i) given that the Ministry of Industry and Information Technology of the Mainland issued the "Development Plan for the Textile Industry under the 12th Five-year Plan" in January this year, which specifies, inter alia, the objective of raising the export share of brand name products to 25%, whether the authorities will consider, by making reference to the relevant practices, establishing an objective for the export share of Hong Kong brand name products and launching measures to facilitate the industry to build the Hong Kong brand;

(j) whether it has assessed the existing role of the local textile and apparel industry in the global supply chain of the fashion industry and the room for future development; if it has, of the details; if not, whether it will plan to make such an assessment; and

(k) whether it has assessed the potential of the local textile and apparel industry in developing into an Asian or global fashion centre; if it has, of the details; if not, the reasons for that?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, our replies to questions (a) to (k) are set out below:

(a) According to the information provided by the Census and Statistics Department (C&SD), as at end December 2011, the textiles and clothing (T&C) industry had 1 800 manufacturing establishments in Hong Kong and employed a total of 17 162 workers. Regarding other businesses related to manufacturing such as import and export trade and retailing, the C&SD does not have information on the number of establishments and employees.

The T&C industry has been, and remains, one of the pillars of Hong Kong's economy. In 2011, Hong Kong's total exports of T&C

products to the world amounted to HK$278.4 billion (comprising domestic exports and re-exports amounting to HK$4.4 billion and HK$274 billion respectively), accounting for 8.3% of our total merchandise exports.

(b) The relevant statistics of the import and export of Hong Kong's T&C products from 2007 to 2011 are at Annex.

(c) We understand that in recent years, some manufacturers have gradually relocated their production facilities to the Mainland as well as other places in Asia due to production cost and other commercial considerations. However, the C&SD does not have the figures on these relocated factories.

(d) The Government's policies are formulated, within the framework of a free market, to promote industrial development by creating a business-friendly environment through the provision of support services. Over the past few decades, Hong Kong's industries have shifted from the low-cost and labour-intensive mode of production to knowledge-based and high-value added production activities. In view of this trend, the Government and the supporting organizations have implemented various measures and services to facilitate the development of high value-added and technology-based industries. They also encourage industries to strengthen R&D capacity and improve the design and quality of products.

Measures introduced by the Government to support the industry include:

(i) The Trade and Industry Department (TID) as well as the Economic and Trade Offices outside Hong Kong closely monitor the latest global development of the textiles trade and disseminate updated information with a view to assisting the trade to draw up suitable commercial strategies and plans;

(ii) The TID administers the SME Loan Guarantee Scheme, SME Marketing Fund (EMF) and SME Development Fund (SDF) to support industries (including the textile and apparel industry)

to secure loans from lending institutions; encourage them to participate in export promotion activities to expand their overseas markets; and enhance their overall competitiveness;

(iii) The "Design Smart Initiative" of Create Hong Kong (CreateHK) and the "Innovation and Technology Fund" of the Innovation and Technology Commission also provide support for the textile and apparel industry in design and technological upgrade; and

(iv) Under the "Mainland/Hong Kong Closer Economic Partnership Arrangement", the textile and apparel industry has been able to enjoy zero tariff preference in exporting "Hong Kong-made" wearing apparels to the Mainland since 2004. The zero tariff preference not only enhances the market appeal of "Hong Kong-made" wearing apparels, but also helps the industry develop Hong Kong brands and high value-added products in order to enter into the medium to high-end market of the Mainland. As at 31 March 2012, over HK$4.53 billion worth of T&C products have benefitted from the zero tariff preference.

(e) A number of institutions are offering a wide array of programmes to nurture talent for the textile and apparel industry to equip them to join the industry and to enhance the professionalism, knowledge and skills of in-service personnel through promoting lifelong learning. Such institutions include the Hong Kong Polytechnic University, Vocational Training Council (VTC), Clothing Industry Training Authority (CITA), Caritas Bianchi College of Careers, School of Continuing and Professional Studies of The Chinese University of Hong Kong, Li Ka Shing Institute of Professional and Continuing Education of The Open University of Hong Kong, and HKU SPACE Po Leung Kuk Community College. These programmes cover different areas of the industry including fashion and textile design and technology, fashion marketing, merchandising and retail, fashion material analysis and technology, brand planning and product development.

The Textile and Clothing Training Board under the VTC provides advice on the training needs of the industry and develop relevant skill standards. The Training Board conducts manpower surveys of the industry every two years and publishes a manpower survey report as a reference for the industry as well as the education and training providers.

The CITA offers a wide array of full-time programmes on, *inter alia*, textiles, fashion, design and merchandising, which range from diploma to bachelor degree, for senior secondary school leavers and diploma graduates. It also provides part-time courses, seminars and workshops for in-service workers with a view to upgrading their skills.

As the Government's major partner in promoting design, the Hong Kong Design Centre (HKDC) has organized various overseas master classes for local practising designers so that they can learn from the leading international designers. For example, a master class on fashion accessories was organized in 2009 for local designers. The participants had a chance to experiment with innovative design methodologies in the Domus Academy in Italy.

The "Business of Design Week" and the "Knowledge of Design Week" organized by the HKDC have included conferences and workshops focused on fashion design with industry players as speakers, thereby facilitating exchanges among local design talents.

(f) The Government has provided funding support to the Hong Kong Science and Technology Parks Corporation since 2006 for running the Design Incubation Programme (DIP), which aims at nurturing design start-ups, including fashion design companies, and building up a design talent pool and design entrepreneurship in Hong Kong. The DIP offers funding and other support services to the incubatees, with a view to helping them meet the challenges during the early and critical stages of development. Each incubatee can receive funding support of a maximum of HK$500,000 on a reimbursement basis over the two-year incubation period to cover expenses incurred for office rental, general operation, promotion and development, management and training courses, technical and management

assistance, and so on. The incubatees also have opportunities to network with other industrial organizations, academic institutes, professional bodies and potential business partners. As at 31 March 2012, 104 incubatees have been admitted to the programme and about 20% of them are fashion design start-ups. The Government will provide funding support to the HKDC to launch another phase of the DIP to recruit about 60 additional design start-ups in a three-year period commencing 1 May 2012.

In addition, the DesignSmart Initiative and CreateSmart Initiative under the purview of CreateHK of the Commerce and Economic Development Bureau provide funding support to those initiatives which are conducive to the development of local creative industries including the fashion design sector. Through the initiatives supported by the funding schemes, local young fashion designers are provided with ample exposure opportunities. Such initiatives include the "Fashion World Talent Awards" held in 2009, the "Fashion Visionaries Exhibition" held from 2011 to 2012, and the "EcoChic Design Award Hong Kong" held in 2011 and 2012.

CreateHK has also collaborated with the Hong Kong Trade Development Council to organize the "Hong Kong Design and Branding Seminar Series" in the Pearl River Delta Region, Zhejiang Province and Fujian Province since 2009 to promote Hong Kong's design and branding services to the Mainland enterprises through seminars, mini-exhibitions, business matching activities, and so on. The Series have attracted the participation of many fashion designers and fashion enterprises, helping local fashion designers tap the Mainland market.

(g) In 1999, the Government set up the Innovation and Technology Fund (ITF) to provide funding support for projects that contribute to innovation and technology upgrading in manufacturing and service industries. As at 31 March 2012, ITF has supported over 1 700 R&D projects, including some 110 projects in T&C related technology areas at a total funding of HK$400 million.

In 2006, the Government set up R&D Centres in five selected focus areas to drive and co-ordinate applied R&D and to promote

commercialization, including the Hong Kong Research Institute of Textiles and Apparel (HKRITA). Over the past six years, the HKRITA has undertaken 65 R&D projects, of which 41 have been completed. The HKRITA is also actively promoting commercialization of its R&D deliverables, for example, finer Nu-Torque cotton yarn production, quick testing sensors of formaldehyde in textiles products, and so on.

In April 2010, the Government launched the R&D Cash Rebate Scheme to reinforce the research culture among companies and encourage them to establish stronger partnership with local research institutions. To encourage more companies to apply under the Scheme, we have raised the level of cash rebate from 10% to 30% starting from February 2012.

(h) The Secretary for Financial Services and the Treasury has explained to Members of the Legislative Council on a number of occasions that the Inland Revenue Department (IRD) follows the "territorial source" and "tax symmetry" principles in assessing the profits tax of Hong Kong enterprises which engage in processing trade in the Mainland, and the same is equally applicable to other Hong Kong enterprises. The requirement of section 39E of the Inland Revenue Ordinance and the 50:50 basis of tax apportionment are also based on the above taxation principles. The mode of business operation adopted for the purposes of upgrading and restructuring as well as for sustainable development is the commercial decision of individual enterprises. The IRD assesses taxes based on facts and in accordance with the law.

(i) The Government has in place various measures, including funding schemes, for example, SDF, EMF, ITF and R&D Cash Rebate Scheme, to help Hong Kong enterprises develop and promote Hong Kong brands.

To give further support to Hong Kong enterprises (including those in the textile and apparel industry), the Chief Executive announced in the 2011-2012 Policy Address a proposal to set up a dedicated fund of HK$1 billion to encourage them to move up the value chain and explore and develop the Mainland market through developing

brands, restructuring and upgrading their operations and promoting domestic sales in the Mainland.

The dedicated fund will comprise two parts including providing funding support to individual Hong Kong companies to undertake projects to develop brands, upgrade and restructure their business operations and promote sales in the Mainland market; and to non-profit-distributing organizations to undertake large-scale projects in the relevant areas to assist Hong Kong enterprises in general or in specific sectors.

We have consulted the trade and the Commerce and Industry Panel on the operational details of the fund. We plan to seek funding approval from the Finance Committee in May 2012 with a view to launching the fund in the first half of the year.

(j) and (k)

The geographical advantage and business facilitating environment of Hong Kong, together with the experience and purchase networks established by the industry, have enabled the industry to respond efficiently to the demand for just-in-time and different production requirements of the customers, and allowed the industry to enjoy advantage in overall production co-ordination. These positive factors have also attracted many international brands to set up their procurement centre in Hong Kong. In the longer term, the industry will continue to perform its function as a supply management centre for textile products and strengthen the role of Hong Kong as a purchasing hub for overseas buyers.

In addition, the industry has evolved itself from labour-intensive and low-cost manufacturing to quality production through novel design and quality output. So long as the industry continues in the direction of innovation and high-value added production, or production under its own brand name in the longer term, it can maintain its competitiveness and enhance the potential to develop further.

Annex

Total exports and imports of Hong Kong textiles & clothing products (in quantity) (2007-2011)

		2007			*2008*			*2009*			*2010*			*2011*		
		Domestic Exports	*Re-Exports*	*Imports*	*Domestic Exports*	*Re-Exports*	*Imports*	*Domestic Exports*	*Re-Exports*	*Imports*	*Domestic Exports*	*Re-Exports*	*Imports*	*Domestic Exports*	*Re-Exports*	*Imports*
Mainland of China	Kg	88,618,253 (78.2%)	1,760,587,227 (72.1%)	1,950,548,502 (70.9%)	70,802,184 (80.3%)	1,440,453,314 (71.1%)	1,646,722,869 (73.3%)	45,224,342 (80.9%)	1,246,137,053 (73.8%)	1,329,089,630 (72.2%)	35,364,560 (79.6%)	1,241,088,308 (73.2%)	1,319,912,285 (71.4%)	22,906,815 (81.3%)	938,713,259 (69.6%)	1,039,177,214 (71.7%)
	SqM	155 (9.8%)	450,485 (33.2%)	4,122,403 (55.4%)	14 (0.6%)	413,005 (32.0%)	4,461,137 (61.2%)	213 (8.9%)	127,473 (14.1%)	4,079,367 (69.3%)	513 (17.4%)	174,367 (17.2%)	4,994,798 (71.7%)	0 (0.0%)	210,445 (16.3%)	5,024,088 (72.8%)
	Pcs	321,164,326 (38.8%)	278,323,392 (5.9%)	5,745,632,830 (96.5%)	166,167,019 (39.3%)	289,369,167 (6.2%)	5,261,333,981 (95.9%)	26,229,822 (37.3%)	262,351,058 (5.9%)	4,908,172,596 (94.9%)	32,387,248 (53.1%)	272,173,220 (6.2%)	4,664,143,288 (93.0%)	13,413,781 (44.1%)	268,942,622 (7.1%)	3,869,155,004 (93.3%)
US	Kg	1,868,470 (1.6%)	87,436,207 (3.6%)	13,886,541 (0.5%)	961,565 (1.1%)	65,088,157 (3.2%)	11,640,469 (0.5%)	198,223 (0.4%)	46,829,705 (2.8%)	7,770,841 (0.4%)	175,625 (0.4%)	47,277,975 (2.8%)	9,934,105 (0.5%)	134,244 (0.5%)	36,844,222 (2.7%)	9,617,618 (0.7%)
	SqM	164 (10.3%)	388,597 (28.6%)	702,359 (9.4%)	0 (0.0%)	341,322 (26.4%)	703,603 (9.7%)	238 (10.0%)	220,668 (24.4%)	290,616 (4.9%)	355 (12.0%)	226,833 (22.3%)	357,601 (5.1%)	336 (2.8%)	230,461 (17.8%)	400,673 (5.8%)
	Pcs	269,257,479 (32.5%)	1,221,984,886 (25.7%)	16,584,307 (0.3%)	184,079,747 (43.5%)	1,148,411,963 (24.7%)	18,869,180 (0.3%)	20,395,727 (29.0%)	1,162,827,345 (26.2%)	15,136,645 (0.3%)	11,110,952 (18.2%)	1,264,786,896 (28.7%)	28,528,995 (0.6%)	5,440,307 (17.9%)	1,076,367,658 (28.5%)	32,231,123 (0.8%)
EU	Kg	1,084,625 (1.0%)	52,680,429 (2.2%)	39,955,777 (1.5%)	414,604 (0.5%)	47,079,585 (2.3%)	32,850,700 (1.5%)	202,406 (0.4%)	32,691,992 (1.9%)	24,420,394 (1.3%)	161,934 (0.4%)	29,758,963 (1.8%)	28,821,952 (1.6%)	149,111 (0.5%)	25,433,600 (1.9%)	26,081,297 (1.8%)
	SqM	17 (1.1%)	79,725 (5.9%)	1,138,679 (15.3%)	173 (7.3%)	70,176 (5.4%)	839,057 (11.5%)	442 (18.5%)	76,475 (8.5%)	685,364 (11.6%)	683 (23.1%)	80,294 (7.9%)	636,228 (9.1%)	498 (4.1%)	116,760 (9.0%)	508,825 (7.4%)
	Pcs	177,640,060 (21.5%)	1,701,082,869 (35.8%)	49,068,083 (0.8%)	45,742,603 (10.8%)	1,706,046,327 (36.7%)	42,874,498 (0.8%)	11,382,840 (16.2%)	1,438,553,484 (32.5%)	43,948,364 (0.8%)	6,887,927 (11.3%)	1,417,762,620 (32.1%)	48,851,735 (1.0%)	2,783,583 (9.1%)	1,147,858,192 (30.4%)	54,929,581 (1.3%)
Others	Kg	21,714,595 (19.2%)	542,428,491 (22.2%)	746,234,620 (27.1%)	15,954,838 (18.1%)	473,271,442 (23.4%)	554,399,284 (24.7%)	10,270,616 (18.4%)	362,699,276 (21.5%)	478,716,759 (26.0%)	8,735,718 (19.7%)	376,688,151 (22.2%)	490,764,637 (26.5%)	4,985,381 (17.7%)	348,353,887 (25.8%)	374,270,935 (25.8%)
	SqM	1,250 (78.8%)	438,359 (32.3%)	1,481,641 (19.9%)	2,186 (92.1%)	466,367 (36.1%)	1,286,855 (17.7%)	1,498 (62.7%)	479,200 (53.0%)	830,745 (14.1%)	1,402 (47.5%)	534,156 (52.6%)	975,851 (14.0%)	11,213 (93.1%)	736,735 (56.9%)	970,379 (14.1%)
	Pcs	59,354,242 (7.2%)	1,547,404,518 (32.6%)	140,996,952 (2.4%)	26,843,375 (6.3%)	1,502,972,796 (32.3%)	161,489,187 (2.9%)	12,260,328 (17.4%)	1,567,839,327 (35.4%)	204,159,778 (3.9%)	10,624,545 (17.4%)	1,455,136,619 (33.0%)	275,701,792 (5.5%)	8,811,879 (28.9%)	1,278,045,714 (33.9%)	191,827,224 (4.6%)
World	Kg	113,285,943 (100.0%)	2,443,132,354 (100.0%)	2,750,625,440 (100.0%)	88,133,191 (100.0%)	2,025,892,498 (100.0%)	2,245,613,322 (100.0%)	55,895,587 (100.0%)	1,688,358,026 (100.0%)	1,839,997,624 (100.0%)	44,437,837 (100.0%)	1,694,813,397 (100.0%)	1,849,432,979 (100.0%)	28,175,551 (100.0%)	1,349,344,968 (100.0%)	1,449,147,064 (100.0%)
	SqM	1,586 (100.0%)	1,357,166 (100.0%)	7,445,082 (100.0%)	2,373 (100.0%)	1,290,870 (100.0%)	7,290,652 (100.0%)	2,391 (100.0%)	903,816 (100.0%)	5,886,092 (100.0%)	2,953 (100.0%)	1,015,650 (100.0%)	6,964,478 (100.0%)	12,047 (100.0%)	1,294,401 (100.0%)	6,903,965 (100.0%)
	Pcs	827,416,107 (100.0%)	4,748,795,665 (100.0%)	5,952,282,172 (100.0%)	422,832,744 (100.0%)	4,646,800,253 (100.0%)	5,484,566,846 (100.0%)	70,268,717 (100.0%)	4,431,571,214 (100.0%)	5,171,417,383 (100.0%)	61,010,672 (100.0%)	4,409,859,355 (100.0%)	5,017,225,810 (100.0%)	30,449,550 (100.0%)	3,771,214,186 (100.0%)	4,148,142,932 (100.0%)

Note:

The figures in brackets denote the percentage share of Hong Kong's trade (in quantity) with the specified place in Hong Kong's total trade (in quantity) with the world.

Total exports and imports of Hong Kong textiles & clothing products (in value) (2007-2011)

(HK$ Mn)

	2007			*2008*			*2009*			*2010*			*2011*		
	Domestic Exports	*Re-exports*	*Imports*	*Domestic Exports*	*Re-exports*	*Imports*	*Domestic Exports*	*Re-exports*	*Imports*	*Domestic Exports*	*Re-exports*	*Imports*	*Domestic Exports*	*Re-exports*	*Imports*
Mainland of China	12,386 (29.1%)	75,497 (26.3%)	199,714 (78.3%)	8,141 (32.0%)	69,441 (24.2%)	187,658 (78.1%)	2,791 (42.0%)	58,138 (23.5%)	156,444 (79.2%)	2,494 (48.0%)	66,573 (24.7%)	166,795 (76.9%)	2,232 (51.1%)	66,365 (24.2%)	163,992 (74.5%)
US	15,444 (36.3%)	70,532 (24.6%)	2,343 (0.9%)	11,386 (44.8%)	67,651 (23.5%)	2,393 (1.0%)	1,591 (23.9%)	62,676 (25.3%)	1,840 (0.9%)	848 (16.3%)	68,868 (25.6%)	2,315 (1.1%)	589 (13.5%)	67,505 (24.6%)	2,434 (1.1%)
EU	10,801 (25.4%)	66,635 (23.3%)	16,433 (6.4%)	3,278 (12.9%)	77,501 (27.0%)	17,398 (7.2%)	739 (11.1%)	65,371 (26.4%)	13,322 (6.7%)	426 (8.2%)	66,668 (24.7%)	16,951 (7.8%)	251 (5.8%)	64,030 (23.4%)	22,040 (10.0%)
Others	3,866 (9.1%)	73,913 (25.8%)	36,667 (14.4%)	2,608 (10.3%)	72,736 (25.3%)	32,837 (13.7%)	1,530 (23.0%)	61,423 (24.8%)	25,838 (13.1%)	1,425 (27.4%)	67,382 (25.0%)	30,769 (14.2%)	1,292 (29.6%)	76,115 (27.8%)	31,573 (14.3%)
World	42,497 (100.0%)	286,577 (100.0%)	255,157 (100.0%)	25,413 (100.0%)	287,329 (100.0%)	240,286 (100.0%)	6,651 (100.0%)	247,608 (100.0%)	197,444 (100.0%)	5,193 (100.0%)	269,491 (100.0%)	216,830 (100.0%)	4,364 (100.0%)	274,015 (100.0%)	220,039 (100.0%)

Note:

The figures in brackets denote the percentage share of Hong Kong's trade (in value) with the specified place in Hong Kong's total trade (in value) with the world.

(Source: Census and Statistics Department)

Hong Kong People Serving Imprisonment Sentences Abroad

20. **MR PAUL TSE** (in Chinese): *President, it has been learnt that at least seven to eight Hong Kong permanent residents who are held by the Philippine Government in the high-security Bilibid Prison have served their sentences there for over 10 years, and they applied to the SAR Government in February last year for returning to Hong Kong to serve their sentences under the transfer of sentenced persons agreement (TSPA) signed by the SAR Government with the Philippine Government. However, they have yet to know the progress made by the authorities in processing the applications. In this connection, will the Government inform this Council:*

(a) of the mechanism put in place by the SAR Government to process the aforesaid applications and the processing procedures; the reasons why the aforesaid applications, which were made more than a year ago, have still not been approved, as well as the current progress of each case; whether the SAR Government has informed the aforesaid prisoners of the progress of those applications so far; if it has not, of the reasons for that;

(b) of the number of cases (including those cases in which sentences were served in countries other than the Philippines) in each of the past five years in which approval had been granted for the prisoners to return to Hong Kong to serve their sentences; the average time taken to process a case, and the respective time taken in respect of the cases requiring the longest and shortest processing time;

(c) whether the SAR Government has taken the initiative to contact Hong Kong permanent residents serving sentences of more than 10 years in countries which have signed TSPA to inform them of their rights and the procedures to apply for returning to Hong Kong to serve their sentences; and

(d) given that the aforesaid Hong Kong people have served their sentences in the Philippines for 17 years to 18 years and it has been learnt that some of them who are in old age and poor health wish that they can return to Hong Kong in their remaining years and will not die in a foreign place, whether the SAR Government will review

and process their applications afresh; if it will, of its plans; if not, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): President, to enable Hong Kong residents serving sentences in other places and non-local residents serving sentences in Hong Kong to adapt to prison life more easily and to assist their rehabilitation, the policy of the Government of the Hong Kong Special Administrative Region (SAR) is to facilitate the transfer of prisoners back to Hong Kong or to their places of origin to serve their remaining sentences in a familiar environment which is free from language barrier and where their friends and relatives can visit them on a regular basis. This will be conducive to their rehabilitation. The Transfer of Sentenced Persons Ordinance (Cap. 513) (the Ordinance) provides a legal framework for the transfer of sentenced persons (TSP) between Hong Kong and other countries and Macao SAR. Since the Ordinance came into effect in June 1997, the SAR Government has signed TSPAs with 10 overseas jurisdictions and Macau SAR, including the Philippines.

(a) and (d)

Hong Kong residents serving sentences in the Philippines may apply to the SAR Government or the Philippine Government if they wish to be transferred back to Hong Kong to serve their remaining sentences. We will process their applications in accordance with the Ordinance and the bilateral TSPA. In general, each application has to satisfy the following main conditions:

(i) The act, on which the sentence has been imposed, would also constitute a criminal offence according to the laws of Hong Kong if it had been committed in Hong Kong;

(ii) the sentenced person is a permanent resident of Hong Kong;

(iii) the judgment is final and no further proceedings relating to the offence or any other offence are pending in the Philippines; and

(iv) there is a tripartite consent to the transfer given by the SAR Government, the Philippine Government and the sentenced person.

According to the agreement, if a Hong Kong resident sentenced in the Philippines applies for transfer back to Hong Kong to serve his remaining sentence, the Philippine Government has to provide specified information on the sentenced person concerned, including the legal documents relating to his conviction and sentence, the length of sentence already served and the remaining sentence, and so on.

The SAR Government has so far received seven applications from Hong Kong residents referred by the Chinese Embassy in the Philippines to apply for transfer to Hong Kong to serve their remaining sentences. According to established practice, we have approached the Philippine Government a number of times through appropriate channels, including the Philippine Consulate-General in Hong Kong and the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the SAR to obtain the documents required for those cases. If the cases are confirmed to satisfy the conditions for transfer, we will confirm with the Philippine side on their consent to the transfer. So far, we are still awaiting responses from the Philippine side. The SAR Government will continue to follow up the cases with the Philippine Government through various practicable channels with a view to obtaining the basic information required and confirming the consent of the Philippine Government as soon as possible, so as to proceed with the transfer procedures. In response to individual applicant's enquiry, the SAR Government will let them know the progress of their applications through officers of the Chinese Embassy in the Philippines.

(b) As mentioned above, in processing each transfer application, we have to obtain the necessary documents or information to ensure that the applications satisfy the conditions for transfer under the Ordinance and the bilateral agreement. The processing time required for each case is affected by various factors, for example, the time taken to obtain the relevant documents, confirm the calculation

of the remaining sentence to be served in Hong Kong and obtain the consent of the relevant Government and the applicant, and so on. The processing time ranges from a few months to a number of years. In the past five years, a total of 35 sentenced persons were transferred back to Hong Kong from other places to serve their sentences. A breakdown of the figures by year is as follows:

2007	—	23
2008	—	5
2009	—	2
2010	—	4
2011	—	1

(c) The objective of signing TSPAs with other places is to facilitate the TSP back to their places of origin to serve their remaining sentences, which is conducive to their rehabilitation. After signing the TSPA, both parties will take appropriate measures to inform the sentenced persons of the application arrangement for transfer to their places of origin and the basic conditions, and so on, for their consideration. Depending on individual circumstances, Hong Kong residents serving sentences outside Hong Kong may also make enquiries with the Chinese Embassy in the country concerned or the Assistance to Hong Kong Residents Unit of the Immigration Department through their family members in Hong Kong. We will also consider whether we can request again each jurisdiction, which has signed TSPA with SAR, or through the Chinese Embassy in the respective jurisdiction, to inform Hong Kong residents serving sentences in those jurisdictions (where feasible) of the application arrangement for transferring to Hong Kong to serve their sentences.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): Bills. We now resume the Second Reading debate on the Protection of Wages on Insolvency (Amendment) Bill 2011.

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 2011

Resumption of debate on Second Reading which was moved on 13 July 2011

PRESIDENT (in Cantonese): Mr WONG Ting-kwong, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

MR WONG TING-KWONG (in Cantonese): President, in my capacity as Chairman of the Bills Committee on the Protection of Wages on Insolvency (Amendment) Bill 2011 (the Bills Committee), I report the salient points of the deliberation of the Bills Committee.

The objective of the Protection of Wages on Insolvency (Amendment) Bill 2011 (the Bill) is to expand the scope of the Protection of Wages on Insolvency Fund (PWIF) to cover the amount of pay for untaken statutory holidays within the four-month period immediately before the employee's last day of service and untaken annual leave being payable on account of employment in the last leave year under the Employment Ordinance (EO), where the amount must not exceed $15,000.

Some members consider that as a payment ceiling of $15,000 has already been laid down in the Bill ……

PRESIDENT (in Cantonese): Mr WONG, do you mean to say $10,500?

MR WONG TING-KWONG (in Cantonese): Sorry …… as a payment ceiling of $10,500 has already been laid down in the Bill, all limits on the period in respect of pay for untaken annual leave and for untaken statutory holidays should be removed. Moreover, some Members propose that with the payment capped at $10,500, the limit on period in respect of pay for untaken annual leave should be relaxed to cover pay for untaken annual leave for the last two leave years payable upon termination of employment contract under the EO. Other Members consider that any proposal should be made in line with the prudent management of the PWIF.

The Bills Committee had passed a motion requesting the Administration to abolish the ceiling on the number of days for calculating the amounts of pay for untaken annual leave and the pay for untaken statutory holidays. Subsequently, the authorities had consulted the Protection of Wages on Insolvency Fund Board (PWIF Board) and the Labour Advisory Board (LAB). After considering the views of the PWIF Board and the LAB, the authorities proposes to extend the ex gratia payment to cover pay for the employee's untaken annual leave earned in the last two leave years. However, as statutory holidays must be granted within 90 days under the EO, the authorities consider that the limits on the number of days or period in respect of pay for untaken statutory holidays should not be abolished.

While some Members are in support of the revised proposal, some other Members remain of the view that given the payment ceiling of $10,500, the limits on the period in respect of pay for untaken annual leave and untaken statutory holidays should be removed.

The Administration has stressed that the PWIF Board has undertaken to review the coverage of the PWIF in respect of pay for untaken annual leave, pay for untaken statutory holidays and the payment ceiling of $10,500 one year after the implementation of the Bill, if enacted. Ms LI Fung-ying has proposed to include other items covered by the PWIF in the review. The Administration has undertaken to convey Ms LI's proposal to the PWIF Board and report the outcome of the review to the Panel on Manpower at an appropriate time.

Since the PWIF Board will conduct a review in future, Members do not oppose the revised proposal of the authorities. In this connection, Secretary for Labour and Welfare will propose the relevant amendments later.

Members have noted that the total amount of pay for both untaken annual leave and untaken statutory holidays from the PWIF is capped at $10,500, Members are concerned about the apportionment between the payment for these two categories of entitlement should the total amount exceed the ceiling payment.

The Administration has responded that the computation will not affect the employees' claims to be registered as priority debts and detailed computation will be worked out and discussed by the Labour Department with the Official Receiver's Office and the Legal Aid Department after the passage of the Bill.

Finally, Members have urged the Administration to implement the proposals in the Bills as soon as possible to provide better protection to employees.

I will then express my views on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

The DAB considers that the revised proposal put forth in the Bill will be conductive to safeguarding and reinforcing the protection of employee's benefits, so we will support the Bill.

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

According to the EO, pay for untaken annual leave and untaken statutory holidays is the entitlement of employees who have been employed under a continuous contract for a specified period. The inclusion of these two entitlements in the coverage will further enhance employees' protection, and ease the social conflicts arising from the default of wages by insolvent employers. The proposal will not only fulfil the purpose of establishing the PWIF, but will also expand the scope of the PWIF.

According to the initial proposal of the authorities, the scope would only be expanded to cover pay for untaken annual leave being payable on account of employment in the last leave year and the pay for untaken statutory holidays fall within the four-month period immediately before the applicant's last day of service, where the amount should not exceed $10,500. In the course of scrutiny, the major cause of dispute is whether limits on the period in respect of pay for untaken annual leave and untaken statutory holidays should be set given the ceiling payment of $10,500. Some Members consider that the limits should be removed, some consider that the limits should be relaxed and some Members consider that the limits should remain unchanged.

The DAB considers the proposal relating to pay for untaken annual leave in the last leave year is open to further discussion. At the meeting, I had quoted the example of an employee who had not taken any annual leave one year and 11 months prior to the insolvency of the company, but since employees would only

be granted the pay for untaken annual leave in the last leave year, their entitlements would not be under the best protection. However, to avoid further delay in the legislative process which will prevent the employees affected from benefiting earlier, the DAB considers that the Bill should be passed as soon as possible, and then a review should be conducted when details of the practical operation is known, so as to decide the further enhancement measures to be taken.

However, the Bills Committee later passed a motion to request the authorities to consult the PWIF Board and the LAB. Subsequently, the two Boards had made amendments in response to the views of Members by extending the limit on the period for pay for untaken annual leave to the last two leave years, whereas the limit on the period for pay for untaken statutory holidays would remain unchanged.

The DAB agrees with the two Boards in choosing to relax the amendment in the Bill rather than removing the limit of the period. On the one hand, the relaxed amendment will enable employees, low-income employees in particular, to receive better protection. On the other hand, the objective for setting up the PWIF is to provide suitable assistance to employees of insolvent companies, where an ex gratia payment is granted to employees as the final safety net to provide timely relief; the PWIF does not intend to repay all the wages in arrears for the insolvent employers. Hence, the relaxed amendment will prevent unscrupulous employers from abusing the PWIF by shifting the liability of non-payment of statutory entitlements to the PWIF. The arrangement will also encourage employers and employees to develop the habit of making better co-ordination and leave arrangements as soon as possible, so as to avoid the accumulation of leave for a prolonged period.

Deputy President, though the PWIF has now accumulated a vast reserve, the fund should not be used carelessly, neglecting the factors of change in the economic prospect. We should not overlook the impact of the implementation of minimum wage, where the increasing operating costs of small and medium enterprises (SMEs) have forced the closure of more companies, resulting in an increasing number of applications to the PWIF and a higher expenditure of the PWIF. Hence, in the view of the DAB, the final amendment proposed by the two Boards and the authorities is an improvement, and the revised proposal can make effective use of the resource of the fund to expand the scope of coverage progressively and appropriately, striking a balance among the protection of

employees' rights and benefits, the responsibility of employers and the prudent management of the PWIF.

The DAB urges the authorities to implement the relevant proposals expeditiously, so that the employees affected will enjoy more comprehensive protection as soon as possible. Moreover, the authorities should step up its promotion effort, so that employers and employees can understand the relevant amendments, particularly the computation of the pay for untaken annual leave. The authorities should provide clear and simple explanation with illustrating examples to ensure clear understanding on the part of employees and avoid disputes. At the same time, the authorities should perform its gate-keeping function properly, such as stepping up the detection to combat the illegal act of default of wages.

Moreover, the authorities stated that the PWIF Board had undertaken to conduct a review based on the experience of practical operation one year after the enactment of the Bill, thus the authorities should monitor closely the situation after the formal implementation of the measures, and report to the Legislative Council if necessary.

With these remarks, Deputy President, I support the Bill and the amendments proposed by the authorities.

MR IP WAI-MING (in Cantonese): Deputy President, according to the existing legislation, when an employer becomes insolvent, employees who are owed wages, wages in lieu of notice and severance payment may apply for ex gratia payment from the Protection of Wages on Insolvency Fund (PWIF). Since the policy may provide timely relief to employees, the Hong Kong Federation of Trade Unions (FTU) has all along been greatly concerned about the development of the PWIF and the adequacy of the ex gratia payment, as well as whether the coverage can keep abreast of the times, so as to effectively protect the entitlements of employees.

Regrettably, though the rate of levy has been adjusted several times since the establishment of the PWIF in 1985, there is a lack of a comprehensive review on the coverage of ex gratia payment. For this reason, in the past many years, the FTU had urged the authorities at various times and on various occasions to

expeditiously review and revise the coverage of the PWIF. At the meeting of the Legislative Council Panel on Manpower held on 29 November 2009, a relevant motion was passed to urge the Administration to amend the scope of coverage of the PWIF.

After a long wait, the authorities eventually submitted the Amendment Bill to the Legislative Council, and today, we will proceed with the Second Reading and Third Reading of the Bill. This is a belated spring to many employees. The FTU welcomes the proposal of the Bill to expand the scope of ex gratia payment of the PWIF to cover the pay for untaken statutory holidays and untaken annual leave, and hopes that the proposal will be implemented as soon as possible to benefit more affected employees.

Nevertheless, the Government has proposed certain restrictions in expanding the scope of coverage, which directly restrict employees in obtaining the payment. Hence, in the course of scrutiny, I had raised concerns and proposals on various aspects, with a view to improve the legislation.

As at the end of last year, the PWIF has an accumulated surplus of over $2.6 billion, and coupled with the year-on-year decrease in the number of applications for ex gratia payment, the conditions are favourable for the expansion of the scope of coverage of the PWIF. However, on the pretexts of preventing employers from shifting the liability of default of pay for statutory entitlement to the PWIF, and improving the protection to employees in a progressive manner, the Administration has set up various hurdles and restrictions in the Bill. They include capping the total amount of ex gratia payment for untaken annual leave and untaken statutory holidays at $10,500, limiting statutory holidays to those falling within the four-month period immediately prior to the applicant's last day of service, and capping the amount of ex gratia payment to the full entitlement of the applicant for the last leave year, which ranges from seven to 14 days' pay.

I have reservation about the relevant proposal. Given that the PWIF has an enormous amount of accumulated surplus, and since a payment ceiling of $10,500 has been stipulated in the legislation, it is not necessary to impose a limit on the period, so as to provide proper protection to employees. In fact, even if the ceiling of $10,500 is removed, we do not consider it a problem. The

authorities should know that 85% of the applications for pay for untaken annual leave and untaken statutory holidays do not exceed $10,500 in total. In other words, even if the ceiling of $10,500 is removed, only 15% of the applications will exceed the limit. Hence, we consider that the implication will be insignificant. After all, employees are entitled to receive full pay for untaken annual leave and untaken statutory holidays.

During the discussion at the scrutiny stage, we were glad that the Administration had reconsidered the views of the Bills Committee and accepted our proposal. As a result, the coverage of pay for untaken annual leave was extended from the full entitlement of an employee earned in a period not exceeding the last leave year to that in a period not exceeding two leave years, that is, an increase ranging from 14 to 28 days.

However, we still consider this inadequate. In the long term, the FTU expects the Administration to remove the payment ceiling of $10,500. Moreover, we think the PWIF should expand its scope to cover long service payment in addition to severance payment, so as to provide better financial assistance and protection to employees of insolvent employers by all means. Regarding the maximum amount of ex gratia payment granted from the PWIF to each employee, it has increased from only $8,000 wages in arrears in 1985 to four months' wages in arrears, at a ceiling of $36,000 at present. However, with the implementation of the minimum wage, the salaries of grass-roots employees have in general increased, and the medium wage has also increased. According to the statistics of the Census and Statistics Department, after 1 May 2011, the monthly median wage of local employees has reached $12,800, 8.5% higher than $11,800 in the second quarter of 2010. In this connection, I think the authorities should review as soon as possible the payment ceiling for wages in arrears and the limit on the period of service, so as to ensure that the policy advances with the times and copes with the actual needs.

Deputy President, it is true that the present Bill has not covered all the major factors we mentioned earlier and the Bill itself still has much room for improvement. However, in order to enable affected employees of insolvent employers to receive their entitlement for pay for untaken annual leave and untaken holidays as soon as possible, I agree to first pass the Bill and then conduct a comprehensive review one year after its implementation, so as to

further improve the legislation. We hope the Labour and Welfare Bureau will heed our earlier views and include them in the scope of the next review.

With these remarks, Deputy President, the FTU supports the Bill.

MR LEE CHEUK-YAN (in Cantonese): Deputy President, on behalf of the Hong Kong Confederation of Trade Unions (CTU), I cannot but swallow my wrath and support the amendments to the Bill. I am disgruntled. Why would I say so? If the Bill as a whole can offer protection to more employees, we will definitely support it. But what kind of protection is proposed in this Bill?

In fact, the protection proposed this time is to include untaken annual leave and untaken paid statutory holidays in the scope of the Protection of Wages on Insolvency Fund (PWIF), yet subject to two caps. I would call that double restrictions. The first restriction is to cap the coverage for statutory holidays to the ones that fall within the four-month period immediately before the employee's last day of service. The second restriction is to cap the coverage for annual leave ranging from seven to 14 days for the last leave year, as initially proposed in the Bill. In other words, statutory holiday coverage is subject to the four-month period restriction and annual leave coverage is subject to the seven to 14 days' restriction, in addition to the payment ceiling of $10,500.

Deputy President, during the discussion at the Panel on Manpower, we had expressed to the Secretary that we preferred to have the restriction on the number of days of leave removed entirely and maintain the payment ceiling of $10,500. We have indeed made a significant compromise by accepting the payment ceiling. Though the payment proposed by the Government is capped at $10,500, I agree to accept it. I have made a computation on the $10,500 payment ceiling. Upon the implementation of a minimum wage, a worker who works for 12 hours a day will earn a daily wage of $400, which means the payment ceiling will at least cover 25 days of leave. If the daily wage is $300, it will cover over 30 days of leave. Based on this computation, I no longer insist and accept the $10,500 payment ceiling. We put forth this request at the Panel on Manpower, and the Secretary, after consulting the PWIF Board and the Labour Advisory Board (LAB), told us — the time when we started to scrutinize the Bill — that there should be a four-month period restriction on statutory holiday coverage and

a seven to 14 days' restriction on annual leave coverage. We queried the reasons for imposing such restrictions.

Deputy President, the number of statutory holidays that fall within a four-month period is really limited. Members all know that. Take the four months following today as an example, how many holidays will there be? Not many, a few days at most. There are only 12 statutory holidays a year, and there are only three to four days of statutory holidays in a four-month period. The coverage of three to four days is inadequate, for the employee may not have taken leave for the entire year. These are statutory holidays, Deputy President. These statutory holidays are stipulated in the law, they are not favours bestowed. But now, a four-month restriction is imposed for statutory holiday and a seven to 14 days' restriction for annual leave. Though an amendment will be proposed later to extend the restriction ranging from 14 to 28 days, there is still a restriction on the number of days of leave.

There is one point I do not understand, since a payment ceiling has already been imposed, why do we have to restrict the number of leave days? I would like Members to look at the operation of the PWIF. At present, the PWIF has an accumulated surplus of $2.6 billion. Take the year 2010-2011 as an example. The income was $510.9 million and the expenditure was $90.6 million, so the surplus for the year was $429.6 million. For the year 2009-2010, the surplus was $289.5 million, and the accumulated surplus was $2.6 billion.

How much will be incurred if our proposal on removing all restrictions on the number of leave days and maintaining merely the payment ceiling of $10,500 is accepted? Let us use the year 2002 as an example, for that was the worst year with the largest number of applications. The amount involved was only some $70 million. For a normal year with an additional increase of 14%, the amount incurred is around $10 million or some $10 million. We are only talking about $10 million or so, it is a small proportion in terms of the $100 million or $200 million surplus; and the amount is insignificant when compared with the $2.6 billion surplus.

The authorities always act this way. The Secretary is really mean. Why should he be so mean? He will definitely say that public money is involved and we should not spend public money recklessly. But I am not spending public money recklessly now. The purpose for setting up the PWIF is to protect

employees. At present, the PWIF is running a surplus of $2.6 billion, so does it matter to allocate an extra $10 million? Besides, I accept retaining the payment ceiling of $10,500 in removing the restrictions on the number of leave days. It is absolutely a humble request. It is definitely practicable. Though I say some $10 million should be set aside, I may have overestimated the actual amount incurred. I cannot but ask if the Secretary suffers from an "unkindly illness"; if not, why is he so mean and calculating all the time, why not offer the best option? I find this practice of the Secretary most annoying. The authorities have more than enough money to adopt the proposal, but it is unwilling to do so.

I am greatly disappointed about this, and I must strongly reprimand the Secretary. The Secretary may shift the blame, so I have to reprimand the PWIF Board and the LAB as well, for the Secretary said that he had conveyed our request to the two Boards, but they insisted on imposing such restrictions. I do not understand what the PWIF Board is worrying about. I wonder what it wants to do with the $2.6 billion at hand and what makes it unwilling to set aside $10 million out of the $2.6 billion. What is the Board doing and what is it arguing about? I really do not see the point for going through all these disputes. After the disputes, the restriction on the coverage for annual leave is relaxed, but merely from seven to 14 days to 14 to 28 days. Is this kind of alms-giving? Why not handle the issue properly? This makes me angry. Deputy President, I really do not understand why the Government has to be so mean and why proper protection cannot be provided to employees.

Sure, the Secretary has stated two reasons, but both are unjustified. The first reason is about the progressive improvement. This progressive improvement approach may be regarded as the so-called "imperial sword" or the sacrosanct principle, but what is the definition of progressive? The PWIF now has $2.6 billion at hand, is it not a progressive approach to allocate an additional amount of $10 million? I have not proposed removing the payment ceiling of $10,500, I only propose lifting the restriction on the coverage of the number of leave days, so that low-income employees will have a greater number of days of protection.

The second reason stated by the Secretary is that it is unjustified for the PWIF to shoulder all the wages defaulted by unscrupulous employers, and there is no reason to transfer all the liabilities to the PWIF. In fact, the objective of establishing the PWIF is for the transfer of liabilities. It is all about wages in

default. The PWIF is after all a means for undertaking liabilities transferred by unscrupulous employers. Certainly, we may replace the word "transfer" with the word "joint undertaking", where society or employers as a whole undertake the risk of wages in default by putting some money together. It is just normal, so what is wrong with this transfer of liabilities? The PWIF is set up for the transfer of liabilities.

As the Secretary has once stated, maybe there is a view in the committee that the provision of more protection might encourage certain employers to default on their payment for holidays. I think this is nonsense. If that is the case, we may as well abolish the PWIF altogether. If they are so competent, why not let them help employees get back their pay. The PWIF is set up out of the concern that the existing laws on insolvency fail to assist employees to recover their pay. The purpose of the PWIF is to protect the interest of employees, so how can we say that it condones employers?

Some people say that employees also have the responsibility of not allowing employers to default on wages. Have Members heard about the bogus self-employment arrangement? Why there are so many unpaid days of leave, Deputy President? Actually, in many cases, employees are being forced by employers to be self employed. Employees only know about the arrangement of bogus self-employment when they consult the Labour Department and trade unions upon their dismissal. This should be attributed to the inadequate promotion of the Government. Honestly, and to be fair, even with adequate promotion, employees dare not make a sound when they are alleged as adopting bogus self-employment. Has the Government offered any protection to them? Has the Labour Department ensured that employees who report employers' dismissal act will be offered immediate protection? No, employees will still be dismissed. The Government fails to protect them. It cannot adamantly tell the employees, "Do not be afraid. If you are dismissed, I will request your employer to reinstate your job immediately." No, this is not the case.

So, employees should hardly be blamed for swallowing the grudges given their disadvantaged position. They are enduring the hardship without overtime payment for holidays, so no one can blame them. They should be provided with better protection. Why should we be so mean and miserly? That is the point I have to point out. Certainly, some people may say, "Ah Yan, if you are so angry, why not put forth an amendment." I have considered proposing an

amendment, but we all know that such an amendment would not be passed under the separate voting system, so I do not bother to put forth the amendment.

However, my stance is crystal clear. I think the Government is …… Sometimes, it is difficult for me to consider whether Secretary Matthew CHEUNG should stay in for another term. He is so hardworking and devoted, yet he seems to be making unnecessary effort on certain issues. I do not know whether he should continue to stay in his incumbent post. His successor may just be doing unnecessary things and making unnecessary consideration like him. With $2.6 billion at hand, he is still unwilling to set aside $10 million. Such practice is uncalled for.

I do not know that the PWIF is so "overflowing" with cash. Funds should be allocated to drain the water away. Besides, we are merely asking for a few drops of water, which can in no way have the flood subsided. Actually, protection in various aspects should also be provided. Take severance payment as an example. For severance payment amounting to $50,000 or above, the employee will only enjoy protection for the first $50,000 plus 50% of any excess entitlement. Improvement should be made on this front and many other fronts. However, the authorities are unwilling to take this small step. I really hope that the Secretary will discuss this issue again with the PWIF Board and make further improvement by lifting the restriction on the number of days of leave as soon as possible. I think the PWIF Board should provide protection in many other aspects, including the severance payment protection mentioned earlier. It would be much better to raise the cap from $50,000 to $100,000 to provide better protection than simply offering 50% of any entitlement exceeding $50,000.

Really, I do not understand what the PWIF wants to do with the $2.6 billion at hand. Certainly, some are of the views that at times of economic recession, the PWIF may run a deficit of $200 million a year. Even in that case, the reserve of the PWIF will be sufficient to offset the loss for 13 years. Besides, it is not known when such scenario will occur. After all, the Government should protect employees. Even if there are problems, the Government can provide loans as in the previous case when there was a problem with cash flow. During the years of recession, the Government can provide loans to the PWIF, and the PWIF may repay the loan when the environment improves. It is purely a matter of cash flow. Why is this not possible? It is

most unbearable and irking that the Government acts so miserly despite the large amount of money at hand.

As such, I am disgruntled though I give my support. Yet, no matter how disgruntled we are, we will continue to strive for the expansion of the scope of coverage.

Thank you, Deputy President.

MS LI FUNG-YING (in Cantonese): Deputy President, the Bill on the protection of wages on insolvency which will resume Second Reading debate today is very mean in improving the protection for employees. This is particularly so when the Protection of Wages on Insolvency Fund (PWIF) has accumulated a surplus of over $2.5 billion. The former Chairman of the PWIF Board also considered that the PWIF had too much money and the levy on employers should thus be lowered. However, the PWIF imposes all kinds of restrictions on the coverage of employees' entitlement and introduces many unreasonable arrangements. These practices are a mockery with regard to the protection of employees' entitlements.

In a motion passed by the Legislative Council Panel on Manpower in June 2009, the authorities was requested to expand the scope of the PWIF to cover the pay for untaken statutory holidays and untaken annual leave of employees. The motion aimed at slightly enhancing the protection for employees. Yet, with all the twists and turn, the Government had dragged on for nearly three years before submitting the Bill to make the relevant changes, which is the Protection of Wages on Insolvency (Amendment) Bill 2011 under scrutiny today. But still, no adjustment has been made to the proposal after a lapse of these years. Worse still, the proposal submitted is different from the one proposed in the motion passed by the Panel on Manpower at the time.

First, I have to stress that expanding the scope of the PWIF to cover pay for untaken statutory holidays and untaken annual leave of employees does not involve any increase in welfare or better treatment, as these paid leave are the statutory entitlements of employees. However, the Government has imposed many additional restrictions on the proposal, which include the payment ceiling of $10,500, the coverage limit for pay for untaken annual leave earned in the last

two leave years upon termination of employment contract under the Employment Ordinance (EO), as well as the limit on pay for untaken statutory holidays fall within four months before the termination of employment contract.

During the scrutiny of the Bill, I had made my stance very clear that the payment ceiling of $10,500 was unreasonable and must be raised, for untaken statutory holidays and untaken annual leave were wages that employees are entitled to, and no limits should be imposed. Obviously, the Government has not accepted those views. The Government has given a litany of reasons for opposing the proposal, which include ensuring the sustainable operation of the PWIF, respecting the decision of the Labour Advisory Board (LAB) and avoiding giving the false impression to the public that the PWIF will shoulder the liabilities arising from the illegal acts of employers. These excuses are hackneyed and do not hold water. Regarding the saying that the PWIF should not undertake the liabilities arising from the illegal act of employers, for employers registered as limited companies, the liabilities to be shouldered are indeed very limited. As for certain employers who deliberately wind up to dodge their legal liabilities to their employees, society has not put in place effective punitive measures against them. While employers may dodge their legal liability to their employees and the PWIF does not undertake the legal liabilities of employers, employees in a disadvantaged position will eventually suffer, for their interests are not properly protected.

As for the reason of prudent management of the PWIF to ensure its sustainable operation, I would say that prudent financial management is the synonym of being mean and miserly. The former Chairman of the PWIF said earlier that the PWIF was "flooded with cash" and proposed lowering the annual levy for the PWIF from $450 to $250, and he considered it most desirable that the proposal on levy reduction could be passed in the current term of the Legislative Council. On the one hand, the Government stresses the importance of maintaining the sustainable operation of the PWIF and refuses to consider providing better protection for the interests of employees; yet, on the other hand, it indicates the need to lower the levy due to excessive surplus. Is this self-contradictory? Here, let me tell the Government loud and clear, in order to ensure that the PWIF will provide continuous and effective protection for employees' interests, I oppose lowering the levy of the PWIF.

The defensive attitude adopted by the Government in protecting employees' interests is well evident in the imposition of the triple restrictions involving the payment ceiling on employees' compensation, the limits on the number of untaken holidays and untaken annual leave in the Bill. When a payment ceiling of $10,500 is set, I do not see any justifications for imposing limits on the coverage for untaken holidays and untaken annual leave. Besides, this arrangement deviates from the original intention of the motion of the Panel on Manpower. Even under the principle of ensuring sustainable operation of the PWIF so claimed by the Government, the removal of the limits on untaken holidays and untaken annual leave will not affect the operation of the PWIF, yet it may slightly improve the protection for employees. Regrettably, the Government has not accepted these proposals.

Deputy President, it is out of good intention that the Government is willing to expand the scope of coverage of the PWIF, yet it is unwilling to amend the inadequacy of the existing legislation during the deliberation of the Bill. The Government only undertakes to conduct a comprehensive review one year after the implementation of the Bill. Though I am very dissatisfied with the extremely conservative revised proposal of the PWIF, I do not want to delay the legislative work and hamper the improvement of employees' interests. I only hope that the review to be conducted a year later is a genuine review and will further enhance the protection for employees' interest under the PWIF.

Deputy President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, the Protection of Wages of Insolvency (Amendment) Bill 2011 (the Bill) today seeks to expand the scope of protection to cover pay for untaken statutory holidays and untaken annual leave, and impose a payment ceiling of $10,500 for the total amount of the two categories of leave.

The amendments proposed in the Bill sound good initially. All along, we have been striving for the expansion of the scope of coverage of the Protection of Wages of Insolvency Fund (PWIF), particularly the coverage for annual leave and statutory holidays. Many fellow workers consider that they should be entitled to paid leave but their interests in this respect have been ignored. The Bill has

made a significant step forward by covering such entitlements under the scope of protection.

Yet, can the mere inclusion of entitlements uncovered in the past gain our support? I guess the Secretary definitely knows that we are dissatisfied with the amendments. Why are we not happy? First of all, workers cannot get the full pay for their statutory holidays and annual leave. What makes us most happy is that employees are entitled to such benefits as stipulated under the law, they should not be required to beg for getting what they are entitled to. Employees do not want alms-giving, yet since the establishment of the PWIF in 1980, whenever we campaign for expanding the scope of coverage, the Government has acted as if it is bestowing favours to workers, giving small favours each time, just like "squeezing toothpaste" out of a tube. If the Secretary puts himself in the shoes of workers and consider the issue from their angle, will he consider the arrangement acceptable? Workers sweat blood to earn their wages.

If the law stipulates that employees have certain entitlements, yet it fails to guarantee that employees can enjoy such entitlements, the law itself is unacceptable and ridiculous. The Government has told us clearly that workers are entitled to annual leave and statutory holidays and employers are required to offer these benefits. However, when employees fail to get such benefits, the Government just turns a blind eye to the situation.

In the 1980s, when an employer went bankrupt, closed down a business or ran away, that was the end of the story and the employees concerned would receive no compensation. Later, to avoid this painful experience, the Government set up the PWIF to compensate the loss suffered by employees. However, it is regrettable that the compensation provided by the PWIF has been extremely limited, which covers only a small portion of wages and severance payment, and so on. If labour organizations and representatives of trade unions have not been striving incessantly, the current scope of coverage of the PWIF would have been much more limited. Despite our continuous efforts to strive for improvement, a payment ceiling has been set regarding the coverage for pay for annual leave and statutory holidays. Earlier, a number of colleagues have already commented on the extremely limited scope of the coverage. To certain workers, the payment ceiling prevents them from obtaining 100% compensation. In that case, how can we consider the proposal satisfactory?

Concerning this point, though the Secretary told us at the Bills Committee that a review would be carried out one year later, this promise is meaningless for the direction of the review has not been stated. Will the Secretary undertake that the review will be carried out in the direction of enabling employees to obtain 100% compensation when their employers become insolvent and close down their business? If the review is carried out in this direction, it will be more fruitful. However, you cannot make that promise at present.

I hope the public would understand, the compensation now provided under the PWIF is not additional benefits provided to employees but the payment they are entitled to for the work they have done for their employers. Why can we not achieve this goal despite all the efforts made? I am really puzzled. As I said earlier, these are entitlements of employees stipulated under the law. If so, why the Government cannot assist them to recover the payment when they are not provided with such benefits, and why the Government cannot ensure that they can get those benefits? Why the Government would on the contrary impose limits on the compensation? I think this practice is unreasonable.

Moreover, we find that there are still many problems with the PWIF, yet the Secretary has not told us whether he would resolve the problems in other aspects. For instance, at present, employees cannot apply for 100% compensation for severance payment, for the PWIF will only grant payment for the first $50,000 of severance payment plus 50% of any excess entitlement. Furthermore, other benefits like service payments, overtime allowance and double-pay are not covered by the PWIF. I would say that the PWIF covers no benefit at all. To wage earners, these payments are their entitlements, which are rewards payable to them. However, none of these payments is covered by the PWIF. I think it is very unfair.

A colleague said earlier that the Government was unwilling to include the aforesaid payments in the past mainly due to two reasons. First, it worries that the PWIF does not have insufficient funds, and second, it worries that spending a large amount of funds all of a sudden may deprive other workers from getting the compensation, which is unfair to them.

However, we can tell from history that all these reasons are unjustified. At present, the PWIF has accumulated a surplus of over $2 billion, reaching $2.5 billion to $2.6 billion. How would there be insufficient funds? Besides,

the PWIF will receive contribution from employers every year, so its funds will not only be limited to some $2 billion but will continue to accumulate. When the Government finds that the surplus of the PWIF has reached an excessively high level, it proposes lowering the contribution rate of employers. Secretary, how can you explain this to fellow workers? They work hard but they cannot get their entitled payment. On the contrary, the Government allows employers to reduce their contribution to the PWIF. Is this reasonable?

Certainly, you may say that it is unfair to require employers of normal operation to subsidize employers failing to operate normally or unscrupulous employers. I cannot be sure if it is truly unfair. Since the PWIF is set up in view of the fact that certain companies may run into difficulties in future, the PWIF will assist these companies in handling the compensation at that time. As a saying goes, "one may come to the same pass one day", so employers running normal operation may one day come under the same circumstances, by then they will have assistance. To put it bluntly, this is comparable to taking out insurance.

The PWIF is kind of insurance taken out by private enterprises, yet apart from this, I agree that the Government has to shoulder the responsibility in this respect. Since the Government has stipulated under the law that employees are entitled the rights to receive wages, overtime allowances, double-pay, pay for leave and severance payment, yet it has not enacted legislation to ensure that these rights and benefits must be realized. This is contradictory. The Government should enact legislation to ensure that employees will definitely receive these benefits. If that is the case, the situation will be completely different and the setting up of the PWIF will be unnecessary. Actually, I disagree with the setting of the PWIF. The PWIF has been established for over 20 years, yet workers still fail to get full compensation for any one of these benefits. Why? What is the merit of such arrangement? Why the Government does not ensure that employers will provide full compensation to employees? Had the Government done so, we would not have to deal with these "headaches".

However, the Government is not adamant and dare not do so. Since the Government dares not do so, may I ask the Government to enhance the PWIF, so that the PWIF will fill the gap of the legislative work the Government dares not

do, employees may thereby get their entitled benefits, protection and compensation when their employers cannot pay their wages.

As many colleagues said, today, we have to accept the Bill in a helpless and unwilling manner. If we do not pass the Bill today, I wonder how long it will be delayed. In that case, employees now affected by insolvent employers will not receive any protection, and this is not good. Hence, we have no alternative but accept the Bill.

However, we will insist on expanding the scope of coverage of the PWIF to enable employees to receive full compensation, for only this is reasonable. The PWIF should not impose deduction on the compensation for each category of benefit. Such a practice is extremely disappointing to employees.

Deputy President, I so submit.

DR PAN PEY-CHYOU (in Cantonese): Deputy President, the Hong Kong Federation of Trade Unions (FTU) has always shown great concern about the interest of wage earners. Regarding the Protection of Wages of Insolvency (Amendment) Bill 2011 (the Bill), we basically welcome the proposal.

The Protection of Wages of Insolvency Fund (PWIF) was set up in 1985 to grant ex gratia payment to employees who are owed wages, wages in lieu of notice and severance payment by insolvent employers. During the 27 years since the setting up of the PWIF, the PWIF has provided assistance to many employees, where the ex gratia granted to employees has increased from its initial coverage of only $8,000 wages to the current maximum payment of $278,500 to each employee, and the scope has been expanded to cover wages, wages in lieu of notice and severance payment. It is evident that the PWIF is progressing to perfection.

This time, the Administration proposes to expand the scope of ex gratia payment granted under the PWIF to cover pay for untaken statutory holidays and untaken annual leave under specific restrictions. In other words, in future, in addition to wages, wages in lieu of notice and severance payments, employees may also seek recovery of pay for untaken statutory holidays and untaken annual

leave. Though the proposal has enhanced the protection for employees, as many colleagues said earlier, the Administration has imposed some rather harsh conditions and restrictions under the proposal, which include capping the payment amount at not exceeding the pay for the applicant's full statutory entitlement under section 41AA (Annual leave) of the Employment Ordinance (EO) for the last leave year or $10,500, whichever is the lesser. That means that employees will at best be able to recover the pay for untaken annual leave entitled in a year, that is, the last leave year, and the payment ceiling is $10,500. If the accumulated pay for untaken annual leave exceeds the payment ceiling, the PWIF will not grant payment for the outstanding wages. We consider that the restriction imposed fails to protect the interest of employees. We strongly propose that the Administration will relax the limit of period for untaken annual leave and raise the payment ceiling for wages covered, so as to provide greater and better protection for wage earners.

The double restriction on leave year and payment ceiling of $10,500 imposed by the authorities is utterly unreasonable. First, we doubt that the payment ceiling of $10,500 is too low. At present, the monthly income of many middle-class households is around $30,000. Yet in comparison with the expensive costs of living, their income is not particularly high and they can barely make ends meet. For these families, once the bread-winner becomes unemployed, they will feel quite helpless. They have to pay school fees for their children, for they may be studying in Direct Subsidy Scheme schools or private schools, and all kinds of tuition fees for extracurricular learning, including piano classes, drawing classes, dancing classes and swimming classes, as well as other expenditure like mortgage instalments for home and cars or rental, and so on. When the bread-winner of a family becomes unemployed, the family concerned can hardly meet these expenses. So, is not the level of the payment ceiling of $10,500 too low? During the discussion at the Bills Committee, I had raised this point.

The limit set for leave year is even more unfair. We are not talking about future but past events, the pay for leave earned by employees through hard work. We are not talking about benefits employees should not be entitled to but wages they earned with blood, toil and sweat. If a person works hard to get the reward, why would he be prevented from recovering his wages by the provision in the legislation? Should not the legislation allow him to get the wages he entitled? It is utterly unreasonable. I think the two restrictions are very problematic.

Earlier, other Members mentioned that an enormous surplus of the PWIF. We understand that the credit should go to the efforts made by the Government, Secretary Matthew CHEUNG in particular, in criminalizing the default of payment of wages. The arrangement has forced unscrupulous employers to shoulder their responsibilities, and the number of applications for ex gratia payment for default wages received by the PWIF has decreased, which allows the PWIF to accumulate a large surplus. Given the surplus, we consider there is actually room …… We are not requesting the Government to provide loans, for in actuality, the PWIF has the capacity to provide more protection to employees. According to the Annual Report 2010-2011 of the PWIF Board, with the continued growth of the local economy, the number of applications received and the amount of ex gratia payment approved under the PWIF were both on a downward trend. In the financial year 2010-2011, a surplus of $429.6 million was recorded, yet this is only the amount for a year. According to the annual report, the accumulative surplus of the PWIF reached $2,265.3 million, which has probably reached a higher level up to date. We do not understand why such unreasonable and unsympathetic restrictions have to be imposed on applications for ex gratia payment when the PWIF is running an enormous surplus. During the scrutiny of the Bill by the Bills Committee, many Members had expressed the same opinion. The PWIF Board then reconsidered the proposal in response to the concerns of Members.

According to the EO, an employee should be entitled to payment in lieu of any annual leave not yet taken upon the termination of his employment contract, including the pay for untaken paid annual leave the employee earned in the last full leave year. Moreover, if an employee with at least three but less than 12 months' employment in the last leave year, he will be entitled to pro rata annual leave pay. Against this background, the PWIF Board considers that amendments can be made to the Bill with reference to these provisions. Eventually, the Administration put forth a revised proposal to the Bills Committee to relax the limit on the period for pay for untaken annual leave from one leave year to not exceeding two leave years. We are glad that the Administration has accepted some of the views of Members, yet we still consider it inadequate. With this amendment, employees will be provided with greater protection. However, we hope that the authorities will honour its promise in conducting a review one year after the implementation of the Bill, if enacted. The review will be conducted from three perspectives: the pay for untaken annual

leave, the pay for untaken statutory holidays and the payment ceiling of $10,500, so as to ensure that protection for employees will be enhanced with time.

The FTU supports the Bill. Deputy President, I so submit.

MR KAM NAI-WAI (in Cantonese): Deputy President, I will now speak on behalf of the Democratic Party. Mr WONG Sing-chi, a member of the Bills Committee, is supposed to speak today. However, as he is sick and cannot speak, he asks me to stand in for him to speak on behalf of the Democratic Party.

The Protection of Wages on Insolvency Fund (PWIF) was set up in 1985 to provide timely assistance in the form of ex gratia payment to insolvent employers and their employees at the closure of companies. The PWIF mainly provides payment to employees for the wages, wages in lieu of notice and severance payment owed by employers. The amount of ex gratia payment granted to each employee has increased from $8,000 in 1985 to $278,500 at present. We notice that despite the increase in the amount of ex gratia payment granted, specific coverage for the untaken leave and untaken statutory holidays of employees is not provided under the PWIF.

It is obvious to all that under the Employment Ordinance (EO), an employee is entitled to a certain number of days of annual leave and statutory holiday, and these are the rights of employees. However, we notice that at the closure of companies, employers often default on pay for untaken annual leave upon the termination of employment contract, where some employers may have even failed in granting statutory holidays to employees as required under the EO. These practices are unfair to employees. It is particularly so in sudden closures of companies, where employees are full of anxieties. They do not only have to worry about their prospect, but also have to go around recovering their wages. In the end, they may find that they have not taken the leave they entitled, yet the ex gratia payment under the PWIF does not cover pay for such leave.

The Democratic Party considers the arrangement unfair to employees. Hence, we think that apart from increasing the amount of ex gratia payment, the authorities should also expand the scope of coverage of the PWIF, particularly the coverage for annual leave and statutory holidays, so that wage earners will receive the assistance and rights they entitled and their entitlements will be

safeguarded. Regarding the proposal to expand the scope of the PWIF to cover pay for untaken annual leave and untaken statutory holidays with a view to enhancing the protection for affected employees in these aspects, the Democratic Party will show its support though the improvement is minimal.

Regarding the Bill, as mentioned by many colleagues earlier, while there are minor improvements, there are still many inadequacies. Hence, upon the passage of the Bill, I hope the Government will conduct a review as soon as possible to enable employees to enjoy the protection they entitled under the PWIF. I so submit.

MS AUDREY EU (in Cantonese): Deputy President, it has been almost two years since the Legislative Council discussed the legislation on employees' protection. The discussion on the criminalization of default on wages under the Employment (Amendment) Bill 2009 was also held in April then. Given that many Members in the Legislative Council are concerned about labour affairs, this Council is making very slow progress in the enactment of legislation related to labour protection.

The present debate is about expanding the scope of ex gratia payment of the Protection of Wages on Insolvency Fund (PWIF) to cover default on wages for statutory holidays and annual leave. Actually, two years ago, the Panel on Labour, it should be the Panel on Manpower, passed a motion in June 2009. The Panel passed a motion on 18 June to urge the Government to expand the scope of coverage of the PWIF to include the two aforesaid items, that is, full entitlement for untaken statutory holidays and untaken annual leave, which should be capped at $10,500. In other words, a payment ceiling but not a time limit was proposed for ex gratia payment.

The proposal had been dragged on for two years before the Government introduced the Protection of Wages on Insolvency (Amendment) Bill 2011 into the Legislative Council for discussion. When I attended the first meeting of the Bills Committee, I found that a different proposal was introduced. Certainly, when many colleagues spoke earlier, they have also queried why a time limit has been suddenly imposed for no apparent reason, apart from setting the payment ceiling at some $10,000. At a certain interval, we did suggest that the Government should reconsider the proposal before resubmitting the Bill to this

Council for discussion. However, after some hustle and bustle, the Government said that it had consulted the Labour Advisory Board (LAB) but failed to reach a consensus. It hoped that we would pass the Bill first and a review would be conducted a year later. The Government just keeps dragging its feet on this issue.

Hence, Deputy President, as many colleagues have talked about the content of the Bill in detail, I do not intend to repeat. Instead, I would like to highlight the responsibility of the Government. First, the Government is obliged to act efficiently. Just think, the Panel on Manpower passed the motion two years ago, which involved only a very small scope, yet the authorities could only introduce the relevant Bill into this Council after such a long time. It is a problem of efficiency. Moreover, the Government is obliged to uphold justice and maintain the harmony in society.

In the present case, apparently, it is not a matter of lack of funds, for the PWIF has in its possession over $2 billion, and as described by many colleagues, it is "cash-flooded". Besides, the expansion under discussion involves only a very small scope, so money is definitely not a concern. If Hong Kong is in financial difficulties as other European countries, where everyone has to tighten their belts, we would understand the situation. Yet, first, the PWIF is now "cash-flooded"; second, the coverage under discussion concerns the wages owed to employees which are their entitlements; and third, the employees have made the efforts, and made for a long time, as the wages have been defaulted for a certain period of time. If a time limit has not been set, their entitlement should have been granted several years ago. However, the Government proposes that the coverage should be limited to four months, which mean a four-month limit is set for their wage entitlement.

Obviously, the Government has failed to uphold justice in this respect. On the face of it, the Government had conducted consultation; it is duty-bound to do so. Yet, the Government should understand the relationship between employers and employees, particularly when an employer defaults on wages and then applies for bankruptcy and cessation of business, employees are in no position to bargain with employers. Employees can only count on society and the Government to uphold justice for them and strive for them their entitled interest. But now, the Government simply turns a blind eye to the situation. It

says that a consensus has to be reached and work will be carried out progressively pending the unanimous consent of the LAB.

In upholding justice and maintaining harmony in society, no one can substitute the Government's role. Even if the Legislative Council has put forth amendments, if the Government does not give its support, the proposed amendments will not be passed under the separate voting system. More often than not, people may ask: Why the happy index of people in Hong Kong is so low given that Hong Kong is such an affluent society? Why our society is so inharmonious, and why there are so many deep-rooted conflicts? The Government can in no way shirk its responsibility. Regarding its proposal on asking employees to reach an agreement with their employers, more often than not, it is no more than asking a tiger for its hide. The Government not only fails to uphold justice, it even lends its support to those in power. As a result, we in the Legislative Council are very often wasting our time, as a simple change will take at least two years to take effect. Regarding the amendments, while many Members will support them, they have also expressed their reluctance and anger in doing so. If we review the whole issue calmly, we will find that the PWIF has the funds required; the scope of ex gratia payments are in fact the entitlements of employees, which should have been provided long ago if we reason things out. However, the Government simply drags on, and then it gives us the excuse that a consensus has not yet been secured.

Actually, this practice is not only adopted in enacting legislation on labour issue, but also in other aspects. Hence, whenever such legislation is to be passed, I have to remind the Government in my speech that it is making the same mistake again and has aroused social conflicts …… It should not always blame the media and the opposition camp. I hope all of us, the Government in particular, will reflect on this. The Government has neither fulfilled its obligation in upholding social justice, nor stood by the disadvantaged to strive for the interest they are entitled to. On the contrary, it tells us that nothing can be done when a consensus has not been reached. This is exactly the cause of the widespread discontent in society and the drop in the popularity rating of the Government, which has naturally affected the legislature.

Hence, I hope that the review to be conducted one year after the implementation of the Bill will be conducted earlier and that it will be a specific and practical review. The Government should not tout us every time to pass the

bills first and handle other issues later. This is detrimental to the overall harmony of society.

Thank you, Deputy President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, last July, I introduced the Protection of Wages on Insolvency (Amendment) Bill 2011 (the Bill) into the Legislative Council, and a Bills Committee was formed to scrutinize the Bill in detail. I would like to express my gratitude to Mr WONG Ting-kwong, Chairman of the Bills Committee, and other Members on the Bills Committee for their hard work. The Bills Committee has held four meetings and put forth many precious opinions, so that the Second Reading debate of the Bill can be resumed today.

The Bill seeks to amend the Protection of Wages on Insolvency Ordinance to expand the scope of the Protection of Wages on Insolvency Fund (PWIF) to cover the pay for untaken annual leave and untaken statutory holidays which employees are entitled under the Employment Ordinance (EO).

The PWIF was set up to provide timely relief in the form of ex gratia payment — I have to stress that it is in the form of ex gratia payment — to employees of insolvent employers in the event of business closures. It is mainly financed by an annual levy on each business registration certificate. With improvements over the years, the protection offered by the PWIF has increased from its initial coverage of $8,000, covering of wages to the current maximum payment of $278,500 to each employee, comprising four months' wages up to

$36,000, one month's wages in lieu of notice up to $22,500, and severance payment up to $50,000 plus 50% of the remainder of the entitlement.

Upon business cessation, if insolvent employers are unable to pay wages in arrears and termination payments, very often the employees are also owed pay for untaken annual leave upon termination. Some employers may also fail to grant timely statutory holidays in accordance with the EO. Therefore, we propose to expand the scope of the PWIF to cover pay for untaken annual leave and untaken statutory holidays so as to strengthen the protection of affected employees in this regard.

The Bill proposes to further extend the protection of the PWIF to cover:

(a) pay for untaken annual leave of an employee under the EO, not exceeding his full statutory entitlement for the last leave year (ranging from seven to 14 days' pay depending on the employee's length of employment); and

(b) pay for untaken statutory holidays under the EO of an employee within four months before his last day of service. Neither the amount of pay for untaken annual leave nor the amount of pay for untaken statutory holidays, nor the total amount of the two, may exceed $10,500.

The proposal has taken into account the long standing and fundamental principles in improving the PWIF's coverage in a progressive manner and the relevant requirements under the EO, so as to ensure the PWIF's sustainability and prevent employers from defaulting on payments of statutory entitlements to their employees on a prolonged basis and shifting their liability to the PWIF upon business cessation. Moreover, the proposal had already incorporated the views expressed by the Panel on Manpower of the Legislative Council in 2009 by expanding the coverage from only pay for untaken annual leave to pay for untaken statutory holidays as well. The proposal had been endorsed by the PWIF Board and gained the support of the Labour Advisory Board (LAB) and the Panel on Manpower in 2010. The authorities then worked on the amendment of the EO.

During the scrutiny of the Bills Committee, Members had in general expressed support for the Bill and provided many precious opinions. In gist, some Members agreed with the principle of improving the PWIF's coverage in a progressive manner and support the proposals in the Bill. Some Members proposed that with the payment capped at $10,500, the limit on period in respect of pay for untaken annual leave should be relaxed to cover pay for untaken annual leave for the last two leave years instead of the last leave year. Moreover, some Members proposed totally abolishing the limits on period for pay for untaken annual leave and untaken statutory holidays.

We had responded proactively to Members' proposal on totally abolishing the limits on period in respect of pay for untaken annual leave and untaken statutory holidays by consulting the views of the PWIF Board and the LAB. Having considered the relevant requirements on annual leave and statutory holidays under the EO, the PWIF Board and the LAB considered it inappropriate to totally abolish the limits on the period for pay for untaken annual leave and untaken statutory holidays, so as to avoid the PWIF from shouldering the liability arising from employer's contravention of the law and sending the wrong message to the community that such breaches were tolerable. However, the limit on the period for pay for untaken annual leave, that is the limit of not exceeding the full entitlement of an employee for the last leave year, might be relaxed, so that an employee might be entitled to the pay for the last full leave year and pro rata annual leave pay for the last leave year in which the employee had at least three but less than 12 months' service upon termination of employment contract under the EO, provided that the total amount of pro rata annual leave pay for untaken leave in the last leave year did not exceed $10,500. We agree with the abovementioned proposal and have decided to move amendments in this connection. Moreover, we will propose some technical amendments on the drafting of the provisions and I will move the relevant amendments during the Committee Stage.

Deputy President, I would like to spend some time to respond to the individual views expressed by several Members earlier. Many of these views have been discussed repeatedly at the Bills Committee, yet I would like to respond to them briefly. Some Members consider that the coverage of pay for untaken statutory holidays within four months inadequate. I would like to explain that according to the requirements under the EO, if an employer requires an employee to work on a statutory holiday, the employer shall arrange an alternative holiday within 60 days before or after the statutory holiday. If both

parties agree, any day within 30 days before or after the statutory or alternative holiday may be taken by the employee as a substituted holiday, which means a statutory holiday should be taken within 90 days. During the scrutiny of the Bill by the Bills Committee, we had consulted the views of the Bills Committee, the PWIF Board and the LAB. As statutory holidays must be granted within 90 days under the EO and the four months' coverage has been set with reference to the pay for taken statutory holidays within four months' wages currently covered by PWIF, the PWIF Board considers that the limit on untaken statutory holidays should be upheld. I would like to stress that if the employer violates the requirements under the EO in granting statutory holidays to employees, and if there is sufficient evidence proving the violation of the employer, prosecution will be initiated.

The second point is about the Members' proposal that the pay for all untaken annual leave and statutory holidays should be covered in view of the enormous surplus of the PWIF. I have to point out that the PWIF, which is financed by the levy on business registration certificate, is the last safety net for employees affected by business closures, so prudent management has to be adopted to ensure the sustainability and the proper usage of the PWIF to safeguard the interest of employers and employees. The financial status of the PWIF is closely related to the economy. Members should remember that during the economic downturn in the past and the increase in applications, the PWIF had been running a deficit for seven years in a row between 1997-1998 and 2003-2004. The reserve had been used up in only a few years' time, and the PWIF had to borrow $695 million from the Government in November 2002. In fact, when the PWIF Board and the Labour Department reviewed the expansion of the scope of coverage of the PWIF, it was considered that the financial status of the PWIF was not the sole consideration, and it was necessary to follow the important principles proven to be effective in the past. The three principles include: First, the coverage for employees should be improved in a progressive manner. Second, a ceiling payment must be set as in the case of other items covered by the PWIF, so as to ensure the sustainability and healthy operation of the PWIF. Finally, a limit for the reckonable period and the number of days for untaken annual leave and untaken statutory holidays covered must be set to prevent employers from defaulting on payments of statutory entitlements to their employees on a prolonged basis and shifting their liability to the PWIF upon business cessation.

Furthermore, some Members consider that the authorities should further expand the coverage of the PWIF to cover all other entitlements under the EO. I would like to emphasize that the PWIF is not a tight-fisted fund, for its coverage now include wages in arrears, payment in lieu of notice and severance payment. If the Bill is passed, the coverage of the PWIF will be extended further to cover pay for untaken annual leave and untaken statutory holidays. In other words, the maximum amount of ex gratia payment pay for an employee from the PWIF will be increased to $289,000, covering the major payments an employee may receive from the employer upon the termination of the employment contract. The PWIF Board and the Labour Department will continue to review the coverage of the PWIF in accordance with the social economic development and needs. Some time ago, the administration and the PWIF Board had undertaken to review, one year after the implementation of the Bill, the scope of coverage of the PWIF in terms of the pay for untaken annual leave, pay for untaken statutory holidays and the ceiling payment of $10,500.

Finally, I would like to respond to the criticism on procrastination in legislation. I think there may be misunderstanding and Members may not understand the efforts we have made. I would like to tell Members that we have all along endeavoured to promote the fostering of a consensus, hoping that legislation work may be carried out as soon as possible. During the legislative process, as Members are aware, we have to consult the views of the organizations concerned when there are divergent views, which include the PWIF Board, the LAB and definitely the Panel on Manpower. We have to mediate to arrive at a consensus. Members know that the present proposals have rightly addressed the aspirations of the public.

Deputy President, as I have pointed out earlier, the Bill proposed by the authorities is the outcome of repeated and detailed consultation with the PWIF Board, the LAB and the Legislative Council Panel on Manpower, and we have proactively incorporated the views of the Bills Committee. The present proposal has duly taken into consideration the views and concerns of employers and employees and has upheld the established principles adopted by the PWIF in ensuring the effective operation of the PWIF. If the Bill is passed, two additional items will be covered by the PWIF, which signifies an important step in reinforcing employees' protection.

With these remarks, Deputy President, I implore Members to support the Bill and the amendments we will move at the Committee stage.

DEPUTY PRESIDENT (in Cantonese): I now put the question to you and that is: That the Protection of Wages on Insolvency (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.

(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): Protection of Wages on Insolvency (Amendment) Bill 2011.

Council went into Committee.

Committee Stage

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

PROTECTION OF WAGES ON INSOLVENCY (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 Protection of Wages on Insolvency (Amendment) Bill 2011.

CLERK (in Cantonese): Clauses 1 to 4 and 6 to 11.

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 to 4 and 6 to 11 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): Clause 5.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy Chairman, I move the amendments to clause 5, the content of the amendments is set out in the paper circulated to Members.

During the Second Reading debate of the Bill earlier, I mentioned that the pay for untaken annual leave proposed in the Bill would be capped at an employee's entitled annual leave under the Employment Ordinance (EO) for the last leave year (ranging from seven to 14 days' pay depending on the length of the employee's service).

In response to the views put forth by the Bills Committee during the scrutiny of the Bill, we have consulted the views of the Protection of Wages on Insolvency Fund (PWIF) Board and the Labour Advisory Board (LAB) and put forth a revised proposal. We propose relaxing the limit on the period of pay for untaken annual leave, so that employees who have at least three months' service in the last leave year which is not a full leave year may be entitled to the pay for untaken annual leave accumulated in the last full leave year and the pro rata annual leave pay for the last leave year upon the termination of employment contract under the EO, provided that the total amount of pay of the two categories of untaken annual leave does not exceed $10,500.

The PWIF Board has actively considered that an employee, who has at least three months' service in the last leave year which is not a full leave year, may be entitled to pay for untaken annual leave for over one leave year but not exceeding two leave years upon termination of employment contract under the EO. The PWIF Board is of the view that the limit of the number of days of untaken annual leave may be revised so that an employee may receive ex gratia payment in respect of untaken annual leave earned in the aforesaid period. If that is the case, some employees who are entitled to pay for untaken annual leave for more than one leave year can be fully granted ex gratia payment from the PWIF to cover pay for untaken annual leave payable upon termination under the EO. The LAB also agreed with the PWIF Board's view and the revised proposal. We thus adopted the revised proposal and put forth corresponding amendment.

According to the existing section 16(2)(h)(i) of the Bill, pay for untaken annual leave covers the payment under section 41D of the EO for untaken annual leave to which an employee is entitled upon termination of his employment contract, including:

(1) pay for any annual leave which has not yet been taken by an employee earned in the employee's last full leave year; and

(2) pro rata annual leave pay for the last leave year in which the employee has at least three month but less than 12 months' service that he is entitled to upon termination of his employment contract. The proposed amendment seeks to revise the existing section 16(2)(h)(ii) by deleting the cap on the pay for annual leave of the last leave year under the EO. After the amendment, employees

will have their full entitlement under section 41D of the EO covered by the payment from the PWIF under section 16(2)(h)(i). If the last leave year which is not a full leave year in which an employee has at least three months' service, the employee may receive pay for untaken annual leave earned in the last two leave years (ranging from 14 to 28 days' pay depending on the employee's length of employment).

Moreover, we have put forth some revised proposals in refining the provisions, which include the technical refinements to the proposed section 16(2)(g)(i) which stipulates the four-month limit on untaken statutory holidays as well as sections 16(2)(g)(iv) and 16(2)(h)(iii) which stipulate a six-month limit on making applications in respect of pay for untaken statutory holidays and untaken annual leave for better alignment with the existing relevant provisions on payment items being covered under the Protection of Wages on Insolvency Ordinance. In response to the views of the Bills Committee, we have also proposed technical amendments to the wordings of the English version of section 16(2)(h)(i).

Deputy Chairman, the above amendments have gained the support of the Bills Committee. With these remarks, I urge Members to support and pass the above amendments. Thank You.

Proposed amendments

Clause 5 (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 Labour and Welfare 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): Clause 5 as amended.

DEPUTY CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 5 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.

DEPUTY CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

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

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 2011

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Deputy President, the

Protection of Wages on Insolvency (Amendment) Bill 2011

has passed through the Committee stage with amendments. I move that this 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 Protection of Wages on Insolvency (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): Protection of Wages on Insolvency (Amendment) Bill 2011.

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Lifts and Escalators Bill (the Bill).

LIFTS AND ESCALATORS BILL

Resumption of debate on Second Reading which was moved on 11 May 2011

DEPUTY PRESIDENT (in Cantonese): Dr Raymond HO, Chairman of the Bills Committee on the above Bill, will address the Council on the Committee's Report.

DR RAYMOND HO (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Lifts and Escalators Bill (the Bills Committee), I now submit the report of the Bills Committee to this Council and report on a number of key issues relating to its deliberations.

The Bill seeks to introduce a regulatory system to strengthen the regulatory control over lift and escalator safety so as to safeguard public safety. At present, lifts and escalators in Hong Kong are governed by the Lifts and Escalators (Safety) Ordinance (Cap. 327) (the Ordinance). In view of the number of lift incidents happened in recent years and the increasing public concern about lift safety, the Administration has decided to introduce a new bill in completion of a comprehensive review and repeal the Ordinance.

The Bill provides for, among other things:

(a) the strengthening of the regulatory control over workers, engineers and contractors engaged in lift and escalator works;

(b) the increase of the penalty levels of offences;

(c) the extension of the coverage of the legislative framework; and

(d) the improvement of the existing control process to enhance efficiency.

The Bills Committee has held 17 meetings and members of the public (including the relevant trade and professional organizations) have been invited to give views on the Bill. During the deliberation, members were particularly concerned if the provisions of the Bill can effectively ensure the safety of the lift and escalator users, whether the liabilities imposed on the responsible persons and people engaging in the related works are clear and appropriate, and how proper assistance and guidelines will be provided to people subject to control when the new stringent regulatory system is put in place.

Regarding the penalty level, the Bills Committee considers that given the grave concern of the public over the lift and escalator incidents, the sanctions provided in the Bill should impart a bold message to the industry and the public that a person who knowingly or without reasonable excuse fails to perform his duties in respect of any lift or escalator and related works should be subject to heavy penalty. The Bills Committee also considers that there should not be unjustified disparity between the sanctions applicable to the responsible persons and workers of the trade for offences of the same and similar nature under the Bill.

In view of members' comments and without deviating from the principle that the proposed penalty levels under the Bill should be compatible with offences of similar nature in other pieces of legislation, the Administration proposes to raise the maximum penalty level of the offences in 21 clauses to a fine at level 6 and 12 months imprisonment because the related offence may lead directly to dangerous situations or hamper the safety of a lift or escalator. Furthermore, the Administration also proposes to remove the different penalties for first conviction and subsequent convictions of the offences under eight other clauses to maintain consistency in the penalty of the relevant offences. The Administration has consulted the relevant trade associations and worker union on the proposed amendments to the penalty clauses in the Bill and they have not raised objection to them.

A number of members have expressed the view that the proper functioning of the emergency devices of a lift including the alarm bell, intercom system and ventilation fan is vital at times of lift passenger entrapments. The initial response of the Administration was that, according to the existing code of

practice, registered lift contractors were required to confirm the proper functioning of the components of a lift (including the abovementioned emergency devices) during their monthly routine maintenance cycle. Separately, registered lift engineers were required to verify the functioning of these components when conducting periodic examination. The Bills Committee does not subscribe to the Administration's view that the existing measures are already adequate to ensure the proper functioning of the emergency devices. In the light of heightened public concern over lift safety and the dire consequence that the malfunctioning of the emergency devices may lead to, the Bills Committee has urged the Administration to consider further means to step up the relevant control measures.

In view of members' concern, the Administration proposes to introduce a mechanism in the regulation to be made under clause 154 after enactment of the Bill, requiring that a contractor responsible for maintenance of a lift should attend to any reported failure of the emergency devices of a lift within a specified period. If the contractor fails to reinstate the failed devices within a specified period of time, he should notify the Director of Electrical and Mechanical Services (the Director). With the proposed mechanism in place, the Director can effectively monitor the timeliness of reinstatement of the concerned emergency devices. Furthermore, if considered necessary, the Director may issue an order prohibiting the use of the lift concerned.

Mr Andrew CHENG opines that the relevant users should be duly informed when a lift incident occurs, and has suggested imposing a requirement on the lift contractor concerned to post a notice at a suitable location with information about the incident, such as the nature of the incident and the follow-up actions that have been and are being undertaken by the contractor.

After considering Mr CHENG's views, the Administration proposes to introduce a regulatory scheme in relation to the incidents specified in Schedule 7 to the Bill, requiring that a contractor responsible for the maintenance of a lift or escalator should post a notice to alert users that the service of a lift or escalator has been suspended and cannot be resumed within a specified period. To cater for the incorporation of the proposed regulatory scheme, the Administration will move a Committee stage amendment (CSA) to amend clause 154(2) to enable the making of regulation by the Secretary for Development to provide for the display of such notices.

Both the existing regulatory system and the Bill have not imposed restrictions on multi-layered subcontracting of the works. Many members pointed out that past experience of other fields in the construction industry has indeed revealed that, if left unregulated, multi-layered subcontracting could give rise to serious problems including safety problems, and multi-layered subcontracting of lift or escalator works may become common in the industry. Members thus requested the Administration to consider imposing restrictions in the proposed legislation on multi-layered subcontracting of lift and escalator works even though the contractors concerned are all registered contractors.

After considering members' views, the Administration proposes to introduce a notification mechanism regarding subcontracting in the regulation to be made under clause 154 after the enactment of the Bill, so as to enable the Electrical and Mechanical Services Department (EMSD) to effectively monitor the subcontracting arrangements. Apart from the notification mechanism, the Administration has also undertaken to step up various control and publicity measures pertinent to subcontracting of lift and escalator works.

(THE PRESIDENT resumed the Chair)

Some members opine that any disciplinary board and appeal board set up under the Bill should contain lay members so as to enhance the board's impartiality. The Administration agrees with the view, and proposes to introduce a relevant CSA to ensure that the membership of any disciplinary board and appeal board must contain lay members.

According to clause 141, certain persons connected with a body corporate or partnership in the case where the body corporate or partnership has committed an offence under the Bill may be criminally liable. Since owners' corporations (OCs) are body corporate, some members have expressed concern that the provisions under clause 141 may impose unduly onerous liabilities on those persons taking part in the management of OCs and this would discourage the public from participating in the management of their lifts or escalators.

The Administration explains that clause 141 expressly targets those concerned in the management of the body corporate or partnership to ensure vigilant compliance with the proposed legislation by imposing criminal liability

also on these people, which includes provisions providing for the protection of the innocent. Similar provisions are also found in other local legislation. The Administration is of the view that the provision will not create unduly onerous liabilities to discourage people from participating in the management of their lifts or escalators. The Administration has assured the Bills Committee that it will conduct publicity programmes and public education on the requirements of the Bill, including organizing briefing sessions for property management agencies and property owners. The EMSD will also prepare pamphlets and guidelines for flat owners and stakeholders.

Apart from the above issues, the Bills Committee has also discussed the following issues with the Administration:

(a) the registration requirements and transitional arrangements of personnel engaged in lift and escalator works;

(b) the coverage and liabilities of responsible persons for lifts and escalators;

(c) the work on the preparation of the code of practice;

(d) the registered contractors' performance rating schemes; and

(e) manpower supply of the relevant works.

The relevant discussions have been detailed in the written report.

In response to the concerns and views expressed by members, the Administration will propose a number of CSAs. The Bills Committee agrees to the CSAs proposed by the Administration and supports the resumption of the Second Reading of the Bill.

President, the following is my personal view.

All accidents of lift and escalator are pretty worrying. I recalled that, a few years ago, I was trapped in a lift of a commercial building for 45 minutes. In the lift, a middle-aged woman soon lost consciousness and fell on the floor. A strong-built man, who had been shouting loudly for help using the intercom

system, also fell sick soon afterwards. So did four female students. And, their bodies began to shake. This is why we were so concerned about the emergency devices during the scrutiny of the Bill. It is vital for the relevant devices, including alarm bell, intercom system and ventilation fan, to function properly at all times. As to why we are so concerned about the publicity programmes and public education launched by the Government, this is because in case of a lift accident, it is also important for the trapped people to remain calm instead of panicking and screaming. Keeping a cool mind can enhance their safety.

In fact, legislative amendments on lifts and escalators had been made a few years ago, and the relevant bills committee was also chaired by me. This time, the Government introduced a brand new bill in the light of the widespread public concern over the issue and highlighted various areas in great detail, as I have mentioned in the Bills Committee report submitted by me earlier. The Government has carefully tackled various areas and put forward detailed proposals, thereby greatly enhancing the safety of lift and escalator users. Certainly, details of manpower supply or control have also been clearly set out.

As far as I understand, the Government has liaised and engaged in numerous discussions and consultations with the trade and people from all walks of life, either professionals or workers, for a long period of time, and has received wide recognition. Therefore, the scrutiny process of the Bill has been pretty smooth. Various parties were initially very concerned that the Bill would affect their operation or future development. In fact, the Bill will be beneficial to different parties. So, I think they can rest assured.

It is also our wish that the code of practice being prepared by the Government will be able to let members of the trade feel at ease once completed, which is vital to the operation. Although the Bill is considered perfect, the actual operation depends very much on the comprehensiveness of the code of practice and whether those engaged in the relevant works, in maintenance and operation of the equipment can fully accept it.

President, I so submit and hope that the Bill can successfully get passed. Thank you, President.

MS LI FUNG-YING (in Cantonese): President, early this month, a rope breakage lift incident occurred at The Seacrest, Tuen Mun. Fortunately, it has not evolved into a major incident, but has again showed that it is essential to strengthen the management of lifts and escalators. Therefore, in principle, I support this Bill, which seeks to enhance the safety of lift and escalator users.

I have two concerns with regard to this Bill. First, it is the implication of the Bill on members of the trade, and second, the implication on lift owners. The registration of lift and escalator workers requires that they either meet the stipulated academic or training requirement and have not less than four years' relevant working experience, or obtain the recognition of a registered contractor that they have acquired sufficient experience or training to carry out lift or escalator works competently. At present, most employees have obtained the recognition of registered contractors and become qualified workers for lift works or escalator works. However, this approach is seriously deficient because a worker is no longer qualified once he is not employed by that lift or escalator contractor.

The Bill proposes to improve the registration scheme of lift and escalator workers, and introduce a principle for renewal of registration. On top of the four years' working experience and relevant academic requirement, there will be an additional requirement that at least one year of working experience was obtained within the five-year period before the date of submission of the application. Another requirement for the application of registration is that the worker has no less than eight years' relevant working experience and has passed a recognized trade test. I welcome the transitional arrangements made by the Government, which have enabled the smooth registration of employees engaging in lift or escalator works, thereby minimizing the implications on them. However, as I have pointed out during the deliberation of the Bill, in order to register, an applicant must have eight years' working experience and passed a trade test. The required years of working experience is too long and has departed from the Government's previous principle of regulating technical jobs. For instance, when the Government intended to strengthen the management of electrical works and introduce a registration system for electrical workers in the 1990s, relevant transitional arrangements have also been made and employees were only required to have six years' working experience to be registered as electrical workers without the need to pass any trade test.

The introduction of a registration renewal system in the Bill will undoubtedly cause inconvenience to personnel engaged in lift or escalator works. However, in view of technological advancement, there is a need for members of the trade to keep abreast of the times and the development trend of the skills. The renewal system can therefore effectively enhance the quality of members of the trade and ensure public safety. And yet, a proper balance must be struck between safeguarding the quality of the trade and protecting the rights of employees. There must be, for instance, a clear and transparent mechanism for continuous development and registration renewal, so as to ensure that the employees can understand and the relevant charges are reasonable.

President, another concern is the implication on lift owners. My gravest concern is that the new provisions have imposed liabilities on the OCs taking part in the management of the property concerned. If it is so unfortunate that a lift incident happens, the OC concerned will be sanctioned in accordance with the law. As the saying goes, "They invited the troubles themselves." As people usually take part in the OCs out of their passion for community service, and are not paid for the work, the provision which holds OC members liable for lift incidents in their buildings will seriously dampen their enthusiasm for taking part in building management. Worse still, for some single-block buildings located in old districts, the residents are mostly elderly people. They have not formed an OC, and the lifts are dilapidated with a lack of maintenance. Thus, the property owners, being the lift owners as well, are also liable under the Bill.

As the Government had explained to members at the Bills Committee meetings, the Bill does not intend to make things difficult for OCs or scare off people who wish to take part in building management. Hence, a protection clause has been included in the Bill to save OC members from being inadvertently held liable.

President, I certainly understand the legislative intent, but it seems that it has far deviated from the recognition of the general public. People may immediately think of the liability that might be imposed on them as a participant of building management for the lift safety of their buildings. This will undoubtedly dampen people's incentives to take part in building management. Therefore, despite the fact that the Government has time and again clarified the purpose of the Bill at the Bills Committee meetings, it should expeditiously launch widespread promotion upon enactment of the Bill to address public

concern. Furthermore, it should also set up inquiry hotlines to receive public enquiries and introduce effective measures to provide support to the general public. Thank you, President.

MR CHEUNG HOK-MING (in Cantonese): President, there are currently about 58 000 lifts in Hong Kong. In view of the growing housing needs, and coupled with the fact that the Urban Renewal Authority has actively promoted urban renewal in recent years, it is believed that the number of lifts will continue to increase in the years to come. The existing Lifts and Escalators (Safety) Ordinance was enacted since the 1960s of the last century, and so far 50 years have passed. Although numerous amendments have been made, the spate of lift incidents occurred in recent years and the improved technical specifications of lifts and escalators have rendered the abovementioned Ordinance outdated. It is therefore necessary to strengthen the regulatory control of lift safety and upgrade the entry requirement of members of the trade, so as to put the public's mind at ease.

The existing Ordinance does not apply to buildings controlled or managed by the Housing Authority. In other words, while lifts in private buildings are supervised by the Electrical and Mechanical Services Department (EMSD), those in public housing estates are not. Repair and maintenance of lifts in public housing estates are instead done by the Housing Department following the guidelines issued by the EMSD. In other words, the lifts in public housing estates inhabited by 2-odd million residents are not protected by the law. Members may recall that a few years ago, accidents which involved the plunging of lifts and snapping of lift suspension ropes occurred one after another in Fu Shin Estate, Wan Tau Tong Estate and Tsui Ping South Estate, which have aroused public concern about the safety of lifts in public housing estates. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has urged the authorities time and again to look squarely at the issue. It can be said that the present Bill introduced by the authorities, which covers government buildings and public housing estates, has plugged the loopholes of the existing Ordinance and, to a certain extent, responded to the aspirations of the community. The DAB welcomes this proposal.

Under the Bill, the definition of "responsible persons" covers people who own a lift or escalator, and those who have the management or control of a lift or

escalator. Also, they are criminally liable for any major incidents. Although small property owners, who are also owners of the lifts or escalators, have engaged and authorized management companies to take care of the daily management work and are not directly involved in the management of the lifts, they will still be regarded as the responsible persons of the lift or escalator concerned. Given the extensive coverage of the definition of "responsible persons", people will inevitably worry about the criminal liability related to an accident. Therefore, the authorities need to step up promotion and organize more briefing sessions to enable small property owners, owners' corporations and management personnel to gain a better understanding of their criminal liabilities, so as to avoid confusion and misunderstanding.

It is learnt that in the EMSD, only dozens of staff have been deployed to undertake the audit inspection of lifts. Notwithstanding the good intention of the Bill to greatly expand the coverage of the existing Ordinance, the adequacy of manpower resources for undertaking audit inspection of lifts has aroused concern. I hope that the authorities will increase the relevant manpower resources to dovetail with the implementation of the new legislation.

The Bill also proposes to introduce a registration system, requiring all workers in the trade to meet the relevant academic and development requirements in the future, and renew their registration every five years. This facilitates the control of the safety level. However, we are concerned whether the threshold is so high that young people will be discouraged from entering the trade.

The lack of manpower in the trade is, to a certain extent, attributable to the existing bundled tender system. Under the practice of "the lowest bidder wins", contractors are induced to provide inferior services for lower fees. As a result, the workload of maintenance workers has significantly increased whereas the time spent on inspecting each lift has shortened correspondingly. The Bill proposes that in case of a lift incident, not only the contractor concerned will be sanctioned, but the workers responsible for the maintenance work will also be held liable. If the authorities do not improve the tender system when the new legislation is fully implemented, as well as reduce the workload of the maintenance workers and improve their remunerations, I am afraid that the imposition of additional criminal liability will result in a loss of manpower resources and affect the absorption of new blood into the trade.

President, undeniably, the implementation of the new legislation can ensure the quality of technical workers, but appropriate measures should also be adopted to rationalize the existing tender system, improve the working environment of members of the trade, shorten the working hours and step up the relevant promotion and training, with a view to providing incentives (such as a reduction of registration fee) to attract more young people to enter the trade.

With these remarks, President, the DAB supports the Bill.

MR LEE CHEUK-YAN (in Cantonese): President, I support this Bill on behalf of the Labour Party. As Members may aware, this Bill is concerned with lift safety. Lift accidents can bring about very serious consequences and often cause serious casualties. Even if there are no injuries or deaths, the people concerned would be scared to death. Therefore, the safety issue has all along been the major concern of this Council and the Government.

I think one merit brought about by the drafting of this Bill is a comprehensive review of the entire regulatory framework. Under this regulatory framework, there are three types of people, namely the owners' corporations (OCs), contractors and workers. Very often, the OCs' practice of awarding tenders to the lowest bidder is the root cause of the problem. That is indeed a very dangerous approach. I hope that after listening to our debate today, the OCs will think seriously about the importance of safety and quality as any accident may lead to dire consequences.

Next, I will talk about contractors and workers. Contractors play a pivotal role as they are responsible for undertaking the maintenance works after winning a bid, and thus bear the greatest responsibility. The Bill requires that both workers and contractors must register, but I consider it most important to set up a system of de-registration, with a view to changing the culture of the contractors.

What kind of culture is that? The Secretary should have heard of the "three-legged" approach. We have all along expressed grave concern about the practice of "the lowest bidder wins", as contractors are tempted to undertake maintenance works in a way that yields the largest savings. Which approach will yield the largest savings? The "three-legged" approach is one way. I wonder if this is the kind of trick that only unscrupulous businessmen in Hong Kong would invent. The "three-legged" approach means that two workers

attend to any maintenance order but one of them subsequently leaves earlier, leaving the other behind. Since only one worker is left behind, the quality of maintenance will certainly be affected. Worse still, the remaining worker may be in danger. In case an accident happens, he is all alone at the scene, having no assistance or support, which can be very dangerous.

In the past, accidents happened when a worker was left all alone under the "three-legged" situation. Therefore, such an approach must be stopped. I nonetheless notice something positive in this Bill, and that is, the requirement for both the contractors and workers to register. This would facilitate the authorities to assess if the number of workers employed by a contractor is sufficient to meet the requirement of two workers undertaking the maintenance works of one lift. After counting the number of workers, we consider that there is sufficient manpower but some people have expressed concern over a lack of manpower. In my view, a lack of manpower is a good phenomenon, because it implies that training must be stepped up to nurture more talents to join the trade.

In fact, young people can advance through the technical path, and repair and maintenance is precisely the path. Not everyone has to choose the academic path and not everyone is suitable to advance through the academic path. So long as the technical career can provide a stable job and income, it is good for young people. We can develop more apprenticeship schemes for young people as the practice of apprenticeship is also adopted in this trade. Apprentices can pursue self-development in the Hong Kong Institute of Vocational Education and get an internship while studying. As apprentices can secure a job soon after they graduate, it is indeed a very good arrangement for young people. In order not to put them in danger, the "three-legged" approach should be eradicated.

Furthermore, reasonable wages, terms of employment and working hours should be set, so that young people can rest assured that the skills they acquired will enable them to support their family. Although we have provided for the protection of minimum wages, I absolutely do not wish to see that workers receive only minimum wages as they are now earning more than minimum wage. We consider that workers should receive reasonable wages and have annual increments. Only this can be regarded as an ideal industry. Tightened regulatory control would make the industry more professional, and workers who have attained the professional qualification should therefore receive reasonable wages.

Meanwhile, the "three-legged" approach should be eradicated. How can we do so? Contractors may still attempt to adopt this approach in the future. How can we ensure that they will not adopt the "three-legged" approach but employ sufficient staff to do the job? Supervision lies in the hands of the registration authority. Contractors who fail to comply must bear the responsibilities. How do we know that they fail to comply with the provisions? This requires the supervision of the OCs and the management offices. If they notice that two workers come to attend the maintenance work but then one leaves first, this is a "three-legged" case and they are obliged to report the case. For non-compliant contractors, the Government will, according to the code of practice …… I hope that the relevant code of practice will not be "toothless tigers" and will impose heavy sanctions on non-compliant contractors by de-registering them. I think this is very important.

As to whether this can be achieved, I will listen to the Secretary's response on how the Government will ensure the safety of lift workers and users, and whether the regulatory framework is sufficient. We support the introduction of this framework, and particularly rigorous law enforcement in the future. It is vital that non-compliances relating to lifts should be dealt with unswervingly in the same way as unauthorized building works, and rigorous enforcement actions should be taken to ensure the safety of workers. Workers of the trade sincerely hope that the Government will take rigorous enforcement actions to protect their safety and ensure that they receive reasonable wages. Thank you, President.

MR IP WAI-MING (in Cantonese): The enactment of the Lifts and Escalators Bill (the Bill) seeks to replace the existing outdated Lifts and Escalators (Safety) Ordinance (the Ordinance), with a view to strengthening the regulatory control of lift works and operational safety. I had participated in the deliberation of the Bills Committee and discussed the details of the Bill with the staff of the Development Bureau and the Electrical and Mechanical Services Department (EMSD). Through the concerted efforts of various parties, we finally completed the deliberation of the principal legislation contained in the Bill. However, I wish to remind the Government, as certain details of the Bill will later be more specifically stipulated by way of subsidiary legislation, it is hoped that the Government will expeditiously submit the relevant subsidiary legislation for the Legislative Council's consideration, and give a clear account of the concerns raised by me and the Hong Kong General Union of Lift and Escalator Employees.

President, the following is my personal view on provisions relating to the registration of workers, subcontracting works, lift and escalator safety, fees and engineers' opinion, as well as the support for the buildings or owners' corporations (OCs) as proposed in the Bill.

On the registration of workers, the existing provisions are actually the achievements of trade unions, the Hong Kong General Union of Lift and Escalator Employees and workers after years of efforts. In the past years, the registration of lift workers was linked to the works companies which they belonged to. Simply speaking, the registration of workers will become invalid once they leave the company. This does not only create inconveniences to lift workers, but is also unfair to them. Therefore, over the years, Members and the Hong Kong General Union of Lift and Escalator Employees have been urging the Government to link the registration with workers themselves but not their companies. Thus, one of the major amendments of this Bill is the introduction of a registration system for lift and escalator workers, and I welcome this proposal.

In order to tie in with the implementation of the registration system, it is hoped that the Administration will gain a good understanding of the demand and supply of lift workers on a periodic basis and take note of the age changes of workers in the industry, with a view to stepping up its efforts to attract more young people to enter the trade. We find that among the 5 000-odd registered personnel in the entire industry, the age of most of them is pretty high. I therefore reckon that the industry is facing an ageing problem. It is hoped that the Government will shed light on the construction industry and introduce more measures to attract more young people to join the trade, thereby maintaining its healthy development. One thing that is worth mentioning is the income. At present, many workers are earning a daily wage of only $200 to $300, which has completely failed to attract young people to enter the trade.

Secondly, regarding the safety issues raised by a colleague earlier, the present code of practice has only set out 10 works, commonly known as the "Almighty Ten", to be carried out by two lift workers together. However, for the sake of safety and quality, an ideal arrangement is to have all inspection and maintenance works carried out by workers in a team of two.

The two recent lift incidents involving the failure of suspension ropes have heightened our concern in this regard because very often, it is downright impossible for one worker to ascertain if the suspension ropes of a lift meet the safety requirements of the Government during an inspection. Two workers are required to work together to inspect the suspension ropes to ascertain if they comply with the safety requirements. We therefore hope that when the code of practice is formulated in the future, the provision setting out the mere 10 works that must be carried out by two workers should be replaced with a new provision, which provides that a full working team should comprise two workers. It is hoped that the Government will take note of this.

President, another issue of my particular concern during the deliberation is subcontracting, which actually refers to briefing out or sub-subcontracting. Being a representative of the labour sector, I must solemnly point out that we oppose the practice of subcontracting and sub-subcontracting. Therefore, during the deliberation, I have discussed with the EMSD time and again about clauses 38 and 74 on subcontracting. Suppose the practice of subcontracting is adopted and Company A has to subcontract the maintenance works of lifts after securing the relevant contract, it will probably offer an even lower price. So, how can the subcontractor make up for the price difference? Obviously, they will minimize the wages of employees or the cost of materials.

As Members may aware, the large number of high buildings in Hong Kong has made lifts and escalators an essential part of our daily life, and the operational safety of lifts and escalators has therefore become a grave concern of the community. Public safety will be threatened if cost is minimized by exploiting the workers and using inferior parts or spare parts not manufactured by original manufacturer. Thus, the Government must exhaust all possible measures to prevent this from happening, and the best way is to tackle the subcontracting of lift and escalator works. This would prevent the exploitation of workers' legitimate interests, while at the same time safeguard public safety.

During the deliberation, I had once pointed out at a Bills Committee meeting that the number of registered lift contractors and registered escalator contractors may increase substantially after the enactment of the Bill and multi-layered subcontracting of lift or escalator works may also become common in the industry. In fact, past experience of other fields in the construction industry has indeed revealed that, if no proper regulation is imposed in the first

place, multi-layered subcontracting could give rise to many serious problems, including safety problems, and supervision would become more difficult in future. Therefore, we hope that the Government will exert greater effort at the initial stage of implementation to strictly monitor the subcontracting of lift and escalator works.

Safety is another major issue of concern to the Bills Committee during the scrutiny. In recent years, a number of lift and escalator accidents happened in Hong Kong, among which the plunging of a lift in Fu Shin Estate in Tai Po in 2008 had aroused the greatest public concern. The incident well demonstrated the importance of lift safety. In fact, lift safety is closely related to the subcontracting problem mentioned by me just now. This is because subcontracting might lower the quality of maintenance materials and reduce the mandatory staff cost. The safety level of lifts is therefore in doubt.

After numerous discussions with the officials concerned, they agreed that any subcontracting of lift works must inform the EMSD. We think this is tantamount to holding the EMSD responsible for supervision. From then on, the EMSD will have to play the gate-keeping role properly while we will closely monitor if it has performed its duty with due diligence instead of briefing it out.

On the other hand, the views expressed by the lift engineers are also worth noting. During the deliberation of the Bill, members of the Bills Committee advised that when legislative amendments to the Lifts and Escalators (Safety) Ordinance was scrutinized in 1998, there were provisions assuring lift engineers that their professional qualifications were valid for life. Changes have nonetheless been made by the Government when drafting this new legislation, by requiring lift engineers to renew their registrations every five years. To lift engineers, this is no doubt a renege on previous undertakings. In this connection, we hope that the Government will attach importance to the engineers' views and step up communication with them, with a view to exploring the possibility of making amendments in due course to address their concern. The Government should consider the feasibility of honouring its pledge made in 1998 by drawing a line for the lifelong professional qualifications, such that engineers registered under the old regime before the enactment of the Bill can retain their lifelong professional qualifications. Only lift engineers registered after the enactment of the new legislation are required to renew their registrations every five years under the new regime.

Regarding the registration fee, we hope that the authorities will consider the implications of the proposed registration fee on the livelihood of lift engineers, especially lift workers. It is hoped that the authorities will come up with an appropriate registration fee, and in particular, consider if the currently proposed $500 registration fee can be reduced.

Another important point about this Bill is that it has imposed additional liabilities on OCs and property owners. We opine that when the new legislation comes into effect, the Government should provide more support to the relevant buildings and their OCs, especially those single-block buildings. This is because under the new legislation, lift owner can be a property management company, an OC or building owner. As they are lift owner, they are required to bear onerous liabilities under the new legislation and must therefore make the best choice when selecting a lift maintenance company.

Nonetheless, many OCs, especially OCs or property owners not assisted by any professional management companies, may not know how to identify a qualified lift maintenance contractor or company. Nor can they tell if a quotation is reasonable. And yet, they are required to bear onerous liabilities. This has not only put them in a difficult position, but has also exposed them to abuse by maintenance contractors during the selection process. We therefore hope that the Government will do more by providing sufficient information to OCs or landlords of single-block buildings, so that they know how to select a lift maintenance contractor and examine if a quotation is reasonable. This would prevent them from being preyed on by contractors. Thus, we hope that the Government can provide more support to these OCs and property owners after the enactment of the Bill to ensure that they are properly protected.

President, I so submit and the Hong Kong Federation of Trade Unions supports the resumption of the Second and Third Readings of the Bill.

MR WONG KWOK-HING (in Cantonese): President, today, the Lifts and Escalators Bill (the Bill) is finally submitted to the Legislative Council for passage. I very much welcome the Second and Third Readings of the Bill today and call on Members to support it. If we look back at the history before the Bill was scrutinized, we would find many precious lives of workers were lost and many of them have become permanently disabled due to lift accidents.

Therefore, though the Bill is finally submitted to this Council, I still consider that it comes too late. However, being late is better than never.

President, in a metropolis like Hong Kong which is densely populated with many high buildings, lifts have become an essential carrier which carry people from one floor to another, and they are thus closely related to our daily life. Therefore, for such cabled carriers installed in multi-storey buildings, they not only affect the safety of passengers, but are also closely related to the safety of lift maintenance workers. Given that the existing Ordinance is outdated and not comprehensive enough to monitor the problems that have arisen in recent years, there is a desperate need to amend the legislation. In fact, as I have said earlier, it is an undisputed fact that the relentless efforts of many workers and engineers have made this achievement possible.

Although the Bill is tabled for examination today, and even if it is passed today, there are still many areas requiring further actions by the enforcement authorities and the executive authority through effective measures. They should not think that all problems will be solved after the legislation is amended.

First, I hope the authorities will take note of the fact that tendering is a very common practice of procuring lift maintenance services, and very often the approach of "the lowest bid wins" is adopted. And yet, the approach of "the lowest bid wins" adopted in the tendering exercises, which are conducted once every few years, has a vicious knock-on effect. After winning the bid at a low price, the contractors will try to lower the cost by minimizing the basis expenses such as wages and spare parts, so as to get the established level of return. This might result in serious consequences and give rise to many problems relating to the maintenance and quality of spare parts.

We cannot help but ask, why is it that the owners' corporations (OCs), management committees or property management companies concerned cannot perform a good gate-keeping role and prevent the abovementioned tendering problem? We notice that both the users and occupiers lack the professional knowledge and they know nothing about the safety and quality of lift maintenance. As a result, small property owners tend to use prices as the deciding factor when awarding the service contracts.

In this connection, I consider it essential for the Administration to step up education after the enactment of the Bill. Apart from education, professional teams should be set up to provide support to equip the building management authorities (namely the OCs, property management companies and their members) with the relevant knowledge. Otherwise, the tendering exercise will end up in blunders right at the very beginning. This is the first point I wish to make.

Secondly, I hope that the executive authorities, that is, the relevant government departments can perform their monitoring function and, in particular, to monitor if the lift maintenance contractors have employed sufficient workers and engineers to duly perform their duties. After the occurrence of lift incidents, when we examined if any professional or engineer was present at the scene to supervise the relevant works, we often found that no such arrangements had been made. In particular, for serious accidents which had caused injuries and deaths, we found that lift maintenance companies only deployed one worker to do the work that should be carried out by two workers. In fact, it is essential for lift maintenance works to be carried out by two workers so that they can support each other. This is particularly important as the lift shaft is far away from the guide rails, and communication through mobile phones is not possible. Therefore, insufficient manpower will definitely lead to spates of accidents.

As a Member has said earlier, it is not enough to deploy two workers to deal with the 10 lift works, the so-called "Almighty Ten". Thus, comprehensive review should be conducted. The Government is duty-bound to exercise its monitoring power when the management companies do not have the professional competence or statutory power to exercise supervision and prevent such accidents from happening.

Thirdly, the quality of spare parts of lifts is often the major cause of numerous incidents and accidents. Why would this become an important factor in the lift maintenance industry? As I have pointed out right at the beginning, lift maintenance companies often win the bid at low prices under the "the lowest bid wins" approach. After they have been awarded the contract, they tend to use spare parts of cheaper brands rather than those from original manufacturers, resulting in a mix of spare parts, metal and computer parts of different brands and qualities. As a result, even the quality of spare parts manufactured by the original manufacturer cannot be guaranteed. I think it is difficult for OCs and

management companies to monitor the situation as they do not have the relevant technical knowledge and power. In my opinion, the Government, and the Electrical and Mechanical Services Department (EMSD) in particular, should carry out close supervision and audit inspection to prevent abuse.

Fourthly, the Government should take the initiative to properly monitor the maintenance of lifts in buildings under its management. Why do I need to raise this point? In fact, we find that, in recent years, many lift incidents occurred in public housing estates managed by the Housing Department, be they public housing estates, Home Ownership Scheme housing estates or Tenant Purchase Scheme (TPS) housing estates. I am afraid that the quality of lift maintenance works of government buildings has also been affected by "the lowest bid wins" approach under the subcontracting system. For instance, the EMSD had conducted a review of the lifts in 39 TPS housing estates territory-wide in 2009 and the findings showed that the lifts of 32 housing estates have problems. The EMSD had inspected 1 004 lifts and found that the suspension ropes of 153 lifts have problems. The top on the list is Heng On Estate, which is followed by Tsui Lam Estate and Yiu On Estate. In these three housing estates, the numbers of lifts having defective suspension ropes are 19, 18 and 10 respectively. Among the 36 lifts in Tsui Lam Estate, half of them have defective suspension ropes. Hence, we can see that even buildings managed by the Government have major problems. How can the Government take the lead to perform the role of quality assurance? This is indeed a very important issue.

We hope that after the passage of the Bill, the EMSD will not only exercise tight control over the lift safety of public housing estates, but will also exert greater effort to increase manpower to help monitor the lift safety of private buildings, especially the quality of spare parts. In the light of the incidents relating to the quality of suspension ropes, we doubted how the general public, OCs and management companies can exercise tight control over the quality of the suspension ropes in the absence of technical support.

Fifthly, we hope that the Government will step up control over the structural safety of lifts. I am afraid that apart from the EMSD, both the Housing Department and the Planning Department will have take part as well. President, in June 2010, someone came to me for help regarding an accident happened in Coastal Skyline, Tung Chung, involving the duct room. The fact that this housing estate is designed to have all the duct rooms on each floor

opened by the same key has resulted in an accident. Thinking that the door of the duct room could lead him to his destination, a meter reader opened the door with the key but soon found himself falling tens of storeys to the ground and died in a lift shaft.

As evident from the incident, apart from the structural safety of lifts, there are other issues which the enforcement and regulatory authorities should pay special attention to, so as to avoid the recurrence of such serious accidents. The fatal lift accident happened in Coastal Skyline has aroused widespread public concern. I therefore hope that the relevant government departments will review the duct rooms of lifts in all buildings in Hong Kong to ascertain their safety.

Lastly, I wish to raise the training issue and just now a colleague has made some specific suggestions. I nonetheless hope that the Government will attract more enthusiastic young people to join this professional lift maintenance industry.

Thank you, President.

MR WONG YUK-MAN (in Cantonese): President, two Members from the People Power support the Lifts and Escalators Bill (the Bill). Once the Bill is passed, it will replace the existing Lifts and Escalators (Safety) Ordinance (the Ordinance). The Ordinance was enacted in the 1960s — the sixties of the last century — and it fails to respond to public aspirations despite numerous amendments. In the wake of a spate of lift and escalator incidents in recent years, reviews have been conducted and two reasons are identified: the Government has not done its work in monitoring and the contractors cannot absolve themselves of the blame.

The present Bill has plugged the loopholes that have prevailed. We welcome a comprehensive review under the legislative framework, to be followed by amendments of the relevant laws. An improvement of this Bill is its wider scope. In the past, government buildings are often excluded from supervision and thus left uncontrolled. The existing Ordinance does not apply to any building belonging to the Government, the Housing Authority and which belongs wholly to the government of a foreign country and which is used exclusively or mainly for the purpose of official business of the consular officer of such government. At present, even government organizations do not enjoy the same

exemption as before. Therefore, clauses 3 and 4 which cover the abovementioned buildings are worth supporting.

If Members may recall, probably in 2008 — Mr Andrew CHENG is also present at the meeting now — in Tai Po's Fu Shin Estate, seven out of eight suspension ropes of a lift had broken. This was the situation in public housing estates. Since public housing estates are not covered by the Ordinance, serious incidents occurred. The case is just that simple, right? There is no way that the Government can still turn a blind eye to the aspirations of the community. We therefore support the inclusion of the abovementioned buildings in clauses 3 and 4.

On the other hand, according to the Bill, the responsible person of a lift and escalator, meaning a person who owns a lift or escalator, or any other person who has the management of the lift and escalator, is liable. And yet, the definition of "responsible person" is so wide as to include watchman, security guard and members of owners' corporations (OCs), and so on. These people do not have professional knowledge of lifts and escalators at all. Therefore, the liabilities suggested in the Bill should be entrusted to the professionals instead.

However, the Bill provides that it is not a defence available to property owners or OCs if a building manager has been appointed to manage or control the lifts and escalators. This would discourage many OC members from participating in the management of buildings to avoid liability. Although a provision of "without reasonable excuse" has been included in the Bill, it still cannot address public concern. I suggest that the Government should formulate specific and transparent guidelines, step up public promotion and education, and provide more support and assistance to the OCs via the various District Offices. Without their assistance, it would be very difficult to have the mission accomplished.

The Bill has also upgraded the qualification requirement for registration as lift and escalator engineers or workers. We agree with this proposal as human lives are involved, the issue should not be taken too lightly. Newly registered lift and escalator engineers are required to attain the registered professional engineer status with two years' relevant working experience, whereas registered professional workers are required to have four years' relevant working experience or academic qualification, or have eight years' relevant working experience and

passed a trade test. Both of them are required to complete 90 hours and 30 hours of relevant professional training respectively, and the registered professional engineers, workers and contractors must renew their registrations every five years. These provisions are very appropriate.

At present, that is, under the old regime, there are not many registered lift and escalator engineers and qualified workers; only 277 and 4 950 were recorded respectively last year. Considering the actual situation and the employment problem faced by incumbent engineers and workers, there will be a smooth transition of the existing registered engineers and qualified workers to the new regime. As they are required to renew their registrations every five years and undertake mandatory training, we hope that the old problems will no longer prevail under the new regime and can be completely resolved. We will certainly have to wait and see if this mission can be accomplished.

In fact, the registration system is nothing new. Regarding the registration system of maintenance engineers and workers, it is most important is to step up inspection and enforcement. The existing problem is partly attributable to the lack of manpower, which cannot be tackled by the introduction of a registration system alone. The Government should also address the problem from the perspectives of training, remuneration and career prospect of the entire industry, and join hands with the relevant universities or institutions to organize suitable courses under "co-operative education". This is also essential.

One of the differences between this Bill and the Ordinance lies in clause 74 and part 2 of Schedule 8, which set out the factors a Registrar will consider when deciding if the applicant (meaning the lift contractor) is a fit and proper person. This is an improvement. As Members may aware, generally speaking, the Government will very often allow itself to have great discretionary power in different licensing regimes, without stating the relevant factors for consideration. This is not in line with the fact that Hong Kong is a civilized and open society. Some factors for consideration are pretty abstract, such as the capability of the applicant to maintain the necessary facilities, the resources and workforce to carry out lift works, and so on. While we agree that the provisions of the Bill should have certain flexibilities, it is hoped that the authorities will set out some concrete requirements in the code of practice for easy compliance.

During the scrutiny of the Bill, we noted that some members had requested the Government to review the penalty levels of various offences committed by different people, so as to avoid having different penalties for offences of the same seriousness. According to clause 16(2), the maximum penalty imposed on a lift contractor is imprisonment for six months, which is far lower than the penalty applicable to the responsible persons under clause 13(4), which is imprisonment for 12 months. This has indeed put the cart before the horse. As reflected in many cases, the contractors should bear a greater responsibility. Of course, the Government has accepted the Bills Committee's views and amendments will be made in this regard. Furthermore, we also support the proposed increase of the maximum fine from the present $10,000 to $200,000.

While we support the Bill, I must point out that the problems cannot be resolved by making legislative amendments alone. The law-enforcement authorities should bear a greater responsibility. Let us take a look at some figures. Between 2005 and 2008, the annual inspection of some 15 000 lifts has been delayed, which accounts for nearly 30% of non-compliance. And yet, the EMSD has only issued two forms but no prosecution has been instituted. As evident from these figures and the spate of lift incidents, legislative amendments only plays a supplementary role, the culprit is the failure of the enforcement departments to observe the law and rigorously enforce the law. We therefore hope that the Government will make serious reflection during this legislative amendment exercise.

Thank you, President.

MR ANDREW CHENG (in Cantonese): President, the present Lifts and Escalators Bill (the Bill) is actually a very complicated and pretty important bill. Being a member of the Bills Committee — I need to look at the Bills Committee report as the deliberation had completed for quite some time — I wish to tell the Secretary, while we support the Bill, we also hope that certain parts — though no amendments have been proposed, we still wish to draw the Secretary's attention to the parts which warrant her attention after the enactment of the Bill.

After numerous meetings on scrutinizing this complicated Bill, the Secretary who is considered a "good fighter", the relevant bureaux and departments had accepted Members' views on many parts. They accepted what

is right and denounced what is wrong. We therefore think that the Secretary should be commended.

And yet, many parts of the Bill were only amended after our repeated persuasions, and we even threatened to propose amendments if the Government refused to do so. I guess the Government are also aware that 58 000 lifts over the territory are covered under this Bill, and should there be any accidents, the Government cannot evade its responsible. So, I think that the Government is sincere on this issue. However, again, I wish to highlight a few points to the Secretary — I guess the Secretary should be able to work in the next Government — being the Secretary of the next Government, there are a few issues she must pay attention to.

I think many colleagues have already mentioned some of the issues, but I still have five points to share with the Secretary. President, firstly, it is the role of the Electrical and Mechanical Services Department (EMSD). While we have an impression that the EMSD has all along been industrious, does it have sufficient manpower, resources and power to carry out proper audit inspections, examinations and even spot checks on the 58 000 lifts, so as to tackle the maintenance problems to be undertaken by contractors or responsible persons?

As Members may aware, there are tens of thousands of lifts in Hong Kong. In order to have sufficient resources — frankly speaking, I know what "sufficient" means but the Government would definitely ask what is meant by "sufficient" — to carry out audit inspections and regular checks for every lift at least once a year, how many manpower resources do we need? To be honest, never will there be a situation which can be regarded as "sufficient". Rather, I think the resources currently available for the EMSD fall far short of the reasonable aspirations of the public.

I remember that during our informal meetings, the Secretary once said "as there is no Under Secretary in my Bureau, the money saved could be reserved for the Government to fight a real war." I have a very strong impression about this remark. I hope that the money saved from not filling the post of Under Secretary can be used to employ more engineers, so that the EMSD can carry out more inspections and spot checks, it would surely be more meaningful.

The second point is: How does the EMSD make use of the so-called Contractors' Performance Rating Scheme (the Scheme)? As Members may aware, there have been a number of serious accidents in the past. If we look at the performance ratings of the contractors or maintenance contractors concerned, we find that their ratings are not low; some of them even got pretty high ratings. Why would contractors with such high ratings be involved in such serious accidents? Can the Scheme truly reflect the reality? If not, it would be very dangerous for the owners' corporations (OCs) or property management companies will, based on the rating of the Scheme, consider the tenders submitted and award contracts to the contractors.

Therefore, during the deliberation of the Bills Committee, some members and I had expressed our particular wish that the Government should consider incorporating the Scheme into the Bill, with a view to providing an effective and objective legal basis for the EMSD to decide whether or not to revoke or suspend the licence of a registered contractor in the case of misconduct.

Of course, we all know that the Government was reluctant to do so. According to the Government, the Scheme merely aims at providing information to the general public. It might therefore be biased to use such a simple demerit point system to reflect the past performance of contractors in terms of safety performance and quality. President, you may not completely refute what the Government said, but as a member of the public, property owner or management company, we certainly hope that the Government and the EMSD, being the professional authorities, can develop an objective performance rating scheme which links up with the contractors' performance by all means.

In fact, I was only half convinced by the Government and had a strong impulse to propose amendments at that time. However, I am sure that amendments proposed by Members will definitely not be passed. What is more, I would like to pass the ball to the Secretary for this important bill. If the Secretary undertakes to conduct future reviews to examine the legislative intent and performance indexes of the contractors in the light of this approach before putting it to trial, I hope that the Government will bear in mind the views expressed by colleagues today and in the past. After all, there should be a basis for the demerit point scheme and the basis should be objective. Without an objective basis, I am afraid that the Scheme will only remain to be a "toothless tiger" as contractors with incident records can still get high ratings. This may

mislead many responsible persons or OCs into awarding contracts to them and thereby sustaining their operation, which would certainly affect the overall safety.

President, the third point is concerned with the penalty. As Members have mentioned just now, initially we had doubts on the penalty level. Why would the penalty levels applicable to the responsible persons and contractors be different? The penalty levels should be higher for contractors than the responsible persons in any event. This is because contractors are professionals of lifts, whereas the majority of responsible persons are probably property owners or ordinary owners. Even if they are professional management companies, they know nothing about maintenance. We have therefore put forward our request and the Government has taken heed of our advice in the end. I think this should be commended. Nonetheless, much effort and time have been spent to convince the Government.

Regarding the penalty levels, I still have a piece of advice for the Secretary. While I consider the present penalty insufficient, given that the original fine is as low as $10,000, a significant increase will certainly arouse serious opposition from the industry. So, I hope that this is just a beginning. Human life is precious. If a company actually contravenes the law, the penalty should serve as a deterrent. The present penalty level is fine at level 6 and imprisonment for 12 months, which can be found in clauses 16(2) and 13(4). I allow the Government to use this as a starting point. But should we notice that some companies merely consider the penalty as an operating cost rather than a deterrent, the Government should then formulate more stringent penalty with greater deterrent effect.

President, regarding the posting of incident notices and the functioning of emergency devices, long hours have been spent by the Bills Committee to deal with these issues. Chairman of the Bills Committee, in particular, have reiterated time and again how scared he was when he was trapped in a lift. If a person who is trapped in a lift pressed the button printed with a big word "Alarm" but found that it is not functioning …… Chairman of the Bills Committee had mentioned time and again his experiences of lift entrapments — it was so "lucky" for him to be trapped in a lift for a few times, I did not, God forbid, have this experience for very long time — and his vivid description of such experiences had scared us. We therefore requested the Government to clearly consider if the emergency devices in lifts should be governed by the law, and whether heavier penalty will be imposed for non-compliance. However, it seems that the

Government is reluctant to take heed of our advice in this regard. On the other hand, knowing that we are not professionals, we have accepted many of the Government's explanations.

Regarding the posting of incident notices, the Government will introduce a regulatory scheme in the future, which will be specified in the Schedule. President, many proposals were put forth by us and would be dealt with by the Government by way of subsidiary legislation or schedules in the future. We hope that the Government will realize the importance of lift safety and the emergency devices, and require the contractors to inform the EMSD as soon as possible if the failures cannot be reinstated in 24 hours. The Government appreciated our requests and agreed to follow up with the Bills Committee. I hope that the Secretary will report on these issues when she speaks to resume the Second Reading of the Bill.

Last of all, it is the subcontracting system. President, I think I need not speak too much on this as a number of colleagues, including representatives of the trade unions, have said a lot. This subcontracting system does not only exploit workers' income to a certain extent, but also brings negative implications on lift safety. Therefore, the subcontracting system should be dealt with by stipulating specific legislative requirements and responsibilities. However, the Government states that it will provide for a notification mechanism for subcontracting works in the regulation to be made under clause 154. Frankly speaking, I am not pretty convinced. But given that colleagues representing the trade unions have consulted members of the trade, and I am not a representative of the trade unions but an ordinary user, I hope that the so-called notification mechanism specified in the regulation to be made can genuinely enable the entire community to have confidence in lift safety …… the most important is to gain an understanding of the tier which the contractor belongs to under the subcontracting system, and then minimize the number of tiers by all means. From a layman's point of view, the risk increases with the number of tiers and thus a higher risk of safety problems.

Therefore, President, I raise the abovementioned issues to the Government, and especially the Secretary. Chairman of the Bills Committee had conducted the meetings in a very sincere manner and had given us gentle reminders all the time. I do not expect to have zero accident in the future, but whenever there is an accident, the penalty imposed on the contractor concerned should have

deterrent effect. With regard to the emergency safety measures, I think they also owe the public an explanation.

With these remarks, President, I support the resumption of the Second Reading of the Bill.

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 Development to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR DEVELOPMENT (in Cantonese): President, first of all, I sincerely thank the Chairman of the Bills Committee Dr Raymond HO and other Members for spending so much of their precious time on the Lifts and Escalators Bill (the Bill), and providing so many constructive views. During the past hour or so, I have listened very attentively to Members' views. Although certain views raised at the Bills Committee meetings have not been fully incorporated into the Bill, we will definitely take follow-up actions according to Members' advice. Over the past 10-odd months, the Bills Committee has held 17 meetings and examined a total of 160 provisions and 16 Schedules to the Bill. Between November and December 2011, the Bills Committee met almost once a week and sometimes even twice a week. During the deliberation, the Bills Committee had listened to the views of some 20 organizations and conducted thorough discussions on the implementation and operation details of the Bill. We have taken heed of the advice of the Bills Committee and the industry, and proposed relevant amendments to further improve the Bill. I will brief on the relevant details when I introduce the Committee Stage amendments (CSAs) later on.

There are as many as 58 000 lifts in Hong Kong. From 2006 to 2010, there were 170-odd cases of mechanical malfunctioning related to lifts, causing injury to about 20 people. Despite that the number of casualties was not high, in view of the number of lift incidents happened in recent years, the anxieties

brought to people who had been trapped in a lift just as Members as said, as well as the possible consequences of major incidents, we consider it necessary to strengthen the regulatory control of lifts and escalators. In fact, the current-term Government has strived to enhance the safety level of lifts and escalators within its term of office.

Mr WONG Yuk-man just now said that the existing deficient regulatory regime is attributable to the inadequate monitoring of the Government and the contractors should also be blamed. Yet, allow me to give a fair comment. This is also attributable to the negligence of property owners. For instance, with regard to the accident that happened in Fu Shin Estate in 2008, Mr WONG Kwok-hing cited the result of an investigation conducted subsequently on the maintenance of lifts in Tenant Purchase Scheme (TPS) housing estates. The result was not satisfactory and it showed that the maintenance of lifts in these buildings are arranged by property owners themselves as the power to maintain and manage the lifts has already been transferred from the Housing Department to the owners' corporations (OCs) under the TPS. Therefore, an essential part of control is to ask property owners to attach importance to the maintenance of lifts.

A package of improvement measures has been adopted under the existing legislative framework since late 2008, which include enhancing the existing code of practice, disclosing contractors' performance details, as well as stepping up inspection and publicity. With regard to inspection, in particular, we had immediately stepped up inspections from one-out-of-ten to one-out-of-seven in December 2008. As this involved the deployment of resources saved from not filling the post of Under Secretary, which was mentioned during my meeting with Mr Andrew CHENG, I think I need to make some clarifications here. It is no easy task for an enforcement department to increase manpower resources in the middle of the year to dovetail with the enhanced inspections. As Members may know, resource allocation is made on an annual basis during the formulation of the Budget. The Development Bureau was originally allowed to create the post of Under Secretary at that time, but as it had yet to be filled, I had taken the initiative to redeploy the resources dedicated for this Under Secretary post to the Electrical and Mechanical Services Department (EMSD) to increase the manpower for inspection, thereby stepping up inspection and enhancing the safety level. However, it seems that Mr CHENG has forgotten the undertaking given to me at that time to refrain from mentioning this again on public occasion. As Members may recall, we were expanding the Accountability System towards

the end of 2008. I did not want to give people an impression that I had no intention of filling the Under Secretary post. Nonetheless, given that my term of office is approaching an end, I do not think there is any harm in bringing out the issue today.

In implementing the abovementioned measures, we had, at the same time, conducted a comprehensive review of the Lifts and Escalators (Safety) Ordinance which was enacted in 1960, and had taken heed of the advice of the Task Force established by the EMSD in August 2010 to formulate a brand new bill. The Task Force is comprised of representatives from workers unions, trade associations, the Vocational Training Council, the Construction Workers Registration Authority and relevant professional bodies. After the serious deliberation of the Bills Committee, the Legislative Council resumes the Second Reading of the Bill today, which is a milestone for an improved regulatory system of lifts and escalators in Hong Kong. We strongly believe that the new legislation can strengthen the existing regulatory framework in various aspects, including strengthening the registration regime of personnel engaged in lift and escalator works, increasing the penalty levels of offences, extending the coverage of the legislative framework and enhancing the operational efficiency and enforcement effectiveness.

Considering that the quality of workers in the trade is vital to the safety of lifts and escalators, we propose to upgrade the registration threshold of lift engineers and escalator engineers to that of professional engineers with at least two years' relevant working experience, and therefore compatible with other legislation for building safety control. Furthermore, there is an additional requirement of registration renewal every five years. We also propose to stipulate the registration requirement for lift contractors in the law, and introduce a registration renewal requirement to provide a mechanism for continual compliance checking of their eligibility. With regard to engineers, we propose to introduce a brand new registration system, which can address the longstanding concern of Mr IP Wai-ming about lift and escalator workers. This registration system does not only recognize workers' competence, but also provides better control of workmanship, promotes continuous self-development, as well as governs improper and unsafe practices.

Ms LI Fung-ying has expressed concern over the requirement that workers should have eight years' relevant working experience and passed a trade test

before they are qualified for registration, but this requirement is not stringent at all. Another route of meeting the registration requirement is to acquire the relevant academic qualifications and four years of working experience. And yet, it might take the workers about seven to eight years to be qualified as a registered worker. Therefore, the two routes are generally compatible.

During the deliberation of the Bills Committee, Members have expressed three specific concerns over the workers' registration system. Firstly, the Government should provide a transitional arrangement for workers such that the livelihood of existing workers will not be adversely affected. Secondly, it is the manpower resources situation of the industry. Thirdly, as Mr IP Wai-ming has reiterated earlier, whether the Government has considered exempting existing registered engineers from the registration renewal requirement.

In order to ensure that the registration system introduced under the Bill will not adversely affect the livelihood of existing workers or the availability of manpower resources in the industry, transitional arrangements have been provided to cater for the needs of existing workers, including some 40 registered contractors, 290-odd registered engineers and over 4 900 qualified workers. This would ensure the smooth transition of workers when the new regime is put in place, thereby continuing to provide lift and escalator services for the public. The transitional arrangements have been incorporated into the Bill and workers can thus rest assured. As to when these arrangements will terminate, we will consider the manpower resources situation of the industry and consult the stakeholders before giving effect to the arrangements by means of a commencement notice, which will be submitted to the Legislative Council subject to the "negative vetting procedure". I would like to mention in passing that we will provide for, in the regulation to be made after the enactment of the Bill, the carrying of registration cards by registered lift/escalator workers. What is more, we have provided for the carrying of any other documentary proof recognized by the Director of Electrical and Mechanical Services (the Director), such as the registration cards issued under the Construction Workers Registration Ordinance.

Regarding the manpower resources situation of the industry, our preliminary estimate is that the number of registered engineers and workers should be adequate to cater for the needs in the next five years. Yet, some members of the trade highlighted the potential problems of a lack of new entrants to the industry and the ageing of existing workers. In fact, ageing workers and a

lack of new blood are the greatest challenges currently faced by the entire construction industry in Hong Kong. To ensure the availability of human resources to provide the relevant services, measures have been taken in conjunction with the industry to provide training, with a view to attracting new entrants. Our partners include the business sector, the Hong Kong Institution of Engineers (HKIE) and other relevant professions. Besides, registered contractors are encouraged to provide recognized professional training programmes for engineering graduates to sit for professional qualification examinations leading to their admission to the registered professional engineer status. At present, there are three registered contractors providing professional training programmes recognized by the HKIE and over 10 engineering graduates have received training since 2011. With regard to workers, we will request the Construction Industry Council to consider, if necessary, including relevant trades in the Enhanced Construction Manpower Training Scheme currently in place. It is hoped that the provision of training allowance will attract more people to receive training on lift and escalator works, thereby increasing the manpower resources of the industry.

Both Mr CHEUNG Hok-ming and Mr LEE Cheuk-yan opined that, in order to genuinely attract new blood to join the industry, we must also tackle other issues concerning the working environment, remuneration and culture of the industry. We will follow up on these issues with great caution.

Regarding the registration renewal requirement for existing registered engineers, in view of the technological advancement of lifts and escalators, as well as the need to ensure that the relevant services can keep abreast of the times and protect pubic safety, we consider it necessary to require all registered engineers (including engineers registered under the existing Ordinance) to comply with the specified training and working requirements by renewing their registration every five years. When formulating the relevant provisions, we will focus on the practical needs to ensure that engineers would keep abreast of technological development of lifts and escalators and maintain their skills and expertise as registered engineers, yet without unnecessarily creating hindrances to their application for registration renewal. Mr IP Wai-ming, who has raised the same concern, can therefore rest assured as the relevant provisions have obtained the support of the stakeholders.

Both Mr IP and Mr Andrew CHENG have expressed concern about the subcontracting of lift/escalator works. To ensure public safety, we consider it necessary to properly monitor the subcontracting of lift and escalator works. Clauses 38 and 68 stipulate that, except works concerning the installation and demolition of lifts or escalators, the subcontracting of lift and escalator works to a non-registered contractor must be approved by the Director. In order to control the subcontracting of works from one registered contractor to another, we propose to provide for a regulation to require all registered contractors to notify the Director within a specified period of time in respect of the undertaking of any lift or escalator works from another contractor or subcontracting any lift or escalator works to another registered contractor. Under normal circumstances, it is suggested that the specified period of time is seven days before the subcontracting works commences. We will also implement, after the enactment, a series of enhanced administrative measures, which include stepping up inspection, reminding registered contractors by way of notices of their criminal liability under the subcontracting arrangement, taking the initiative to audit the operation of registered contractors and stepping up publicity and promotion, with a view to further controlling the subcontracting works of lifts and escalators to protect public safety.

Regarding the penalty level of offences, in order to ensure that the Bill can have the necessary punitive and deterrent effect, we will increase the penalty levels to that of offences of similar nature. Therefore, we will increase the maximum fine from $10,000 to $200,000 while the length of imprisonment will remain at 12 months. The maximum penalty will apply to offences of a serious nature and with serious consequences, for instance, allowing the lift or escalator to continue to operate even after knowing that the enforcement authority has issued a prohibition order in view of the unsafe condition of a certain lift or escalator.

During the deliberation process, a number of Members also considered that the penalty levels of certain offences should be increased to reflect the seriousness of the offence. After considering and consulting the views of the industry, we have taken heed of Members' views and will propose the relevant amendments.

Another major proposal of the Bill seeks to extend the scope to cover lifts and escalators installed in buildings belonging to the Government and the Hong Kong Housing Authority, which are not covered by the existing Ordinance. On the other hand, the Bill also brings persons who have the management or control of lifts or escalators under its control, including the property management company of a building which manages or controls the relevant facilities therein or its manager. We hold that imposing control over people who play an important role in the day-to-day operation of lifts and escalators can strengthen the regulatory control over the safety of lifts and escalators, and is in line with the principle of "shared responsibility".

During the discussion of the Bills Committee, Members have expressed grave concern over the provisions on responsible persons, and the support provided by the Government to enable these responsible persons (including building owners or their management companies) to understand the requirements under the new legislation, and engage the appropriate contractors to carry out the lift and escalator works.

To enable the responsible persons (including building owners or their management companies) to understand the requirements under the new legislation, we plan to launch a series of publicity and promotional activities before the enactment of the Bill. Initial activities include the issuance of guidelines for the responsible persons and promote the requirements of the new legislation by organizing briefing sessions for the public and the stakeholders.

With regard to the engagement of contractors, the EMSD will amend the sample tender document for procurement of lift/escalator maintenance services currently posted in the EMSD website in the light of the provisions of the Bill, so as to facilitate property owners to formulate the appropriate terms and conditions when engaging registered contractors, thereby assisting them to comply with the requirements of the Bill.

To further facilitate the responsible persons to select the appropriate contractors, the EMSD has consolidated contractors' performance information currently posted in its website for easy and direct access by the public. Contractors' performance information include the past performance ratings, equipment fault incidents, warning letters and records of prosecution and disciplinary cases that the contractors are involved.

Also, the EMSD will continue to improve the assessment criteria of the Registered Lift Contractors' Performance Rating Scheme (the Scheme), so that the performance ratings published in the EMSD website on a quarterly basis can fully reflect the performance of the registered contractors in respect of maintenance and repair. After examining and consulting the trade and representatives of property management associations, the EMSD has revised the assessment criteria of the Scheme in March 2012 and included a new point-deductible item for the occurrence of equipment fault incidents, and increased the demerit point for failure of some components, including alarm system, inter-communication system, levelling devices, and so on.

Apart from the abovementioned improvement measures, Members have also expressed grave concern over the control of subcontracting works during the discussion of the Bills Committee, which I have already responded to earlier. Appropriate responses have also been made with regard to the control over the maintenance of emergency devices of a lift, the posting of lift or escalator incident notices for users' information, as well as the composition of the disciplinary boards and appeal boards.

Stepping up the control of emergency devices of lifts is, as a number of Members have highlighted, also a major concern of the Chairman of the Bills Committee, Dr Raymond HO. Actually, we do share Members' views and consider that the proper functioning of alarm bell, intercom system and ventilation fan is vital at times of lift passenger entrapments. Thus, control over the maintenance of emergency devices should be strengthened. In this connection, we propose to introduce a notification mechanism for the repairing of emergency devices in the regulation, with a view to assisting the Director to effectively monitor the performance of registered contractors and ensuring that they can expeditiously reinstate the relevant devices. After consulting the industry stakeholders and the Legislative Council Panel on Development, we propose to specify in the regulation that a registered contractor responsible for lift maintenance should be required to attend to any reported failure of the alarm system, emergency lighting, intercom system and ventilation fan of a lift within four hours. If the registered contractor fails to reinstate the failed device in 24 hours, the contractor shall notify the Director of the incident.

Regarding the lift incident notices for users' information, during the Bills Committee's discussion on the provisions setting out the incidents to be reported to the Director, some Members have pointed out, in case a lift incident specified

in Schedule 7 of the Bill occurs, where a person is injured or dies, the main drive system of a lift fails or any suspension ropes of a lift breaks, and causes a suspension of the lift service, the registered contractor should be required to post a notice to inform the users. We accepted Members' views. After consulting the industry stakeholders and the Legislative Council Panel on Development, we propose to introduce a regulatory system in the regulation to be made, providing that if the service of a lift/escalator suspends due to any of the abovementioned failure and the responsible registered contractor considers that service cannot be reinstated within fours hours upon knowledge of the reported failure, the contractor shall post notice to remind the users of the incident. In order to include the proposed regulatory scheme into the regulation, we will propose an amendment to provide an empowering provision for making regulation.

Lastly, regarding the composition of the disciplinary boards and appeal boards, both Dr Raymond HO and Prof Patrick LAU from the professional sector proposed that the disciplinary boards and appeal boards should comprise lay members to enhance their impartiality. On the request of the Bills Committee, we have comprehensively reviewed the composition of the disciplinary board panel, the disciplinary board, the appeal board panel and the appeal board under the Bill, and relevant amendments will be proposed.

After thorough deliberation, we considered that the Bill has achieved the target of protecting public safety. And yet, no matter how sound a law is, it would be ineffective in the absence of rigorous enforcement. Therefore, I want to assure Members that, in the light of the four-pronged approach which I have adopted to strengthen Hong Kong's building safety in the past few years, namely, legislation, enforcement, support services to property owners and public education, we will take into account all perspectives and, in particular, provide support to property owners as a number of Members have suggested. This is because the emergence of various laws has imposed heavier pressure on OCs and property owners. Since we have to implement the Mandatory Building Inspection Scheme and the Mandatory Window Inspection Scheme at the same time, I will work in conjunction with our partner organizations — the Urban Renewal Authority and the Hong Kong Housing Society, and tap on the experience from the implementation of the Operation Building Bright over the past three years to provide more comprehensive support to property owners of private buildings.

President, we wish to improve the regulatory system through the legislative framework proposed under the Bill, thereby enhancing the safety levels of lifts and escalators. This is precisely the common aspiration expressed by Members during discussions held at the Legislative Council Panel on Development, questions raised at meetings of the Legislative Council or open discussions held after the lift accidents. I am so glad that the Bill has been endorsed and supported by the Bills Committee, and I am very grateful to Members' precious views. The smooth enactment of this brand new Lifts and Escalators Bill within the current-term Government is attributable to the accommodation and mutual understanding of the industry stakeholders, as well as their understanding of the importance of addressing public concerns. I would like to take this opportunity to express my heartfelt thanks to the Lift and Escalator Contractors Association, Registered Elevator and Escalator Contractors Association Ltd, Hong Kong General Union of Lift and Escalator Employees, International Association of Elevator Engineers (HK — China Branch) and other relevant bodies. I implore Members to support the amendments to be moved by me later.

Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Lifts and Escalators Bill.

Council went into Committee.

Committee Stage

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

LIFTS AND ESCALATORS BILL

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

CLERK (in Cantonese): Clauses 1, 3 to 7, 12 to 15, 18 to 23, 29, 30, 33, 36, 37, 39, 40, 41, 44, 45, 46, 49 to 53, 59, 60, 63, 66, 67, 69 to 100, 102 to 112, 114, 116 to 122, 125 to 146, 148 to 153, 155, 156, 157 and 160.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 8 to 11, 16, 17, 24 to 28, 31, 32, 34, 35, 38, 42, 43, 47, 48, 54 to 58, 61, 62, 64, 65, 68, 101, 113, 115, 123, 124, 147, 154, 158 and 159.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members.

During the resumption of the Second Reading of the Bill, I have introduced some of the amendments. As I have said in the earlier speech, in response to the views expressed by the Bills Committee on the penalty levels and without deviating from the principle that the proposed penalty levels under the Bill should be compatible with offences of similar nature in other pieces of legislation, we propose to raise the maximum penalty level of the offences in clauses 8, 9, 10, 11, 16, 31(2), 32, 35, 38, 42, 43, 47, 61(2), 62, 65 and 68 of the Lifts and Escalators Bill (the Bill) from the minimum of a fine at level 3 to a fine at level 6 and 12 months imprisonment, so as to bring them on a par with the maximum penalty level of the offences in clause 13 concerning the duties of responsible persons in respect of use and operation of lifts. The proposed amendment is made on the ground that registered lift contractors' contravention of clause 16, which requires them to carry out lift works properly and safely, is similar to the responsible persons' contravention of clause 13, and both may lead directly to dangerous situations or hamper the safety of a lift or escalator.

Furthermore, to avoid disparity between the sanctions for other offences in the Bill, we propose to remove the different penalties for first conviction and subsequent convictions of the offences under clauses 17, 24, 25, 48, 54 and 55 concerning the duties of registered lift engineers. While Schedule 1 to the Bill has defined the scope of the major alterations, industry stakeholders opine that to classify the replacement of the steps and pallets for an escalator, and the replacement of lifts (including the safety circuit for a lift that contains any electronic component) as major alterations may delay the reinstatement of lift and escalator services. In order to strike a proper balance between the need to protect public safety and avoid causing great inconveniences to the users, we now propose to amend clauses 16, 17, 47 and 48 concerning the duties of registered contractors and registered engineers by introducing a new measure. Under the new measure, registered contractors and registered engineers must obtain the type approval of safety components (including a step or pallet of an escalator and the safety circuit for a lift that contains any electronic component) by the Director before any of the safety components can be used in any lift or escalator works.

With the new requirement in place, I will later propose to amend Schedule 1 to the Bill to exclude the replacement of a step or pallet of an escalator and the replacement of a safety circuit that contains any electronic component of a lift from the scope of works being classified as major alteration.

Clause 154 empowers the Secretary for Development to implement the regulation to be made under the Bill in a more effective way. We propose to amend clause 154(2) to include the regulatory system of posting incident notices in the regulation.

Lastly, among the amendments are textual or technical amendments of the provisions, for instance, "如第23條就有關升降機而遭違反" in the Chinese text of clause 26(2) will be replaced by "如任何人就第(1)款提述的升降機而違反第23條". Together with other minor amendments, they are made for the sake of consistency, to better reflect the original policy intention, or to rectify typing errors.

Chairman, the abovementioned amendments have been thoroughly discussed and supported by the Bills Committee, so I implore Members to support and endorse the relevant amendments.

Thank you, Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 8 (see Annex II)

Clause 9 (see Annex II)

Clause 10 (see Annex II)

Clause 11 (see Annex II)

Clause 16 (see Annex II)

Clause 17 (see Annex II)

Clause 24 (see Annex II)

Clause 25 (see Annex II)

Clause 26 (see Annex II)

Clause 27 (see Annex II)

Clause 28 (see Annex II)

Clause 31 (see Annex II)

Clause 32 (see Annex II)

Clause 34 (see Annex II)

Clause 35 (see Annex II)

Clause 38 (see Annex II)

Clause 42 (see Annex II)

Clause 43 (see Annex II)

Clause 47 (see Annex II)

Clause 48 (see Annex II)

Clause 54 (see Annex II)

Clause 55 (see Annex II)

Clause 56 (see Annex II)

Clause 57 (see Annex II)

Clause 58 (see Annex II)

Clause 61 (see Annex II)

Clause 62 (see Annex II)

Clause 64 (see Annex II)

Clause 65 (see Annex II)

Clause 68 (see Annex II)

Clause 101 (see Annex II)

Clause 113 (see Annex II)

Clause 115 (see Annex II)

Clause 123 (see Annex II)

Clause 124 (see Annex II)

Clause 147 (see Annex II)

Clause 154 (see Annex II)

Clause 158 (see Annex II)

Clause 159 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 8 to 11, 16, 17, 24 to 28, 31, 32, 34, 35, 38, 42, 43, 47, 48, 54 to 58, 61, 62, 64, 65, 68, 101, 113, 115, 123, 124, 147, 154, 158 and 159 as amended.

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

(Members raised hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 2 to 6, 9 and 10.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedules 2 to 6, 9 and 10 stand part of the Bill. Will those in favour please raise their hands?

(Members raised hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 7, 8 and 11 to 16.

SECRETARY FOR DEVELOPMENT (in Cantonese): Chairman, I move the amendments to Schedules 1, 7, 8, 11, 12, 13, 14, 15 and 16 as set out in the paper circularized to Members.

Schedule 1 of the Lifts and Escalators Bill (the Bill) defines the scope of the major alterations. In view of the concerns of the industry stakeholders, we have, through the amendments passed just now, included a new measure in clauses 16, 17, 47 and 48 to require registered contractors and registered engineers to obtain the type approval of safety components (including a step or pallet of an escalator and the safety circuit for a lift that contains any electronic component) by the Director of Electrical and Mechanical Services (the Director) before any of the safety components could be used in any lift or escalator works. With the new requirement in place, I propose to amend Schedule 1 to the Bill to exclude the replacement of a step or pallet of an escalator and the replacement of

a safety circuit that contains any electronic component of a lift from the scope of works being classified as major alteration.

Schedules 11 and 12 to the Bill provide for the composition of the disciplinary board panel and disciplinary board (with members selected from the panel) respectively, which consist of eight categories of persons, including three from the engineering professions, one from registered engineers, one from registered contractors, one from registered workers, one from persons carrying on the business of property management and one from management committee members or lift/escalator owners. To enhance the impartiality of the disciplinary board, we propose to introduce an additional requirement in Schedule 11 such that every person from the last two categories must be a layperson.

Schedules 13 and 14 to the Bill provide for the composition of the appeal board panel and appeal board (with members selected from the panel) respectively, which consist of three categories of persons and they all come from the engineering professions. To enhance the representativeness and impartiality of the appeal board, we proposes to amend Schedules 13 and 14 so as to make the composition of the appeal board panel and appeal board the same as that of the disciplinary board panel and disciplinary board respectively. Under the new membership, the appeal board will be more able to look after the interests of all those whom may be affected by any of the decisions and orders listed in clause 115.

Lastly, among the amendments are textual or technical amendments of the provisions, for instance, in the light of Mr Alan LEONG's views, we will remove the words "the date immediately after" from the definition of "prescribed period" in section 5(4) of Schedule 15 to the Bill for the sake of consistency, to better reflect the original policy intention, or to rectify typing errors.

Chairman, the abovementioned amendments have been thoroughly discussed in the Bills Committee and obtained its support, I implore Members to support and endorse the relevant amendments.

Thank you, Chairman.

Proposed amendments

Schedule 1 (see Annex II)

Schedule 7 (see Annex II)

Schedule 8 (see Annex II)

Schedule 11 (see Annex II)

Schedule 12 (see Annex II)

Schedule 13 (see Annex II)

Schedule 14 (see Annex II)

Schedule 15 (see Annex II)

Schedule 16 (see Annex II)

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

(No Member indicated a wish to speak)

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

(Members raised hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 7, 8 and 11 to 16 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedules 1, 7, 8 and 11 to 16 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

LIFTS AND ESCALATORS BILL

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the

Lifts and Escalators Bill

has passed through Committee stage with amendments. I move that this Bill be read the Third time and do pass.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Lifts and Escalators Bill be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Lifts and Escalators Bill.

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 Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012.

I now call upon Mr CHAN Kam-lam to speak and move the motion.

PROPOSED RESOLUTION UNDER SECTION 34(4) OF THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR CHAN KAM-LAM (in Cantonese): President, I move the motion in my capacity as Chairman of Subcommittee on Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012 (the Order) to extend the period for scrutinizing the Order to 9 May 2012.

At the House Committee meeting on 23 March 2012, Members decided to establish a Subcommittee to examine the Order in the motion. Since the Subcommittee needs more time for the scrutinizing work, will Members please support the motion to extend the period of scrutiny of the Order to 9 May 2012.

Thank you, President.

Mr CHAN Kam-lam moved the following motion:

"RESOLVED that in relation to the Prevention of Bribery Ordinance (Amendment of Schedules 1 and 2) Order 2012, published in the Gazette as Legal Notice No. 38 of 2012, and laid on the table of the Legislative Council on 21 March 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 9 May 2012."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr CHAN Kam-lam be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Second Member's motion.

At the Council meeting of 9 December 2009, Ms Miriam LAU moved a motion under Rule 49B(1A) of the Rules of Procedure to censure Mr KAM Nai-wai. The debate on that motion was adjourned and the matter stated in the motion was referred to an investigation committee in accordance with Rule 49B(2A) of the Rules of Procedure.

As the report of the investigation committee established in respect of the censure motion was laid on the Table of the Council on 28 March 2012, the Council now resumes the debate on the motion in accordance with Rule 40(6A) of the Rules of Procedure.

MOTION UNDER RULE 49B(1A) OF THE RULES OF PROCEDURE

MRS SOPHIE LEUNG (in Cantonese): President, the Report of the Legislative Council Investigation Committee established under Rule 49B(2A) of the Rules of Procedure in respect of the Motion to censure Honourable KAM Nai-wai (Investigation Committee), was tabled before this Council on 28 March. When I

spoke in my capacity as Chairman of the Investigation Committee on that day, I briefly accounted for the course and results of the investigation. As Honourable colleagues have three weeks to go through the report since its release, I am not going to repeat the contents of the report today.

In accordance with the Rules of Procedure, the Investigation Committee is responsible for establishing the facts stated in the motion and giving its views on whether or not the facts as established constitute grounds for the proposed censure. The censure motion comprises two allegations of misbehaviour made against Mr KAM Nai-wai. The Investigation Committee agrees to the first allegation that Mr KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity. Concerning the second allegation, the Investigation Committee fails to confirm that Mr KAM Nai-wai was unfair in dismissing his female assistant, Ms Kimmie WONG, after his expression of affection was rejected by her. Hence, the Investigation Committee cannot form the view that Mr KAM had acted "unfairly" in this incident.

However, the Investigation Committee expresses regrets at the behaviour of Mr KAM as a supervisor. The Investigation Committee considers that Mr KAM's conduct was improper in that it failed to live up to the public's expectations on the integrity and ethical standards of a Legislative Council Member, but that his misconduct was not so grave as to warrant disqualification from the office as a Legislative Council Member. In other words, the facts as established do not, in the Investigation Committee's view, constitute sufficient grounds for the censure of Mr KAM under Article 79(7) of the Basic Law.

Regardless of whether the censure motion is passed today, the Investigation Committee considers that the Legislative Council should consolidate the experience drawn from this investigation and consider the need to review the current mechanism in order to ensure that there are appropriate mechanisms and proportionate sanctions for dealing with complaints against Members' misconduct of varying gravity, so as to safeguard the credibility of the Legislative Council.

The Investigation Committee held 57 meetings, with a total meeting time of more than 96 hours. During the 26-month investigation period, members of the Investigation Committee seriously evaluated the weight of the evidence it had obtained and discussed the evidence and the contents of the report. The

Legislative Council Secretariat also provided full support, and the Secretary General and the Legal Adviser of the Legislative Council served as the Clerk and Legal Adviser to the Investigation Committee. I would like to thank members of the Investigation Committee and the staff of the Legislative Council Secretariat.

I so submit, President.

MR KAM NAI-WAI (in Cantonese): President, first of all, I would like to disclose some relevant information in accordance with Rule 83A of the Rules of Procedure on personal pecuniary interest. As I will be disqualified from office if this motion is passed, I particularly wish to disclose my personal pecuniary interest today.

President, more than two years ago at the debate of this Council on 9 December 2009 when Members discussed whether an investigation committee should be established to investigate into the dismissal of my assistant, I remarked that "I sincerely hope that the Legislative Council will conduct a fair investigation, so as to allay public concern with facts. I strongly believe the Legislative Council and Hong Kong society where the rule of law prevails can accord me stringent proceedings and justice in tandem with any possible investigation by the Legislative Council." That was my remark on that day.

The Investigation Committee was established after the conclusion of that debate because pan-democratic Members opined that, even if the allegations in the censure motion were established, they were not serious enough to necessitate the removal of a Member. Members from the Democratic Party had not joined the Investigation Committee because they might have to assist in the investigation. Finally, only pro-establishment Members joined the Investigation Committee.

Despite this arrangement, I also expect the Investigation Committee to put aside political views and prejudices and conduct an objective investigation, so as to ensure justice throughout the process and the credibility of the investigation report. During the 26-month investigation period which straddled more than two years, I attended seven hearings totalling more than 15 hours and I tried my best to co-operate with the Investigation Committee. It was a pity that the

Investigation Committee had "not" notified me before the hearings whether the complainant would attend the hearings or how many witnesses that would attend the hearings to be questioned. Thus, I did not have adequate and timely information. I only knew 15 months after the establishment of the Investigation Committee and upon writing to the Committee that the complainant had not attended the hearing. Moreover, the Investigation Committee had "not" formulated a timetable for the investigation and hearings, making it difficult for me to engage legal representatives within the two-year period. The most important point is that the Investigation Committee had "not" given me the opportunities and rights to cross examine the complainant. In my opinion, the three "nots", that is, not providing the number of witnesses, not providing a timetable for the investigation and not providing the opportunities to cross examine the complainant, has made the investigation approach appear inappropriate and not in compliance with procedural justice.

Regarding the long investigation period extending for 26 months, my emphasis on procedural justice is not merely for my personal interest; in any case, the investigation on me had been completed. Owing to procedural justice, Legislative Council Members belonging to the Democratic Party did not join the Investigation Committee as they might be invited to assist in the investigation. As a matter of fact, they had been invited to attend the hearings. I hope that for future investigations to be conducted by the Legislative Council, it is vital to ensure procedural justice, so as to establish the credibility of the Legislative Council.

President, I certainly do not agree with many parts of the investigation report but I will not respond point by point today; my detailed comments had been set out in Appendix 1.14 of the report. I had made a submission of 32 pages commenting on more than 30 paragraphs of the draft Report of the Investigation Committee. I had requested the Investigation Committee to withdraw or rewrite certain parts of the draft report, but regrettably, the Investigation Committee had ignored most of my requests to withdraw or rewrite the contents of the report.

Nevertheless, I would like to extend my sincere apology to Ms WONG for the incident has caused her great distress; my apology also goes to the public as they have doubts on my integrity. I have also learnt a lesson from this incident that public officers must speak and act more cautiously. Furthermore, under the

mechanism for work appraisal of employees in my Member's office, I have added the employee's annual self-assessment of performance and the assessment of his/her immediate supervisors. These assessments will be used to appraise employees' performance, so as to improve the staff management system.

Although the complainant had not attended the hearing, the Investigation Committee still took 26 months to complete the investigation, leading to strong queries by the public before and after the release of the report. Quite a number of people considered that without the attendance of the complainant, the investigation should be completed as soon as possible. The Investigation Committee should notify the Legislative Council of the situation and the investigation should immediately be terminated and completed.

To enhance the efficiency and increase the credibility of the Legislative Council, I think the Legislative Council can establish a new mechanism in the future for handling the public's complaints against the misbehaviour of Members.

I have reviewed earlier an information note entitled "Mechanisms in Selected Legislatures for Regulating and Dealing with Members' Misbehaviour Unconnected with Parliamentary Proceedings" prepared by the Research and Library Services Division of the Legislative Council in the year 2004-2005. As stated in the information note, the Parliamentary Commissioner for Standards of the House of Commons (the Parliamentary Commissioner) has the following duties: handling Members' misbehaviour, receiving and, if he thinks fit, investigating specific complaints from Members and from members of the public in respect of the propriety of a Member's conduct.

In handling a complaint, the Parliamentary Commissioner has power to: consider whether a complaint should be followed, and reject complaints which are anonymous, clearly trivial or vexatious, or have insufficient evidence; seek to agree remedial action with the Member concerned under the rectification procedure, if the complaint, though justified, is minor; and interview the Member concerned, the complainant and other persons; seek relevant documentary or other evidence from the parliamentary authorities and other public or private bodies, or from private individuals, when a full investigation is needed.

The Parliamentary Commissioner appointed by the House of Commons is required to report the facts of the complaint and offer his own conclusion to the

Committee on Standards and Privileges (CSP) on whether the Code of Conduct for Members of Parliament has been breached. The CSP is a select committee appointed by the House of Commons to oversee the work of the Commissioner.

Similarly, I think a Commissioner for Standards of Behaviour (the Commissioner), similar to the Parliamentary Commissioner should be appointed by the Legislative Council and a retired judge should be invited to take up the office. The Commissioner should handle complaints against Members' behaviour made by Members and the public, ascertain if the *prima facie* evidence of the incidents are initially established and propose conclusions and recommendations before decisions are made to refer these complaints to the relevant committees of the Legislative Council for further actions.

The merits of appointing the Commissioner will convey to the public that the compliant is handled in a relatively neutral way, and the impression of "investigation by peers" can be avoided. Hence, the public's criticism that Members are mutually shielding one another or cracking down on those holding different views can be minimized. Investigation can be carried out more efficiently to ascertain if the *prima facie* evidence of the complaints is established. In the future, a Member being complained against may not need to go through a 26-month investigation and public expenditures may be reduced.

I hope the Legislative Council would carefully consider and actively follow up the abovementioned proposals.

Today, I am going to withdraw from the meeting, just like what I did more than two years ago at the debate of this Council on 9 December 2009. I hope this Council would fairly and impartially vote against Ms Miriam LAU's motion. I so submit.

MR ALBERT HO (in Cantonese): President, this investigation involved the working relationship between Mr KAM Nai-wai as the employer and Ms WONG, personal assistant to Mr KAM. According to my understanding, Mr KAM Nai-wai had improperly handled the working relationship with his employee, which caused the victim, Ms WONG, to feel hurt. There was extensive media coverage of the incident after it had come to light, which further subjected Ms WONG to enormous pressure. In this connection, The Democratic Party and Mr

KAM Nai-wai would like to express our apologies to Ms WONG and we hope that the media would respect her feelings. After the release of the investigation report on the incident, we hope the incident would come to a full stop and we wish that Ms WONG would, as expressed in her statement, be relieved of the burden at an early date, attain peace in mind and make a new start in her life.

Ms WONG has explicitly stated in her statement submitted to Members of the Legislative Council on 3 December 2009 that she could not assist in the investigation due to the pressure and she hoped that her statement would end the incident. She might think that the incident would come to an end but Honourable colleagues of this Council considered it necessary to investigate further on the basis of her statement. Thus, a seven-member Investigation Committee was established to conduct an investigation, knowing that the victim, Ms WONG, would most probably not attend the hearings to be held. The investigation lasted two years and two months, from 8 January 2010 until completion, and $1.5 million of public money were spent. A total of 57 meetings were held, including 11 hearings, and this report of 447 pages was produced.

President, as we all know, the motion to be discussed and resolved today is based on Article 79(7) of the Basic Law. If this censure motion is passed, President will, in accordance with the relevant provision, declare that Mr KAM is disqualified from the office. Thus, this motion has very serious consequences. When a decision was made to establish the Investigation Committee and conduct an investigation, we knew that we would have to make a decision on a motion with serious consequences when the report was tabled before the Legislative Council.

President, in light of the conclusion in the report, the Democratic Party has a very clear position on this motion today. In our view, even though Mr KAM Nai-wai has improperly handled his working relationship with his employee, his behaviour definitely does not constitute serious misbehaviour such that the Legislative Council has to pass such a harsh censure motion to remove him from his seat.

President, as we know, this motion is based upon the two allegations in the report. The first allegation is that, in the incident, Mr KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the

public to have doubts about his integrity; and the second allegation is that Mr KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her.

Let me talk about the first allegation. Truly, the facts as stated are kind of funny. Sometimes, the remarks or statements made by a public figure (such as a Member or a politician) about certain incidents have caused people to think that he is contradictory or inconsistent or not very honest. These allegations are frequently made, as in the case before and after the Chief Executive Election forum …… we know that the Chief Executive candidates this time ― the two other candidates ― have been repeatedly criticized for making inconsistent remarks. Though their previous remarks had been reported in the press, they could still declare that "I do not remember", "I have not said so" and "this is not what I mean".

If, as stated in the allegations, the remarks made by a politician in public are contradictory or inconsistent, giving people an impression that he is concealing something, and this would constitute serious misbehaviour and call for severe disciplinary investigation, I believe that is a bit absurd. I do not believe that it is necessary for the legislature to monitor or even sanction Members' behaviour this way. It is difficult for objective judgment to be made because the statements may really have different meanings.

In this incident involving Mr KAM Nai-wai, he said that he had expressed good feelings towards his female assistant but I wonder if expressing good feelings is the same as expressing affection. This is the key to the whole incident. He clearly expressed and admitted that he had expressed good feelings towards her but that was definitely not the same as expressed affection. In response to press enquiries, he explicitly said, "I had not expressed affection to her". This remark might not necessarily be contradictory to his admitting later that he had expressed good feelings towards her, as this is dependent on his subjective opinion of "expressing good feelings". In judging whether a person has given inconsistent remarks, we must base on his subjective opinion instead of the objective perspective of a third party, thinking that a person who has expressed good feelings towards a person of the opposite sex must have expressed affection. We cannot view this incident from our objective perspectives or tackle this incident based on our feelings as a third party.

Hence, from the first day up till today when I have a chance to read the report, I strongly think that the first allegation should never be made because it is ridiculous and absurd. As regards whether the public remarks given by a politician are often contradictory or inconsistent, the public will have their impartial views and there will be public criticisms. Also, every politician must face the electors. If his credibility is queried, the electors will naturally make a fair judgment through voting. For this reason, I do not think that investigation should be conducted in respect of the first allegation. When it is concluded that the first allegation is substantiated, though the allegation was not very serious in nature, the conclusion is neither logical nor objective. This is the first point and I think the conclusion is unfair.

Regarding the second allegation, it implies that Mr KAM Nai-wai was being unfair in dismissing his employee after his expression of affection was rejected by her. This was a more serious allegation because he, as a public officer, employed an assistant with public money but he later dismissed his assistant after his expression of affection was rejected by her. An investigation should be conducted if there was a *prima facie* case. However, in review of the whole incident, I do not think that the incident has been fairly investigated.

As Mr KAM Nai-wai has just commented, there should be impartial procedures for conducting such a serious investigation but it seemed that the Investigation Committee had failed to do so. What should be the impartial procedures? I had made a few points when the Investigation Committee was established. One of these points was that as the most important information on the complaint came from the complainant, she should step forward and give the details of the whole incident, and she should be questioned by the Investigation Committee. If the defendant considered that some points were unclear, he should have the opportunity to raise questions to the complainant. How could a *prima facie* case be established if the complainant was not ready to step forward? How could an investigation that might have serious consequences be conducted in this way? I think this is questionable. Hence, at the initial stage, I raised a view that a lengthy investigation should not be conducted if the complainant indicated that she was not going to give evidence.

People can hardly regard an investigation with only a defendant but not a plaintiff as impartial. In particular, when the conclusion is unfavourable to the defendant, we can hardly accept that it is reliable. We should not forget that the consequence can be serious. In any case, regarding the final conclusion made

by the Investigation Committee, after carefully considered the facts as established, the Investigation Committee considers that (I quote) "Mr KAM's conduct was improper in that it has failed to live up to the public's expectations on the integrity and ethical standards of a Legislative Council Member, but that his misconduct was not so grave as to warrant disqualification from the office as a Legislative Council Member. In other words, the facts as established do not, in the Investigation Committee's view, constitute sufficient grounds for the censure of Mr KAM under Article 79(7) of the Basic Law." It has not been clearly stated in the report why though Mr KAM's conduct was improper, it was not so grave. That exactly does that mean? When the allegations were first made, they were based on Article 79(7) of the Basic Law, and if the allegations were substantiated, Mr KAM's misconduct should be regarded as grave, and he should be censured. Yet, even the Investigation Committee considered that his misconduct was not so grave; hence why should an investigation be conducted in the first place?

On the whole, we think that the relevant procedures should be reviewed. After this incident, I hope the Legislative Council would conduct a detailed review to examine how actions should be taken under Article 79(7) of the Basic Law, and what methods should be adopted in future to follow up, investigate or sanction Members for their behaviour as alleged. Yet, today we can only decide to vote against this censure motion.

DR PAN PEY-CHYOU (in Cantonese): President, this Council is going to discuss today whether an Honourable colleague should be censured in accordance with Rule 49B(1A) of the Rules of Procedure (RoP), hence I speak with a heavy heart. Although we Members have different political views, we should seek truth from facts and conduct political discussions for the sake of the public. Our objectives should be to strive for a better Hong Kong and we should focus our attention on public affairs in Hong Kong. Today, we are having a debate on the behaviour and remarks of an Honourable colleague and the voting result may lead to his censure and even his disqualification from office. He may have livelihood problems after being disqualified from office, and some Hong Kong people may lose their elected representative. Indeed, we feel quite helpless, but even if the problem has weighed heavily on us, we must handle this incident with a cautious and serious attitude, so that the voting results today can fully reflect the rights and wrongs in this incident.

This incident happened on 24 September 2009 when Mr KAM Nai-wai suddenly dismissed his assistant, Ms Kimmie WONG. There were media reports on 4 October that Mr KAM Nai-wai dismissed her after his unsuccessful advances to her. This incident aroused wide public concern and some people lodged complaints with the Complaints Division of the Legislative Council, requesting for an investigation to be conducted by the Legislative Council. The issue was referred to the House Committee for discussion and it was decided after voting that an investigation would be conducted. The Investigation Committee was established under the RoP and it decided, after careful consideration, not to invoke the Legislative Council (Powers and Privileges) Ordinance to order the complainant to attend the hearing and give evidence, having taking into account her feelings and emotions. The Investigation Committee also allowed Mr KAM Nai-wai to choose between open or closed hearings. Even though some members of the political parties or groupings had not become members of the Investigation Committee, the Investigation Committee still engaged in its work in the most stringent manner. Members of the Investigation Committee had cast aside the preconceived ideas of different parties and groupings, and adopted scientific and objective attitudes in obtaining evidence and presenting arguments. It can be said that this objective and rigorous attitude had been shown throughout the entire report and the records of the hearings.

The Investigation Committee had drawn a conclusion. The motion set out two allegations of misbehaviour. On the first allegation, Mr KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity. The Investigation Committee concludes that the first allegation is established. Mr KAM Nai-wai had really made inconsistent remarks throughout the whole process. On the second allegation, Mr KAM Nai-wai was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her. The Investigation Committee considers that there is insufficient evidence to establish that Mr KAM had dismissed Ms WONG after his expression of affection was rejected by her, and the Committee has not recommended the censure of Mr KAM Nai-wai.

It has always been the mission of the Hong Kong Federation of Trade Unions (FTU) to protect labour interests, and we have been highly concerned about all acts of oppressing workers (such as sexual harassment and unreasonable dismissal). However, we have all along had reservations about conducting an

investigation into the incident concerning Mr KAM Nai-wai's dismissal of his female assistant. If employees are unfairly treated, there are various means to seek justice, the trade unions, the Labour Department, the Labour Tribunal and even Members can offer a helping hand. The FTU has established the Trade Union of Councillors' Assistants and Workers and it can provide assistance. Thus, I believe it is highly controversial as regards whether it is necessary for the Legislative Council to spend a large amount of resources to investigate into the acts of an employer. Although some have said that an investigation by the Legislative Council is warranted as it is an issue of public concern, however, I do not consider this is a reason for intervention by the Legislative Council. If movie stars are alleged to mistreat their employees or domestic helpers, should the Legislative Council also intervene and investigate?

Another reason why we have reservations is that we must respect the parties concerned. I would like to quote the remark made by Mr WONG Kwok-kin on behalf of the FTU when the House Committee discussed this issue on 9 October 2009. Mr WONG said, "We have noticed a very important point, it appears that the female victim or the female assistant concerned has not stepped forward or said anything so far. Would it be against her will if we forcibly conduct an investigation? …… On this issue, we consider that we would only support the conduct of an investigation if the assistant concerned comes forth and requests the Legislative Council to investigate the matter. We believe that at this stage, we will abstain in the vote on the proposals". As the female assistant concerned had all along refused to give evidence, the Investigation Committee was unable to obtain the most critical evidence, which substantially affected the integrity of the investigation. For this reason, the FTU had not voted at the House Committee meeting on that day and our position had not changed so far. Nevertheless, the Legislative Council eventually decided to conduct an investigation and the procedure under Rule 49B(1A) of RoP was triggered. I was also "recruited" as a member of the Investigation Committee.

Today, we have to decide whether Mr KAM Nai-wai had misbehaved and whether he should be censured and disqualified from office. I think we should consider this matter from two aspects. First, Legislative Council Members are elected by voters and they should be accountable to the voters who voted for them. Disqualifying a Member from his seat also means depriving voters of the Member they elected for and subsequently the services of the Member. Therefore, when a Member is no longer fit to be a Member due to a major

incident and he should no longer serve the voters, the relevant decision should in theory be made by the voters who voted for that Member at the election. Certainly, we know that in practice, there are practical difficulties in giving the right to make such a decision to those who elected the Member. Hence, there must be a mechanism for the decision to be made by other people on behalf of the voters. Handing over this responsibility to other Legislative Council Members would be reasonable and expedient. With such power in hand, we should bear in mind that we are making a decision on the removal of a Member on behalf of the voters who voted for him. Thus, we should not make a reckless and casual decision, we should carefully consider a variety of justifications to determine whether the removal of a Member is in the best interest of the voters. So, I would imagine that I am a voter who voted for Mr KAM Nai-wai, and what my prime considerations are. I believe my prime consideration would be the performance of Mr KAM in the past few years. According to my observation, Mr KAM Nai-wai has a relatively high attendance or speaking rate at Council meetings.

As a matter of fact, he participated in the marathon meetings of the Subcommittee to study issues arising from Lehman Brothers-related products. As we witnessed, quite a number of Honourable colleagues appeared exhausted at these meetings. Nonetheless, I heard from Dr Raymond HO, Chairman of the Subcommittee, that Mr KAM Nai-wai had been considerably enthusiastic. On the whole, the performance of Mr KAM Nai-wai, I mean work performance, may basically have met the expectation of the voters who voted for him.

These are the factors for consideration on one side of a scale. On the other side, I will consider the seriousness of this incident, the compensation that Mr KAM Nai-wai made to the female assistant concerned, and the direct or indirect punishment on Mr KAM Nai-wai in this incident. Lastly, I will consider the impact of Mr KAM Nai-wai incident on the image of the Legislative Council and on Members. I would first consider the seriousness of this incident. Based on the open statement issued by Ms WONG to all Members, Mr KAM Nai-wai still sought opportunities for him to be alone with her after his unsuccessful advances to her, which had caused emotional distress to her. If this behaviour is substantiated, it can be regarded as a kind of continuous and planned sexual harassment. Since Ms WONG refused to testify and she had not sought assistance from the relevant departments, the Investigation Committee could not confirm the allegations in Ms WONG's statement. Under the principle of giving

the defendant the benefit of doubt — of course, we do not have the real defendant in this case — we can only accept the arguments of Mr KAM Nai-wai.

It can be said that it is extremely unreasonable for Ms WONG to be dismissed with immediate effect without advance notice and reasonable explanation. The rough handling of employment relationship is extremely unfair to the disadvantaged employees. This is also not the responsible behaviour expected of Members fighting for public justice, and making an outcry against unreasonable happenings and acts.

Mr KAM Nai-wai has to pay a price for his behaviour. After Ms WONG had sought assistance from Chairman of the Democratic Party, Mr KAM Nai-wai finally offered a very large amount of compensation, almost equivalent to about six months' salaries of Ms WONG. The compensation of $150,000 can be a very heavy burden for a full-time Member. In addition, during the investigation by the Investigation Committee, Mr KAM Nai-wai had to engage the service of legal representation and he had to make lots of efforts for the hearings. Indeed, Mr KAM Nai-wai had paid a considerable price for his rough handling of his employment relationship with Ms WONG.

The Investigation Committee had to establish that Mr KAM Nai-wai had made inconsistent remarks to the media and withheld key information from them, thus, the public was likely to have doubts about his integrity. Such behaviour is not uncommon among politicians, and we often see a lot of similar or even more repugnant examples. Although this behaviour affects the public's perception and trust of the Legislative Council, I believe that the impact is limited because of its prevalence. As regards the impacts on Mr KAM Nai-wai, I believe that the matter will naturally be handled by the political party to which he belonged. If Mr KAM Nai-wai will stand for election in the next Legislative Council election, people in the districts concerned will also consider the seriousness of this incident when they decide how they are going to vote.

Having considered various factors, the FTU agrees with the conclusions of the report of the Investigation Committee and we are not going to support the motion to censure Mr KAM Nai-wai.

President, I am a psychiatrist and my 30 years of experience in medical practice has allowed me to have a clear view of human nature. As a humanist, I

maintain a calm state of mind in seeing the glory and dark side of human nature. I am deeply impressed by a story in the New Testament about a woman taken in adultery. Jesus appeared when she was about to be stoned by the public. Jesus said to them, "He who is without sin among you, let him throw the first stone." The accusers did not cast the stone and they left. This story arouses common feelings because making mistakes is a part of human nature and people who have made mistakes would like to have a chance to start all over again.

I so submit.

MR IP KWOK-HIM (in Cantonese): President, the report on the investigation into the allegations of misbehaviour of Mr KAM Nai-wai has finally been released to the public after 26 months. In this incident, Mr KAM Nai-wai made inconsistent remarks to the media and withheld key information, causing the public to have doubts about his integrity; and he was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her. He had caused pain to his subordinate and made their employer-employee relationship complicated and tense. These are the facts established after the investigation.

After the report has been released, Mr KAM publicly stated that he would act more prudently in the future but he still insisted that his expression of good feelings towards his female assistant was just friendly encouragement. I cannot accept the shamelessness of Mr KAM. He is a well experienced politician, from working as a Member's assistant to the present status as a Legislative Council Member, he has engaged in political work for a fairly long period of time. According to my understanding and knowledge, he has been in the political field for more than 15 years. When this incident occurred, it was definitely not his first day to be engaged in political work, why is it that he has only come to realize the truth after this incident had been extensively reported by the media? Subsequently, he had repeatedly tried to conceal what he had done, thinking that he could sweep the whole incident under the carpet. However, as the common saying goes, "you cannot wrap fire in paper". Mr KAM's evasion would just be in vain. It has been fully proven in the report that someone was shamed into anger. It was unfair and inappropriate to dismiss his female assistant after his expression of affection was rejected by her.

Mr KAM is one of the 60 Members of the Legislative Council and he is a politician known to the public, thus the public has high expectations of his ethical conduct. I believe that the public might not get to the bottom as to whether this incident would ruin the political future of Mr KAM but this incident has already aroused public concern. Objectively speaking, it has definitely damaged the reputation and image of the Legislative Council for which Mr KAM must be held responsible.

Lastly, I would like to share with Mr KAM the concluding remark given by Mr Stephen CHAN at a press conference on the day he was arrested by the ICAC: "you may never fake the truth nor can you turn lies into reality." Is there any concealment or argument? Justice naturally inhabits man's heart.

President, based on the conclusion of the report of the Investigation Committee, the DAB will abstain from voting on this motion.

I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, I would like to make a few points concerning my views on the issue being discussed today.

When we discussed on that day whether it was necessary to establish an investigation committee, I had much reservation about exercising the privilege of the Legislative Council to establish the committee. It was our "imperial sword" that could not be used causally, and we should act fairly and impartially.

President, during the Legislative Council election, could any one of us claim that we are a perfect person, a saint or a noble person? Who dared say so? Certainly, when the issues being discussed are favourable to one's political party or the Member himself, he always put himself on the moral highland, making criticisms about the others; in particular, senior barristers tend to do so. I have always criticized against the 10 major occupational illnesses of lawyers, but I do not want to repeat myself here as this is repetitive and not meaningful, and these illnesses have been clearly revealed from their political behaviours and political parties. For this reason, I did not find it necessary to establish an investigation committee for the incident concerning Mr KAM Nai-wai at that time. What are

the reasons? I am not a lawyer but I am deeply concerned because Hong Kong's core values involve the law and I have been subject to legal sanctions.

Regarding the first issue, as the female employee concerned was unwilling to give evidence, and based on the fact that there were no plaintiff and no major witnesses, there were absolutely no reasons to establish an investigation committee. Certainly, sometimes politics is hard to reason. Regarding the Democratic Party to which he belongs, what requirements did it previously imposed on other people or political parties? What requirements does it impose on its own party members? The people will have their own comments. President, it is impossible for us to require other people to commit themselves to strict self-discipline and treat other people leniently. As I have just said, there is no saintly behaviour.

President, I was asked by the media about my views on the "a pair of shoes" incident in which an Honourable colleague was involved. My opinions were really simple: first, had the person concerned said that he was a saint who had never made mistakes? If he did say so, he naturally should be responsible for his words. If he intended to stand for the next election, the electors in the constituency to which he belonged would naturally make a judgment by using the votes in their hands. The electors in his constituency might be proud of his behaviour, and they did not pursue further, hence the Member was re-elected.

President, I believe these matters must be dealt with separately, especially when many things in Hong Kong are subject to statutory regulation. If someone has violated the law, especially the law relating to sexual harassment, he will naturally be subject to criminal prosecution and even legal sanctions. As I have already stated, it is absolutely inappropriate for the Member to behave that way. Yet, I do not remember quite well if I had made strong opposition at that time.

Just now, an Honourable colleague has quoted what the Member concerned had done to his female staff, and he had even expressed his appreciation for her. What was wrong even if he had made advances towards her? Did his unsuccessful advances towards her have anything to do with us? He had not broken the law so long as he had not violated the criminal laws. Should the Legislative Council Member concerned be held responsible? Some Honourable colleagues opined that this incident tarnished the reputation of Legislative Council Members. What actually is the reputation of Legislative Council

Members? Of course, it is essential for a person to behave himself. But, I think that it is a matter of opinion as to whether everybody needs to behave properly or take special precautions outside the scope of the law. Given that it is a matter of opinion, we should not impose our own opinions and views on other people.

In my opinion, we should not only take this incident into consideration and we should even review if it is essential to do so under the law. Some may say that an Honourable colleague should be subject to regulation beyond the scope of the law when his behaviour has reached a certain stage or degree, and we can have further discussions on this viewpoint.

The ways of expression of some Honourable colleagues during meetings — I always agree that we have the freedom of speech and expression but we cannot infringe upon the freedom of other Honourable colleagues. Yet, some Honourable colleagues have made other Members degenerate into third-class or fourth-class Members — you have also played a part in conniving them. This is just my impression and you do not need to respond. As I have just said, their behaviour nearly made other Honourable colleagues degenerate into third-class or fourth-class Members because they would like to steal the limelight. They speak longer time than us, and television stations like to shoot them when they speak. Hence, they behave like Members of the Legislative Yuan in Taiwan in the past. They can do anything when the camera of television stations are on, but once the camera of television stations are off, they will either behave like "dead dogs" or they would leave the Chamber.

President, I believe you also know that I always follow the rules. There are only a few Members present at some meetings. I believe that you will find this situation despicable, even though you may not be driven to tears. Just consider how much you are paid a month, you will feel ashamed and consider this as an insult to other Honourable colleagues. Is there any solution? As I have previously suggested, the best method is that, while giving Legislative Council Members their basic salaries, there should also be an appraisal system. Speaking of the appraisal system, all Members will say that they have done a lot of work outside the Legislative Council, and what has that to do with us? President, as Legislative Council Members, while we express the views of our sectors and that of other sectors, we should also consider the interests of other Honourable colleagues.

President, Mr KAM's dismissal of his staff is another issue. Are there any existing rules specifying the circumstances under which a Legislative Council Member can dismiss his staff? If an employee does not act as instructed and has committed other acts, is it necessary to establish an arbitration committee and to specify that the dismissal of staff should be considered by the arbitration committee? Is there such a rule? If the staff is aggrieved or believes that he has been treated unfairly, and lodges a complaint with the Legislative Council, do we need to establish a committee or a team to review and discuss the appropriate measures? These matters must be handled fairly. I do not agree with or support the handling of such matters by any persons in ways that are beyond common sense. The most important thing is that we must treat Honourable colleagues fairly.

In summing up, I think Members must respect other Honourable colleagues. I am not saying that the Investigation Committee has been casually established. In any case, the Investigation Committee has held 57 meetings within 26 months and it has spent $1.5 million. This can be described as invisible pressure on Honourable colleagues. Since a ruling has been made by the Democratic Party to which Mr KAM belonged, we must respect it. I ask Honourable colleagues to treat each other fairly. I also ask pan-democratic Members to treat other people with different political ideas fairly while protecting their common political ideas and behaviours. Is it not acceptable for people to have different political views? We are human beings and we can change our political thoughts and ideas at any time under different circumstances. It is most important for Honourable colleagues to solve the problem sincerely.

President, I also have respect for the Investigation Committee and I will abstain from voting.

MR CHAN KIN-POR (in Cantonese): President, the Investigation Committee has completed its investigation after 26 months and it released a report last month. The conclusion and justifications have been set out in the report and detailed explanations were given at the press conference. After the release of the report, there are still views that the investigation has wasted the time of the Legislative Council and the money of taxpayers because the Legislative Council has spent $15.7 million and more than two years on investigating this incident but

sufficient evidence has not been found to support the censure of Mr KAM Nai-wai under Article 79(7) of the Basic Law.

In my capacity as Deputy Chairman of the Investigation Committee, I would like to respond to the relevant comments. I do not think this investigation has wasted time and money; instead, it is an important investigation to maintain the credibility of the Legislative Council and restore public confidence, and it is also a matter of principle that do justice to all parties. We may recall that, when the incident occurred in 2009, there were nearly 100 news reports about this incident each day, and the Complaints Division of the Legislative Council Secretariat received letters, emails and telephone calls from quite a lot of people. This reflected that the public was highly concerned about the incident.

In that case, the Legislative Council could not turn a blind eye; otherwise, it would inevitably be criticized for harbouring Honourable colleagues. Moreover, it would be impossible for the Legislative Council to explain to the public why it had not taken follow-up actions, and it would be difficult for the Legislative Council to address public concerns. This incident also involved the conduct of Members, and the issue was of a very serious nature. There were also a lot of controversies and doubts about the truth of the incident. Since the incident happened at a Member's office and involved the use of public money, the Legislative Council certainly has the responsibility to find out the truth and do justice to all parties, including Mr KAM Nai-wai and Ms Kimmie WONG.

There are views that this investigation failed to identify substantial evidence or results, which reflected that the investigation did not have practical effects. I believe the criteria for assessing the investigation is not whether we can censure the Member concerned, as our objective is not to relieve the Member of his duties but to do justice to all parties. Hence, we cannot simply refrain from making efforts at the very beginning on the pretext that we cannot find further evidence. This will be an irresponsible act.

As mentioned in Chapter 5 of the report, the Legislative Council has not formulated an appropriate mechanism for handling complaints and put in place proportionate sanctions for misconduct which is not so serious as to warrant the disqualification of the Member in question from office. The Investigation Committee considers that the Legislative Council should consider afresh the need to review the current mechanism in order to ensure that there are appropriate

mechanisms and proportionate sanctions for dealing with complaints against Members' misconduct of varying gravity, so as to safeguard the credibility of the Legislative Council. I agree very much with the proposal. With the constitutional development in Hong Kong and an increasing level of transparency, I believe there will be complaints about the misconduct of Members in the future. To avoid the failure to handle such complaints due to the lack of mechanisms, the Legislative Council should examine this issue as soon as possible.

Having listened to the views just expressed by a few Members on the investigation process, I would like to respond to their views. First, I think that it is inappropriate for Mr Albert HO to compare this incident to the daily words and deeds of politicians, as we cannot place these two on a par. It is a very serious matter for the media to accuse Mr KAM Nai-wai of dismissing his female assistant after his advances had been rejected by her. As I have just said, this incident involved public money and the image of the Legislative Council, and absolutely it cannot be placed on a par with the daily words and deeds of politicians. So, I totally disagree with his views.

Second, Mr KAM Nai-wai and other Members have questioned why the investigation was conducted when there was no complainant. I would like to talk about the course of events. As Ms WONG had explained to the Investigation Committee, due to immense pressure and strain caused by this matter, she hoped to forget the incident as quickly as possible and keep a low profile. When the Investigation Committee obtained evidence from Mr KAM and the witnesses, it made reference to the information in Ms WONG's open statement issued through her solicitors to all Legislative Council Members on 3 December 2009, and asked them questions on the basis of the information. As the witnesses who attended the hearings had provided very useful evidence, which enabled the Investigation Committee to thoroughly understand the circumstances of this case, it respected Ms WONG's wish and did not consider it desirable to invoke the power under section 9(1) of the Legislative Council (Powers and Privileges) Ordinance to compel Ms WONG to attend hearings as a witness. Otherwise, it would be equivalent to rubbing salt in the wound, which would aggravate Ms WONG's sufferings.

We must note that the Investigation Committee was established under the Rules of Procedure (RoP) after a Member had moved a censure motion; it was not established upon the receipt of a complaint from Ms WONG. Therefore, the

Investigation Committee was not established pursuant to Ms WONG's compliant, and it can be said that there was no complainant. Under the RoP, the Investigation Committee's responsibility is to establish the facts stated in the censure motion moved by four Members and give its views on whether or not the facts as established constitute grounds for the censure. Even if Ms WONG participated in the investigation, her role would only be a witness. Thus, the Investigation Committee should fulfil its responsibility under the RoP, and its investigation could not be terminated just because a witness was unwilling to give evidence.

Some have asked why the Investigation Committee had taken 26 months to complete the investigation and whether it had been procrastinating? I am going to discuss the difficulty in investigating the whole incident. First, I wish to draw your attention that the investigation period straddled two summer recesses which lasted for three months. We all know that it is especially difficult for work to be conducted during summer recesses. Second, though the Investigation Committee decided not to allow Mr KAM to cross-examine the witnesses lest they should feel embarrassed, it had taken measures to ensure that he had a chance to review and respond to the evidence provided by the witnesses. These measures included presenting to Mr KAM before the hearing the written statements of the witnesses and the relevant information to facilitate his response. The exchange of documents was very time-consuming, and each exchange often took more than two weeks.

In arranging the dates on which Mr KAM would attend the hearings, the Investigation Committee has to fit in the timetable of Mr KAM and that of the accompanying practising barrister. During a certain period of time, as the barrister could only attend hearings on Saturdays due to official business, the Investigation Committee had to conduct hearings on Saturdays. Throughout the investigation process, Mr KAM's legal representative had written to the Investigation Committee more than 10 times in respect of Mr KAM's rights and the investigation procedures, and so on. On each occasion, the Investigation Committee carefully considered the arguments and ensured that the investigation was fair and impartial to Mr KAM and various parties. For instance, Mr KAM had asked to attend a hearing to make his concluding remarks, and to comment verbally on the draft report. Even though this arrangement was not specified in the Practice and Procedure of the Investigation Committee, we had tried our best to be accommodating.

Furthermore, I had repeatedly asked the Secretary General, President and Legal Adviser to expedite the handling process because I really considered that a very long time had been spent. Yet, they patiently explained to me that these issues ought to be handled fairly and impartially. They would rather spend more time for the sake of perfection. I understood their difficulties afterwards.

The person involved in this incident, Mr KAM Nai-wai, had actively assisted in the investigation. He spent a lot of time attending the hearings and he engaged his own lawyer; and I believe he had spent a lot of money. I understand very well how he felt and I also hope that he would understand how I felt. In fulfilling the responsibility of the Legislative Council, the Investigation Committee held 57 meetings and spent 96 hours. We must conduct an investigation after the Investigation Committee has been established but the problem was who should undertake the work. I had chosen to participate though many Members had declined to do so. I participated in the work to fulfil the responsibility of a Legislative Council Member. If this incident had not occurred, I could have used these 96 hours for other better purposes. For example, I could have spent time with my family members or handled affairs for my sector on Saturdays. I think Mr KAM Nai-wai should express his gratitude to members of the Investigation Committee, and I hope that he would do so very soon.

Finally, I want to thank Ms Sophie LEUNG, Chairman of the Investigation Committee, for leading the investigation work. She has actually contributed a lot because meetings could only be held when five of the seven members were present. So, she tried very hard to ask members to attend meetings, as if she was "catching chickens". We all know that Legislative Council Members are very busy and it is particularly difficult for her to ask five Members to attend those meetings on Saturdays. Yet, she managed to do so and she prepared for all members fine refreshments at each of the 57 meetings; hence, they still had a little fun at these long meetings.

Thank you, President.

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

DR MARGARET NG (in Cantonese): President, the motion to censure Mr KAM Nai-wai is placed before us but it is not simply a censure. As stated in Article 79(7) of the Basic Law, the President of the Legislative Council shall declare that a member of the Council is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two thirds of the members of the Legislative Council present.

Besides, under Rule 49B of the Rules of Procedure (RoP) on the Disqualification of Member from Office, if a motion to censure a Member is passed by two-thirds majority vote of the Members present, the President shall declare forthwith that the Member is no longer qualified for his office. That is to say, this motion to censure Mr KAM Nai-wai today will not just verbally censure Mr KAM because his censure is equivalent to disqualifying him. We are now going to decide if Mr KAM Nai-wai should be disqualified from office.

Should Mr KAM Nai-wai be disqualified from office? The answer is evidently in the negative. We only need take a look at the report of the Investigation Committee on Mr KAM Nai-wai's case: the conclusion in paragraph 4.47 is that "The Investigation Committee notes that the disqualification of a Member from the office is currently the most severe sanction that may be imposed on an individual Legislative Council Member, and has the effect of overturning the decision made by voters in an election. Therefore, such a sanction should be applicable only when a Member is found to have committed extremely serious misconduct. Having carefully considered the facts as established, the Investigation Committee considers that Mr KAM's conduct was improper in that it has failed to live up to the public's expectations on the integrity and ethical standards of a Legislative Council Member, but that his misconduct was not so grave as to warrant disqualification from the office as a Legislative Council Member. In other words, the facts as established do not, in the Investigation Committee's view, constitute sufficient grounds for the censure of Mr KAM under Article 79(7) of the Basic Law." There is no suspicion that members of the Investigation Committee were biased towards Mr KAM. They spent 27 months on the investigation, summoned 10 witnesses, and held 11 hearings and 46 meetings before arriving at this conclusion. On what grounds should we not respect the conclusion of the Investigation Committee? Therefore, Members of the Civic Party and I will vote against this motion because this conclusion should not be disputed.

It is not surprising at all for this conclusion to be drawn. On 9 December 2009 when Ms Miriam LAU and three other Members moved the censure motion about which we are debating today, I stated that "even if the remaining allegations are established, the matter is still far from being so serious that a Member has to be disqualified. This is why I support Mr Paul TSE's motion on taking no further action." The investigation report also concluded that the second allegation might not be fully established.

President, during the debate at the Council meeting on 9 December 2009, Members of the Civic Party and I opposed the moving of the censure motion and the investigation into Mr KAM Nai-wai. Some questioned our attitude, stating that it was self-contradictory for us to propose using the mechanism of a censure motion to handle the case but voted in opposition. Some even suspected us of justifying Mr KAM's behaviour. As I mentioned on that day, we considered that an investigation should be conducted into a Member under the existing mechanisms and procedures, and the only mechanism in place was the censure mechanism under Rule 49B of the RoP. If it has been proven that the three main allegations were established, there were really grounds to disqualify the Member. What were the three main allegations initially made, President? First, whether sexual harassment was involved; second, whether the dismissal of the assistant employed by public money involved improper use of public money, and whether the reasons for her dismissal were reasonable; and third, whether the incident might be related to the integrity of a Member. These were the three main allegations at the time.

However, as the dismissed female assistant subsequently indicated that she would not like to be examined, and she had not lodged any complaint with the Legislative Council, material changes were made to the allegations and the most serious parts involving sexual harassment and improper use of public money were removed. It was really self-contradictory if Rule 49B should still be invoked under such circumstances. I also said on that day: "I consider it an abuse of the process if Members insist that an investigation be conducted regardless of the allegations. What is more, this will give rise to doubts about the ability of this Council to deal with the issue fairly and impartially." This is also the reason why I am not optimistic about the recommendation in paragraph 5.14 of the report of the Investigation Committee.

In paragraph 5.14, it is recommended that "the Legislative Council should consider afresh the need to review the current mechanism in order to ensure that there are appropriate mechanisms and proportionate sanctions for dealing with complaints against Members' misconduct of varying gravity, so as to safeguard the credibility of the Legislative Council." Firstly, the establishment of the so-called "appropriate" mechanisms requires the Legislative Council's approval, and it is not very probable for the Legislative Council to grant its approval; secondly, if an approval is granted, it will certainly become a tool of struggle under the pressure of political wrestling whilst the conclusion of the investigation will be ineffective under the division mechanism. No goals will be achieved other than discriminating against those holding different view; let alone maintaining the credibility of the Legislative Council.

President, if we compare today's two motions involving the dismissal of a Member with the two motions moved by the Committee on Members' Interests on 13 July 2011, we can see that a red light is lit concerning the operation of this Council. As we fail to reach a consensus on the criteria and attitudes for handling Members' discipline, these procedures will only exist in names and can hardly perform any practical functions. Also, they fail to convey to the public that our decision on strict or lenient sanctions are well justified, and we are fair and impartial. How then can we fulfil our constitutional responsibilities of monitoring the executive authorities? If people do not have trust in the executive authorities, they will not have trust in the Legislative Council as well. Currently, people only have trust in the judiciary but I wonder if that is enough. Can their trust be maintained? Under the shadow of LEUNG Chun-ying's taking over and the interference in domestic affairs by the Liaison Office, what force can we rely on as checks and balances? Thank you, President.

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

MS CYD HO (in Cantonese): President, the motion being discussed is related to moving a motion under Rule 49B of the Rules of Procedure (RoP) to disqualify a Member.

This procedure can be activated easily but the consequences will be rather harsh. So long as a Member and three other Members want to activate this

procedure under Rule 49B, an investigation can be conducted and a motion to disqualify the Member concerned can be moved after the completion of an investigation. The passage of a motion on the disqualification of a Member from office requires a two-thirds majority vote of the Members present, thus, the threshold is much lower than that of another motion to be handled later, that is, to invoke Article 79(6) of the Basic Law. Under Article 79(6) of the Basic Law, the President of the Legislative Council of the Hong Kong Special Administrative Region shall declare that a member of the Council is no longer qualified for the office when he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two thirds of the members of the Legislative Council present. On the contrary, the procedure under Rule 49B can be activated much more easily.

We must be very careful when we consider activating the procedure under Rule 49B. We must at least have proportionate information and evidence before starting the investigation. The Legislative Council initially proposed that an investigation should be conducted by the Committee on Members' Interests but it is not an appropriate forum because the Committee is responsible for monitoring Members' registration and declaration of interests, and operating expenses. It is a mechanism for public monitoring of any conflict of interests rather than monitoring the private life of Members and matters of ethics relating to Members. It is also not a forum for judging if a Member has committed any criminal offence.

Hence, Dr Margaret NG had stated at that time that if an investigation was to be conducted, it should comply with the procedures listed in RoP, and actions should explicitly be taken under Rule 49B of the RoP. Nonetheless, as discussed on that day, as the party concerned was unwilling to be a named complainant or to give evidence, and the evidence available did not meet with the easy disqualifying procedure under Rule 49B, so opposition was raised.

I would like to make another point: these four Members should bear political responsibilities for proposing the activation of Rule 49B because if this procedure can be activated too easily, it will easily become a tool of political struggle. So, Members who propose activating the procedure under Rule 49B should be personally responsible. Nevertheless, a mistake was accidentally made by the Legislative Council on that day. At the meeting preceding the one

on which a decision was made to activate Rule 49B, Members discussed whether an investigation could be conducted under another mechanism, and whether the Chairman of House Committee could propose on behalf of the House Committee to conduct an investigation, focusing on Members' interests. We had not discussed and considered the matter very clearly at that meeting.

The issue was thoroughly discussed at the following meeting of the House Committee. If an investigation was to be conducted, it should be conducted under Rule 49B, with proportionate representation. Unfortunately, most Members still considered that such a motion should be proposed by the Chairman of House Committee on behalf of the House Committee. Thus, the Legislative Council had made a mistake in activating the procedure under Rule 49B. If the Chairman of House Committee proposes the motion and a collective responsibility system is adopted, this harsh procedure will actually be activated under a mechanism under which nobody will be accountable. At the meeting of the House Committee, Members who vote in support of the activation of this mechanism by the Chairman of House Committee, will not be held politically accountable in disguise.

Today, we should take another look at the voting list on that day and be accountable for what we did. President, a review should be conducted when we invoke Rule 49B or when the Committee on Rules of Procedure discusses Rule 49B in the future. We should at least have a threshold; if the threshold is so low, the four Members who activate the procedure should move the motion in their personal capacity and they should be held politically accountable; they should not hide behind the collective responsibility system, such that they do not need to give the public an account.

Moreover, President, a review is needed on how the legislature monitors the conduct of Members and this issue has been discussed all along. I know that there were lengthy discussions and studies in the Legislative Council before 1997 but the motion was finally negatived because the mechanisms for monitoring Members' conduct proposed before 1997 were deemed as unfeasible. I heard that Ms Miriam LAU seemed to have shed tears when the motion was negatived after lots of efforts had been made.

President, I thank the Legislative Council for giving me an opportunity to study the rules of procedure of the Parliament in the United Kingdom last year.

It is my responsibility to share with Honourable colleagues the experience that I gained as a representative of the Legislative Council.

First of all, the Parliament of the United Kingdom specified on the first page of the Code of Conduct for Members that the purpose of the Code is to provide guidance for Members on the standards of conduct expected of them in the discharge of their parliamentary duties; the Code does not extend to Members' performance of duties unrelated to parliamentary proceedings, or their private lives. I believe Honourable colleagues thoroughly understand this point. We often talk about a divine vote; when a candidate stands for election, he calls upon each voter to give him a divine vote, which actually represents how the voter sees the candidate and his responsibility to perform official duties, as well as his personal values.

Even if the private life of a Member fails to meet the expectations of some or even most members of the public, his disqualification from office should be determined at an election rather than in the legislature. What then can the legislature do? If a Member has committed a criminal offence, Honourable colleagues should invoke Rule 76 of the Basic Law, as in the case of another motion to be discussed later. If a Member has violated the rules in respect of declaration of interest, his case can also be handled under a complaint mechanism. We should not activate Rule 49B of the RoP simply because the private life of a Member is not up to the public's expectations. This approach is by no means desirable.

In this incident, Mr KAM Nai-wai's dismissal of his assistant, Ms WONG, involved his behaviour in performing his public duties. The evidence available at that time showed that Mr KAM made a compensation that was equivalent to six months' salaries. This met the requirement of the labour legislation about unreasonable dismissal and Mr KAM had not claimed this compensation, which was equivalent to six months' salaries, as the expenditure of his office. This incident did not involve abuse of public money, as Mr KAM paid the compensation out of his pocket.

Some investigation procedures are clearly stated in the Code of Conduct, for example, anonymous complaints will not be considered. We should not initiate an investigation into an incident just because the incident had been reported in the newspaper front page for 10 days or two weeks. Mr KAM's

incident had been the front-page reports throughout the whole week, which was very exceptional.

In the past few months, we noted from the Chief Executive Election that many front-page reports are now rather biased. Therefore, Members of the Legislative Council must be very careful in handling "black materials" as disclosed by the media reports.

Of course, these "black materials" may be factual and not fabricated; thus, Rule 49B specifies that the relevant motion should be signed by four Members. If Members consider that they have received some very specific confidential information or letters and would like to activate the procedure under Rule 49B, they should step forward and be politically accountable. However, they cannot activate this procedure merely on the basis of the press or media reports.

In 2009, there was a serious scandal involving a number of Members of the Parliament of the United Kingdom who abused public money and indiscriminately applied for their accommodation expenses in London. Even the ruling party could not withstand the pressure of the scandal, and proposed a new legislation for regulating the declaration of such expenditures by Members. However, the Secretary General of the Secretariat of the Parliament spoke out at that time, saying that some parts of this new legislation were excessive, which would affect Members' criticisms on other political parties in the Parliament and on the privileges of Members or certain court proceedings; and they would no longer make any noise. This highly controversial proposal was eventually removed. President, I must deviate a little, though this remark is also on the right track. Under the pressure of this scandal, the political parties in the United Kingdom dared not make any noise, they dared not oppose the "tough" legislation, for fear that other people would think that they were biased and tended to defend themselves. Hence, the Secretary General of the Secretariat of the Parliament was the one who ultimately spoke out. A good Secretary General should be able to withstand the pressure from the political parties in the legislature. When necessary and when the pressure is almost unbearable for political parties, the Secretary General has the responsibility to explain to the public in a transcendent capacity and according to the principle of independence of the legislature. The Secretary General should not fear making blunt arguments and should step forward and restate this principle because the Secretary General must have such quality and responsibility. In particular, when

there are power struggles among various political parties and when the political parties dare not positively respond to public opinion because of certain media reports, an independent Secretary General should have a transcendent status to defend this system.

I so submit, President. I hope that this Council will use these powers with caution in future, and I also hope that the new Secretary General of the Secretariat will fairly and independently defend the impartiality of the legislature. Thank you, President.

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

DR PRISCILLA LEUNG (in Cantonese): President, the Investigation Committee on Mr KAM Nai-wai incident is one of the investigation committees in which I have taken part since I became a Legislative Council Member. I have joined two investigation committees established by invoking the Legislative Council (Powers and Privileges) Ordinance (P&P Ordinance); one of them is related to the Lehman Brothers incident while the other is to inquire into the incident concerning the West Kowloon Reclamation Concept Plan.

As previously discussed, Ms Kimmie WONG said that her supervisor, Mr KAM Nai-wai, started to court her, and in her open letter to all Legislative Council Members through her lawyer on 3 December 2009, she made public what had actually happened. There had been extensive media reports on the incident at the time. I remember that this incident was first discussed on 9 October 2009. I asked the Secretary General if we could refrain from activating Rule 49B because from my experience in similar investigations (in universities and other public organizations), the investigation work usually comprises two stages. At the first stage, we will consider if there is a *prima facie* case, as I said the other day. I would like to know if the House Committee could first establish an investigation committee or a committee to consider if there is sufficient *prima facie* evidence concerning the case. I had also asked more senior Members how the case concerning the declaration of interest by Mr James TO was eventually handled a few years ago. As far as I recall, Mrs Sophie LEUNG was in charge of the investigation but at that time, I was not a Legislative Council Member. Mr James TO was finally admonished as a punishment. During our discussions,

I wanted to find out if we could have a two-stage investigation just like the usual practice of other public organizations.

Very often, investigations conducted by public organizations are related to similar cases, and upon investigation, the person being complained of may not necessarily be found problematic. However, when many people, especially female employees, in an organization complain about someone, in particular a male supervisor, a perception will be formed before the case has been investigated. Thus, we sometimes need to conduct preliminary investigations. We will move onto the next stage if it is found during the preliminary investigation that there are problems. I remember that, after the conclusion was made in 2009, Dr Margaret NG said that Rule 49B ought to be invoked to handle such kind of allegation; that was why the direction of our discussion had been shifted to Rule 49B.

I think it is necessary to review how to handle similar cases, as well as how to handle cases that are widely reported by the media and must be handled by the Legislative Council, but they are not so serious that Rule 49B should be activated. It seems that there may be various extent of punishment for a Member who has conflict of interest, ranging from warning to admonishment and dismissal, which is the most serious punishment. This is the first time Members dealt with the invoking of Rule 49B; this issue was discussed in the last part of the report but the Investigation Committee had not made a conclusion on this point. I recall what Members said at the last meeting: Honourable colleagues should discuss at this meeting how the existing mechanism should be improved for handling a future case for which Rule 49B will not be invoked though it must be handled by the Legislative Council or the Legislative Council must express a certain attitude. I think this first point is worth consideration by Members.

I believe there are advantages for adopting a two-stage investigation. Generally speaking, in a two-stage investigation, a small team may be responsible for preparing the preliminary documents and activation, and the next step will be taken after a preliminary decision has been made. The two, three or four parties will then be informed and they will have to engage lawyers. The parties have to give notice in accordance with the investigation procedures or to give notice within a specified number of days. In the course of this investigation, I remember that we had to determine how Rule 49B should be activated at the first stage, and how evidence should be obtained after the activation (at open hearings

or behind closed doors), as well as what should be done by the lawyer of the other party. I have taken part in the related discussions and we have had longer discussions on how 49B should be activated.

I believe each member of the Investigation Committee — I think other Honourable colleagues also share this view — kept reminding one another at the meetings that, if there were doubts, Mr KAM Nai-wai should be given the benefit of the doubt because we all considered this as a very serious matter. I think that we had unanimous views on the conclusion of the report on the basis of this guiding principle.

Regarding my judgment on this incident, I initially based on the lawyer's letter issued by Ms Kimmie WONG on 3 December, in which allegations were publicly made against Mr KAM Nai-wai. In my opinion, as compared with the general media reports on the incident, the lawyer's letter issued by a woman to all Legislative Council Members sufficiently reflected that she took this matter very seriously. I believe that Ms Kimmie WONG placed a bet in issuing this letter. If she was not talking about the truth, in the face of such a serious mechanism which may be activated to disqualify Mr KAM Nai-wai, Mr KAM Nai-wai would reasonably sue her for defamation. According to my experience, when a woman accused her supervisor for starting a pursuit, and that her supervisor repeatedly invited her to go out with him alone after she had turned him down, and she made a written statement through her lawyer, she should take the matter very seriously because she would be sued at any time, and she might eventually become bankrupt. As Mr KAM Nai-wai expressed at the very beginning, he also wanted an investigation to be conducted. In that case, I think that Ms Kimmie WONG was not completely dodging.

We took part in the relevant discussions after the Legislative Council had voted to approve the activation of the mechanism. As I mentioned in the course of our discussions, one of the difficulties was that, Ms Kimmie WONG accused her supervisor, a Legislative Council Member, in an open lawyer's letter. Frankly speaking, this would be a very serious incident if it had happened in a public university because this might constitute sexual harassment. If this constituted sexual harassment, there would be victimization — she was dismissed after she had complained against her supervisor. Victimization is common in sexual harassment cases but immediate dismissal will generally not occur. Now that Ms Kimmie WONG had seriously issued a lawyer's letter and was willing to

assume legal responsibility in accusing Mr KAM Nai-wai, I believe we should consider invoking the P&P Ordinance to summon her attendance, as I previously said. Nevertheless, many Honourable colleagues might have sympathy for Ms Kimmie WONG. As she had never stated clearly that she would not attend the hearings, we tried to be accommodating in various ways. Yet, as reported by the Secretary General, in view of her emotional fluctuations, if we summoned her by invoking the P&P Ordinance, there might be consequences that Honourable colleagues would not like to see. So, I finally agreed that the P&P Ordinance should not be invoked.

In comparison with the other three committees, the consequence of not invoking the P&P Ordinance can be instantly seen. On the contrary, the investigation concerning the West Kowloon Reclamation Concept Plan can be described as "exceedingly fast", and I even did not have a chance to raise questions. The Chairman of the Select Committee is now present and Members can ask him questions. The time for a conclusion almost dictates how we should raise questions. The Subcommittee to investigate the Lehman Brothers incident held almost 200 meetings and there were even 400 meetings according to President. If the P&P Ordinance similarly needs to be invoked by the Investigation Committee on Mr KAM Nai-wai incident, I believe fewer meetings would be held. Since Mr KAM Nai-wai issued several lawyer's letters and the Investigation Committee considered it necessary to comply with procedural justice, we even allowed him to examine the final report first.

I believe that we, male and female Members, have considered various issues from the perspective of Mr KAM Nai-wai. It gives little cause for criticism for Mr KAM Nai-wai as the party concerned to challenge the relevant procedure. Nevertheless, Mr Albert HO commented at the very beginning that we were unfair. Honestly speaking, I considered that unacceptable. If we were unfair, the final conclusion would definitely be different. We expected to be criticized as unfair but those people making the criticism should also speak in fairness to us.

I hope that they would thoroughly go through the report because all members of the Investigation Committee, the Legal Adviser and the Secretary General made strenuous efforts to ensure impartiality as far as possible. Members should also understand that this is the first time Rule 49B has been invoked.

I have also read some reports after the incident. Ms Mandy TAM told the media on 29 March that Mr KAM Nai-wai should take the blame and resign, though we thought that the incident was not so serious as to warrant his resignation. I was infuriated because we had invited Ms Mandy TAM to attend the hearing but she refused to do so, and she made such comments before the media. As I have just said, the most important evidence was the lawyer's letter issued by Ms Kimmie TAM because she had to assume legal responsibilities.

Another point is that, Mr KAM Nai-wai has all along insisted that it was just friendly encouragement and I think that he might as well withdraw this remark. We have compared the evidence given by Mr Albert HO and Ms Emily LAU. Ms Emily LAU's straightforward reply at that time was that there were good feelings between a man and a woman, as Mr KAM Nai-wai had told her. Hence, further arguments would be unnecessary because he had already been given the benefit of the doubt according to our conclusion. Yet, he said that a reasonable third party should believe that there were good feelings in that scenario. We might as well stop arguing because the incident already occurred.

The recent Chief Executive Election is an eye-opener for me. In the United States, an in-depth investigation was held into the scandal concerning the former President Bill CLINTON. In view of the extramarital affairs and the issue of the illegitimate children of Mr Henry TANG as revealed in this Chief Executive Election, I found that the standard of Hong Kong people in this area are not as high as those in the United States. If it is said that a Senator in the United States has an illegitimate child, he may have to step down immediately; thus, there may really be a cultural difference. I have revisited Mr KAM Nai-wai incident after the Chief Executive Election, and I have found that it involved a Member's conduct, and Members should make a decision as to whether an investigation should be conducted.

I believe Members should consider the work of the Investigation Committee when they comment on it. I trust that all members have tried our best to be fair and impartial, and we have given Mr KAM Nai-wai the benefit of the doubt. Hence, we made the judgment because we unanimously agreed that the first point was established.

Lastly, I would like to thank Mrs Sophie LEUNG because I really miss her home-made green tea cakes. We will always remember and thank her for her green tea cakes.

I so submit.

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

MR FREDERICK FUNG (in Cantonese): President, since I became a Member of this Council, I have always hold the view that it is inappropriate for the Legislative Council to conduct investigations into its Members in its own capacity, position or name, whether or not the incidents to be investigated involve any interests. My reason is that this approach will transform the Legislative Council, made up of Members returned by different modes of elections and of different political parties and political backgrounds, into a place like a "court" (the word "court" is in quotation) where investigations are conducted, facts and information are discovered and judgments are made on whether a certain Member has certain misbehaviours. However, unlike acts of corruption, the misbehaviours, which the Member may or may not have done, are not necessarily something which can be quantified as personal interests. Then, is this an appropriate approach?

I do not think it is appropriate for two reasons. First, this Council is not a court and we may not be able to follow all court procedures; and second, Members are not judges. Can we completely stay aloof of this Council, political backgrounds, political stands or even our motives when we collect information, conduct cross-examinations or even draw a conclusion on this incident?

Even if we are impartial, do other people think that we are impartial? In particular, considering that there are the so-called "good guys" versus "bad guys" in this Council or the pro-establishment camp versus the democratic camp, as well as heated election campaign, competition and confrontation among different political camps, people will suspect that there is something fishy going on in the investigation even if we are upright. People will wonder whether we are targeting at our opponents, and whether we will make use of the investigation to knock out people who are our opponents in the election.

Hence, regarding this issue, owing to the main reason stated above, I always consider that it is improper and inappropriate to handle the incident this way; owing to the same reason, I also opposed to a past proposal on stepping up the authority of the Committee on Members' Interests. Today, I still hold the same view with the same reason and justification. Certainly, some Members have pointed out this Council has received many complaints, but can these complaints justify the approach adopted? In my view, even if the public have lodged complaints, it is still unjustifiable to adopt this approach.

Dr Priscilla LEUNG has pointed out just now that Ms Kimmie WONG's act of issuing an open statement through her solicitors suggested that the incident might involve sexual harassment. If there is a possibility of sexual harassment, I think it is better to bring the matter to court. Ms Kimmie WONG can file a case against Mr KAM Nai-wai and seek a court judgment. Hence, should this incident be handled by the Court or by this Council, I still think that this Council should not be the organ to handle this incident.

Of course, there may be other criteria which can be adopted as a standard. For instance, should ethical standard in society be used as the yardstick to assess Member's ethical standard, and if his ethical standard does not measure up to that of society, the mechanism under Rule 49B of the Rules of Procedure can then be activated to pass a judgment on him? However, ethical standards are very difficult to be judged. Different people may have different ethical standards, and different eras and periods of time may also have different ethical standards. Even people of different age groups may have different ethical standards. For instance, four distinctly different ethical standards can be identified between now and at the time when the Republic of China was first established, the Qing Dynasty and the Tang Dynasty. Men and women of this generation may have different ethical standards. Young people and adults may also have different ethical standards. Hence, we can hardly judge which ethical standards are higher, or which ethical standard should be used as the yardstick to assess another ethical standard.

Some people have suggested whether religious belief can be used as a yardstick, but still problems may arise, are all religious beliefs the same? All religions may share the same element in that they encourage people to be kind. However, from the perspective of men and women, there are obviously some differences. Let me cite an example. Both Catholics and Christians believe in

monogamy, that is, they can only have one spouse; but a Muslim man can marry three or four wives. Hence, religious beliefs are not all the same. So, coming back to the question of whether we can use religious beliefs as a yardstick, I do not think it is an easy or good option.

President, against this background, I have all along disagreed to invoking Rule 49B(2A) of the Rules of Procedure to set up an Investigation Committee to handle Mr KAM Nai-wai incident. For instance, examples can be drawn from political parties in the United Kingdom in respect of how they handle party members who do not comply with moral standards or who have violated party decisions. As far as I know, the Labour Party and the Conservative Party allow their members to freely decide or vote under three circumstances: first, when the incident in question is related to ethics, as ethical standard differs from person to person, members can cast their vote based on their ethical standards; second, when the incident involves religious beliefs and third, which is rather odd, when the incident is related to interests of the local voters, members can vote on the basis of the interests of voters in their geographical constituency and they need not toe the party line. The United Kingdom is a country with mature parliamentary politics, rendering it possible to have a greater degree of flexibility. We should draw reference from it.

President, as I have just mentioned, this Council is made up of Members of different backgrounds. It is very complicated. For instance, some Members are returned from functional constituencies and some from direct elections, and they belong to different political parties. Hence, when these Members of different backgrounds mingle with each other …… Of course, some people may favour such a composition, saying that if this Council is made up of people with different perspectives, we will be able to draw conclusions which are all-inclusive and tenable. Nevertheless, in the end, the seats are filled by Members of conflicting backgrounds seeking to serve different political functions. Hence, no matter we support or censure the person in question, we cannot change the public impression on us: if we support the person in question, people will think that it is because we are close to him and belong to the same political party; if we oppose or censure him, they will query whether it is because he is a member of our opposing political party. No matter what the outcome is, we will still be criticized. Hence, I genuinely think that there is no need to make any more rulings on such incidents. Obviously, if the behaviour of the Member concerned has violated the law of Hong Kong, it should naturally be dealt with by a third

organ, that is, the Court. Although the Legislative Council has its own system and rules to deal with such incidents, it does not mean that we have to use them.

Lastly, I would like to add that whether or not the hearing process is fair, just and objective, or is free from any bias and deviation, in the end, it will lead to the same problem, that is, the process itself will, to a very large extent, cause harm to the person in question. Is such harm proportionate and justifiable? If he has indeed misbehaved, only that we are unable to prove it in our investigation, then it may be the will of heaven that he has to bear the brunt of the censure motion. However, if the allegations of his misbehaviour are unfounded and the so-called conclusion is inconclusive, then the process itself may have ruined the political career of a political figure. This is a major decision and an important process. Hence, coming back to the question of whether this Council should be the organ to deal with this incident, I do not think so. Whether this political figure has done something right or wrong, I would rather let him bear his own political responsibility. That is, in the next election, his voters will make a judgment on him. Being a political figure, he will have to shoulder his political responsibilities. As he is returned by a democratic system, we should let the democratic system decide whether he should continue to be a Member.

President, based on the above points, I oppose censuring Mr KAM Nai-wai.

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 Ms Miriam LAU to reply. This debate will come to a close after Ms Miriam LAU has replied.

MS MIRIAM LAU (in Cantonese): President, I would like to briefly guide Members through the ins and outs of how this motion is proposed. Just now, some Members have mentioned some of the details, but I wish to take a comprehensive look of the matter with Members again. As Members may still remember, on 4 October 2009, a local newspaper reported that Mr KAM Nai-wai

dismissed a female assistant who then lodged a complaint with the political party to which Mr KAM belonged, claiming that she had been unreasonably dismissed after his advances were rejected by her. The incident was widely covered by the media in the days that followed with many commentaries and articles focusing on the incident. The Complaints Division of the Legislative Council Secretariat received a lot of views submitted by the public on the incident in the following week. There was strong public sentiment about the incident and the general views were that the Legislative Council should conduct an inquiry to investigate whether the allegation of sexual harassment was established, whether there had been improper use of public money in the course of the dismissal, including whether the dismissal was reasonable, and whether the incident had a negative impact on the integrity of Mr KAM. Duty Roster Members for that week decided that they would propose to the House Committee that the Committee on Members' Interests should be specially authorized by resolution of the Legislative Council to inquire into the matter, and submit a report to the Council.

The House Committee conducted detailed deliberations on the matter at its meetings on 9 and 16 October 2009. Members noted that the Rules of Procedure had already provided for a mechanism to implement Article 79(7) of the Basic Law for the purpose of dealing with allegations of misbehaviours of Members. Article 79(7) of the Basic Law provides that the President of the Legislative Council shall declare that a Member is no longer qualified for the office when he or she is censured for misbehaviour or breach of oath by a vote of two thirds of the Members present. After deliberations, members agreed that I, in my capacity as Chairman of the House Committee, should activate the aforesaid mechanism for Members to debate on the censure motion, and that I, together with the three other Members jointly signing the notice of the motion, should be responsible for drafting the wording of the motion. Subsequently, three Members of different political combinations and parties, namely Mr Joseph LEE, Mr IP Kwok-him and Mrs Regina IP, jointly signed the notice of the motion and helped me in drafting the wording. I must take this opportunity to express my gratitude to them again.

With regards the wording of the censure motion, the main body of the motion was drafted in accordance with the format laid down in Rule 49B(1A) of the Rules of Procedure while the Schedule to the motion set out the details of the misbehaviours. In drafting the Schedule, the three other Members signing the notice to the motion and I had upheld three principles: first, the truth should be

sought from facts, not from speculation or extrapolation; second, impartiality should be maintained in treating both Mr KAM Nai-wai and the female assistant while responding to public concerns; and third, the allegations should not be drafted solely on the basis of media reports or hearsay. Before we began drafting the wording, the four of us carefully looked up the records and scrutinized the remarks which Mr KAM Nai-wai had made at the press conference held on 4 October 2009 and at a radio programme broadcasted on 6 October 2009, as well as the written statement issued by Mr KAM on 4 October 2009. We arrived at the conclusion that two allegations, as the ones now set out in the Schedule, should be raised. The first allegation is that Mr KAM made inconsistent remarks to the media at the two aforesaid occasions and withheld key information, causing the public to have doubts about his integrity. The details of the allegation are set out in the Schedule. The second allegation is that Mr KAM was unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her. The details are also set out in the Schedule.

I wish to point out that in the process of drafting the Schedule, we had tried to contact the female assistant's lawyer a number of times and had sent the draft motion to her through her lawyer, hoping that she might be able to provide information and views, if any, to help us finalize the draft motion. Regrettably, the female assistant informed me through her lawyer that she had decided to disengage from further involvement in any investigation due to immense pressure and strain caused by the matter. Hence, the wording of the censure motion and its Schedule was drafted not on the basis of the information or views provided by the female assistant, but on the basis of Mr KAM's remarks made at the two aforesaid public events. Regarding the wording of the motion and the content of the Schedule to the motion, I personally do not have any subjective judgment on their severity. I have only presented the facts based on the facts that we have consolidated.

Subsequently, we, the four Members who had jointly signed the censure motion, gave notice to the Legislative Council Secretariat of my intention to move the motion; and at the Council meeting on 9 December 2009, I moved the censure motion on Mr KAM Nai-wai. Upon the moving of the motion, the motion debate then stood adjourned in accordance with Rule 49B(2A), and the matter stated in the motion was referred to an investigation committee.

Under Rule 73A(2) of Rules of Procedure, the Investigation Committee is responsible for establishing the facts stated in the censure motion and giving its views on whether or not the facts as established constitute grounds for the censure. I believe Members have already read the report submitted by the Investigation Committee and are aware that the report is for Members' reference when the debate on the censure motion resumes. It is then a question for Members of this Council to decide whether Mr KAM Nai-wai, the person under investigation, should be censured, and thus be disqualified from office.

With reference to the investigation findings, the Investigation Committee concludes that the first allegation set out in the Schedule to the censure motion is established for the reasons below:

(a) Mr KAM's remarks made in the two aforesaid media meetings were "inconsistent";

(b) Mr KAM did "withhold key information";

(c) Based on the above, the public was very likely to have doubts about Mr KAM's integrity; and

(d) Mr KAM's misbehaviour has, to a certain extent, adversely impacted on the Legislative Council and its overall image.

In respect of the second allegation set out in the Schedule to the censure motion, which refers to Mr KAM being alleged to have been unfair in dismissing his female assistant, whose overall work performance was judged by him to be good, after his expression of affection was rejected by her. The Investigation Committee is unable to establish that Mr KAM has dismissed the female assistant under the circumstances as described in the second allegation, and therefore cannot form a view that Mr KAM was "unfair" in dismissing his female assistant as alleged in the censure motion. However, the Investigation Committee considers that it was improper for Mr KAM to have dismissed his female assistant with immediate effect, and expresses regrets at the behaviour of Mr KAM as a supervisor.

The Investigation Committee states in the Conclusion of the Executive Summary in the report that the disqualification of a Member from the office is the most severe sanction, or what we call the "execution", that may be imposed on an

individual Legislative Council Member and it holds that this sanction has the effect of overturning the decision made by voters in an election. The Investigation Committee considers that Mr KAM's conduct was improper in that it failed to live up to the public's expectations on the integrity and ethical standards of a Legislative Council Member, but that his misconduct was not so grave as to warrant disqualification from the office as a Legislative Council Member. In other words, the facts established do not, in the Investigation Committee's view, constitute sufficient grounds for the censure of Mr KAM under Article 79(7) of the Basic Law.

I wish to take this opportunity to thank members of the Investigation Committee for their dedication and efforts in conducting a thorough investigation on Mr KAM Nai-wai incident. I fully accept and respect the investigation findings and recommendations made by the Investigation Committee. As I have just said, the investigation findings and recommendations do not constitute sufficient grounds for the censure of Mr KAM under Article 79(7) of the Basic Law. Hence, although this motion is proposed by me, which seeks to censure Mr KAM under Article 79 of the Basic Law, I will vote against my motion because I respect the investigation findings and recommendations made by the Investigation Committee.

Although I am not going to support my original motion, I wish to share my views on this motion debate today and Mr KAM Nai-wai incident. With reference to a number of past incidents concerning Members' conducts and behaviours, the Committee on Members' Interests has sought to introduce, through certain mechanisms, some regulations and procedures for the handling of such incidents. As a member of the Committee on Members' Interests for two terms, I have twice shared my experience at its meetings. I said that when something negative about a Member happened, a stampede of Members would make a mountain out of a molehill. However, when the incident subsided, they would forget about the allegations they made against the Member concerned and oppose the motion when the motion debate was held pursuant to Council procedures. They even put the blame on the person proposing the motion. This is unfair. I have a similar experience in this incident. Just now, Mr Albert HO criticized that some of the allegations made by the Investigation Committee were unfair. I beg to differ with his view. With much regret, this shows that some members of the Democratic Party are trying to shield its Member's wrongdoings.

My overall view on Mr KAM Nai-wai incident is that as an elected Member, a married man of 20 years as well as a professional social worker, I expect that Mr KAM should be rather mature in interpersonal skills. However, in the incident, he has expressed affection towards his female assistant when he was alone with her on one occasion, which led to the fiasco. His actions show that he is unwise.

The report of the Investigation Committee finds that though Mr KAM was aware of his female assistant's rejection of "his advances", he still tried to meet her alone, rendering the female assistant with no choice but to repeatedly reject him. When the incident came to light, the female assistant said that she felt immense pressure, and it is natural that the public's hearts went out to her. Nevertheless, Mr KAM's conducts fails to live up to the public's expectations on a Member's conducts, which also indicates that he has not shown due respect for women.

The Investigation Committee has established the fact that Mr KAM's remarks were "inconsistent". As a matter of fact, the public will suspect whether he has done something wrong which has caused him to withhold certain facts, which may, in turn, have caused him to make inconsistent remarks.

I also note that during the development of the incident, some members of the Democratic Party, including Mr Albert HO, whom I just criticized, have more or less put the blame on the Investigation Committee, and tried to water down the incident. I express disappointment to these Members. Some other Members of the Democratic Party have failed to maintain impartiality or have made biased remarks. For instance, Mr CHEUNG Man-kwong said that he would not associate the term "having good feelings" with personal affection. I find his remark implausible. Mr James TO even said that he had praised his female secretary a beautiful lady some 10 years ago. Using his own words, he said, "It is very easy for a man to have good feelings about someone". Then, as if exonerating Mr KAM, he asked whether Mr KAM's words should be interpreted this way. I believe Members' remarks of shielding each other is not welcomed by the public.

One last point I wish to raise is, the lesson of this incident is that we cannot rely on Rule 49B(2A) of the Rules of Procedure alone to handle such matters. It

is necessary to conduct a review to see whether there is a better mechanism to handle such matters.*(The buzzer sounded)*

As to how Members are going to cast their votes on this motion ……

PRESIDENT (in Cantonese): Ms LAU, your speaking time is up.

MS MIRIAM LAU (in Cantonese): …… it is up to Members to decide.

PRESIDENT (in Cantonese): Before I put the question, I wish to remind Members that in accordance with Rule 49B(3) of the Rules of Procedure, the passage of this censure motion shall require a two-thirds majority vote of the Members present.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Ms Miriam LAU be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr IP Kwok-him rose to claim a division.

PRESIDENT (in Cantonese): Mr IP Kwok-him has claimed a division. The division bell will ring for five minutes.

PRESIDENT (in Cantonese): Will Members please proceed to vote.

PRESIDENT (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Miriam LAU, Ms Emily LAU, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Ms Cyd HO, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr Timothy FOK, Mr TAM Yiu-chung, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him and Dr PAN Pey-chyou abstained.

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

THE PRESIDENT announced that there were 48 Members present, 27 were against the motion and 20 abstained. Since the question was not agreed by a two-thirds majority of the Members present, he therefore declared that the motion was not endorsed by a two-thirds majority of the Members present.

PRESIDENT (in Cantonese): Third Member's motion: Motion under Rule 49B(1) of the Rules of Procedure to relieve Mr LEUNG Kwok-hung of his duties as a Member of the Legislative Council.

I now call upon Mr Paul TSE to speak and move the motion.

MOTION UNDER RULE 49B(1) OF THE RULES OF PROCEDURE

MR PAUL TSE (in Cantonese): President, we have discussed a similar motion just now, but of course different Member is involved and the behaviour in question is also different. Nonetheless, allow me to quote the statements just made by Ms Miriam LAU, that is, even if we do not support the relevant motion, we have the obligation to activate the relevant mechanism.

Regarding the Mr KAM Nai-wai incident, by my count, a total of 37 Honourable colleagues had agreed to activate the relevant mechanism at that time. Even though I made a last ditch effort to reverse the situation by moving the suspension of the motion in relation to the KAM Nai-wai incident, it was unsuccessful. The present motion in relation to Mr LEUNG Kwok-hung should be easier because procedure-wise, it does not involve any investigation mechanism, and the true facts should soon be reviewed today. Honourable Members will state their stance shortly, and this, to a certain extent, can well illustrate how some political parties and Honourable colleagues have swung like a pendulum, or how they "say one thing and do another", in this incident. Hence, let us wait and see.

President, let me start by stating, first and foremost, my own stance. Firstly, I have all along strongly opposed to any kind of violent acts both inside and outside this Council; and secondly, regarding the procedure proposed to be activated under the motion, originally I thought that it would have the support of Honourable colleagues at the House Committee; however, due to certain reasons, some parties refused to give their support, perhaps they wanted to shield a shortcoming or they have adopted double standard. I think I am duty-bound to activate this mechanism for the sake of fairness and upholding the comparatively impartiality of this Council, so as to give a fair treatment to Members for their acts, such as Mr CHIM Pui-chung in the yesteryear.

Thirdly, I will vote against the motion. I am not suffering from psychosis, as Ms Audrey EU had criticized me last time in the Express Rail Link incident. This time, my thoughts and actions are definitely appropriate and deliberated. Although I am the mover of this motion, I need not necessarily come to the final decision of supporting the motion. Any Member with a logical mind will not criticize me as such. As in the case of the previous motion moved by Ms Miriam LAU, I am only responsible for opening the gate.

President, what are the reasons for establishing such a mechanism? Article 79(6) is different from Article 79(7) which relates to the motion we just discussed in relation to Mr KAM Nai-wai. The provision under Article 79(6) is relatively clear: When a Member is convicted and sentenced to imprisonment for one month or more for a criminal offence, the President shall declare that the Member is relieved of his duties upon a motion passed by two thirds of the Members present. Article 79(7) is even more general, and no requirement of any specific charge or term of imprisonment has been specified. The provision generally applies to any case involving misbehaviour or breach of oath on a Member's part.

The mess under discussion just now has gone on for more than two years, resulting in a substantial waste of financial resources. While Dr Priscilla LEUNG said that she missed the green tea cakes, those cakes cost some $1.4 million public funds. Nobody should have any feelings of reminiscent for the whole matter, as this should not have happened in the first place. The whole matter is unfair to the Member concerned, the Council and taxpayers.

President, concerning this motion, why do we have to disqualify an Honourable colleague who has been convicted and sentenced to imprisonment for one month or more? There are but only a few reasons. Of course, the most important one is to uphold the credibility and reputation of this Council. I need explain no further because this is well-understood by Members. Secondly, if the relevant Member is sentenced to imprisonment, or even long-term imprisonment, he probably cannot provide service to his constituents or the sector he represented. Thirdly, such a course of action is required by other reasons. However, I am afraid that this will lead to a relatively danger zone, and hence, that is exactly why today, we must deal with the question of when we should exercise this power. Why do we still have to decide whether or not to support the motion, given the clear and objective fact of a specific term of imprisonment as well as the criminal conviction? I think the public will definitely pay attention to the speeches made by Members as well as their voting preferences in this motion.

President, there are some crucial factors as well, such as the involvement of political factors in the relevant charge. Many Honourable colleagues are against relieving the duties of Mr LEUNG in this case, and their reason is that no

personal interest was involved in the matter as he was only striving for people's rights and defending justice. Hence, even though he was convicted under the judicial process, which according to Dr Margaret NG is the only thing we can trust, Members can still make a decision based on their own judgment as well as rational thoughts and actions.

President, regarding the present legal case, I think it is still pending appeal and hence, we should not comment on the case itself. Nonetheless, when giving his judgment, the Magistrate has stated clearly that given the political background involved, he would adopt an attitude or perspective that is as liberal and open as possible, so as to give effect to the spirit of democracy and freedom. The Magistrate was clearly aware that his judgment was made with these factors in mind. Nonetheless, even set against such a lenient and open perspective, the defendant was still convicted and sentenced to imprisonment for two months. Under the circumstances, how can we refuse to perform the rightful obligation of the Legislative Council or serve the people?

President, the second factor is of course whether the legal case concerned is pending appeal. In fact, as I just said, the case is indeed pending appeal, but the exact date is unknown yet. Nevertheless, I think Mr LEUNG Kwok-hung can provide us with some additional information in this regard.

Nonetheless, this case is different from the previous case of Mr CHIM Pui-chung in the following aspects. Firstly, nature-wise, it seems that no political consideration was involved in CHIM Pui-chung's case at that time. Secondly, in CHIM's case, the initial sentence was imprisonment for three years, which is much longer than the sentence of two months in the present case. Thirdly, I was told that when the relevant motion was debated on 9 September 1998, Mr CHIM Pui-chung's application for appeal had yet to be heard — the hearing date was set on 12 November — and more importantly, it was only 11 days …… pardon me, it should be 13 days — it was only 13 days away from 22 September, which was the date for hearing of his application for bail pending appeal. In other words, the motion on whether Mr CHIM Pui-chung should immediately be relieved of his duties as a Member of the Legislative Council was debated in this Council 13 days before the hearing on his application for bail pending appeal.

There was another minor episode in this matter. When the then President of the Legislative Council gave permission to hold the motion debate on the disqualification of Mr CHIM, Mr CHIM immediately filed an application for leave to apply for judicial review. Of course, his application was dismissed, and the grounds given by the Court were only technical in nature, which are irrelevant to the present case. The two cases are different because in Mr CHIM's case, he was already serving his sentence when the motion on his disqualification was moved. Hence, the question of whether he could serve the people would arise. One of the reasons cited by the Judge for dismissing Mr CHIM's application was to ensure fairness for the people because a by-election should be held immediately after his disqualification. In the present case, while it is not yet known whether an appeal will proceed and what the outcome of the appeal will be, at least, Mr LEUNG Kwok-hung can still serve his constituents freely.

President, I would like to raise another point. At that time, before the motion in relation to Mr CHIM Pui-chung was moved, an extensive discussion on the relevant procedures and rationale was held by the then House Committee. At that time, most Members, notably Dr Margaret NG, clearly pointed out that given the Court's judgment, this Council did not have any discretion as to whether the mechanism should be activated or not. Of course, I also understand that the rules and regulations are silent on whether the relevant motion must be moved, but at that time, Members including Dr Margaret NG and Mr SZETO Wah seemingly considered that such a motion must be moved, and this view was echoed by other Members. Surely, such a view is not binding, and has absolutely no impact on the present decision of this Council. However, that was indeed the view and decision at that time. As a result, notwithstanding Mr CHIM Pui-chung's impending appeal and bail, the then Legislative Council still decided to relieve him of his duties as a Member of the Legislative Council with immediate effect. That was how another Honourable colleague was treated.

Regarding the present proposal, I also mentioned just now that while I will activate the mechanism, I personally do not support this course of action, primarily because the circumstances of this case are different. Later, I will also talk about whether a criminal offence committed for political reasons should be used as a shield. I think this will create a lot of arguments, and I want to give my response after hearing the speeches made by other Honourable Members.

Regarding the way I handle this matter today, that is, I will vote against the motion I propose to activate the mechanism, the most important reasons are: firstly, the term of imprisonment is only two months, which is a relatively short; secondly, Mr LEUNG Kwok-hung can still serve his constituents now. Hence, it seems unfair to immediately relieve Mr LEUNG Kwok-hung of his duties at this stage while the appeal proceedings have yet to commence. In fact, I think it was likewise unfair that the then Members of this Council had voted to deprive Mr CHIM Pui-chung of the opportunity or room to appeal.

President, I have also mentioned about political considerations just now. Let me cite an example, albeit somewhat exaggerated. Is it alright for a person to use violence on account of his strong political beliefs? Many people may consider this a common sense question, and of course, the answer is "No". However, in this case, it seems that many Honourable colleagues would consider it acceptable to do so. Members have already witnessed the same situation many times within the current term, such as hurling objects both inside and outside of this Council. Of course, Honourable Members would be more cautious in this Council, and normally they miss their targets. But strictly speaking, if the victim has been shocked by that action, it would already constitute a criminal offence in theory under common law principles. In considering that the victim has not been harmed physically or seriously, as well as the political background involved, it is understandable that the Department of Justice does not institute any prosecution or take follow-up actions. However, it is another matter if a relatively serious criminal offence has been committed. Of course, in this matter, the Department of Justice has already instituted prosecution as appropriate, and the Court has handed down its verdict of conviction and sentence under a lenient and open attitude. Hence, I consider that we should respect the Court's verdict, or at least, before the commencement of the appeal hearing.

However, if under this exaggerate example, a person has acted violently and slapped the Chief Executive twice, or even set fire to his car or committed some criminal offences outside his house, in the name of politics or because this person was dissatisfied with the Chief Executive's dereliction of duty as revealed recently, can we absolve this person of criminal liability on the ground that these criminal offences are motivated by strong political beliefs or reasons, or that these actions have gained fervent public support? I think it is now the right time for Members to discuss the matter. Today's motion debate can provide a proper

platform for Members of the Legislative Council to hold a befitting debate on the preference, principles as well as public accountability in respect of politics *vis-à-vis* violence.

Thank you, President.

Mr Paul TSE moved the following motion: (Translation)

"That whereas the Honourable LEUNG Kwok-hung was convicted on 19 March 2012 in the Kowloon City Magistrates' Courts in the Hong Kong Special Administrative Region of four criminal offences and was sentenced on 20 March 2012 by the Kowloon City Magistrates' Courts to imprisonment for one month or more (as particularized in the Schedule to this motion), this Council relieves the Honourable LEUNG Kwok-hung of his duties as a Member of the Legislative Council.

Schedule

Case No.	Count	Offence Convicted	Date of Conviction	Sentence	Date of Sentence
Kowloon City Magistrates' Courts Criminal Case No. 3676 of 2011	1st Charge	Criminal damage, contrary to section 60(1) of the Crimes Ordinance (Cap. 200)	19 March 2012	Imprisonment for two months	20 March 2012
	2nd Charge	Acting in a disorderly manner at a public gathering, contrary to section 17B(1) of the Public Order Ordinance (Cap. 245)	19 March 2012	Imprisonment for five weeks	20 March 2012

Case No.	Count	Offence Convicted	Date of Conviction	Sentence	Date of Sentence
	3rd Charge	Behaving in a disorderly manner in a public place, contrary to section 17B(2) of the Public Order Ordinance (Cap. 245)	19 March 2012	Imprisonment for five weeks	20 March 2012
	4th Charge	Criminal damage, contrary to section 60(1) of the Crimes Ordinance (Cap. 200)	19 March 2012	Imprisonment for two months (1st to 4th Charges to run concurrently)"	20 March 2012

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

MR RONNY TONG (in Cantonese): President, I am aware that no matter what points I made in my speech today or how I will vote later, I will be criticized by many people. If I vote for this motion, I will be criticized for not standing on the same line as the pan-democratic camp; if I vote against this motion, I will be criticized for shielding a shortcoming, as just said by Mr Paul TSE.

I notice that Mr Paul TSE just said that he would also vote against the motion himself. I concur with his view that he was duty-bound to move this motion. Moreover, I think he will not consider that Members who vote against the motion are invariably shielding a shortcoming; he just considers that it is not

appropriate to censure Mr LEUNG Kwok-hung under these circumstances. President, as I will be criticized no matter what I do, or I will be criticized for either supporting or opposing the motion, I might as well speak from the bottom of my heart. Honestly, if a person is afraid of criticisms, he should not have become a Member of the Legislative Council in the first place.

My starting point is: What does this provision of the Basic Law want us to do? The drafting of the provision is quite simple: "When he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two thirds of the members of the Legislative Council present".

It is worth noting that other circumstances for the removal or disqualification of a Member of the Legislative Council have also been specified under the same provision. In addition, not all circumstances for a Member's disqualification involve a motion debated in the Council and passed by two thirds of the Members present. For instance, it is provided under Article 79(1) that, "When he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons", and other circumstances include that of a Member who, with no valid reason, is absent from meetings for three consecutive months without the consent of the President; loses his status as a permanent resident of the Region; accepts a government appointment and becomes a public servant; and when a Member is bankrupt. In the above circumstances, a Member's disqualification does not require any debate or motion passed by two thirds of the Members present. Why does the requirement of a debate in this Council and a motion passed by two thirds of the Members present for a Member's disqualification only applies to Article 79(6) and Article 79(7) which we have just discussed?

I think the meaning is very clear that in the case of a Member convicted and sentenced to imprisonment for one month or more for a criminal offence, this situation should not be the only reason for his disqualification. In other words, in addition to the imprisonment term of one month or more, there must be other reasons before that Member can be disqualified.

Of course, I cannot dismiss the fact that this provision merely reflects the political reality. A Member can be "kicked out" on account of some trumped up charges after a motion has been passed by two thirds of the Members present. I think this can happen in an unjust parliament. Although I cannot say that this

Council is totally just, it has yet to stoop so low. Hence, we need to examine in a rational and objective manner whether factors other than the imprisonment term of one month or more are present to convince us, or the majority of the people, that this Member should be disqualified.

President, I tried to review the speeches made in the earlier motion debate on the disqualification of Mr CHIM Pui-chung. But regrettably, upon review, I noted that this point was hardly mentioned by former Members, with the exception of Dr LEONG Che-hung who stated clearly at the onset of his speech that Mr CHIM Pui-chung was convicted of one count of a criminal offence of conspiracy to forge. As we can see, regarding the cases of Mr LEUNG Kwok-hung and Mr CHIM Pui-chung, apart from the different terms of imprisonment, Mr CHIM's offence basically involved a breach of integrity — this is the first point. The second point is that in Mr CHIM's case, personal interest was involved. On account of these two factors, Mr CHIM Pui-chung was disqualified. If these two factors are not valid in the present case, or if other factors are present, is that still a reason for disqualifying the Member concerned?

President, I think if Members consider the offence committed by Mr LEUNG Kwok-hung objectively, we all agree that it did not involve any breach of integrity. As a matter of fact, he was elected to this Council twice, and he had said clearly on both occasions that he became a Member in order to "create trouble". In the last term, he was even elected with the highest number of votes — of course, Mr LAU Kong-wah was the Member with the highest number of votes, but their cases can hardly be compared because all supporters of the Democratic Alliance for the Betterment and Progress of Hong Kong had voted for him — in the democratic camp, Mr LEUNG Kwok-hung had the highest number of votes, and he had also stated clearly in his election platform that he intended to join the Council to "create trouble".

Moreover, Mr LEUNG has a track record for not behaving well in the last term as well. President, your predecessor had evicted him from the Chamber many times. Of course, some Members may say that his violent acts have become more frequent this term. On more than one occasion, I have condemned such violent acts despite being criticized or even harshly criticized by supporters of the democratic camp, as well as by Honourable colleagues — Mr WONG Yuk-man is not in the Chamber now, but Mr Albert CHAN is here — they have criticized me publicly many times for this, but it is something I have to accept.

On that day, I learnt of Mr LEUNG's actions on television. When interviewed by reporters, I also condemned his actions in the first instance because I considered such kind of violence unacceptable. Nonetheless, the question now is that whether the matter has reached a stage where he should be disqualified as a Member? In particular, I would consider that Mr LEUNG joined the Council specifically to represent a particular kind of culture in Hong Kong. Although we may not agree with this kind of culture, or even find it unacceptable, is this a reason to disqualify him?

Of course, there is another factor, namely the breach of law. In fact, this factor was raised by many Members in the motion debate on the disqualification of Mr CHIM Pui-chung. For instance, Dr LEONG Che-hung whom I just mentioned had said that, "the most important factor to consider in the question of whether to relieve Mr CHIM Pui-chung of his duties is the protection of public interest and the safeguarding of the credibility of the Legislative Council. Hong Kong has all along been so proud of its spirit of the rule of law and its excellent legal system. This is also the cornerstone of Hong Kong's prosperity." In other words, if an offence was committed by a Member — in the case under discussion at that time, the Member concerned was convicted and sentenced to imprisonment for three years for a criminal offence of conspiracy to forge — under the Basic Law, that Member has breached the law if he was convicted and sentenced to imprisonment for one month or more for a criminal offence.

However, going back to the first point I raised in my speech just now: is breaching the law alone a strong reason for disqualifying a Member? If it is, how come the requirement of disqualifying a Member after "a motion passed by two thirds of the members of the Legislative Council present" is added to Article 79(6)?

President, I think the crux of the issue is whether we can clearly pinpoint or identify other factors in the case — other than conviction and sentence of imprisonment for a criminal offence — which we consider to be highly important, as well as crucial to our core values, such that the Member concerned must be disqualified.

President, I may be biased for I belong to the democratic camp. And all along, I have never denied that I am not a man without bias. Nonetheless, biased or not, I still consider the question from a relatively neutral and, as far as I

am concerned, objective perspective. Although I will not endorse any kind of violence, and have openly condemned the acts of Mr LEUNG Kwok-hung, I consider that his crime is not that fatal because as far as I am concerned, the most important and core quality in the Council is a Member's integrity. In Mr LEUNG's case, it did not involve a breach of integrity. Given that, I think if he is to be punished, his punishment should be administered by the 1 million electors in the New Territories East geographical constituency.

Therefore, President, it is really very difficult for me to support this motion. Thank you.

MR WONG YUK-MAN (in Cantonese): President, the two Legislative Council Members belonging to People Power strongly oppose the Legislative Council relieving Mr LEUNG Kwok-hung of his duties according to Article 79 of the Basic Law. We will vote against this motion today.

At the meeting of the House Committee on 23 March, I and my partisan, Mr Albert CHAN, made a statement as follows:

(a) Mr LEUNG Kwok-hung was sentenced to imprisonment for two months because of his act of civil disobedience. The sentence, which is obviously too heavy, effectively demonstrates that the Judiciary is serving politics. Mr Albert CHAN and Mr WONG Yuk-man, Legislative Council Members belonging to People Power, hereby express our utmost indignation and resentment in this regard.

(b) According to a public statement made by President of the Legislative Council, Mr Jasper TSANG, given that Mr LEUNG Kwok-hung, a Legislative Council Member, had been sentenced to imprisonment for more than one month, it was necessary to activate the procedure of relieving his duties under Article 79(6) of the Basic Law. Mr Albert CHAN and Mr WONG Yuk-man hereby express our adamant objection because we consider that the judgment, which is political in nature, should not be used as a ground to activate the disqualification procedure.

(c) Mr Albert CHAN and Mr WONG Yuk-man appeal to all Members of the Legislative Council not to support the motion to disqualify a representative of public opinion who will be thrown into a political prison as a result of speaking out for justice.

(d) Behold, Members of the democratic camp: No man is an island entire of itself; never send to know for whom the bell tolls: it tolls for thee.

On the day the public consultation forum was held to discuss the replacement mechanism, the Government and the pro-establishment camp mobilized a huge number of supporters to forcibly take up the seats, so as to conduct a bogus consultation and fabricate public opinion. As the opponents were barred from entering the venue, over 100 people had congregated outside. Some people tried to make a forced entry in the hope of voicing the views against the ridiculous replacement mechanism. Mr LEUNG Kwok-hung engaged in civil disobedience through direct actions in his struggle for public justice. What is his crime? There is a common saying in the Judiciary, which goes as follows: Not only must justice be done, it must also be seen to be done. The SAR Government tried to force through the evil law; Stephen LAM, who scorned public opinion and abetted the evil-doers, was promoted to be the Chief Secretary for Administration and has amassed a good fortune; the Chief Executive Donald TSANG, who ruined the tradition of a clean and efficient Civil Service, can still do things his own way; on the contrary, Mr LEUNG Kwok-hung, who has been struggling for justice, is convicted of three charges, namely "criminal damage", "acting in a disorderly manner at a public gathering" and "behaving in a disorderly manner in a public place" and sentenced to immediate imprisonment for two months. Where is justice if Mr LEUNG's case is compared to that of Donald TSANG and Stephen LAM?

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

In totalitarian countries such as the People's Republic of China and Singapore, the rulers can wilfully suppress the political dissidents through the Judiciary. The opposition party and dissidents are often being framed, and charged for trumped-up offences. There are many examples of these people

being prosecuted and even subject to political trials. LIU Xiaobo, who wrote the Charter 08, was charged with the offence of "inciting subversion of state power"; ZHAO Lianhai, who demanded justice for families of kidney stone babies victimized by tainted milk formula, was charged with the offence of "picking quarrels and provoking trouble", and AI Weiwei, human rights activist and artist, was charged for involving in "economic crimes". Judicial violence under political manipulation is common practice in a totalitarian country. The SAR Government deploys the same means to prosecute Mr LEUNG Kwok-hung who has been engaged in civil disobedience, with trumped-up charges. At the same time, the pro-establishment camp was abetting this evil act by proposing to relieve Mr LEUNG Kwok-hung of his duties as a Member. This is not only an act of injustice, but also the brutal murder of democracy.

Speaking of civil disobedience movements, Mahatma GANDHI in India and Martin Luther KING, the black civil rights leader in the United States in the 1960s, were pioneers. Following the steps of Mahatma GANDHI, Martin Luther KING strived for civil rights for black people in a dignified, humble and non-violent manner under the spirit of civil disobedience movements. He once spoke these touching words, "We shall match your capacity to inflict suffering by our capacity to endure suffering. We shall meet your physical force with soul force. Do to us what you will, and we shall continue to love you. We cannot in all good conscience obey your unjust laws because non-co-operation with evil is as much a moral obligation as is co-operation with good. Throw us in jail and we shall still love you. Bomb our homes and threaten our children, and we shall still love you. Send your hooded perpetrators of violence into our community at the midnight hour and beat us and leave us half dead, and we shall still love you. But be ye assured that we will wear you down by our capacity to suffer. One day we shall win freedom but not only for ourselves. We shall so appeal to your heart and conscience that we shall win you in the process and our victory will be a double victory."

Obviously, Martin Luther KING's humanitarian beliefs were akin to religious beliefs for he believed that the conscience of most people would be awakened. He considered that while "an eye for an eye" was an instinctive reflex action, it would only result in bloodshed, taking away the lives of many innocent people. This was not conducive to promoting institutional reform, and it would even corrupt the soul. As Mahatma GANDHI said in one of his famous quotes, "an eye for an eye makes the whole world blind".

The nationals of a country will lead a very different life depending on whether their country proclaims humanitarianism or promotes hatred in the name of revolution and justice. The notion of "non-violent resistance" goes against the emotional response of human instincts; it only comes after profound rational reflection when countless lives have been sacrificed. Their spirit has been regarded as the highest standard by leaders of civil rights movements around the world. Today, many leaders are still living by their spirit, such as AUNG SAN Suu Kyi of Myanmar (Burma) and LIU Xiaobo, both are advocates of non-violent resistance. In his hunger strike declaration, LIU Xiaobo said, "I have no enemies, and no hatred. None of the police who have monitored, arrested and interrogated me, the prosecutors who prosecuted me, or the Judges who sentence me, are my enemies." That statement also embodies the same spirit. Nonetheless, all of us who have studied history know that Martin Luther KING and Mahatma GANDHI, who advocated non-violent resistance movements through self-awakening and awakening others, were eventually killed by violence. AUNG SAN Suu Kyi has been imprisoned for 15 long years, while LIU Xiaobo is still being locked up in a political prison today.

In a country controlled by the totalitarian Chinese Communist Party, the road of "non-violent" civil disobedience movement is bound to be treacherous and perilous. Advocates of non-violent struggle have put themselves in a disadvantaged, passive and under-privileged position and exposed themselves to the peril of violence, with the wishful thinking that the opposite side would act according to rules and regulations. If the other party is cruel and unmerciful, having no qualms about moral judgment, it will only continue to perpetuate its evil deeds fearlessly, such that the non-violent side will only be sacrificing in vain.

Many barristers are now present in the Chamber. Mahatma GANDHI studied law in the United Kingdom. Being a doctor of law himself, Mahatma GANDHI disobeyed the laws of the United Kingdom, and the laws of its colony, and he advocated the "non-co-operation movement". Fellow members, at that time, India was under British rule. It is, at the very least, a place with high regard for the rules of the game. Similar to the trust placed by barristers nowadays on the Court, GANDHI also believed that the Court would be impartial in its judgments. He disobeyed the law and so, he accepted the sanction of the law.

The non-violent resistance campaign led by Mahatma GANDHI finally helped India gain independence. However, there is a factor which has always been overlooked, that is, the British colonial government in India was also in the course of transition at that time. Pitched against historical progress and internal pressures, the British colonial government gradually changed from its "iron fist" rule to institutional governance according to basic rules of society. On the contrary, Hong Kong has now gradually moved away from its institutional governance according to basic rules of society and judicial independence, towards a judicial system which is prone to political manipulation. Mr Ronny TONG! Our barristers are cynical even till this day. Do they not know that the Courts of Hong Kong have gradually come under political manipulation? Have they also forgotten that Hong Kong is now facing a major change, *viz* "Hong Kong Communist regime" ruling Hong Kong. Under the rules of the game stipulated by the Communist Party of China, a person is always under the peril of violence even if he has been imprisoned, disobeyed the law or engaged in civil disobedience.

Hence, if a person engages in the so-called "non-violent civil disobedience" in Hong Kong or even in Mainland China, he is only turning himself in to be slain. Nonetheless, under the prevailing political atmosphere of Hong Kong …… Just now, Mr Paul TSE said that the question of whether politics could override everything should be discussed. OK, I will discuss with him. At present, there are many new comments about non-violent resistance, such as whether non-violence can actually prevail, or whether peace, reasoning and non-violence can prevail? Many people are reflecting on this issue.

Both the Chinese Communist Government and the SAR Government are now ruling people in the same fashion: the rulers have no public mandate, the prevalence of executive hegemony goes unchecked by the legislature, the judicial system has become a vassal of executive hegemony, the media engages in self-censorship, and the autocrats act wilfully to oppress the people. Under such intensive institutional violence, people who participate in "non-violent movements" are tantamount to surrendering their weapons and awaiting annihilation. The hope that their action will cause self-reflection on the part of the autocrats is nothing but futile. Many Hong Kong people think that it would be fruitful to compromise with the Chinese Communist Government or the SAR Government on certain issues, but facts have shown that it is not the case. Seemingly, the democratic camp has still not learned its lessons. They did not

even utter a single word of support when we were arrested and prosecuted. Due to partisanism, friends of the pro-democracy camp have not given any call of support when 138 of us were arrested and 10 were prosecuted after the 1 July march last year. No, there was nothing. Mr Ronny TONG, if you said that Mr LEUNG Kwok-hung's punishment was well-deserved, you should vote for the motion later on. But you also said that his crime was not serious enough to have him disqualified. Buddy, that is self-contradictory. Yet, our stance is crystal clear.

Nowadays, the autocratic SAR Government spares no effort to suppress political struggles and social movements. Last year, 440 protestors were arrested by the police of the SAR Government, which represented a sharp increase of 6.7 times year-on-year. Of the people arrested, some 10% or 46 protestors, were charged. The Department of Justice also issued warning letters to over 300 protestors who had not been prosecuted. The Government now arrests and prosecutes protestors indiscriminately on charges such as "assault on police officer", "unlawful assembly", "disruption of public order", "disorder in public places", and so on. The police of the SAR Government even mobilized the regional crime unit to track down the "graffiti girl" who painted graffiti of "Who's afraid of AI Weiwei?" all over the territory. In the evening of 1 July last year, Chief Executive-elect LEUNG Chun-ying openly criticized protestors for blocking the streets to stage sit-in protests, and declared that they should be sanctioned and censured. Very soon, he will show you his true colours. He is blatantly contemptuous of the rule of law, for he dared say that "doubly non-permanent resident babies" do not have the right of abode. Is that something he can decide on? Notwithstanding his open challenge to the Court, we cannot see our barristers putting up a fight against him. People Power is the only organization that has issued a strong condemnation statement against LEUNG Chun-ying for infringing the rule of law and bypassing the SAR Government. To be honest, I think people who insist on struggling against this totalitarian SAR Government through "peaceful, rational and non-violent" means are extremely brave. Each of us is prepared to be put behind bars, and this is the price all those who engage in political struggles must pay. We implore those who identify with the notion of campaigning through "peaceful, rational and non-violent" means, and who do not use foul language or mutter incantations to ponder on this point.

To the democratic camp, my words of caution like, "As my body turns to dust today, so will yours in the future", "never send to know for whom the bell

tolls: it tolls for thee", and so on, would be like pearls cast before swine. They have no such worry because they are just dillydallying: they protest as a matter of routine and leave afterwards; they rally as a matter of routine and leave afterwards. Do they have any price to pay? Some Members said that as they are lawyers, they will not break the law. Wasn't Mahatma GANDHI also a lawyer? Is Mr Ronny TONG even more knowledgeable than Mahatma GANDHI? No kidding, please! One should really learn more from history. Never in my dream would I imagine that in Hong Kong, a senior counsel like him would say something so conservative. Just now, he predicted that he would be criticized by others. I am not criticizing him now; I am severely censuring him.

We will continue to host the flag of political struggle and persevere in our stand of opposition, so as to overturn the prevailing unjust political establishment. By constantly challenging the executive hegemony of the Government, we hope to strive for concessions from the Government through pressures of public opinion. A fine example happens in my hometown of Wukan village in Lufeng, Guangdong. The villagers' struggle for rights has eventually prevailed so that they can elect their village representatives through "one man, one vote" elections. People Power supports Mr LEUNG Kwok-hung and his four co-defendants in their struggle for justice, and we believe that they will eventually gain the recognition of those people who support democracy.

Last year, I and my partisan, Mr Albert CHAN, were arrested and subsequently prosecuted for marching towards the Government House as the July 1 rally organized by the Civil Human Rights Front was coming to an end. But we have neither complaint nor regret. We hereby voice our support for Mr LEUNG Kwok-hung's civil disobedience movement *(The buzzer sounded)* ……

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

MR WONG YUK-MAN (in Cantonese): …… and strongly condemn the political prosecution of the SAR Government ……

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

MR WONG YUK-MAN (in Cantonese): …… and implore all citizens who support democracy ……

DEPUTY PRESIDENT (in Cantonese): Mr WONG, please sit down.

MR WONG YUK-MAN (in Cantonese): …… to say "No" to the "Hong Kong Communist regime" led by LEUNG Chun-ying in the future. People Power opposes the motion ……

DEPUTY PRESIDENT (in Cantonese): Mr WONG, please sit down.

MR WONG YUK-MAN (in Cantonese): …… I so submit.

MR IP KWOK-HIM (in Cantonese): Deputy President, regarding the motion put forward by Mr Paul TSE today, I requested to discuss this issue at a House Committee meeting last month. The focus of our discussions is whether Mr LEUNG Kwok-hung should be relieved of his duties in accordance with the Basic Law. At that meeting, pan-democratic Members unanimously expressed their dissent. Some of them queried whether the pro-establishment camp's request for discussion was due to political reasons, or even a form of election manipulation. I find such remarks absurd. In fact, the pan-democratic Members who opposed relieving Mr LEUNG Kwok-hung of his duties were the same group of Members who once supported relieving Mr CHIM Pui-chung of his duties. Their selective approach of treating Member differently has aroused concern as regards whether they have acted out of political reasons. This is evidently a case of different affinities and not telling right from wrong.

Deputy President, I must make it clear that the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) will support the motion to relieve Mr LEUNG Kwok-hung of his duties. We support the motion not because we intend to direct against someone. According to Article 79(6) of the Basic Law, when a Member is sentenced to imprisonment for one month or more, he or she will be relieved of his or her duties by a motion passed by two thirds of the

members of the Legislative Council present. In the past, the Legislative Council relieved Mr CHIM Pui-chung of his duties under this provision. Since there are already explicit legal provisions and a precedent, the Legislative Council is obliged to act in compliance with established laws and procedures. The standard once applied in handling Mr CHIM Pui-chung should also apply to Mr LEUNG Kwok-hung — I am talking about the same standards. They must be treated equally without discrimination, or the public can hardly be convinced.

The DAB believes that whether a Member should be relieved of his or her duties, the prime factor for consideration is to safeguard the credibility of the Legislative Council. At a Legislative Council meeting held 13 years ago, the DAB voted for relieving Mr CHIM Pui-chung of his duties based on this consideration. Today, based on the same consideration, the DAB also supports relieving Mr LEUNG Kwok-hung of his duties. As the legislature of Hong Kong, the Legislative Council has the responsibility to enact legislation to safeguard social order and justice. If Members knowingly break the law, they will set an extremely bad example in society, and damage the credibility of the Legislative Council. In this case, will members of the public respect and abide by the laws passed by the Legislative Council in the future?

When Mr CHIM Pui-chung was sentenced to imprisonment after being convicted of criminal offence in 1998, Legislative Council Members from various political parties unanimously passed a motion to relieve him of his duties. In this regard, we cannot suffer from collective amnesia, because the relevant records can be found in the documents of the Legislative Council. Mr YEUNG Sum, who spoke on behalf of the Democratic Party at that time, remarked righteously that the Party supported the relevant motion for ensuring the operation and credibility of the Legislative Council. The Democratic Party then voted for the motion to relieve Mr CHIM Pui-chung of his duties on the grounds of safeguarding the credibility of the Legislative Council. However, when it is Mr LEUNG Kwok-hung who has been found guilty of criminal offence and sentenced to imprisonment, the Democratic Party opposes the proposal to relieve him of his duties. I would like to know if this is a double standard. Since Mr LEUNG Kwok-hung has knowingly broken the law, does the Democratic Party believe that his act does no harm to the credibility of the Legislative Council? This is a question that the Democratic Party must answer.

In addition, Dr Margaret NG, who also supported the motion to relieve Mr CHIM Pui-chung of his duties, emphasized at that time that the relevant motion was not based on the reasons for Mr CHIM Pui-chung's imprisonment, but on the fact that he had been sentenced to imprisonment. The decision was based on the fact rather than the reasons. She added that Members should not make any moral judgment on Mr CHIM Pui-chung. However, at a House Committee meeting last month, Dr Margaret NG gave no regard to the fact that Mr LEUNG Kwok-hung has been sentenced to imprisonment. On the contrary, she incessantly made moral judgment, emphasizing that the nature of Mr LEUNG Kwok-hung's case was not as serious as that of Mr CHIM Pui-chung, and she therefore opposed the motion to relieve Mr LEUNG Kwok-hung of his duties. This is obviously what we say hypocrisy.

In recent years, some individual Legislative Council Members and their parties have repetitively resorted to violence to express their aspirations, they have disrupted public order and threatened public safety. Most members of the public have expressed their dissatisfaction towards such acts of violence. In the case of Mr LEUNG Kwok-hung charging into the forum on the replacement mechanism, for example, the magistrate responsible for the case criticized that the acts of the persons including Mr LEUNG Kwok-hung had put people's safety at risk; such acts were retrogressive and irritating, and deprived other people of their basic rights ― I am quoting the words of the judgment. To prevent the trends of violence from looming larger, the DAB believes that, apart from the punishment meted out by the Court, the Legislative Council should make clear its stance concerning Members' acts of violence, and condemn such illegal acts.

Mr WONG Yuk-man talked a lot about civil disobedience just now. In fact, one of its key features is that prominent figures like GANDHI or Martin Luther KING conveyed public opinion through peaceful means. One of the very important core values of Hong Kong is that every one should make known his or her stance and political views through peaceful means. Such acts of violence are in no way popular among the public.

Unfortunately, pan-democratic Members intentionally or unintentionally "legalized" such acts of violence. One of them said that Mr LEUNG Kwok-hung acted not for personal interest; another said that Mr LEUNG Kwok-hung's acts were to express his political ideology; another even said that Mr LEUNG Kwok-hung was only fulfilling his political responsibility of

safeguarding the public's right to vote in a by-election. Such remarks actually attempt to "legalize" Mr LEUNG Kwok-hung's acts of violence, or even shield him from punishment. I believe that the motion today can in no way be passed due to the shielding of pan-democratic Members. Nevertheless, Members who oppose the motion need to give an account to the public by making it clear whether they support, encourage or oppose such acts of violence.

In addition, I have also heard some views that given that the current session of the Legislative Council has only around three months left, relieving Mr LEUNG Kwok-hung of his duties is not of great significance. This is certainly an objective remark, but I have considerable reservation in this matter, because relieving Mr LEUNG Kwok-hung of his duties is unrelated to the length of the Legislative Session, but rather a problem of principle — right is right and wrong is wrong — it is a problem of right and wrong. The Legislative Council must stand on the side of Hong Kong people, and say no to irritating acts of violence that put people's safety at risk.

Deputy President, I so submit and support Mr Paul TSE's motion.

MR ALBERT CHAN (in Cantonese): Deputy President, having heard the speech of Mr IP Kwok-him just now, I am deeply regretful. The passage of time has made many people forget their own roots, history and what their ancestors did.

If we look back at the riots that took place in 1967 — as soon as I talked about riots, Mr IP Kwok-him left his seat; he is not brave enough to face historical facts. Speaking of the repercussions of riots, acts of violence, killings, car burnings, placing bombs and causing deaths, Hong Kong communists in the 1967 riots were definitely unrivalled. Those who led the riots indirectly caused the death or limb loss of many police officers, and the young children of many police officers thus lost their loving fathers. All such acts were caused by Hong Kong communists. However, the leader of the riots was awarded the Grand Bauhinia Medal; as for those who participated in and supported the riots, one has become the President of the Legislative Council, and another has become a Secretary of the Government.

How come the DAB now condemns slight scuffles? Have members of the DAB, particularly those Hong Kong communists who are members or underground members of the Chinese Communist Party, ever bowed and apologized to Hong Kong people? Have they ever condemned the acts of violence in 1967 that caused social turmoil and numerous deaths? Most ironically, while the Chinese Communist Party grew its political power out of the barrels of guns, killing many of their compatriots due to power struggle, scuffles of such a minor nature are considered acts of violence and being reprimanded. Obviously, one can commit murder and arson while others cannot groan even after being raped. Even acts to express one's discontent are being classified as unlawful.

Deputy President, we must clearly point out that under an unjust, undemocratic or even authoritarian system, acts of disobedience are actually reasonable and lawful to some extent. As Mr WONG Yuk-man pointed out just now, different civil disobedience movements were initiated in different countries and regions at different time, and prominent figures involved in such movements include GANDHI, AUNG SAN Suu Kyi, Martin Luther KING, and MANDELA of South Africa. Even in China, apart from the revolutionary movement led by SUN Yat-sen in the last years of the Manchu Qing Dynasty, there were a number of movements for democracy and human rights as well as movements for opposing warlord rule in various areas and regions in the post-revolutionary period of the Beiyang warlord rule. Even under the rule of the Chinese Communist Party, we have seen continuous movements for opposing corruption and bureaucratic profiteering in the past several decades, and the 4 June incident was a major disaster that led to bloodshed.

Therefore, we must disapprove and oppose the current authoritarian system led by a government returned through small-circle election in Hong Kong. Speaking of violence, we have pointed out repetitively in this Chamber that this authoritarian regime only flirts with big consortiums, there are collusions between business and the Government as well as transfer of benefits. The Government has completely disregarded the difficulties of ordinary people, so that tens of thousands of Hong Kong people are struggling for a living. People have to live in sub-divided flats or cram into a tiny and hot unit; senior citizens receive no care and can only seek a ray of hope while in difficulty, and some of them even commit suicide in despair. Are all these ongoing misfortunes not acts of violence? This authoritarian regime only cares about embezzling money, eating and carousing with tycoons, travelling by sea, air and land between Guangdong,

Hong Kong and Macao, without paying the slightest attention to the hardships of the public. Is this not another form of violence?

(THE PRESIDENT resumed the Chair)

As elected Members with a public mandate, you have the responsibility to challenge such a system on their behalf to give them justice. The most important spiritual principle of a representative government is to obtain the mandate of the people. Mr LEUNG Kwok-hung proclaimed clearly in the election period that he would fight for people's democratic rights and social justice by challenging and confronting this system.

In the "five geographic constituency referendum" in 2010, I and Mr WONG Yuk-man made it clear that we would make trouble and challenge the system by bidding defiance in the legislature. On the night when we gave our resignation speech in Chater Garden, we further proclaimed that we would not only rebel against the regime, but also liberate Hong Kong. This is because Hong Kong is being exploited and bullied by unscrupulous politicians, brazen political scoundrels and unscrupulous capitalists, and millions of Hong Kong people are forced to live in poverty.

Therefore, under such an unjust system, under the circumstances that brazen and unscrupulous political scoundrels deceive their constituents, and people being oppressed and unfairly treated, we must confront the system within and outside the legislature in a peaceful, rational and non-violent manner, following the footstep of GANDHI and Martin Luther KING.

In confrontation, scuffle is inevitable and laws may therefore be violated, given that the unjust laws are enacted under an unjust system and without the mandate of the people. Over the years, all laws were enacted by the British colonial administration and, for 14 years since the reunification, laws have been enacted by a legislature without the mandate of the people. As such, laws without the mandate and recognition of the people command no respect, and must be negated. For some draconian laws, we must challenge them. Since the Member concerned challenged the system with the mandate of the people, there is no justified reason to relieve him of his duties.

Some Members gave a few examples just now, but corruption and frauds were involved in most cases. However, political confrontation with the mandate of the people can be described as being justifiable and reasonable with its political theoretical basis.

President, some Members talked about solemn tradition of the legislature, but I must request Members to note what elements of solemnity are left in the legislature. A bunch of political scoundrels are basically deceiving their constituents. In 2000 and 2004, the DAB and the Liberal Party set precedents by initially pledging to support dual universal suffrage in their election platforms and later revising their stances. In the election in 2008, the Democratic Party also solemnly vowed to fight for dual universal suffrage in 2012, but was ultimately perfidious and deceived its constituents. This legislature is basically full of a bunch of brazen political scoundrels, and this Chamber has been occupied by them. In this case, what kind of solemnity is there? As such, stop telling me how solemn this legislature is, for this supposedly sacred and solemn Chamber has been occupied by you, a bunch of brazen political scoundrels who deceive members of the public. All elements of solemnity have thus been non-existent.

In the legislature, many Members from the various political parties are on the take and fooling around. They claim to attend meetings, but actually, they are handling their family business covertly. They spend most of their time fighting for their own financial benefits. Have they ever fought for the welfare of the general public? We can often see that they are perusing their own company documents, rather than complaint documents submitted by members of the public, while attending meetings in the Chamber. At this moment, similarly, some Members have gone to the racecourse. If we walk around the racecourse, we can locate many Legislative Council Members. Therefore, stop telling me that this legislature is solemn and sacred, for its sacredness and solemnity have been non-existent due to the damage caused by some brazen political scoundrels.

Therefore, President, as Mr WONG Yuk-man has made it clear in his speech just now, the two Members from People Power will oppose this motion today in a clear-cut and justifiable manner. In this Chamber, we will also continue to fight for democracy and social justice in Hong Kong by bidding defiance within and outside the legislature.

MR ALBERT HO (in Cantonese): President, at the meeting of the House Committee of this Council on 5 August 1998, I put a question to the Legal Advisor on the legal interpretation of Article 79(6) of the Basic Law. At that time, the Legal Advisor put forward some opinions, and now I quote from the minutes of the meeting as follows: "In response to Mr Albert HO, the Legal Adviser said that the moving of a motion to disqualify a Member from office under Article 79(6) was not mandatory." Regarding this, I believe this Council should have already reached a consensus, as I have never heard anyone say that when a Member is convicted of a criminal offence committed within or outside Hong Kong and sentenced to imprisonment for one month or more, the Legislative Council must automatically pass a motion on the relief of his or her duties moved by other Members under Article 79(6) of the Basic Law, so that the President can announce that the Member is relieved of his or her duties. We have to exercise our discretion in considering how to use this power conferred on us by law on a case by case basis. We should make our consideration and judgment based on certain criteria before deciding whether or not to pass this motion today.

Many Honourable colleagues used the precedent of Mr CHIM Pui-chung being relieved of his duties as the basis and considered that this incident involving Mr LEUNG Kwok-hung should be of the same nature, and so it would be a double standard if this motion is not passed. However, I must point out that these two cases are totally different in nature. We should first identify clearly the major difference between the two.

For Mr CHIM Pui-chung's case, the Democratic Party considered back then that it should support the motion because the case involved the forgery of documents, which was a rather serious criminal offence, and according to the court's judgment, the defendant was convicted of reaping personal gains and was sentenced to imprisonment for more than one month. Mr LEUNG Kwok-hung's case is different. In the judgment, the Judge stated clearly that Mr LEUNG Kwok-hung did not act out of personal gains this time. He wanted to do what he considered right in order to realize his political philosophy. Therefore, his actions were obviously not motivated by personal gains.

Surely, this point alone does not suffice. We must also consider the circumstances of the case and definitely should not regard his having a noble aspiration as the plea of pardon and convince Members not to disqualify him

from office even if he is convicted of an offence and sentenced to imprisonment. Then, what are the circumstances of the case that we should consider? It is the nature of the incident. Just now, we said that he did not act out of personal gains. However, we should consider his use of violence at the same time. At that time, Mr LEUNG Kwok-hung and people who shared his belief were dissatisfied about the way consultation was conducted on the proposed replacement mechanism. They felt that they were excluded and were unable to enter the venue in the Science Museum to express their strong objection, and so they forced their way into the Science Museum. During the process, there were scuffles which had caused damages to public properties, and some staff at the scene also suffered minor injuries. Regarding this, the Democratic Party has made its stance clear, and that is we are absolutely against the use of violence. Even though we understand Mr LEUNG's motivation to a certain extent, and we also consider the arrangement at that time inappropriate, we think that under such circumstances, we should all the more insist on using peaceful, rational and non-violent means to fight for our cause, in order to realize our goal and challenge the unjust system. Performing acts which invite criticisms will only lead to the undesirable consequence of distracting the focus of the incident.

Back then, the Commissioner of Police, TSANG Wai-hung was reproved by different sectors of the community. He was accused of adopting many unreasonable and uncivilized practices in the August 18 incident involving the University of Hong Kong, and he was in the middle of serious accusations from all fronts at that time. However, after Mr LEUNG's incident had happened, many people's attention was distracted and the focus of their discussion was shifted to their use of violence to force their way into the venue, causing the discontinuation of the consultation meeting. We do not want to see such situations. We also know very clearly that under such circumstances, the use of violence, even if it was not very forceful, was absolutely inappropriate. Therefore, at a meeting of a panel of this Council, we supported a motion to censure such acts of force because we think that force or violence should not be used.

However, I must stress one point: Is the entire incident so serious as to call for disqualifying an elected Member from office? I think it is another consideration. At that time, Mr LEUNG Kwok-hung forced his way into the venue for a simple reason. He only wanted to enter the venue to express his views and dissatisfaction about the procedures at that time. In the end, some

people were injured. He did not want this to happen, and he also told the Judge that he was willing to pay compensation for the damaged properties.

There were incidents of such scuffling in the past, although we think they should be avoided as much as possible. This time, Mr LEUNG Kwok-hung was sentenced to two months' imprisonment. I believe one of the reasons is his past records, otherwise his would not have been given such a heavy sentence.

This incident involves a Member who, returned to this Council by winning the support of electors in an election, performed an inappropriate act not for his personal gains. He was already put on trial by the Court, convicted and given a sentence because of this incident. He may have to receive penalties and he is prepared for them. Under this circumstance, is it necessary to invoke Article 79(6) of the Basic Law to impose the heavy penalty of disqualifying this elected Member from office? As far as the circumstances of this case are concerned, and taking into account of various considerations, we think it is absolutely not necessary to do so.

Even though some Honourable colleagues may think that we have adopted different practices on the two Members, and it may seem that there is an issue of double standard, according to my clear explanation just now, as long as Members have a clear idea of the nature and circumstances of the entire incident, I believe they will understand that we have a strong rationale behind.

President, the Democratic Party opposes today's motion to disqualify Mr LEUNG Kwok-hung from office.

MR FREDERICK FUNG (in Cantonese): President, I believe we Members from the pan-democratic camp have already spoken extensively on this subject, and the points made were more or less the same. So, my speech will be brief.

President, regarding Mr LEUNG Kwok-hung's incident, as the Judge has said, the incident itself did not involve any personal or financial gains, and he performed some radical acts in order to express objection to the replacement mechanism. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I oppose the use of excessively radical and violent means to express certain attitudes or fight for certain rights and benefits.

I am also sure that this incident is different from the precedent back in 1998 in which Mr CHIM Pui-chung was convicted of forgery of documents and was sentenced to three years' imprisonment. Therefore, I oppose today's motion.

Second, I think Mr LEUNG Kwok-hung has already been subject to legal sanction because of his acts, that is, he has been sentenced to two months' imprisonment. Actually, the sentence of two months' imprisonment is the consequence of his acts in this incident or the accumulated consequence of his acts in various incidents in the past. He has already taken his responsibilities and borne the consequences of his acts, which were considered wrong by the Judge. Is it appropriate or necessary to impose further penalties on him? I do not think so. Certainly, this is my perspective, and I have not discussed with Mr LEUNG Kwok-hung. I do not think that he had intentionally plotted or planned the vandalism and the scuffling, just that during the course of action, some people, including Mr LEUNG Kwok-hung, had overacted. Maybe they were driven by emotions, the development of the incident, or some arrangement problems and so on. Therefore, I think with the sentencing passed by the Judge, Mr LEUNG Kwok-hung has already taken the responsibilities for his acts.

Certainly some people said …… actually, I have received some emails, and some of my friends on Facebook have also left me messages, asking me to support this motion. Some people even said that it is stipulated in the Basic Law that with the endorsement of the Legislative Council, a Member who has violated the law may be disqualified from office. Although some people used the Basic Law as their back-up, I still think that the Basic Law allows us to make our own decision. As we are allowed to make our decision, and the endorsement of a two thirds majority of all the Members is required, this Council has the power to support or oppose this motion. Therefore, whether we support or oppose this motion, we will not contravene the Basic Law. So I hope people who wrote to me will understand that no matter what today's voting result will be, there is no question of contravening the Basic Law.

President, the last point I would like to make is that the ADPL has been established for 26 years. All along, no matter whether the approach we adopted was appropriate or not, right or wrong, we have insisted on taking actions on the basis of reasons and facts, and mobilizing people's power and spending time to fight for our legitimate rights and benefits. These rights and benefits do not only concern democracy, many of them are related to people's livelihood, in particular,

the rights and benefits for which we help members of the local community to fight for.

Let me boldly cite an example or two. Regarding public housing redevelopment in certain districts, we started from scratch and then succeeded in lobbying the authorities to draw up the redevelopment policy. Regarding old district redevelopment, we also started from scratch and succeeded in lobbying the authorities to adopt the current old district redevelopment policy. It can be said that regarding these two redevelopment policies, whether it is on public housing or private housing, 80% to 90% of the ideas were proposed by the ADPL to the Government, and the Government has accepted such ideas after consideration.

In that case, does it mean that being rational and non-violent necessarily fail to achieve any result? Is it true that scuffling is the only feasible means, as Mr Albert CHAN has said? In consideration of the situation of Hong Kong, I think it is very difficult to conclude at present which approach and tactic are better.

Obviously, however, if a violent means is adopted, I can see that there will at least be two possible scenarios. First, the use of violent means will become a problem with serious impact on society or affect the perception of the media or the report they make at the scene. Let me use Mr LEUNG Kwok-hung's incident as an example. Initially, the report will be on Mr LEUNG's objection to the replacement mechanism, yet, the focus of the report has shifted to reporting on the scuffling, violence and vandalism, or even on how he would argue his case before the Judge during the trial.

As a matter of fact, the focus of the incident has already shifted from the replacement mechanism to incidents of violence and whether Members should adopt such approaches. The focus has shifted away from what I consider to be Mr LEUNG Kwok-hung's original objective. In that case, is it a good approach?

The second thing is — as Mr Albert CHAN has mentioned this point just now, I would like to ask him, has he ever thought about whether the use of violence would really be of any help to the situation, not only for this incident but also for the long-term movement, that is, the democratic movement?

President, I do not think so. Obviously, over these few years, there are a few Members of this Council who have adopted such means as scuffling, throwing objects and even releasing a balloon in the Chamber. When I visited my constituency, I was also reproached for this. People asked me why we Members from the pan-democratic camp would do so. They also asked me whether I could persuade them not to do so and why we were so violent, turning the Council into — and I put it in brackets — a "thug". We did offer an explanation on these Members' behalf, but I also said, "In the end, those who performed such acts will have to bear the political consequence and the responsibility of their acts in the future, for example, in the subsequent election."

Obviously, however, two cracks have appeared in the democratic movement. One is that within the pan-democratic camp, when some acts or actions have gone beyond certain people's bottomline, co-operation will become very difficult, and it is hard to find out how and when co-operation can be achieved. It turns out that the burst of emotions can lead to many consequences, which can happen so abruptly and to such an extent that, without prior agreement of the people involved, certain legislation of Hong Kong will be breached, or some people may be arrested, yet the people concerned have not planned for it or could not foresee that such a consequence would result.

As a person sharing the same belief, I started to fight for democracy since the 1980s, and it has been more than three decades now. I really hope to see that people who share my belief …… even though some are running faster while others are running slower along this road — most people say that the ADPL and I are running slowly along this road. I hope we can run faster, and I guess Mr LEUNG Kwok-hung is one of the fast runners. In that case, are you going to leave us behind? When you have flown up to the sky, will you just leave us down here? Can those who run fast accommodate those who run slowly, and can those who run slowly pick up their speed? Do we want to enhance the power of democracy or split it up? Do we want convergence or divergence?

Second, I think the major problem for the democratic movement is that we notice that some members of the local community are beginning to leave us. Perhaps you — I might as well address them directly by their names — Mr LEUNG Kwok-hung, Mr WONG Yuk-man or Mr Albert CHAN, it is possible that more and more people will support you, and your organization may grow stronger and stronger, but I am not sure whether you have counted the total

number of such people. If your conduct causes other democrats, members of certain organizations or political parties to leave, members of the local community may find that there is just a very fine line between the two. It turns out that if the democratic camp acts this way, they will support you; and if it acts that way, they will leave you or even stand on the side of the pro-establishment camp instead. Do we have to win the support of all people, from radical democrats — I am not sure whether it is the right term to use — to "moderate democrats" or people who are in between the democratic camp and other camps? If we want Hong Kong to follow the path of a democratic society, we have to enable the largest number of people possible to understand, appreciate and love democracy, and adopt democracy as their own culture. The most important thing is to avoid causing misunderstanding among them — although we from the ADPL are always misunderstood — we have to work hard to achieve this, and I hope that with time, people will find out the ultimate truth.

The ADPL has a history of 26 years, and I have been engaging in community work for more than three decades. Today, I believe people know the ADPL and Frederick FUNG more then they did a decade ago, and they know the ADPL and Frederick FUNG more than they did two decades ago. Despite the fact that during the previous district council election — I certainly do not mean Mr LEUNG Kwok-hung and the League of Social Democrats; I mean the People Power — we split up with the People Power and Mr WONG Yuk-man, not only because of incident of violence but also because he went against the political parties of the democratic camp during the election, resulting in at least two of our Members lose in the election. Are we engaging in a democratic movement or a movement to cause the split of democratic forces? Do we want convergence or divergence? Or do we want to mind our own business? Or do you think that there are things that you can do but others cannot? As members of the democratic camp, should we ponder over it or even review and reflect on it?

Let me state it again. I admit that I move at a slower pace than Mr LEUNG Kwok-hung. I admit that Mr LEUNG Kwok-hung is ahead of us in democracy both in action and in theory. However, if we want to achieve something …… we are not putting up a show. I believe Members believe that Frederick FUNG is not putting up a show, as one who puts up a show cannot do so for 30 years.

I have mentioned this before in the Chamber. Back then, the money I earned from my job during the two years after I lost the election was one and a half times the amount I earn now — 50% more than the amount I earn now. I was only an employee, and I did not run my own business. However, why did I pursue the former path and bear such hardship? If I just consider my salaries, why should I do so even though I have to bear the hardship? The reason is, as time will show, we really love Hong Kong, and we hope a democratic society will emerge in Hong Kong. Whether this democratic society will emerge quickly or slowly hinges on our concerted efforts.

Therefore, this time I do not support this motion, not because I want to beg Mr LEUNG Kwok-hung to come back to my side, but because I only hope, as I said at the beginning of my speech, that there will not be any additional penalty on top of the penalty already imposed because no personal gains were involved. However, concerning the point I made just now, I hope Mr LEUNG Kwok-hung — I believe you also remember that once we joined a duty visit to the United Kingdom organized by the Legislative Council, and we had a very good talk through the night — if we are still friends and good pals in the democratic movement and can still work together, I hope you will not stay so far away and will come closer to us. When I hold your hand, members of the local community will applaud.

Finally, I wish to say one thing, President, when I took a photograph standing next to Mr LEUNG Kwok-hung, members of the local community warned me, saying, "You should never stand next to LEUNG Kwok-hung again when taking a photograph!" I was upset after hearing such a remark. The democratic movement is not a personal movement but a mass movement. I do not need to elaborate on this as you should know it better than I do. I hope you will consider what I have said just now. Thank you.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, I wish to declare my interest in this matter. Although I do not think that any direct pecuniary interests are involved, and the motion is only about whether I should be relieved of my duties. According to the requirement of the Legislative Council, I have to

state clearly whether I have any pecuniary interests in the matter, and so I have to make a declaration.

First, I wish to express my gratitude to the general public who expressed their support to me in the street or on different occasions, including taxi drivers and minibus drivers who did not charge me for the rides, and the person who gave me a chicken drumstick when I was having a dish of rice with chicken and goose. I am very thankful to them, and I think the general public really have discerning eyes. However, I also know that some people hate me very much.

The discussion in question is whether or not I should be relieved of my duties. It is certainly a political decision because if it could be dealt with automatically purely on the basis of legislative requirements, this problem would not have emerged. If it was directly stipulated during the legislative process that a Member shall be relieved of his or her duties right away when he or she is sentenced to imprisonment for more than a certain period of time, or if it was stated in other legislation that as long as the endorsement of a two thirds majority of all the Members of this Council is obtained, a Member who has committed misconduct shall be removed from office, why is it necessary to use the length of imprisonment as a criterion? Therefore, everything discussed in this Council has to do with political decisions, and the purpose of this provision is to allow Members to make a political decision.

Those who think that I should not be relieved of my duties actually have made their points very clear, if I get them wrong, I hope Members will not put the blame on them. Their argument is simple, under such an unjust Government, if a Member displayed civil disobedience or performed other acts to tell Stephen LAM loudly that the consultation exercise was a fake one, pointing out that the replacement mechanism proposed by him was not right, that Member should not be relieved of his duties for this reason. It is as simple as that.

Is there a point in this argument? For Members, such as those from the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), who argued plausibly today that this matter should be dealt with in an "automatic" manner, what had they said when the whole world condemned the Communist Party of China for killing its own people in a massacre back then? Mr LAU Kong-wah might reprimand the Communist Party of China at that time, and so did the President. I still remember that in 1990, the President led students of the Pui Kiu Middle School to commemorate the June 4 incident and sing the national

anthem. Did condemnation of such incidents not take place all over the world? Did it not take place in an "automatic" manner? Why do they not condemn it now? What do they do every year? Back then, they, including LEUNG Chun-ying, also joined in condemning the massacre. When this Council acts in accordance with a universal judgment, what are they doing now? Should condemnation of the massacre not take place in an "automatic" manner?

President, should the matter proceed in an "automatic" manner? They said it should, and the matter should be dealt with right away after a motion has been moved. Will they please dig a hole on the ground to hide themselves out of shame and stop condemning me. When some people said that they killed 200 000 people in return for 200 000 years' of stability, did those Members really believe in it and let those people go? It is so ridiculous. I do not want anyone to show pity on me, and I hope those Members will have some pity on their own soul.

Some people lodged accusations against me by using the court's judgment as an example. As I said, "So give back to Caesar what is Caesar's, and to God what is God's". Let matters above be dealt with by those above; whether my actions are correct, in the political and righteousness sense, should not be determined by the Judge, he is only responsible for passing sentences. May I ask Members: Were the many Communist martyrs who were sentenced to death by the Kuomintang criminals? When one visits the Mainland, he will find that people lay flowers on the cenotaph of martyrs to pay tribute to these people. Back then, these martyrs were criminals; only that the sovereignty has changed.

It turns out that they are so persevere. Did they not make a political choice? This political choice was very clear: under an unjust regime, when people were, because of the system, deprived of their right to decide their own fate in relation to the constitution and the structure of the Government, they put up resistance and initiated a "*de facto* referendum" in 2010. Out of fear, the Government has gone to such lengths as to "throw away the apple because of the core". In order to prevent such incidents from recurring and to stop people from resorting to "five geographical constituencies referendum" again to voice people's opinion when the authorities introduce legislation under Article 23 of the Basic Law again, the Government chose to deprive people's right to universal suffrage at the expense of contravening international practices. Should those Members not raise objection in an "automatic" manner?

Did they not make a political decision in showing their support? When Stephen LAM said there was no need for consultation, did this group of people also think likewise? Was it not a political decision? On 1 July, more than 100 000 people took to the streets. When Stephen LAM said that consultation would be conducted, did they not ask for consultation like a dog waging its tail for pity? Was it not a political decision? Should they not act in an "automatic" manner? In doing so, did they change too readily? What was their logic? I have my logic: I think it is a tyranny, and draconian policies under this tyranny should be objected.

I am sorry to say that among the 44 charges, none of them was against my using violence. I am really sorry about that. Members can try to take a look at the charges, and if they can find such a charge, the credit is theirs. I have mentioned plenty of times in this Council and in my public speeches that I did not act as what Nelson MANDELA did at the beginning, organizing military forces to overthrow the white administration of South Africa. I have never said such words, and I only reserve my right to do so. They accused me for using violence. Then, why do they not accuse the Government of the Hong Kong Special Administrative Region (SAR) for using public money to hire police officers to defend its tyranny? Is this violence? Why do they not condemn the SAR Government? If they condemn the use of violence, why do they not condemn Dr SUN Yat-sen for being violent and even commemorate the 1911 Revolution?

What is violence? Violence does not refer to people using their own power to strive vigorously for the exercise of their rights when civil rights are suppressed. For example, if I struggle to free myself from the police officers who try to stop me from going to a place where I am supposed to stage my protest, it is not violence. If it is, may I ask the President why he supported the June 4 incident? I do not mean during the latter stage but on 27 April. When the April 26 Editorial stated that "It is necessary to take a clear-cut stand against disturbances", a few hundred thousand university students managed to break through the cordon of public security officers outside the university entrance. Did they use violence?

Was the movement against the violence of the British during the time of British rule a kind of violence? When workers of the plastic flower factory wanted to go inside the factory to negotiate with their boss and were blocked by police officers, they pushed the police officers away in order to enter the factory

to raise their case. Was it violence? Why did people support them back then? Today, I have not asked people to make bombs, and neither have I received any money from the Communist Party to have LAM Bun murdered. How did I use violence? May I ask those Members whether the incidents I mentioned just now were instances of violence? Have they condemned those instances of violence? They give their support to this Government month in month out, year in year out, and deprive us of our rights. Particularly during the time of the 4 June incident, they accused us of "canvassing for political capital" by condemning the 4 June massacre. Could those Members still be regarded as humans? Do they support that kind of violence? When LEUNG Chun-ying said DENG Xiaoping should receive the Nobel Prize for Peace, why did they not condemn him? He is a beast in human shape. Have they ever condemned him? Why do they support him?

President, this is violence. The even more evil side of this kind of violence lies in that some people, in order to satisfy their personal desires, would adhere to this autocratic Government which exerts its power over the people. Most people support this state machinery in order to enjoy privileges and personal gains. It is violence in the system. When people raise objection to such violence in the system, this Government would accuse the people for using violence against the country. This is double violence. Why do those Members not condemn George WASHINGTON for rising against the British rule? Why do they not condemn the French Revolution? I pale in comparison to them. It was only because Stephen LAM conducted a fake consultation in a heavily-guarded and locked up venue that I had to force in to make myself heard by him. What kind of violence was it? Did I bring with me a sling to shoot him?

They used violence on me. A member of the media managed to shoot me being beaten up by an old man, yet the police officer denied the incident when he gave his statement. Was it not violence? Lies are violence. This incident has not come to an end yet. According to what those Members said today, I should report it to the police and put that old man under arrest. How should they be qualified to criticize me? Even the Judge is not qualified to do so. Is my conduct to be judged by the Judge in court? The Judge only acts in accordance with the law. Whether he is estimable, I do not care. If I am convicted in accordance with the law, I would not complain about it. I would only say that the sentence he passed was too heavy and he did not understand the law. However, I have to reproach those Members.

President, "heaven is watching the acts of us all". If they want to safeguard the power of this Council, do they support implementing universal suffrage right away? Why do they not act in an "automatic" manner? All parliaments are formed by universal suffrage. Why do they not act in an "automatic" manner? Why do they not automatically invoke Article 39 of the Basic Law? How can they talk about acting in an "automatic" manner? This provision is not "automatic" in itself; it requires Members to make a political decision. They have to make a political decision. I will not criticize them because their political ideas are different from mine. However, they should not accuse others for making a political decision. This provision in itself requires that Members of this Council make a political decision: if a certain Member is sentenced to imprisonment for one month or more, should he or she be relieved of his or her duties? It is stipulated clearly. That being the case, why did they accuse others for putting up conflicting arguments? What conflicting arguments are there? When different people have committed crimes of different nature, it is natural for them to adopt different stances.

President, I have gone through the rules, and I know I am allowed to speak one more time. Let me warn people from the DAB against thinking that they can fool around and bully people after LEUNG Chun-ying has assumed office. I would like to tell them that they may smear my integrity, but they must not smear those people who are against this replacement mechanism. Even if I am wrong, I am still an eagle; even though they now pretend that they are right, and even if one out of 10 points they made may be right, they are only flies. They may fly higher than I do, but they are still flies.

President, I have said that I would not beg for mercy, and neither do I need others to show pity on me. I am grateful to Members' support, and although I may not buy the reasons put forward by Members in an attempt to protect me, I am very thankful to them for their sincerity. I do not wish to win myself a place in the hall of fame and stay and work here forever, but I can tell Members that I will continue to raise objection to such a tyranny as long as I live; and I will continue to raise objection to introducing legislation under Article 23 of the Basic Law. I will live on to see that the attempt to introduce legislation under Article 23 will once again vanish into thin air. Thank you, President.

DR MARGARET NG (in Cantonese): President, at the House Committee meeting on 23 March, Mr Paul TSE said that this Council should activate the procedure prescribed in Article 79(6) of the Basic Law to dismiss Mr LEUNG Kwok-hung, but he made it clear at the same time that he would vote against the motion. His reasoning is that in order to uphold the integrity and credibility of this Council, we should activate the dismissal procedure if a Member of this Council is convicted and sentenced to imprisonment for one month or more for a criminal offence. He further added that with the precedent of Mr CHIM Pui-chung being removed from office and in order to be consistent, a motion should be moved to dismiss Mr LEUNG Kwok-hung. The speech he made when he moved the motion just now is more or less the same as the one he made at the House Committee.

I believe most people would find Mr Paul TSE's reasoning for moving the motion illogical and hard to understand. In this debate, I wish to reiterate certain important principles and further clarify the original intent of the Basic Law and the regulation laid down in Rule 49B of the Rules of Procedures.

Article 79(6) of the Basic Law provides that (I quote)"the President of the Legislative Council …… shall declare that a member of the Council is no longer qualified for the office …… when he or she is convicted and sentenced to imprisonment for one month or more for a criminal offence committed within or outside the Region and is relieved of his or her duties by a motion passed by two thirds of the members of the Legislative Council present." (End of quote)

On 3 August 1998, Mr CHUM Pui-chung was convicted of conspiracy to forge and was sentenced to three years' imprisonment for immediate execution by the Court of First Instance of the High Court. There was uproar in society about the conviction. Given that Members of the Legislative Council should have full understanding of their duties under Article 79(6) of the Basic Law, the House Committee held a special meeting on 5 August to discuss Mr CHIM's case and seek the views of the Legal Adviser. In view of the fact that Mr CHIM Pui-chung's application to appeal was pending, a major issue at that time was whether a motion to relieve Mr CHIM of his duties could be moved while an appeal was pending. Besides, the House Committee also had to seek advice of the Legal Adviser in respect of when, by whom, in what format and procedures such a motion should be moved.

In response to the questions raised by the House Committee, the Legal Adviser categorically said that there was no stipulation in the Basic Law as to when such a motion should be moved, and that it would be up to Members to determine whether, and if so when, such a motion should be moved. He further said that a motion could be moved under Article 79(6) even though an appeal had been lodged by the Member concerned.

Generally speaking, although individual Members had different views on whether a dismissal motion should be moved if a member was convicted and sentenced to more than one month imprisonment, all of them agreed that the Basic Law did not provide an answer for this. As for Mr CHIM Pui-chung's case, they held that action should be taken without delay. At that time, the House Committee decided unanimously to move a motion to relieve Mr CHIM of his duties. With the consent of the Chairman of the House Committee, a motion was moved by the Chairman on behalf of the members of the House Committee.

The view of the Legal Adviser was later echoed by the Court judgment. On 27 August, the President of the Legislative Council decided that the motion to be moved by the Chairman of the House Committee be placed on the Agenda for debate at the Council meeting on 9 September. In the afternoon of 7 September, Mr CHIM Pui-chung filed an application for leave to apply for judicial review to challenge the decision of the President of the Legislative Council. He maintained that the dismissal motion to be moved when the application to appeal was still pending violated Article 79(6) of the Basic Law and he also challenged the reasonableness of the President's decision.

On 8 September, Mr Justice KEITH rejected Mr CHIM's application for leave to apply for judicial review and ruled that the relevant Article of the Basic Law was unarguable. In particular, Mr Justice KEITH raised three points in the judgment:

(a) Conviction and sentence do not automatically result in removal from office even after all avenues of appeal have been exhausted and failed. As to whether a Member should be removed from office, it should be left to the good sense (the term used by Mr Justice KEITH) of the Members of the Legislative Council to decide;

(b) Members have the right to move that the debate be adjourned; for instance, if the appeal is due to be heard shortly, Members may prefer deferring the debate until after the appellate procedures have been completed; or, if the Member's application for bail pending appeal is granted, rendering it possible for him to continue to serve his constituents, or if there are other reasons which commend themselves to Members, they may still move that the debate be adjourned; and

(c) On the whole, whether the debate should proceed as scheduled is a matter entirely for the politicians to decide.

Here I quote the most important paragraph in Mr Justice KEITH's judgment: (I quote)"Conviction and sentence do not automatically result in removal from office even after all appeals have been heard. The fact that two-thirds of the members present have to vote for a member's removal reflects, therefore, not the need for all appellate procedures to be exhausted, but the desirability of leaving the ultimate decision as to whether a member's conviction or sentence should result in his removal from office to the good sense of members of the Legislative Council. Thus, it is open to members of the Legislative Council to defer the question of a member's removal under Article 79(6) until his appeal has been heard — for example, because the appeal is due to be heard shortly or the member is on bail pending appeal and therefore able to look after the interests of his constituents in the meantime, or for any other reason which commends itself to the members of the Legislative Council." (End of quote)

The one-month-or-more imprisonment is only a threshold. All along, it is up to Members of this Council to decide on the basis of their own political accountability and judgment whether a motion to relieve a Member of his or her duties should be moved, debated or passed. If they do not think that the matter concerned should result in the dismissal of a Member from his or her duties, then a dismissal motion would obviously not be moved.

President, what I mean by political accountability and judgment is that, as Members of this Council, we should be politically accountable to the public. Simply put, what are the best interests of the public? When we exercise the important power authorized by the constitution to remove a publicly-elected Member from his office, we must be impartial and selfless and be abide by

principles of the law, and we must also study any precedent available and analyse the facts.

The only precedent that this Council has is the motion which was moved to relieve Mr CHIM Pui-chung of his duties. The motion was passed by a majority of the Members present with only one abstention. How should we interpret this precedent? The most important factor is that Members unanimously agreed that the offence of which the Member concerned was convicted involved his integrity, and that the execution of his prison term would render him impossible to serve his constituents. Allow me to quote the words of Dr LEONG Che-hung, the then Chairman of the House Committee, when he spoke on the motion. He said (I quote), "I think the most important factor to consider in the question of whether to relieve Mr CHIM Pui-chung of his duties is the protection of public interest and the safeguarding of the credibility of the Legislative Council." (End of quote)

Then, he said (I quote), "Now that a law-maker is found guilty of a criminal offence of conspiracy to forge and has been sentenced to imprisonment for three years, if he remains in office as a Member of this Council, how can this legislature be accountable to the public? Our credibility and dignity will certainly go down the drains." (End of quote)

And he further said (I quote), "Every job that we do and every decision we make are all related to public interest. Thus, the personal integrity of a Member is of vital importance. It is the basic requirement of the public on each and every person holding public office. The matter concerning Mr CHIM is precisely one where personal integrity is involved. Therefore, I cannot find a single reason whatsoever to ask the public to let Mr CHIM stay in his office any longer." (End of quote)

Not many Members spoke in that debate, but they generally supported Dr LEONG Che-hung's motion. The personal integrity of a Member is related to public interest and the credibility of the Legislative Council, which was the most important point to be considered.

In my speech, I particularly mentioned that a Member serving his term in prison is in effect incapable of discharging his duties as a Legislative Council Member; and more importantly, when one has to choose between the call of

public office and personal interests, one must choose the former. I said (I quote), "But the nature of public office is that the holder of it should serve the office, not the office serving the holder. When a person is handicapped from giving his public office what that office requires, even if it is through no fault of his own, he should vacate it so that the place can be filled by someone else. To allow the private benefit aspect to override is to treat public office as the personal property of the holder of the office." (End of quote)

Having considered these factors, the proper decision to be made in relation to the dismissal motion today become apparent:

(a) The offences of which Mr LEUNG Kwok-hung was convicted do not involve his integrity and the factual circumstances under which the offences were committed do not involve his personal interests;

(b) Mr LEUNG Kwok-hung was sentenced to two months' imprisonment and was granted bail pending appeal, rendering it possible for him to duly fulfil his public office for his constituents; and

(c) There are considerable controversy in society and this Council over Mr LEUNG Kwok-hung's judgment. The problem involves how to strike a balance between basic human rights and social order as well as the grey area between criminal prosecution and political scrutiny.

With much regret, the debate today is very much different from the one held 15 years ago in that today's debate is far more interior in transcending political stances and conflicts between political parties, and that the important constitutional power has been exercised to inhibit freedom of speech. As a matter of fact, a member of a certain political party has frankly told the media that the real intent of this dismissal motion today was to attack the opposing political parties. President, this attitude shows no respect to the parliamentary spirit and the dignity of the Basic Law. It is indeed regrettable.

However, the most regrettable of all is that, today, we are able to look back on how the rule of law has suffered a great blow. We have little confidence in the impartiality of criminal prosecution. The rule of law is meant to safeguard

human rights and restrain the Government through judicial independence, but today, in the eyes of those in authority, they only regard the law as the privileged power of the Government and the weapon for inhibiting individual rights and freedom.

Today, in the light of jurisprudence, justice and public interests, I oppose with no second thought Mr Paul TSE's motion.

MR LAU KONG-WAH (in Cantonese): President, just now, I have listened very carefully to Mr LEUNG Kwok-hung defending himself. This is significant, but the way he spoke can almost be described as hysterical. His incoherence reflects his hysterics. He did not know what he was talking about and he was incapable of defending himself. Certainly, if people have read the magistrate's verdict and the offences meted out, they should find the sentence fits the offences, having regard to how Mr LEUNG had stormed the venue.

President, in the past few years, we, in the Legislative Council, have witnessed time and again how Mr LEUNG Kwok-hung stormed Council meetings or activities in the community. He is reckless in voicing his own opinions, paying no regard to other people's freedom or showing no respect for others. His conduct at the venue is finally given legal sanction. I advice him not to defend any more but to go back and think about his conducts in the past few years and why he is sanctioned by society. He can certainly remain adamant or accuse the Judge, but we can see in this incident that society can no longer put up with his increasingly violent conducts.

Obviously, a number of pan-democratic Members in this Council have stood by Mr LEUNG Kwok-hung today. This is normal, but may I remind them that their tolerance, connivance and cover-up in the past few years have led to escalating violence in society and in this Council. This is a hard fact. Has our society degraded to such an extent that we have to resort to violence?

Mr Frederick FUNG just now was very brave in pouring out the heart of the residents in his neighbourhood. Some residents warned him, "Never in your life take photos with Mr LEUNG Kwok-hung." Taking photos is a trivial matter, but why do the residents and the public advise other pan-democratic

Members not to get close to Mr LEUNG? It is precisely because people in pursuit of democracy also have to respect others. If a Member does not even uphold the spirit of respect and even resorts to hooliganism or violence, how can people put up with him? How can a person who flaunts himself democratic be a true democrat? I believe Mr Frederick FUNG has spoken from his heart just now. Today, we are here not to take part in a fight between political parties, but to bring home a message. We wish to clearly tell people that the Legislative Council cannot accept escalating violence. This is the message to bring home.

Mr WONG Yuk-man has digressed to talk about GANDHI and AUNG SAN Suu Kyi. To me, it is an insult to GANDHI if Mr LEUNG Kwok-hung is equated with him. They are different. Mr LEUNG Kwok-hung, you had better not be too romantic as to think that you are comparable to GANDHI or AUNG SAN Suu Kyi. There is a world of difference between you and them. Go and look up the history.

Mr WONG Yuk-man said, "We storm a venue and we go to jail. This is what we intend to achieve." Mr LEUNG Kwok-hung, if you truly intend to achieve this purpose, you should not have filed application to appeal. Why do you have to appeal? Your purpose is served. Go serve your term in prison right now. This is obviously not your purpose, is it?

Mr WONG Yuk-man said that his conduct is led by his self-awakening and his attempt to awaken others. Quite the contrary, I think his conduct has inflected harm on himself and others. His conduct not only harms himself, but also affects others.

What Mr Ronny TONG said is utterly illogical. On the one hand, he condemned such conducts, but on the other, he tried to cover them up. This is not the first time Mr Ronny TONG made such remarks. He has done this many times. If he continues to cover up or connive at such conducts, he will only end up harming himself. We have witnessed this today. Mr LEUNG Kwok-hung said just now, "Those who condemn me should dig a hole for themselves." And this should include him. Mr WONG Yuk-man also criticized him as self-contradictory, saying that he should vote for the motion but he said he would not. Is Mr Ronny TONG of the Civic Party not utterly illogical? Is he asinine? Does he have to go on covering up such conducts?

Mr Albert CHAN, in his usual double-Dutch speech, has said something important ……

(Mr LEUNG Kwok-hung rose up)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, what is your question?

MR LEUNG KWOK-HUNG (in Cantonese): President, I wish to ……

PRESIDENT (in Cantonese): Mr LEUNG, if you think that your remark just now has been misunderstood by another Member, you may seek elucidation after that Member has finished.

MR LEUNG KWOK-HUNG (in Cantonese): I see. Thank you.

MR LAU KONG-WAH (in Cantonese): Mr Albert CHAN said, "I came here precisely to make a kerfuffle, to storm the meeting." I can hardly imagine a Legislative Council Member would have said something like that. However, the public will tell him that he will be prosecuted and sanctioned for his conducts. To me, this is the call of the righteous people. More and more people in society will realize that the harm caused by the hooliganism and vandalism of the pan-democrats are becoming apparent. People have a stronger urge to distance themselves from this group of people.

Mr Albert HO pointed out that it is not statutory to move this motion, but adding that how Members show their stance and vote do matter. He said that the two cases are different …… Mr CHIM Pui-chung is now present …… He said that Mr CHIM Pui-chung has committed a serious criminal offence but Mr LEUNG Kwok-hung's offence is much more modest, commenting that the venue was not seriously damaged and only mild injuries were inflicted. The incident, as described in Mr Albert HO's words, is trivial and unintentional. He even stressed that Mr LEUNG's acts do not involve any private interest, citing the words of the magistrate as support. Yes, the magistrate did say so in the verdict,

but he has said more than that. Mr HO has taken the magistrate's words out of context. Many people have not read the magistrate's verdict, which I think is worth reading. The magistrate said that although the defendants did not have any private interests, the audience of the forum had the right to uninhibitedly express their views and listen to others' views, irrespective of whether the forum was a *bona fide* consultation or a bogus consultation as the defending counsel has so claimed. This is a fundamental right of the audience, and in exercising this right, nothing is more important than personal safety. The magistrate has apparently considered the issue of personal safety important. Is infringement on one's personal safety not a serious criminal offence? The magistrate went on saying that the scuffle is an astonishing anomaly, which has disrupted social tranquility, and such conducts have reached an extent that is uncontrollable, detestable and has disrupted social tranquility. Are such conducts still not regarded as serious criminal acts? Hence, the two cases may be different, but the difference lies in the different political affinity and the friend-foe political divide applied on the two Members. As a result, Mr CHIM Pui-chung is measured with one yardstick and the other Member who is more politically akin is measured with another yardstick. I believe the leader of the Democratic Party may have lost his head. Should he not go back and think the matter through?

Dr Margaret NG has made a long speech. As compared with her remarks on the previous case, I think she has employed double standards on this case. Just now, Mr IP Kwok-him has cited some actual examples and put forth several specific questions, but Dr Margaret NG apparently has not answered any of them. Nevertheless, she cited three reasons why she would not support the motion. First, the case does not involve the issue of integrity. May I ask Dr Margaret NG, who is a counsel, whether the relevant Article under the Basic Law specifically provides that a case can only be established if it involves an integrity issue? No, it does not. Second, unlike Mr CHIM Pui-chung's case, the case in question involves a sentence of two months' imprisonment. However, may I remind Dr Margaret NG that the relevant Article under the Basic Law specifically provides that a Member shall be removed from office if he is sentenced to imprisonment for one month or more, not to mention that we are now talking about two months' imprisonment. Third, Dr Margaret NG said just now that the incident has aroused considerable controversy. But should controversy outweigh the rule of law? The rule of law is always controversial. Hence, the three reasons are untenable. Given that her three reasons are untenable, would she please cite more reasons on behalf of the other counsels in the Civic Party?

What is more, as a member of the legal sector, she should uphold the law and the Basic Law. When she interpreted Article 24 of the Basic Law, she said that the common law has laid down everything in black and white and all we needed to do was to interpret its literal meaning. However, when it comes to Article 79 of the Basic Law, she planted different factors in the interpretation of the Article, saying that consideration should be given to whether the issue of integrity was involved, but the provision on the one month or more could be disregarded. How could she still represent the legal sector? She gives people the impression that she has no credibility at all. I blushed with shame when I saw her manipulation of the law.

Mr Frederick FUNG has been quite frank when he spoke just now. He said that such conduct is almost the conduct of a thug. I truly feel that he is very brave for saying so, but what he said is true and he has poured out the heart of the people. Why have such violent conducts happened time and again in Hong Kong? We do not wish to see such conducts. People anticipate that Members will do their job, not making troubles.

President, freedom of speech has been extolled by many colleagues in this Council and the pan-democratic Members. They pledge to defend their own freedom of speech as well as that of their opponents. However, at the venue on that day, had Mr LEUNG Kwok-hung pledged to defend the freedom of speech of those with opposing views? What is more, my concern is that, with such violent conducts being repeatedly covered up and connived at by Members of this Council in the past few years, young people will follow suit. Do not forget that two of the four defendants are university students who are adherents of Mr LEUNG and are influenced by him, but they are now sentenced to imprisonment while they are still at university. Mr LEUNG Kwok-hung, do you have a guilty conscience? I often talk to you in private, trying to convince you not to influence young students and asking you to be accountable to your own actions. Today, what I said has come true. Have you not let your young adherents down? I still vividly remember in a meeting held at the old Legislative Council Building, a security officer was banged against the corner of my table while he was trying to escort him out of the Chamber, and today his waist still hurts. This happened a few years ago.

Mr LEUNG Kwok-hung, in the past, some people find you rude, but I think you are more than rude. You even scolded the Judge. You have become

arrogant and conceited, having no regard for law and order. Your conduct is unacceptable.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, do you wish to seek an elucidation on your remark earlier?

MR LEUNG KWOK-HUNG (in Cantonese): I wish to seek an elucidation. What he just said has distorted my meaning. What I said is, if those who support the 4 June massacre condemn my violent acts, they should dig a hole. I did not say that all those who condemn me should dig a hole. I did not criticize them. Only those who agree with people killing people and those who condemn others' violent acts but support violence every year should dig a hole.

As regards what the hole is for, I do not know. But I know that I can speak again. Mr LAU Kong-wah, you are wrong. I still have a chance to speak later.

MR LEE CHEUK-YAN (in Cantonese): President, Mr LAU Kong-wah earlier described Mr LEUNG Kwok-hung as hysteric and speaking nonsense. Yet, even though he appeared to be composed and well-mannered, what he spoke was actually nonsense. The arguments that he put forward were downright crooked. He accused the pro-democracy camp of adopting double standards, saying that we supported relieving Mr CHIM Pui-chung of his duties back then but not Mr LEUNG Kwok-hung, who has recently been convicted of a criminal offence. He also spoke such nonsense that Dr Margaret NG factored integrity into Article 79(6) of the Basic Law. As a matter of fact, Dr Margaret NG did not do so. Whether integrity was factored into the said article should be up to Members' own judgment.

Members should take a look at Article 79(6), which as a whole does not take effect "automatically". There is not a provision that Members being sentenced to imprisonment for a month will be "automatically" disqualified for the office. Apart from not having a provision on "automatic" disqualification, it is also clearly provided that the motion concerned has to be passed by two thirds of the Members. Why does it require the passage by two thirds of the Members?

The objective is to allow all Members to make a judgment on whether integrity is involved. This is why Members are here to make a judgment.

Members have to make a judgment on two matters, that is, the case involving Mr CHIM Pui-chung and the one involving Mr LEUNG Kwok-hung. How do the two cases differ by nature? Mr CHIM Pui-chung was charged with forgery or making fabricated documents back then; Mr LEUNG Kwok-hung is now convicted of committing an act of storming into a forum on the replacement mechanism and sentenced to two months' imprisonment. The two matters are apparently of different natures. If we are arbitrarily being accused of adopting double standards, the accusation is really arbitrary in nature.

As for the case involving Mr CHIM Pui-chung, it is clear that this is a matter of his integrity and personal conduct. Mr LEUNG Kwok-hung's case is concerned with his opposition to the replacement mechanism. He attended a forum, known to all that it is fake and set up by the Government to force its fake consultation proposals all the way through. As no seats had been reserved for Mr LEUNG Kwok-hung and others, they tried to get inside to air their views. In discussing an issue, one should have a clear idea of the background before making casual accusations, and that is the background of the incident. They got into the venue hoping to reflect the public's opposition to the replacement mechanism, and it was all. As the authorities did not let them it, conflict might have ensued between the two parties. However, Members have to judge how the matter as a whole is related to integrity. There is no such correlation at all. He did not have any integrity issue. He did that for the public's right of making their voice known. The two incidents are strikingly different.

The Labour Party's stance is unequivocal, that is, we are against today motion's to disqualify Mr LEUNG Kwok-hung. We are of the view that the replacement mechanism intends to deprive the rights of members of the public to vote and to be elected; yet, Members are now seeking to disqualify a directly elected Member through a single act of voting. He is elected by members of the public, his conduct in this incident has nothing to do with personal integrity. I believe that in the mind of all Hong Kong people, he does not have any integrity issue. Although some members of the public may disapprove his acts, this is not a matter of integrity. There is no reason to disqualify or remove a directly elected Member so easily.

In my view, they apparently want to drive Mr LEUNG Kwok-hung away arbitrarily. The royalists have exhausted every means to achieve this objective. As a matter of fact, it all comes down to which side one should side with. To the royalists, they certainly wish to silence the dissenting voices as far as possible, it will be the best to mute them or kick Mr LEUNG Kwok-hung out. They are the royalists, so I forgive them for their stance. Nevertheless, I see a big problem in them. In my view, the royalists have a big problem over the matter as a whole, that is, they always talk about violence, but they never have a word on institutional violence or police violence.

Perhaps as they need not stage rallies or petitions, as royalists, they never need to take to the streets to engage in any campaign, they do not have to face the resistance imposed by the police in an unreasonably violent manner. They do not need to cope with any of these problems. Of course, there was once a time when they were subject to the police's unreasonable resistance. For example, the younger brother of President was once barred from handing out pamphlets. What was in their mind at that time? If Secretary TSANG Tak-sing were a Member who was sentenced to more than a month of imprisonment for handing out pamphlets, would they disqualify him? At that time, he might have jostled with the police, who in turn accused him of assaulting police officers. Would they disqualify him then?

Members should think about it: if imprisonment of more than a month would automatically lead to dismissal, chances are that many more people will be dismissed after the enactment of legislation under Article 23 of the Basic Law. In future, taking part in a peaceful demonstration may land one in trouble, as in a current case of peaceful demonstration. On the day I gatecrashed the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) to stage a demonstration, and I also got into the trouble of being accused, without valid reasons, of holding an unlawful assembly. It seems that the current legislation is as draconian as Article 23 of the Basic Law. The case is now under appeal, and I may eventually be sentenced to more than a month of imprisonment.

The mere action of entering the LOCPG to stage a demonstration might incur an arrest, even though entry is barred by the police. In such cases, the royalists are always joyous and jubilant, as they will never get into trouble. They can feast with LEUNG Chun-ying and have a barbecue with Donald

TSANG. They never need to take to the streets to fight for the interest of members of the public, hence they never have to come across resistance imposed by the police, and that is it. This is why they can speak in the way they do now.

However, if the issue is viewed from the perspective of social system, I wonder why they cannot see that it is an institutional offence, in particular, the motion move today is to disqualify Mr LEUNG Kwok-hung. Yet, Members should always bear in mind that he is elected by members of the public. Can a directly elected Member be dismissed so easily?

Just think, people who have voted for Mr LEUNG have their own political stance and aspirations, and they regard Mr LEUNG as the one who can make their aspirations known in this Council. Releasing a balloon or throwing eggs is nothing but a means of reflecting one's aspirations. If members of the public dislike his acts and do not like to take photos with Mr LEUNG Kwok-hung, so be it; if they do not like him, do not vote for him then. But there are people who like to take photos with him and vote for him, and we have to respect those members of the public.

While "great reconciliation" has been ringing on the royalists' lips recently, why do they not seek reconciliation with those who have voted for Mr LEUNG Kwok-hung? They have a litany of grievances on the political system, the absence of universal suffrage, the ruling of Hong Kong by the authority headquartered in Western District, and the LOCPG's interference in elections. Should the royalists pursue "great reconciliation", there have to be changes in numerous areas of our systems. Instead, they do not seek genuine "great reconciliation" but a fake one within the pro-establishment camp.

President, the Labour Party's stance is unequivocal, that is, there is no reason to dismiss a Member owing to his act of confrontation or civil disobedience. Thank you, President.

MR CHIM PUI-CHUNG (in Cantonese): President, there are many main characters in a play. Today, the first main character is Mr LEUNG Kwok-hung, and the second main character is Mr CHIM Pui-chung.

It is very, very reasonable for Members to discuss this motion moved by Mr Paul TSE today, why? Because we, as Members, are exercising our powers, so that people know what play we are acting. Hence, I want to tell Mr LEUNG Kwok-hung — he is the first main character, has he left the Chamber already? In fact, how can anything happen to him? Are the 23 Members of his group useless? He will definitely be safe, and it is just acting.

Alright, let me talk about my case 14 years ago in 1998. We are aware that under Article 79 of the Basic Law, any Member who has been imprisoned for more than one month anywhere in the world will be disqualified if agreed by two thirds of the Members present. I was once targeted and penalized by this provision. President, the Basic Law has not specified the offence leading to one month imprisonment. The barristers, and the so-called SC, are just cheating. I am talking about my feelings, that is, the feelings of members of the public. Why? The barristers charge a high fee. President, you have to understand that ……

MR LEE CHEUK-YAN (in Cantonese): President, point of order. He said others were cheating, is this remark offensive?

MR CHIM PUI-CHUNG (in Cantonese): Mr LEE Cheuk-yan ……

MR LEE CHEUK-YAN (in Cantonese): I seek your ruling on whether he has offended other Members.

MR CHIM PUI-CHUNG (in Cantonese): …… Mr LEE Cheuk-yan, you sit down. President, please mark the actual time I have spoken, so that I can use my speaking time fully. The others are SC, what qualification do you have to argue on their behalf? If they do not feel offended, how come you feel offended? Do you think you can say so just because you are a member of the Labour Party?

MR LEE CHEUK-YAN (in Cantonese): Sorry, I do not have the right; it is the President who has the right.

MR CHIM PUI-CHUNG (in Cantonese): You should sit down if you do not have the right.

MR LEE CHEUK-YAN (in Cantonese): The President has the right, and I have raised a point of order.

MR CHIM PUI-CHUNG (in Cantonese): The President has the right to speak to me, not you. I am now banging on the table and scolding you. What right do you have to say that I am wrong?

PRESIDENT (in Cantonese): Mr CHIM, please continue with your speech.

MR CHIM PUI-CHUNG (in Cantonese): Yes, President, please listen, he does not have the right, but you have. President, I am facing you, not him. According to the rules, Members of the Legislative Council must address their speeches to the President, OK? President, you must give me the right amount of speaking time ……

MR LEE CHEUK-YAN (in Cantonese): President, I have raised a point of order, that is, has he offended any Members?

MR CHIM PUI-CHUNG (in Cantonese): What right do you have to raise a point of order? What party is your Labour Party?*(Mr CHIM Pui-chung banged on the table)* What right do you have?

I have to bang on the table for the second time. Mr LEUNG Yiu-chung, you are not satisfied, right? You are welcomed to debate with me after the meeting.

PRESIDENT (in Cantonese): Mr CHIM, please sit down first and let me rule on the point of order raised by Mr LEE Cheuk-yan.

(Mr CHIM Pui-chung sat down)

PRESIDENT (in Cantonese): I do not consider that the remarks just made by Mr CHIM Pui-chung had offended any Member. Mr CHIM, please continue with your speech.

MR CHIM PUI-CHUNG (in Cantonese): OK. President, I have speaking on and off just now, you must mark my speaking time accurately. I request you to give me the right amount of speaking time. President, we have to understand that nothing has been specified in Article 79 of the Basic Law about the laws contravened by Members such that this treatment applies. Is this a shortcoming of the Basic Law, or the lack of understanding on the part of Members who spoke just now? If it is the lack of understanding on the part of Members, how are they qualified to be Members of this Council?*(Mr CHIM Pui-ching banged on the table)*

President, the laws have not prohibited me from banging on the table. Members are free to bang on the table, and as hard as we can. I am not challenging your goodself, I am challenging your ruling.

OK, the first speaker was Mr Albert HO, and all the so-called facts he talked about were intended to shield the shortcoming of another person. The fact which we are talking about is that I, CHIM Pui-chung, had been imprisoned. How on earth has this got to do with them? Yet, they were so happy. I can still stand here today — and if I say I am facing the 7 million people in Hong Kong, I am lying; about 700 000 people witnessed how I was re-elected to the Council. My re-election is attributable to the sound legal system in Hong Kong, as well as my personal ambition as an alternative Hong Kong citizen. I, CHIM Pui-chung, once said that I would rise from where I fell. Now, another Chief Executive candidate also said that he would rise from where he fell. However, he said he had fallen even before he actually fell.*(Laughter)* One should not parrot others indiscriminately, or accept advice from those so-called "masters" indiscriminately, or claim oneself to have "backbone" or whatever. Of course, I

am ridiculing him. Other people have labelled me as a "TANG supporter", and they can listen carefully for themselves now.

OK, my main point today is, as Members of the Legislative Council, we are aspired to upholding law and order. How can we act in an unfair manner? It is alright for them to say mean things about me, but has the Basic Law clearly stipulated that a Member who has been sentenced to an imprisonment term of one month because of bad conduct and behaviour, or contravention of traffic legislation, must also come under criminal prosecution? Has it been expressly provided in the Basic Law? It is alright if there is express provision; otherwise, the same principle should apply to all and we must abide by the laws.

OK, just now, I said …… Mr LEUNG Kwok-hung has not returned to the Chamber yet. Today, I have said that some Members spoke eloquently, they just left when other Members start speaking. I hope the people of Hong Kong — 700 000 or 1 million would be fine, let alone all 7 million — can open their eyes widely so that they will not be deceived by the high-sounding speeches made by Members, for they are in fact just as filthy.

President, I will now comment on the speeches delivered earlier by the two Members of the Civic Party. I specifically refer to Dr Margaret NG because she mentioned the name "CHIM Pui-chung" about eight or 10 times in her speech just now. President, there is no water in my glass *(A staff refilled water for the Member)*, thank you. President, Dr Margaret NG gives people the impression that she is the most unreliable Member of the Legislative Council. She cannot stand up and say that I have insulted her because legally speaking, it is perfectly alright for me to say "gives people the impression" — how can she say that my impression is wrong? She is a Member returned by the Functional Constituencies (FCs), yet she criticizes the FCs all the time, giving people the impression that she is a shameless person. What qualification does she have to speak like this? In her youthful age when she studied in the University of Hong Kong, she sang love songs under the trees. Who told me that? That was a person surnamed LAM.

President, I need a sip of water. Originally, I admired her very much. Given that she is a Member returned by the FCs, she is at least enjoying the perks, and should have more self-respect. Yet she always criticizes the FCs, and it is unsurprising that she gives people the impression that she is the most unreliable Member, and she is "bringing shame" to the Civic Party. President, that is my

impression. All along, I have said that of those five Members, there are two barristers and three senior counsels, and my speeches are better than theirs. I am absolutely confident about that.

OK, given that she spoke from the legal points of view, how can she represent the legal profession with the three theories she just raised? She may as well go home and sleep. I challenge her that she should no longer represent the legal profession in the next term, just take part in direct elections. I think she is no longer qualified to continue serving as a Member in the next term. There are two Members I never say hello in this Council, one is Dr Margaret NG, and the other Ms Cyd HO, because they are not qualified. As for other Members having different political views from myself, I think that is alright. As we are colleagues, we can maintain effective communication. We are all fighting for the interests of Hong Kong people, and we have different representativeness and represent different classes in society.

All in all, this motion today will definitely be vetoed. As we are colleagues, why do we want to kick Mr LEUNG Kwok-hung out of the Legislative Council? Who would benefit from such a move? Perhaps it is those who want to run in the New Territories East Geographical Constituency (GC) election for the next term. In the next term, nine Members will be returned from the New Territories East GC.

We hope that different political views …… I have said the same thing time and again in the Legislative Council: How many people had died in an honourable and glorified way throughout the 60-odd years' struggle between the Kuomintang and the Communist Party? OK, now that the Chairmen of the two parties have shaken hands thrice, can the deceased rise from death to complain? As Members of the Legislative Council, we are just sitting here to "make a living". There is no need to take the matter so seriously.

Dr Margaret NG, I am challenging you. Have I wronged you in any way? At most, I have not praised your beauty or courted you. Why do you always go after me?

PRESIDENT (in Cantonese): Mr CHIM, please face the President when you speak.

MR CHIM PUI-CHUNG (in Cantonese): I am talking about her beauty, and I should of course look at her. She looks more and more beautiful. What is the purpose of looking at you, President?

Nonetheless, we must understand that there is invariably a run-in process given the different political views held by different Members of the Legislative Council. It is particularly important as Hong Kong is a very unique place. What is reported in today's newspapers will be forgotten tomorrow. Given the prevailing unfair environment in society, we must fight for the interests of Hong Kong people — that is our duty as Members of the Legislative Council, our base for gaining people's support, and our chip for securing enough votes to get re-elected to the Legislative Council.

Regarding other political issues, to put it bluntly, Hong Kong is just a special administrative region of China. What are there to fight for? Even if they are successful, they will only become "yes-men" of foreign powers. The world is centred round the United States first and foremost, and then Japan. A force is acting against the Chinese Government, yet some people become its "yes-men" unknowingly. The barristers consider themselves to be standing on moral high ground when fighting for Hong Kong people. I only pity them for one thing: their time is more expensive than mine because each of them charges their fees by time. These Members are now sitting here diligently, but they will fade out eventually because they need to endure the baptism of the times by withstanding the challenges and hardships of our time. As they consider these things worthless, then why take all these trouble? Nonetheless, we have our own political beliefs and ideologies. But their ideologies are crooked and "incorrect" because they always consider that the moon overseas is brighter. But the moon overseas is like the butt of a beautiful lady; President, there is nothing wrong with this remark. I compel you to listen, no matter you like it or not.

Under the circumstances, this kind of mutual appreciation is wrong because these fantasies of our time will change. Of course, President, you want me to talk more about the reasons, although they may not be something that you agree, or you can agree openly. OK, under the circumstances, even though the laws of Hong Kong are often challenged, we still want very much that genuine moral standards can prevail in the Legislative Council. Why is the reason for that?

I implore all of you to listen and watch carefully. While we used to consider the law utterly dependable, in the case of Nina KUNG, the judgments delivered by the Court of First Instance and the Court of Final Appeal were so eloquent that the avenue of appeal to the Court of Final Appeal was almost blocked directly. Yet when the case went to the Court of Final Appeal, the Judges unanimously handed down a judgment which was completely different from the previous ones. That is a big irony to those who study law because they have not been taught which one is right. Hence, the law is right when it is on their side, and the same also applies in politics. When it is to their advantage, these Members will stand on moral high ground to criticize and censure others. The public is by and large clueless about their actions. The public only knew that these Members had said it was right to vote for them and hence, they gave their votes to them.

I can tell Members that in the last District Council election, the Civic Party suffered a "PK" (drop dead) defeat, and in the future, they should ……

PRESIDENT (in Cantonese): Mr CHIM, mind your language.

MR CHIM PUI-CHUNG (in Cantonese): …… No, I am afraid of nothing, and I have immunity. If you warn me, it means you are threatening me; you are threatening me on behalf of the Civic Party, and you have to think for yourself ……

PRESIDENT (in Cantonese): Mr CHIM, I was referring to my previous ruling that some expressions were unparliamentary. Hence, you should not use that term again.

MR CHIM PUI-CHUNG (in Cantonese): …… OK. You have been timing my speaking time. I have used the term already, regardless of whether I can use it or not.

Under the circumstances, the Civic Party is misleading the people of Hong Kong. On 9 September …… I recall that there is a Chinese song entitled "Wine

on 9 September", but for the Civic Party, it is "Bye on 9 September" — how can they not say goodbye when they are all defeated? Hence, their former party leader was correct in feeling that there was no future at all. President, that is why I have talked so much about issues unrelated to the topic. Just now, a member of the Civic Party has disobeyed the rules and was talking about CHIM Pui-chung incessantly. Is CHIM Pui-chung the subject of discussion today? Instead of the bad guy, I, CHIM Pui-chung, am the forward guy who will definitely succeed.

President, I have my own reasons. I hope the people can use their voting right so that they can clearly see for themselves what is Hong Kong's future, who is genuinely acting for Hong Kong's future, who is defending the principle of fairness in Hong Kong's rule of law, and who are using their legal knowledge wrongly such that the people have to suffer a great loss now and in future, as a result of the cases on infrastructural development and foreign domestic helpers. I am warning the Civic Party about their criticisms on me. What does it matter as I, CHIM Pui-chung, only have one vote? Whether I still want to be a Member is a matter awaiting my wise decision. Of course, it may be not so wise a decision after all if I become a Member again. President, when I started my speech just now, there were only a few Members in the Chamber. It is really a shame. I do not want to speak anymore *(The buzzer sounded)* …… It is just as well that my speaking time has also come to an end.

MR LEUNG YIU-CHUNG (in Cantonese): President, I have heard Mr CHIM Pui-chung talking about his respect for different political stances of Members time and again either privately or in the Council. Just now, I have listened to Dr Margaret NG's speech carefully, and her stance was indeed different from Mr CHIM's. Mr CHIM said that Dr NG had targeted him, but conversely, he was also targeting her. I think his action was likewise not fair.

As we have said that different political stances, analysis and views of Members should be respected in this Council, I think such respect should be maintained.

I am indeed thankful to Dr Margaret NG, for after listening to her speech just now, I think I no longer have to speak on this motion because she has conducted extensive research into the matter. She has cited not only the

explanation given by Dr LEONG Che-hung at that time on the then decision made by the Legislative Council, but also the reasons for the verdict given the Judge on Mr CHIM's application for judicial review, as well as the reasons why the Legislative Council could made its decision before the appeal hearing. She has given us a detailed explanation. I consider such information very useful to Members in general. Disregarding the final outcome of this motion, you can disagree with Dr Margaret NG, but she, as a lawyer and a barrister, has conducted all these researches to facilitate the understanding of this Council and the public on the ins and outs of the matter.

Therefore, in this matter, Mr CHIM Pui-chung, I hope you can practise what you preach and respect the speeches made by each Member.

As I said, I no longer have to speak on this motion after listening to Dr Margaret NG's speech. But why do I stand to speak now? There are mainly two reasons. Firstly, I notice that it is almost 10 pm now, and it is unlikely that the motion will be voted on today. I think voting will most likely take place tomorrow. President, I want to tell you that as I have classes tomorrow, I cannot take part in the voting. Therefore, I need to make my stance clear. I am against the motion even though I cannot take part in the voting tomorrow. Nonetheless, I have to make my stance clear.

Secondly, Mr LAU Kong-wah said that many Members have spoken today to defend Mr LEUNG Kwok-hung. Although I do hear many Honourable colleagues stating their opposition to today's motion just now, it does not mean that they are defending Mr LEUNG Kwok-hung. On the contrary, I note that Members have mostly explained in their speeches what attitudes, stances and perspectives should be adopted when considering whether a Member should be relieved of his duties. Hence, I want to clarify this point.

In fact, Mr LAU Kong-wah has just quoted the explanation given by Dr Margaret NG as to why we should not relieve Mr LEUNG Kwok-hung of his duties today. There are several reasons. Firstly, a breach of integrity is not involved in the present case. Besides, he was only sentenced to a short term of imprisonment for two months, and he can still perform his duties now. Moreover, the question of whether he should be relieved of his duties is controversial, and the determination of whether his actions were correct is also controversial. Therefore, I do not consider that the Member was speaking to

defend Mr LEUNG Kwok-hung. I think her speech can serve as a reference for other Members in future.

Hence, regarding this point, I hope Mr LAU Kong-wah and other Members holding similar views can consider the matter further because we are not only discussing the case of Mr LEUNG Kwok-hung today, but also how we should handle the same situation in future in case of some unforeseeable incidents.

A number of Members just mentioned that it had been clearly specified in Article 79(6) that we must perform this duty. As Mr LEUNG Kwok-hung has been sentenced to imprisonment for more than one month, he should be relieved of his duties by a motion passed by two thirds of the Members present.

Some said that it will be unconstitutional if we do not do so. Instead, I would like to tell Mr LAU Kong-wah that if it is really the case, why don't we consider the drafting of the specific provision *per se*? The provision could have specified directly that a Member should be relieved of his duty when he is sentenced to imprisonment for one month or more. Why does the provision specify that a Member is only relieved of his duties by a motion passed by two thirds of the Members present? That provision is different from its preceding provisions. For instance, a deceased Member will of course be relieved of his duties immediately. There are other provisions concerning the removal of a Member, for instance, if a Member is sick or when he accepts a government appointment, the President can relieve him of his duties immediately. Why has it been specifically provided that the relevant motion must be passed by two thirds of the Members present? In other words, the outcome is not a certainty; this procedure is not mandatorily required when a Member is sentenced to imprisonment for one month or more.

Hence, Mr Paul TSE has proposed to activate this mechanism. I think while Mr TSE is free to activate the mechanism, he has indicated that he does not support the motion himself. His action in fact goes against the latter part of the provision because by that part of the provision, it means that once a Member has activated the mechanism, he should fight for the support of two thirds of the Members present. If he does not support the motion himself, it means that he will not fight for others' support; if he does not intend to fight for others' support, why did he propose the motion in the first place? Such a move is indeed a waste of time, and it is worthless and meaningless. The motion is proposed by Mr

Paul TSE on his own initiative, yet he will not fight for others' support, and he has not indicated a stance of support for his own motion. What does it really mean? Hence, I think we should carefully consider the contents of the provision, which are clearly drafted. Instead of merely focussing on the first part of the provision, both parts should actually be read together.

If Members only focus on the first part of the provision, they may think that they must do so in accordance with their duty and obligation, as well as the constitutional spirit. But I do not consider this mandatory or certain because the provision has already stated clearly that the relevant motion must be passed by two thirds of the Members present. My question is: Why is this requirement included in the provision? Those Members have not provided us with any explanation. I have listened to the speeches of those Members, and none of them have provided any explanation as to why this additional requirement is included. What is its significance? What is the purpose? Can they provide us with an explanation?

Actually, the purpose is to give us some space to make the decision from a political perspective, that is, to have the matter decided after discussion. Hence, it is not mandatory. As Mr LEUNG Kwok-hung said, this is not "automatic". Hence, we cannot blame Members for not performing their duties on this matter. I think such accusation is unfair and borne out of misunderstanding of the spirit of the relevant provision. The purpose of my speech today is to tell other Honourable colleagues that we must examine the provision more carefully by reading it in context. I think at some points in our debate, the provision has been taken out of context such that its meaning is inconsistent with the spirit of the entire provision. In this matter, I have to express my regret, my deepest regret.

Moreover, some Members said that we have applied a double standard in the cases of CHIM Pui-chung and Mr LEUNG Kwok-hung. President, we have not applied a double standard. In fact, even the Court has explained the matter clearly. Why should we be criticized for applying a double standard? We are not targeting Mr CHIM Pui-chung personally. I also chat with him sometimes in private. The crux is that the matter should be discussed according to facts and reasons. I hope Members can respect that, or at least …… Just now, Dr Margaret NG has clearly cited the words of the presiding Judge. If time allows, Dr NG can elaborate on that later. As I do not have the judgment with me, I cannot read it out. But Members should have heard clearly the words of the

Judge, which explained clearly why the disqualification process could proceed whilst the case was pending appeal.

Hence, I think this is not a case of double standard. Instead, it is a matter of both cases having different objective facts. As Members of the Legislative Council, we should make a judgment as a Member, which entails more than moral judgment for we must also make our judgment politically. Therefore, I think it is neither fair nor reasonable to criticize us for applying a double standard. I hope we will focus on the matter itself, rather than the person. In other words, we should consider the cases, and not Mr CHIM Pui-chung or Mr LEUNG Kwok-hung. I hope Members will respect this point.

Regarding the present case of Mr LEUNG Kwok-hung, why should we not pass the motion to relieve him of his duties? That is because regardless of our views on whether his actions were correct or not, a ruling has already made by the Court, and if any punishment should be meted out, the Court has already done so. The crux is that his actions did not arise from personal interests; instead, they were taken for the interest of the public. Although Members may disagree with or disapprove of his actions or way of expression, he did not do so for personal interests, but for the general public. That is the most important point. Members are free to disagree with his stance, but the crux remains that it is not his personal problem, and his actions did not arise from personal interests. I hope Members can respect that.

President, I do not support this motion. Thank you.

DR PRISCILLA LEUNG (in Cantonese): President, Mr LEUNG Yiu-chung just talked about Article 79(6) of the Basic Law. In fact, I concur with his statements because in the earlier discussions about whether the mechanism to disqualify Mr LEUNG Kwok-hung should be activated, I personally was also gravely concerned about the views of former colleagues on the case of Mr CHIM Pui-chung whilst his appeal hearing was pending. At that time, I also pointed out that if that case was pending appeal, why should the matter not be discussed after the appeal?

Actually, the situation is the same today. Mr Paul TSE said that he proposed the present motion for the sake of fairness. However, if leaving the

former case of Mr CHIM Pui-chung aside — I will come to this later — I think it might be more appropriate and reasonable to discuss the matter after the appeal. According to the relevant provisions, ultimately, it requires a motion passed by two thirds of the Members present before a Member can be disqualified. That is absolutely right. Mr LEUNG Yiu-chung was correct in saying just now that it was a political judgment. Hence, our debate today is in fact about a group of Members with different political stands or views on this matter, or even representing the views of members of the public in society, expressing our opinions on the issue, and also possibly our opinions on Mr LEUNG Kwok-hung's sentence of imprisonment for more than one month as a result of his acts of protest and demonstration on that specific occasion.

I think every Member of the Legislative Council is highly self-centred who wants other people to concur with his judgment, namely, in the first place, he is not applying a double standard; secondly, he acts according to the principles of fairness, impartiality and nobleness; thirdly, he also tries to convince other people with different political views so that he can consider himself to be more impartial.

Since I became a Member of the Legislative Council, I have joined various committees over the past few years. I do not detest Mr LEUNG Kwok-hung. In fact, I find him quite adorable at times. Before I was elected to the Council, I had written an article dubbing him the clown of Shakespeare in the Legislative Council. However, I do not agree with the way Mr LEUNG Kwok-hung expresses his views. I find it even more disagreeable that he has glorified his actions as remarkable feats or acted like he is an icon, such that his struggle tactics have been endorsed or even imitated by many young people. As a result, these young people, who think that they are doing something remarkable, may unwittingly commit acts incurring criminal liabilities. I cannot help but ask whether we, as adult politicians who are relatively senior in age, should remind these young people that such criminal liabilities might unduly affect their life prospects. If today's motion is not about making a declaration of political stance, what is it then? The requirement of two thirds of Members is a declaration of political stance, and all of us are duty-bound to represent our constituents as well as members of the public who support us.

Hence, I think there is no need for Members to make a mountain out of a molehill in each and every matter, including Mr Paul TSE. He has a great sense of humour. Just now, he said that in the KAM Nai-wai incident, the green tea

cakes we ate at a cost of some $1.4 million was a waste of public money — I hope this is not a case of making a mountain out of a molehill because the cake was actually bought by Mrs Sophie LEUNG as a treat for other members at the last meeting of the committee — he also said that the whole matter was unfair to Honourable colleagues; I do not know whether he was referring to Mr KAM Nai-wai. Our discussion today is about the matter of Mr LEUNG Kwok-hung, then is it also unfair to Mr LEUNG?

I remember distinctly that during our discussion on whether a select committee should be formed in relation to the West Kowloon Reclamation Concept Plan Competition, I pointed out that it was impossible to ensure the fairness of the select committee because all Members were eligible to vote in the Chief Executive Election. Some Members had expressly stated that they would vote for a particular candidate who was the political enemy of the person under investigation. I remember clearly what Ms LI Fung-ying said that day, I also felt sorry that the Legislative Council eventually decided to set up this select committee hastily in the course of the election. I considered that major newspapers would certainly raise a lot of comments and queries about the composition of this select committee in respect of its integrity — not integrity, but impartiality — I have collected several commentaries to that effect so as to serve as a constant reminder for myself.

OK, grand reasons were given by Members at that time, for example, the crux of the matter was the $21.6 billion involved and not the Chief Executive candidate, and the investigation was not meant to target a particular Chief Executive candidate, and so on, but what happened eventually? After the Chief Executive Election, many Members were acting like it was the end of the game. When I wanted to ask why Norman FOSTER, that is, the winner of the West Kowloon Cultural District design competition, was also the winner of the design competitions for the New Airport and the Kai Tak Cruise Terminal, or why did his designs win in those competitions, most of my colleagues were uninterested because time was limited.

During the said discussion, I also mentioned that even though time was indeed limited, such investigation would be futile because many related questions were also involved in the same issue, that is, the issue of conflict of interest. Concerning this issue, some overseas members might have likewise not declared their interests, and the undeclared interests might be related to the project that was selected, and the design company concerned was still awarded with such a major

project even to this date. However, I was discouraged to pursue my questions. I think I am the only Member still interested in this matter. Why? This rightly tells the whole world that this select committee was set up because of the Chief Executive Election. I admire greatly the courage of Ms LI Fung-ying for her words on that day.

Hence, regarding such committees, Members with different political stances and viewpoints would definitely say that the investigation report of the relevant committee was unfair. I can expect that the impending report of the select committee on the West Kowloon Cultural District incident will hardly be regarded as fair.

The same situation applies to the KAM Nai-wai incident. As Members belonging to the pro-democracy camp have not participated in the investigation, I have written an article previously questioning whether the same practice would apply for later investigations, that is, once the Legislative Council (Powers and Privileges) Ordinance is invoked, Members of a major party or grouping would not participate so that they can discredit the report in due course. If future investigations are to be initiated by the pan-democrats, Members of the pro-establishment camp will not participate. In fact, I have already said in my previous article that such action was actually very irresponsible. By not participating, they can say today that ……

PRESIDENT (in Cantonese): Dr LEUNG, the motion under debate now is about relieving Mr LEUNG Kwok-hung of his duties as a Member of the Legislative Council.

DR PRISCILLA LEUNG (in Cantonese): …… I am on the subject of investigations and committees, President, and those are related. I hope you can let me finish what I want to say. Hence, Members who have been saying that the whole thing is fair and impartial are in fact pointing one finger at other people today, but at the same time, their four fingers are pointing back to themselves. In fact, I quite understand Mr CHIM Pui-chung, why? He felt aggrieved. Nonetheless, there is no need for Mr LEUNG Kwok-hung to feel upset today because he has many die-hard fans. I think I also received many emails from his fans, who are indeed very fond of him. Basically, he knows what he is doing.

Nonetheless, the scene of those people grabbing necks at the consultation forum burns deep into the public's mind. No matter how the incident is packaged by some Members, the public finds the act very horrible. I am even more shocked to learn that according to some sources, the person behind the mask is a prolific commentator in the cultural sector. Why did he wear a mask? Why did he imitate the action of grabbing necks? Should such an action be encouraged? Hence, I am in a conflicting mind today. It is because I do not agree that a case pending appeal should be raised for discussion hastily now. Hence, the theory put forth by Mr Paul TSE is self-contradictory and hardly convincing as far as I am concerned; why not move the motion after the appeal. Perhaps he did so because he felt that Mr CHIM Pui-chung had not been treated fairly in the yesteryear. But his action of proposing the motion before the appeal is really leading us towards the same path several years ago. I consider that the past incident was hasty and unfair to Mr CHIM Pui-chung.

Just now, Mr LEUNG Yiu-chung said how fairly they had been acting because the same yardstick was used. I have no idea whether it is true or not, but I think Mr CHIM Pui-chung knows best about the ups and downs involved. In fact, I think no explanation is required because it is really a matter of different political stances. Those Members were not on friendly terms with Mr CHIM Pui-chung and hence, they voted accordingly. As he just explained, the passage of the relevant motion by two thirds of the Members present was a political judgment. They did not want to see him and hence, they voted accordingly. They might as well admit that. If a review is required, is it also necessary to review whether the former incident was handled hastily? I think Mr CHIM Pui-chung will feel better if at least something to that effect has been said. OK, Members should not make a decision when the case is pending review as I think that is the fair and impartial way to handle such incidents.

In fact, how can this incident be dealt with impartially? It is because political judgment is indeed involved in the matter. Therefore, as far as I can see, if Members consider unanimously that a decision should be made at this stage when the case is pending appeal, they should treat Mr LEUNG Kwok-hung's case today in the same way as they had treated the previous case of Mr CHIM Pui-chung. Otherwise, they should pluck up their courage and say that the previous incident might have been handled somewhat hastily.

President, I think this question really boils down to politics. It is a matter of political judgment as to whether one prefers using "grabbing necks" as a means of campaigning, lobbying the Government or staging protest; it is about how one gauges political sentiment and reflects the views of different members of the public. Many members of the public in Hong Kong whom I come into contact with indeed find such acts seriously offensive. They repeatedly told me that I must speak out, and they did not concur with such acts. Uncertain about my voting preference, they said that if I did not vote for the motion to censure or condemn such acts — they did not have a clear understanding of what this motion was really about but they were against such acts — I was not representing the people of Hong Kong. Of course, those people who support Mr LEUNG Kwok-hung must …… As I just said, I also received a lot of emails from his fans. The messages I received on my mobile phone also contained the same wording, and they also came from his fans …… In fact, voting by the Legislative Council on today's motion is about political judgment, just as in the previous case of Mr CHIM Pui-chung. I only hope that Honourable colleagues can use the same yardstick to handle similar incidents in the same manner because as Mr Frederick FUNG has just said, many matters were relative. Assuming that a person holds the view that the mistakes made by Mr CHIM Pui-chung were more serious than those of Mr LEUNG Kwok-hung, and that Mr LEUNG was selfless in his acts, but how can he actually measure which incident is more serious than the other? As all those acts are prohibited by law and incur criminal liabilities, the decision made is essentially a political judgment.

President, I personally object very much the approach of "grabbing necks" used by Mr LEUNG Kwok-hung's group on that particular occasion. Perhaps that person was not Mr LEUNG himself. I also think that that person was not Mr LEUNG because he said just now that he had not done so. Nonetheless, the entire incident has aroused much detestation in society, and I do not want to get the message across that such acts will be regarded as acceptable because Members dare not make a judgment or decision on the matter. Hence, President, I actually agree with the matter. While I personally consider that the matter should be decided after the appeal, I will apply the same standard as used in the previous case of Mr CHIM Pui-chung to handle the present case of Mr LEUNG Kwok-hung if a decision must be made by this Council today.

President, I so submit.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): It is now exactly 10 pm. I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at one minute past Ten o'clock.

Annex I

Protection of Wages on Insolvency (Amendment) Bill 2011

Committee Stage

Amendments moved by the Secretary for Labour and Welfare

Clause	Amendment Proposed
5(4)	In the proposed section 16(2)(g)— (a) in subparagraph (i), by deleting "within the 4-month period immediately" and substituting "not more than 4 months"; (b) in subparagraph (iv), by deleting "within" and substituting "not more than".
5(4)	In the proposed section 16(2)(h)— (a) in subparagraph (i)(A), in the English text, by deleting "his or her" and substituting "the applicant's"; (b) by deleting subparagraph (ii) and substituting— "(ii) subject to paragraph (i), the payment is of an amount not exceeding $10,500; and"; (c) in subparagraph (iii), by deleting "within" and substituting "not more than".
5(5)	In the proposed section 16(3A), by deleting "(h)(ii)(B)" and substituting "(h)(ii)".

Annex II

Lifts and Escalators Bill

Committee Stage

Amendments moved by the Secretary for Development

Clause		Amendment Proposed
2(1)	(a)	In the definition of ***qualified person***, by deleting the Note and substituting—
		"**Note—** For paragraphs (a)(ii) and (iii)(A), (b)(ii) and (iii)(A), (c)(ii) and (iii)(A) and (d)(ii) and (iii)(A)—see subsection (2) which sets out the criteria for determining whether a registered lift worker, registered escalator worker, competent lift worker or competent escalator worker is qualified to carry out any particular lift works or escalator works.".
	(b)	In the Chinese text, in the definition of ***合資格人士***, in paragraph (d)(i), by adding "工程" after "而該".
	(c)	In the Chinese text, in the definition of ***相聯設備或機械***, by deleting "連接" and substituting "相關".
8(2)	(a)	By deleting "level 5" and substituting "level 6".
	(b)	By deleting "6 months" and substituting "12 months".
8(3)	(a)	By deleting "level 5" and substituting "level 6".
	(b)	By deleting "6 months" and substituting "12 months".

9(4) By deleting "level 5" and substituting "level 6 and to imprisonment for 12 months".

10(3) By deleting "level 5" and substituting "level 6 and to imprisonment for 12 months".

10(4) By deleting "level 5" and substituting "level 6 and to imprisonment for 12 months".

11(2) By deleting "level 5" and substituting "level 6 and to imprisonment for 12 months".

16(1) (a) In paragraph (e), by deleting "; and" and substituting a semicolon.

(b) By adding—

"(ea) if the works are works other than those specified in paragraph (e) and any safety component is required for the works, the works are not to be carried out unless the safety component is of a type in respect of which the contractor has obtained approval from the Director; and".

16 By deleting subclauses (2) and (3) and substituting—

"(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 12 months.".

17(1) (a) In paragraph (b), by deleting "; and" and substituting a

semicolon.

(b) In paragraph (c), by deleting the full stop and substituting "; and".

(c) By adding—

"(d) if the works are works other than those specified in paragraph (c) and any safety component is required for the works, the works are not to be carried out unless the safety component is of a type in respect of which the registered lift contractor who undertakes the works has obtained approval from the Director.".

17 By deleting subclauses (2) and (3) and substituting—

"(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".

24 By deleting subclause (8) and substituting—

"(8) A person who, without reasonable excuse, contravenes subsection (1), (2), (3) or (6) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".

25 By deleting subclause (6) and substituting—

"(6) A person who, without reasonable excuse, contravenes subsection (1) or (4) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".

26(2) In the Chinese text, by deleting "如第23條就有關升降機而遭違反" and substituting "如任何人就第(1)款提述的升降機而違反第23條".

26(3) In the Chinese text, by deleting "如第143條就有關升降機而遭違反" and substituting "如任何人就第(1)款提述的升降機而違反第143條".

27(1)(b) In the Chinese text, by deleting "的有效期在完成該項檢驗的日期的首個周年日" and substituting "在完成該項檢驗的日期的首個周年日，即告有效期".

27(2)(b) In the Chinese text, by deleting "的有效期在上一份准用證的屆滿日期的首個周年日" and substituting "在上一份准用證的屆滿日期的首個周年日，即告有效期".

27(3)(b) In the Chinese text, by deleting "的有效期在完成該項檢驗的日期的首個周年日" and substituting "在完成該項檢驗的日期的首個周年日，即告有效期".

28(2) In the Chinese text, by deleting "如第143條就有關升降機而遭違反" and substituting "如任何人就第(1)款提述的升降機而違反第143條".

31(2) By deleting "level 3" and substituting "level 6 and to imprisonment for 12 months".

31(4)(a) In the Chinese text, by deleting "(如被檢控的人是將電力供應重新接回有關升降機的人)" and substituting "如被檢控的人是重新接通有關升降機的電力供應的人，".

32(3) (a) By deleting "level 4" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

34(1) In the Chinese text, by deleting "為安全起見，向升降機的負責人送達命令指示該人採取以下行動是可取的，可作出該命令" and substituting "向升降機的負責人送達命令指示該人採取以下行動，為安全起見屬可取的，可送達該命令".

35(1)(b) In the Chinese text, by deleting "作出該命令是可取的" and substituting "有需要作出該命令".

35(3) (a) By deleting "level 4" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

38(2) (a) By deleting "level 5" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

42(2) (a) By deleting "level 5" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

42(3) (a) By deleting "level 5" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

43(4) By deleting "level 5" and substituting "level 6 and to imprisonment for 12 months".

47(1) (a) In paragraph (e), by deleting ", and" and substituting a semicolon.

(b) By adding—

"(ea) if the works are works other than those specified in paragraph (e) and any safety component is required for the works, the works are not to be carried out unless the safety component is of a type in respect of which the contractor has obtained approval from the Director; and".

47 By deleting subclauses (2) and (3) and substituting—

"(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 12 months.".

48(1) (a) In paragraph (b), by deleting "; and" and substituting a semicolon.

(b) In paragraph (c), by deleting the full stop and substituting "; and".

(c) By adding—

"(d) if the works are works other than those specified in paragraph (c) and any safety component is required for the works, the works are not to be carried out unless the safety component is of a type in respect of which the registered escalator contractor who undertakes the works has obtained approval from the Director.".

48 By deleting subclauses (2) and (3) and substituting—

"(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".

54 By deleting subclause (7) and substituting—

"(7) A person who, without reasonable excuse, contravenes subsection (1), (2) or (5) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".

55 By deleting subclause (6) and substituting—

"(6) A person who, without reasonable excuse, contravenes subsection (1) or (4) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.".

56(2) In the Chinese text, by deleting "如第143條就有關自動梯而遭違反" and substituting "如任何人就第(1)款提述的自動梯而違反第143條".

57(1)(b) In the Chinese text, by deleting "的有效期在完成該項檢驗的日期翌日開始的6個月期間的最後一日" and substituting "在完成該項檢驗的日期翌日開始的6個月期間的最後一日，即告有效期".

57(2)(b) In the Chinese text, by deleting "的有效期在上一份准用證的屆滿日期翌日開始的6個月期間的最後一日" and substituting "在上一份准用證的屆滿日期翌日開始的6個月期間的最後一日，即告有效期".

57(3)(b) In the Chinese text, by deleting "的有效期在完成該項檢驗的日期翌日開始的6個月期間的最後一日" and substituting "在完成該項檢驗的日期翌日開始的6個月期間的最後一日，即告有效期".

58(2) In the Chinese text, by deleting "如第143條就有關自動梯而遭違反" and substituting "如任何人就第(1)款提述的自動梯而違反第143條".

61(2) By deleting "level 3" and substituting "level 6 and to imprisonment for 12 months".

61(4)(a) In the Chinese text, by deleting "(如被檢控的人是將電力供應重新接回有關自動梯的人)" and substituting "如被檢控的人是重新接通有關自動梯的電力供應的人，".

62(3) (a) By deleting "level 4" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

64(1) In the Chinese text, by deleting "為安全起見，向自動梯的負責人送達命令指示該人採取以下行動是可取的，可作出該命令" and substituting "向自動梯的負責人送達命令指示該人採取以下行動，為安全起見屬可取的，可送達該命令".

65(1)(b) In the Chinese text, by deleting "作出該命令是可取的" and substituting "有需要作出該命令".

65(3) (a) By deleting "level 4" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

68(2) (a) By deleting "level 5" and substituting "level 6".

(b) By deleting "6 months" and substituting "12 months".

101(1)(a) In the English text, by deleting "for".

113(1) In the English text, by deleting "either".

115(1)(g) By deleting "Director" and substituting "Registrar".

123 By deleting "considers it appropriate and in the interests of safety" and

substituting "is satisfied that it is consistent with the interest of safety and is appropriate to do so".

124 By deleting "at or above the rank of Assistant Electrical Inspector or Assistant Mechanical Inspector".

147(3) In the Chinese text, in the definition of ***法院***, in paragraph (b), by adding "、法庭" after "法院".

154(2) By adding—

"(ja) provide for the display of notices specified in the regulations, including prohibiting or regulating the removal of, or the obstruction of the display of, such notices;".

158(1) In the Chinese text, by adding "已廢除的" after "提述的".

159(1) In the Chinese text, by adding "已廢除的" after "提述的".

Schedule 1, section 1

(a) In paragraph (v), by deleting "and" and substituting "or".

(b) In paragraph (w), by adding "(other than a safety circuit that contains any electronic component)" before "or safety equipment for the lift".

Schedule 1, section 2

(a) In paragraph (d), by deleting "safety component or".

(b) In paragraph (g), by deleting "and" and substituting "or".

Schedule 7, Part 1, item 4 — By adding ", safety component" after "device".

Schedule 7, Part 2, item 3 — By adding ", safety component" after "drive chain".

Schedule 8, Part 1, section 1 — In the Chinese text, in the definition of ***香港工程師學會***, by deleting "Institute" and substituting "Institution".

Schedule 11, section 1 — In the definition of ***panel***, by deleting "section 109" and substituting "section 108".

Schedule 11, section 2(1)

(a) In paragraph (g), by deleting "5 persons" and substituting "5 laypersons".

(b) In paragraph (h), by deleting "5 persons" and substituting "5 laypersons".

Schedule 12, section 7(4) — In the Chinese text, by deleting "聆訴" and substituting "聆訊".

Schedule 13, section 2 — By deleting subsection (1) and substituting—

"(1) The panel is to consist of the following numbers and categories of persons appointed by the Secretary—

(a) not more than 5 persons nominated by the Hong Kong Institution of Engineers, each of whom is both—

(i) a member of the Institution; and

(ii) a registered professional engineer within the discipline of building services engineering, mechanical engineering, or marine and naval architecture engineering;

(b) not more than 5 persons nominated by the Hong Kong Institution of Engineers, each of whom is both—

(i) a member of the Institution; and

(ii) a registered professional engineer within the discipline of control, automation and instrumentation engineering, electrical engineering or electronic engineering;

(c) not more than 5 persons each of whom is—

(i) a registered lift engineer nominated by an organization which, in the opinion of the Secretary, represents the interests of lift engineers; or

(ii) a registered escalator engineer nominated by an organization which, in the opinion of the Secretary, represents the interests of escalator engineers;

(d) not more than 5 persons nominated by the Hong Kong Institution of Engineers, each of whom is a member of the Institution whose name is in the list of engineers contained in the register kept under section 3(2)(b) or (3) of the Buildings Ordinance (Cap. 123);

(e) not more than 5 persons each of whom is nominated by an organization which, in the opinion of the Secretary, represents the interests of lift contractors or escalator contractors;

(f) not more than 5 persons each of whom is—

(i) a registered lift worker for all kinds of lift works nominated by an organization which, in the opinion of the Secretary, represents the interests of lift workers; or

(ii) a registered escalator worker for all kinds of escalator works nominated by an organization which, in the opinion of the Secretary, represents the interests of escalator workers;

(g) not more than 5 laypersons each of whom is nominated by an organization which, in the opinion of the Secretary, represents the interests of persons carrying on the business of property management; and

(h) not more than 5 laypersons each of whom is—

(i) a member of a management committee, or a new management committee, within the meaning of the Building Management Ordinance (Cap. 344); or

(ii) a person who owns a lift or escalator.".

Schedule 14, section 2(1) By deleting "4 members" and substituting "8 members".

Schedule 14, section 3(1) By deleting "3 board members" and substituting "5 board members".

Schedule 14, section 7 By deleting subsection (1) and substituting—

"(1) The parties to an appeal before an appeal board are the appellant and—

(a) if the appeal is an appeal against a decision of the Director, the Director;

(b) if the appeal is an appeal against a decision of the Registrar, the Registrar;

(c) if the appeal is an appeal against an order of a disciplinary board, the disciplinary board; and

(d) if the appeal is an appeal against a decision mentioned in section 115(1)(l), the person who made the decision.".

Schedule 15, section 2(5)(b)

By adding "unless cancelled or suspended," before "expires".

Schedule 15, section 4(3)

In the Chinese text, in the definition of ***訂明工程***, in paragraphs (a) and (b), by deleting "連接" and substituting "相關".

Schedule 15, section 5(4)

(a) In the definition of ***prescribed period***, in paragraph (a), by deleting "the date immediately after".

(b) In the Chinese text, in the definition of ***有負載訂明檢驗***, in paragraphs (a) and (b), by deleting "連接" and substituting "相關".

(c) In the Chinese text, in the definition of ***訂明檢驗***, in paragraphs (a)(i) and (ii) and (b)(i) and (ii), by deleting "連接" and substituting "相關".

(d) In the Chinese text, in the definition of ***訂明證明書***, in paragraph (f), by deleting "連接" and substituting "相關".

Schedule 15, section 6(3)

(a) In paragraph (a)(ii)—

(i) in sub-subparagraph (B), in the Chinese text, by deleting "連接" and substituting "相關";

(ii) in sub-subparagraph (C), by deleting "engineer" and

substituting "person".

(b) In paragraph (b)(ii)—

(i) in sub-subparagraph (B), in the Chinese text, by deleting "連接" and substituting "相關";

(ii) in sub-subparagraph (C), by deleting "engineer" and substituting "person".

Schedule 15, section 15(3)

In the Chinese text, in the definition of ***訂明檢驗***, in paragraphs (a) and (b), by deleting "連接" and substituting "相關".

Schedule 16, section 4

(a) By deleting "At the end of Schedule 1" and substituting "Schedule 1, after item 115".

(b) By renumbering the proposed item 117 as item 116.

(c) By renumbering the proposed item 118 as item 117.

Schedule 16, section 13

By adding—

"(13) Section 2(1), definition of ***qualified person***—

Repeal the Note

Substitute

"**Note—**

For paragraphs (a)(ii), (b)(ii), (c)(ii) and (d)(ii)—see subsection (2) which sets out the criteria for determining whether a registered lift worker or registered escalator worker is qualified to carry out any particular lift works or escalator works.".

Schedule 16 By adding—

"**13A. Section 2 amended (Interpretation)**

Section 2(1)—

Repeal the definition of *technical institution*.".