

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 2 May 2012

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

IR DR THE HONOURABLE RAYMOND HO CHUNG-TAI, S.B.S., S.B.ST.J.,
J.P.

THE HONOURABLE LEE CHEUK-YAN

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

THE HONOURABLE FRED LI WAH-MING, S.B.S., J.P.

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

DR THE HONOURABLE PRISCILLA LEUNG MEI-FUN, J.P.

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBER ABSENT:

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

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

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

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

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

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

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

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

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

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

MISS ADELINE WONG CHING-MAN, J.P.
UNDER SECRETARY FOR CONSTITUTIONAL AND MAINLAND
AFFAIRS

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Dangerous Goods (Application and Exemption) Regulation 2012.....	55/2012
Dangerous Goods (Shipping) Regulation 2012	56/2012
Ferry Services (The "Star" Ferry Company, Limited) (Determination of Fares) (Amendment) Order 2012.....	57/2012
Fire Services Ordinance (Amendment of Second Schedule) Regulation 2012	58/2012
Police (Discipline) (Amendment) Regulation 2012	59/2012
Prison (Amendment) Rules 2012	60/2012
Government Flying Service (Discipline) (Amendment) Regulation 2012	61/2012
Traffic Wardens (Discipline) (Amendment) Regulation 2012.....	62/2012
Customs and Excise Service (Discipline) (Amendment) Rules 2012.....	63/2012
Dutiable Commodities (Amendment) Regulation 2012	64/2012
Firearms and Ammunition (Amendment) Regulation 2012.....	65/2012
Firearms and Ammunition (Storage Fees) (Amendment) Order 2012	66/2012

Pawnbrokers (Amendment) Regulation 2012	67/2012
Massage Establishments (Amendment) Regulation 2012	68/2012
Genetically Modified Organisms (Control of Release) (Exemption) Notice	69/2012
Legal Practitioners (Amendment) Ordinance 2010 (Commencement) Notice 2012.....	70/2012

Other Papers

No. 89 — Language Fund
Financial statements together with the Report of the
Director of Audit for the year ended 31 August 2011

No. 90 — Vocational Training Council
Annual Report and Financial Report 2010/2011

Report of the Bills Committee on Legislative Council (Amendment) Bill
2012

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Improvement to Employees' Compensation Insurance System

1. **MR WONG TING-KWONG** (in Cantonese): *President, some members of the trade have relayed to me that at present, quite a number of small and medium-sized enterprises (SMEs), particularly those in the transport industry, and so on, face the problems of surging and high insurance premiums, or difficulties in taking out insurance policies when they procure employees' compensation insurance (labour insurance policies). They have pointed out that*

the insurance companies which they used all along ceased to underwrite labour insurance policies due to cost of risks, and other insurance companies also refuse to do so or charge extremely high premium rates; moreover, the number of insurance companies providing labour insurance policies on the market is not enough. They have also pointed out that even though the existing Employees' Compensation Insurance Residual Scheme (ECIRS) might provide the ultimate channel for employers to take out labour insurance policies, employers still cannot afford the insurance premiums, and these problems have significantly increased their operating costs, rendering SMEs difficult to survive. In this connection, will the Government inform this Council:

- (a) whether the authorities will consider relaxing the application criteria of ECIRS, and lowering its premium rates; if they will, of the details; if not, the reasons for that;*
- (b) whether the authorities will consider afresh the setting up of a central employees' compensation insurance scheme; if they will, of the details; if not, the reasons for that; and*
- (c) whether the authorities will launch other specific measures to assist SME employers in dealing with difficulties in taking out labour insurance policies and the problem of high premium rates; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, according to section 40 of the Employees' Compensation Ordinance, all employers are required to take out employees' compensation insurance policies to cover their liabilities under the Ordinance and common law. Otherwise, they shall not employ any employee in any employment. At present, there are around 50 insurance companies which can underwrite employees' compensation insurance. Each insurance company will, taking into account the market conditions and the company's own underwriting guidelines, decide to underwrite employees' compensation insurance for different industries. Insurance companies will also determine premium rates on the basis of risk of underwriting the policies, which is mainly the rate of accident and the amount of claim. However, statistics of the Office of the Commissioner of Insurance (OCI) have shown underwriting losses in the business of employees' compensation insurance

for many years. This is mainly due to fierce competition in the market. Coupled with huge insurance payouts for work injuries, and deliberate misstatement or under-reporting by individual employers in respect of the number of employees, salaries and types of work (for example, misstating high-risk technical staff as low-risk clerical staff), underwriting losses have continued to be registered for many years. Therefore, insurance companies underwriting this type of insurance have to adjust upwards the premium rate to a more reasonable and sustainable level.

My reply to the three parts of the question raised by Mr WONG Ting-kwong is set out below:

- (a) The ECIRS was set up in 2007. Its purpose is to provide assistance to employers who encounter difficulties in taking out employees' compensation insurance through offering them the necessary insurance cover. Employers can participate in the ECIRS if they meet two criteria:
 - (i) Employers have been declined insurance cover by at least three insurers underwriting employees' compensation business, provided that the non-availability of insurance is not by reason of the employer failing to pay premiums due or meet statutory requirements on occupational health and safety imposed as a condition of the grant of insurance; or
 - (ii) Though insurance covers are offered to the employers, the premium rates quoted by insurers are 30% over the corresponding premium benchmark rates of the relevant high-risk industries specified by the Scheme.

If individual employers encounter difficulties in taking out insurance but do not meet the criteria that I mentioned above, the ECIRS Bureau and the Hong Kong Federation of Insurers (HKFI) will also try their best to offer assistance.

As regards the insurance premiums, a discount and loading mechanism is in place to adjust the rates to be offered according to factors like the occupational safety and health performance and risk preventive measures adopted by employers. This discount and

loading mechanism helps encourage employers adopt good occupational safety and health measures to reduce risks at work.

The ECIRS Bureau has drawn up a list of high risk-industries according to relevant information and set the benchmark premium rates of these industries through independent actuaries. The ECIRS Bureau will also review these benchmark rates annually.

Past experiences have shown that the ECIRS has been operating smoothly. Since its establishment on 1 May 2007 to the end of March 2012, the ECIRS Bureau has received 218 applications. Of these, 50 have been provided employees' compensation insurance cover by the ECIRS; 64 are being vetted; two have been withdrawn by the employers; two have been refused as the covers sought do not fall under the category of employees' compensation insurance; and the remaining 100 applications have eventually been offered employees' compensation insurance cover by other insurance companies.

The ECIRS Bureau will improve the operation of the Scheme through practical experience, and will provide proactive assistance to employers encountering difficulties in taking out employees' compensation insurance.

- (b) Currently, Hong Kong's employees' compensation system is based mainly on the Employees' Compensation Ordinance which adopts the system that individual employers are responsible for their own employees. An employer must, in accordance with the requirements of the relevant legislative provisions, take out employees' compensation insurance with an authorized insurance company. This is to ensure the employer's ability to pay employees who are injured at work the compensation as stipulated under the Employees' Compensation Ordinance as well as the compensation awarded by court under common law. The existing system also encourages employers to adopt proactive measures to prevent work accidents, as the premium payable is directly related to their occupational safety and health performance and the measures adopted to reduce risks at work.

At the same time, in order to address public concern over the possible non-availability of employees' compensation insurance cover and the rising premium costs for certain high-risk industries, the ECIRS was launched by the insurance industry in May 2007. The ECIRS acts as a market of last resort to provide assistance to employers who encounter difficulties in acquiring employees' compensation insurance cover.

We think that the existing employees' compensation system, after years of continuous improvements and enhancements, can offer comprehensive and suitable protection to employees. As the establishment of a central employees' compensation insurance system will have far-reaching impact on employers, employees and the insurance industry, we should handle the matter with great caution. Moreover, the current private industry mode of operation is functioning well and the relevant system can better suit Hong Kong's current situation. Therefore, no drastic changes should be made. We will continue to maintain close contact with the relevant stakeholders and institutions in order to ensure better improvement of the current system.

- (c) As regards assisting SME employers to tackle the difficulties in taking out employees' compensation insurance and the high premiums problem, the premium level of insurance companies is determined by adjustments in the free market. Section 26(3A) of the Insurance Companies Ordinance stipulates that the OCI cannot intervene in the premium rates of insurance companies. However, we fully understand the impact of increase in employees' compensation insurance premiums on SME employers. We understand that the HKFI, which represents insurance companies, has all long maintained close contact with representatives or trade associations of different trades and industries to listen to their views. Moreover, the HKFI has striven to enhance their services for the insured, which include the establishment of the ECIRS in 2007. The ECIRS offers assistance to employers who encounter difficulties in taking out employees' compensation insurance through providing them with the necessary insurance cover. The HKFI and the ECIRS Bureau will, where necessary, have meetings with SME

employers and representatives. For instance, they have frequent contacts with the scaffolding, cleaning and recycling industries over the past year so as to strengthen communication among various parties and listen to the demands of different industries.

For example, the transport/logistics, cleaning and recycling industries have earlier on reflected to the Government and the insurance industry that they had encountered difficulties in taking out employees' compensation insurance. After frank and in-depth discussions among the various parties, the ECIRS Bureau agreed to issue short-term insurance policies ranging from three to six months, so as to enable the sectors to have more time to discuss with individual insurance companies on the policy terms and the premium rates. Thereafter, the ECIRS Bureau has also designated these industries as high-risk industries with effect from 1 April this year and appointed independent actuaries to determine the benchmark premium rates, so as to facilitate the employers of these industries to take out insurance policies and estimate the cost of insurance premiums.

Moreover, the HKFI and the ECIRS Bureau will strengthen the communication with the High Risk Group employer representatives with a view to better understanding the operation of the industries concerned. Through enhanced communication, improvements to occupational safety and risk management as well as the keeping of complete salaries records by employers, insurers can more accurately assess the risks concerned for setting the premium rates.

President, I would like to stress that the relevant government bureaux and departments will continue to actively co-operate with the industry to combat illegal activities such as insurance frauds and champerty. The Labour Department will also improve occupational safety awareness and level and prevent accidents through adopting the three-pronged approach of enforcement, training and publicity. Through these efforts, the number of insurance claims will hopefully be reduced, thus giving premium rates room for downward adjustment.

MR WONG TING-KWONG (in Cantonese): *President, it has been five years since the establishment of the ECIRS in 2007 but it has only received 218 applications, among them, 50 applications have been approved, 64 applications are still being vetted, and the rest of the applications have been handled by other means. For this reason, some groups have raised criticism on insufficient consultation and publicity on the ECIRS, little communication, high charges as well as a lot of rules and regulations. Will the authorities consider streamlining the assessment procedures to strengthen the communication with the industry and enhance the publicity?*

PRESIDENT (in Cantonese): Which Secretary will reply? Secretary for Labour and Welfare, please reply.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): We will surely reflect Mr WONG's supplementary question to the ECIRS Bureau. As a matter of fact, we have always reminded the ECIRS Bureau that its work must be people-oriented and user-oriented. Mr WONG has just said that only 218 applications have been received since the establishment of the ECIRS in 2007. In fact, the ECIRS was activated for the first time in August 2011 after its establishment in May 2007. In other words, from 2007 to August 2011, it was not necessary to activate the ECIRS, and 218 applications were received within less than a year since its activation in August last year. This sufficiently proved that the ECIRS Bureau has enthusiastically assisted the employers in need. In respect of publicity, the Bureau has leaflets and a website, and we can definitely ask it to do a better job. We also reflected to the HKFI that they are expected to enhance transparency in this area. They would readily maintain communication with the industry and have frank communications, so that all employers will take out labour insurance policies.

MR IP WAI-MING (in Cantonese): *President, as I have noted, the Secretary has stated in part (b) of his main reply that the existing system is desirable and it seems that there are no problems, and only continuous improvements and enhancements are required. However, in the past few years, labour unions including the Construction Industry Union and many other SME employer groups have complained that they have encountered difficulties in taking out insurance*

policies. In his reply just now, the Secretary said that the ECIRS started receiving applications last August, but we have noticed that the insurance premiums have been increasing. President, I would like to cite the example of an industry. In 2010, the premium benchmark rate of the diving industry was 62.98 but it increased to 82.42 in 2011. Why have employers and employees made so many complaints if this system is operating effectively? Will the Secretary lower the threshold of the ECIRS as Mr WONG Ting-kwong has just mentioned, and use that as a stepping stone for the implementation of a central employees' compensation insurance scheme?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I thank Mr IP for his supplementary question. First, I would like to clarify that the ECIRS has been implemented since May 2007 but it was only activated in August last year; that is, substantive applications were only received in August. While no substantive applications have been received during that period, it does not mean that the ECIRS started receiving applications in August. Actually, the ECIRS has started receiving applications in May 2007. This is the first point I would like to clarify.

Second, perhaps I would say a few words on the central compensation mechanism just mentioned by Mr IP. I also want to ask the Secretary for Financial Services and the Treasury to discuss the technical issues relating to insurance premiums. President, the Panel on Manpower of the Legislative Council had in-depth discussions on the establishment of a central compensation mechanism in 2005; and it was considered after detailed consideration that it was inappropriate for a central system to be implemented in Hong Kong, as I have stated in my main reply. We think that the current mode of operation can meet the demands and have its own merits, and we decided to implement the remaining mechanism, that is, the ECIRS mechanism, on this basis. So, this mechanism has been put in place. After an in-depth study, we found that it is not possible for the central compensation mechanism to operate continuously. One of the reasons, as we had elaborated in detail before, is a lack of risk diversification, and it is not complemented by other types of insurance. There may be financial difficulties when risks are encountered, and premiums will increase under pressure. The second reason is that the central compensation mechanism will only be operated smoothly with the backing of a huge administrative body, hence, the efficiency may not necessarily be more flexible as in the present situation

where there is an element of commercial competition. The third reason is that, if the Government has to set the insurance premium rate on the basis of the underwriting risks, major accident rates and the amounts of claims, there may not be any room for the downward adjustment of insurance premiums. We had already given a detailed account of the above reasons at that time.

Last year, the Secretary for Financial Services and the Treasury explained when he responded to Members at a motion debate that even though it appeared that the central compensation mechanism had merits, there were many obvious risk factors that we had to deal with. I would like to ask the Secretary, Prof K C CHAN, to give supplementary remarks on the insurance premium rates.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I would talk about insurance premiums first. As Members already know, on the whole, insurance premiums have been increasing over a period of time. Information from the OCI showed that the principal reason is that the compensation insurance taken out by employers suffered losses in the past 10 years, with an average loss of around \$400 million each year. As a result, many insurance companies and the insurance industry undertaking the insurance have taken more measures to verify the number of employees and the work types, which has pushed up insurance premiums. This reflected the risks of the industry in undertaking the insurance.

As regards how insurance premiums are determined under the ECIRS, the ECIRS Bureau has identified 22 high-risk industries on the basis of the information provided by the Labour Department, and the insurance premium rates for various high-risk industries as determined by an independent actuary are taken as the benchmark. The ECIRS Bureau will review the benchmark and the list of high-risk industries and its Advisory Committee comprises representatives of employers, employees, the accounting industry, the legal profession, the insurance industry, the Labour Department and the OCI.

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

MR IP WAI-MING (in Cantonese): *President, I have just asked the Secretary if there can be a lower application threshold to allow more people to file applications but it seemed that the Secretary has not answered my question.*

PRESIDENT (in Cantonese): The Secretary has already answered your question.

MR CHAN KIN-POR (in Cantonese): *Even when there is a central compensation system, if an industry has an excessively large number of claims, its insurance premiums will certainly become higher. Otherwise it will be unfair to other employers. So, the root of the problem is why individual industry has such a large number of claims.*

I would like to share my experience. Some 10 years ago, since the labour insurance for the construction industry had serious losses, the insurance premiums increased from 1% of the total project cost to 4%, an increase of more than three times. With joint efforts made by the Labour Department, the construction industry and the insurance industry, improvements have later been made in respect of site safety, occupational safety and health, and the site accident rate; as a result,, the insurance premiums have considerably fallen to less than 1%. Of course, the present problem is much more complicated because there are cases of champerty, defraud and under-reporting of wages.

In the face of the existing problems, will the Labour Department set up a task force to help the industries and the insurance industry deal with these problems and identify solutions, so as to genuinely assist SMEs?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to thank Mr CHAN for his sharing, and he is really an expert in this area. As I have just mentioned in my main reply, we try our best to provide assistance through the three-pronged approach of enforcement, training and publicity. Prosecution is one of our current tasks and the number of prosecution last year was not small; we have to ensure that employers have taken out insurance policies. In 694 cases out of the 750 prosecutions last year, the offenders were convicted and the maximum fine was \$20,000. One employer was sentenced to 120 hours of community service in addition to a fine. Firstly,

we would continue to step up inspection to ensure that employers have taken out insurance, and employers must not report a smaller or larger number of employees in taking out insurance policies because we will conduct inspections to find out how many employees they have employed. Hence, there will be deterrent effects.

Secondly, we will carry out publicity and training thorough various channels, starting with occupational safety and health. The Member has rightly said that past performance is most important for the construction industry. Fewer claims and better records in the past will naturally be reflected in the insurance premiums, which may have upward or downward adjustments. We must put emphasis in conveying this message, hoping to change the whole culture, and employers will ultimately be benefited as insurance premiums can be lowered.

MR TAM YIU-CHUNG (in Cantonese): *President, the Secretary has just said that with the ECIRS, there should not be any problems and only improvements are needed. Regarding high insurance premiums, in the face of competition at present if there is greater competition, should the authorities consider afresh the central employee compensation mechanism? Many foreign places have implemented this mechanism. I had also proposed this mechanism in the 1980s, and some academics in Hong Kong have written books to introduce the relevant experience. Since central compensation mechanism works well in other places and it can enhance competition, should the authorities reconsider this option?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): If Mr TAM remembers, we had discussed this issue at the Legislative Council Panel on Manpower for more than a year, and we finally decided in 2005 to implement the so-called remaining mechanism, that is, the present ECIRS. We found it essential to help the remaining employers who failed to take out insurance policies. The remaining mechanism is very similar to the system in the United States. My colleagues made some proposals to the OCI after a visit in the United States, and the HKFI had really been co-operative; hence, the ECIRS was implemented in 2007. In other words, assistance would be given to employers under the ECIRS who have failed to take out insurance policies, and no employer

has so far failed to take out insurance policies. Let me give an example: as stated in the main reply, among the dozens of approved industries, the scaffolding industry belonged to the high-risk group, but there are over 30 approved employers in the scaffolding industry. The employers who have encountered difficulties in taking out insurance policies and failed to find insurance undertakers can definitely take out insurance policies under the existing mechanism.

Concerning the central compensation scheme, we had detailed discussions before, while we found that there were merits, the risk factors were indeed very high. I will not repeat the points that I have just made. The insurance premiums will become higher under pressure if this insurance is not complemented by other types of insurance. An enormous structure is also needed for the operation of the central compensation scheme, there is no guarantee that it will be more flexible than the present mechanism because the present ECIRS is market oriented. Besides, the effectiveness of the central compensation scheme is not clear. Based on the outcome of our duty visit, the operation of the scheme was not that smooth in foreign countries. Hence, we think that it is most important to be practical and realistic. We must ensure that all employers who fail to take out insurance policies can take out insurance, and the present ECIRS can really play a role as the last resort.

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

Restructuring and Upgrading of Hong Kong Enterprises Engaging in Processing Trade on the Mainland

2. **DR LAM TAI-FAI** (in Cantonese): *President, during his visit to Hong Kong in August last year, Mr LI Keqiang, the Vice-Premier of the State Council, announced the Central Government's 36 measures to support Hong Kong's further development. In respect of the support for the stable development and restructuring and upgrading of Hong Kong enterprises engaging in processing trade on the Mainland, the measures include continuing to maintain a consistent policy on processing trade, promoting the establishment of exemplary zones for restructuring and upgrading of processing trade in the Pearl River Delta (PRD)*

Region, promoting innovative management model, establishing a sound mechanism to facilitate the domestic sales of processing trade, strengthening employment services and guidance, providing financial and insurance support, and encouraging Hong Kong enterprises engaging in contract processing trade to upgrade and restructure. In this connection, will the Government inform this Council:

- (a) apart from the proposal to set up a dedicated fund, whether the Government has taken any follow-up and support action in respect of the content of the aforesaid measures to support the stable development as well as the upgrading and restructuring of Hong Kong enterprises, and of the progress and results achieved so far;*
- (b) whether it will consider allowing Hong Kong enterprises engaging in import processing trade in the PRD Region to submit their claims for depreciation allowances to the Inland Revenue Department (IRD) of Hong Kong in respect of their machinery on the Mainland and to enjoy the 50:50 basis of tax apportionment with a view to complementing the aforesaid measures to support the upgrading and restructuring of Hong Kong enterprises when studying the promotion of the establishment of exemplary zones for restructuring and upgrading of processing trade in the PRD Region on the Mainland; if it will, of the details; if not, the reasons for that; and*
- (c) whether it has studied and assessed the difficulties and obstacles faced by Hong Kong enterprises in upgrading and restructuring and in developing domestic sales market on the Mainland at present; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President,

(a) and (c)

Hong Kong enterprises have a lot of investments in the Mainland, especially in the Guangdong Province. These investments involve different businesses, and many of them are manufacturing operations

in the processing trade. Under the National 12th Five-Year Plan, the Central Government will continue to encourage the upgrading and restructuring of enterprises and to expand domestic demand. During his visit to Hong Kong in August 2011, the Vice-Premier LI Keqiang announced a series of 36 measures supporting the social and economic development of Hong Kong, which cover a wide range of areas including finance, economy and trade. One of the measures is to support and encourage the stable development and upgrading and restructuring of Hong Kong enterprises engaging in processing trade in the Mainland.

The HKSAR Government has been maintaining a close dialogue with the trade through the Task Force to Support the Processing Trade and other channels, so as to understand their concerns and views. To address the needs of the trade, we have been implementing various measures to assist the Hong Kong enterprises in upgrading and restructuring their operations and promoting domestic sales in the Mainland, so that they can capture the massive opportunities brought by the National 12th Five-Year Plan. The concerns of the trade and the measures we have been implementing include:

- (i) Hong Kong enterprises operating in the Mainland have to adapt to changes in Mainland policies and regulations, for example, the adjustment to the minimum wage standard and the implementation of new legislation such as the Labour Contract Law of the People's Republic of China. On various issues of concern to Hong Kong enterprises operating in the Mainland, the HKSAR Government has been maintaining close liaison with the relevant Mainland authorities at central, provincial and municipal levels. Through channels such as meetings of the Committee on Commerce and Trade with the Ministry of Commerce and meetings of the Hong Kong/Guangdong Expert Group on the Restructuring and Upgrading of the Processing Trade with the Department of Foreign Trade and Economic Cooperation of the Guangdong Province, we convey to them the views of the trade and discuss with them measures to support the trade. In addition,

the Trade and Industry Department (TID) and our offices in the Mainland also disseminate information to Hong Kong enterprises through circulars and newsletters and organizing activities such as symposiums and seminars to keep them abreast of various new policies and regulations and the latest business environment in the Mainland. TID's website includes a dedicated page on economic and trade information in the Mainland, with hyperlinks to the economic and trade websites of about 200 Mainland authorities. This platform facilitates Hong Kong enterprises in accessing economic and trade information in the Mainland;

- (ii) The trade requires technical support in upgrading and restructuring their operations and promoting domestic sales in the Mainland. Through organizations such as the Hong Kong Trade Development Council (HKTDC) and Hong Kong Productivity Council, we provide Hong Kong enterprises with support services on technological upgrading, management improvement, branding and market development, and so on, as well as information on the Mainland market;
- (iii) Regarding promoting domestic sales, we understand that the trade needs to understand the relevant markets in the Mainland and also needs a suitable and effective platform to promote their products and brands. In the light of this, we have been organizing promotional activities, trade fairs and trade missions to the Mainland through the HKTDC, with a view to enhancing the trade's understanding of the Mainland's policies and market development. In addition, in 2012-2013, we have made arrangements for our offices in the Mainland to collaborate with trade associations and other organizations to organize a "Hong Kong Week" in a second-tier city under their respective coverage, in order to promote Hong Kong brands and products, and assist Hong Kong enterprises in building up their brand image and brand awareness in the Mainland market; and

- (iv) Recently, the trade has reflected to us that their operating environment has become more difficult due to declining orders as a result of the weakening demand in the international market and rising costs of financing and Renminbi appreciation, which have increased the operating costs of businesses, and the impact is particularly evident on small and medium enterprises (SMEs). In order to provide financial support to the trade, we will continue to assist SMEs in market promotion, acquisition of equipment, upgrading of operational and technical skills, and business restructuring or relocation through the existing funding schemes, including the various SME funding schemes administered by TID. In addition, to further assist Hong Kong enterprises in increasing their competitiveness in the Mainland market, the Chief Executive announced in the 2011-2012 Policy Address the proposal to set up a \$1 billion dedicated fund to assist Hong Kong enterprises in exploring and developing the Mainland market through developing brands, upgrading and restructuring operations and promoting domestic sales in the Mainland. The Government proposes that the dedicated fund should comprise two parts: provide funding support to individual enterprises and to the non-profit-distributing organizations. We have consulted the Legislative Council Panel on Commerce and Industry and plan to seek funding approval of the Finance Committee within this month, with a view to launching the fund by mid-2012.

We trust that through the above measures, we can provide appropriate support and assistance to Hong Kong enterprises in upgrading and restructuring of their operations and promoting domestic sales in the Mainland market.

- (b) The Administration has been facilitating the upgrading of Hong Kong enterprises in the Mainland through various supportive measures to assist them to upgrade their technology, enhance their management, promote and develop their brands as well as open up the Mainland market. Nevertheless, in assessing the profits tax of Hong Kong enterprises which have engaged in processing trade in

the Mainland, the IRD would adhere to the established "territorial source" and "tax symmetry" principles regardless of whether such processing trade is conducted in the exemplary zones for restructuring and upgrading of processing trade in the Mainland. The restriction of section 39E of the Inland Revenue Ordinance (the Ordinance) and the 50:50 basis of tax apportionment are also based on the above taxation principles.

In fact, the Administration has explained to Members of the Legislative Council on a number of occasions that under the "import processing" arrangement, the Mainland enterprises, which are responsible for the Mainland production activities, are independent legal entities. These Mainland enterprises have to pay for importation of raw materials and for installation of production equipment as needed. The finished products belong to the Mainland enterprises and it is their responsibility to arrange for domestic sale or export of their finished products. The Hong Kong enterprises maintain the buyer and seller relationship with their Mainland counterparts. The taxable profits of the Hong Kong enterprises in Hong Kong are derived from their trading transactions. Since the profits derived from the production activities in the Mainland do not belong to the Hong Kong enterprises, IRD would not charge profits tax on the Hong Kong enterprises in relation to the Mainland production activities. Based on the "tax symmetry" principle, depreciation allowances would not be granted for the machinery and plant solely used in the Mainland production activities. According to the "territorial source" principle, IRD could not apportion part of the profits of the Mainland enterprises derived from the production activities and transfer such to the Hong Kong enterprises for assessment of Hong Kong profits tax. Based on the same principle, IRD could not allow the Hong Kong enterprises to enjoy the 50:50 basis of tax apportionment for their profits derived from trading activities. Moreover, if we were to provide in Hong Kong depreciation allowances for the machinery and plant used under the "import processing" arrangement, we would be perceived as encouraging transfer pricing. This would affect the taxing rights of Hong Kong and the Mainland, and Hong Kong would be regarded as a harmful tax competitor.

Individual enterprises make their own commercial decisions on the mode of business operation to be adopted for the purposes of upgrading and restructuring. IRD assesses taxes based on facts and in accordance with the laws.

DR LAM TAI-FAI (in Cantonese): *President, over the past years, I have relentlessly raised different views on the upgrading and restructuring of Hong Kong enterprises and the developing of domestic sales market on the Mainland, and sought government assistance, but only to no avail. As I believe this might be the last oral question that I would raise within my term of office, I must keep up my courageous drive and make another attempt to raise a question about the upgrading and restructuring of Hong Kong enterprises, hoping that the Government will respond. However, the Secretary's reply is once again disappointing. In the reply, the Government simply repeated the same old stuff. President, while the Central Government keeps introducing measures to support Hong Kong's further development, the HKSAR Government has remained unwilling to move forward and has made no further efforts to tie in with or echo those measures. President, how can we clap with just one hand? The attitude of the Government has not only be unworthy of the Mainland's good intention to support the HKSAR Government, but has also placed the development of the industry in an even more difficult position.*

My supplementary question is: what the Government has done has completely detached from the reality. By turning a blind eye to the actual difficulties and hindrances faced by the industry, it failed to keep abreast of the latest development. If it remains in situ and refuses to keep abreast of the times, it is actually running counter to the nation's policies and can be said to be completely derailed

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

DR LAM TAI-FAI (in Cantonese): *..... President, this is my supplementary question. May I ask Secretary Gregory SO to give a simple, concrete and specific reply to the industry on whether the existing section 39E of the Ordinance has dampened the industry's incentives to upgrade and restructure as*

well as develop domestic sales market? If Secretary Gregory SO does not think so, I hope that he can advise me and the industry the legislative intent of section 39E of the Ordinance when it was enacted in 1986.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, as evident from the pretty lengthy main reply, the Government is very concerned about the industry's development of branding and domestic sales market on the Mainland, and much effort has been spent to help the industry upgrade and restructure. Our efforts in this regard are obvious to all. It is also our wish to work with Members and members of the trade, and make use of the dedicated fund to help the enterprises to open up the gigantic Mainland market under the framework of the "Twelfth Five-Year Plan". For the question relating to section 39E of the Ordinance, I will ask Secretary K C CHAN to reply.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Dr LAM Tai-fai for his question. It is indeed very admirable for Dr LAM Tai-fai to raise the same question time and again to follow up actively on the issue. The rationale of this issue, as we have explained before, is very simple. So, I am not going to repeat here. I just want to point out that our tax regime follows the principles of "territorial source" and "tax symmetry". As to how various arrangements would be made under these tax principles to minimize tax payments, enterprises are given a free hand.

Therefore, it is highlighted in the main reply that "Individual enterprises make their own commercial decisions on the mode of business operation to be adopted for the purposes of upgrading and restructuring. IRD assesses taxes based on facts and in accordance with the laws." Take import processing as an example, is the provision of machinery to Mainland enterprises under a rent-free leasing arrangement a commercial decision? As a Hong Kong enterprise may choose to receive rent from the Mainland counterpart for leasing the equipment, the rental income received is definitely the income earned by the Hong Kong enterprise in the Mainland, which is thus subject to tax payment in the Mainland. This is why enterprises must take this into consideration.

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

DR LAM TAI-FAI (in Cantonese): *Apparently, both Secretaries have failed to answer my supplementary question.*

PRESIDENT (in Cantonese): Please repeat the supplementary question which you wish the Secretaries to answer.

DR LAM TAI-FAI (in Cantonese): *My supplementary question is very simple, can the two Secretaries advise members of the trade whether the existing section 39E of the Ordinance has dampened the industry's incentives to upgrade and restructure, as well as develop the domestic sales market on the Mainland? If the Secretaries do not think so, I hope that they will brief us on the legislative intent of section 39E.*

PRESIDENT (in Cantonese): Regarding the first part of your supplementary question, the Secretary for Financial Services and the Treasury has already answered. As for the legislative intent, let me see if he has anything to add.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): The legislative intent at that time was to adopt the principles of "territorial source" and "tax symmetry" as the basis. This can be examined against facts and is in line with the principles of tax assessment.

DR SAMSON TAM (in Cantonese): *President, Dr LAM Tai-fai requested the Government, on behalf of the industrial sector, to look at the issue with a more visionary attitude rather than sticking to an old legislation which will only stifle industrial development. I do not think that the Administration has given a reply and therefore feel pretty disappointed.*

No doubt, it is good for the Government to establish a \$1 billion fund to assist the upgrading and restructuring of enterprises. But how can this

\$1 billion be properly spent? I believe this issue is of grave concern to all members of the trade.

In part (a) of the main question raised by Dr LAM Tai-fai, he asked about the effectiveness and progress of other funds. In reply, the Secretary has highlighted a series of events, including the delegations and "Hong Kong Week", and so on. I nonetheless failed to see any mention of the effectiveness.

My supplementary question is: Has the Secretary or the Government assessed the domestic sales condition of Hong Kong enterprises? Yes or no? Is the relevant figure growing or shrinking?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Dr TAM for his supplementary question. As I have pointed out in the earlier reply, various measures have been put in place to help Hong Kong enterprises. I wish to take this opportunity to answer Dr TAM's question. On the assistance programmes, we have established the funding schemes for SMEs and the Innovation and Technology Fund. On skills upgrading, we have the Research and Development Cash Rebate Scheme. Furthermore, the Government has also undertaken many design projects, such as the Design-Business Collaboration Scheme. We have helped the industry to develop domestic sales market under this multi-pronged approach. Of course, we are moving up the value chain. Under the SME Loan Guarantee Scheme — which is also a standing scheme — the amount of loan approved has reached \$17.7 billion, thereby facilitating the preservation of job opportunities. For the Special Loan Guarantee Scheme, the amount of loan approved has also reached some \$96 billion and has preserved a lot of job opportunities in Hong Kong.

Earlier, I also mentioned that we will help the industry develop the domestic sales market on the Mainland under the dedicated fund. Therefore, we are actually assisting the industry with a multi-pronged approach. Take the "Hong Kong Week" function held last week as an example. It is organized by the trade associations — the Chinese Manufacturers' Association of Hong Kong — after they visited Hubei and Wuhan, and noticed that the Mainland market has very great potential for development

PRESIDENT (in Cantonese): Secretary, you kept talking about the measures, but the Member actually asked if the Government has obtained the sales figures of manufacturers in the Mainland market to reflect the effectiveness of the measures mentioned by you. Can you respond to this question?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Regarding the figures concerned, I will provide in writing after the meeting. (Appendix I)

MR PAUL CHAN (in Cantonese): *President, regarding the upgrading and restructuring of Hong Kong enterprises, I wish to ask the Secretary whether taxation policy will be introduced to support the upgrading and restructuring of Hong Kong enterprises in the Mainland and encourage Hong Kong people to work in the Mainland in respect of the future Qianhai economic zone in the border?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): I thank Mr CHAN for his supplementary question. Qianhai can be said to be a special administrative region within a special administrative region, and all matters are still in the discussion stage. We certainly hope that the Qianhai development can assist the upgrading and restructuring of Hong Kong enterprises (especially high value-added areas), and measures will be introduced to assist the development of Hong Kong enterprises (especially the servicing industry). In this connection, we will closely liaise with the relevant Mainland authorities and hope that the measures can help the development of the industry.

MR WONG TING-KWONG (in Cantonese): *President, I support the views expressed by Dr LAM Tai-fai and Dr Samson TAM on section 39E of the Ordinance. I hope that the Secretary will gain a better understanding of the difficulties encountered by the industry in this regard.*

My question is: Has the HKSAR Government examined the difficulties encountered by the industry in restructuring, upgrading and developing domestic

sales market in the Mainland, and considered engaging consultants to conduct a comprehensive assessment in this regard?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, the HKSAR Government has all along maintained close contact with the industry and the TID has met various chambers of commerce and representatives of the trade from time to time to learn more about the operation of Hong Kong enterprises in the Mainland, including the difficulties encountered in the course of upgrading and restructuring, and in developing the domestic sales market in the Mainland. After listening to their views, we have relayed the matters to the relevant Mainland authorities. For instance, the Permanent Secretary for Commerce and Economic Development (Commerce, Industry and Tourism) has just met some representatives from the chambers of commerce in March to follow up on the latest operation of Hong Kong enterprises in the Mainland. We welcome members of the trade to express views to us in this regard. We hold that good communication between the industry and the Government would enable us to directly receive the industry's views, therefore obviating the need to engage any consultant for this cause.

MS STARRY LEE (in Cantonese): *President, Dr LAM Tai-fai has raised question on this matter time and again, and even I am touched by him. It is precisely because he has asked this question so many times that whenever I met with members of the trade and my accountant friends, we would inevitably talk about and discuss the difficulties encountered when dealing with section 39E of the Ordinance.*

In fact, the issue has many perspectives. Regarding the 50:50 basis of tax apportionment, I can understand if it applies to machinery or industrial equipment. However, the request put forth by the industry is specifically related to moulds. Owing to the production process of Hong Kong enterprises, moulds are sent to the Mainland factories for production. And yet, the moulds actually belong to Hong Kong enterprises and in consideration of the copyright or other concerns, they must be provided by Hong Kong enterprises. Nonetheless, under the existing tax arrangement, these moulds cannot enjoy the original depreciation allowance. May I specifically ask the Secretary if he has considered what can be done to enable the moulds belonging to Hong Kong enterprises to enjoy the

original depreciation allowance? If he has, what is the result? If not, why not?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I have answered similar questions in the Legislative Council before. It all depends on the relations between the Hong Kong companies and their Mainland counterparts. If they belong to different body corporate, the provision of production equipment to the Mainland companies free of charge, mould or other machinery alike, should follow the same taxation principle. We have studied the matter and responded to the Legislative Council, we hold that section 39E of the Ordinance does not apply to moulds in this case.

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

MS STARRY LEE (in Cantonese): *Yes, President, I do not quite agree with his views on the moulds*

PRESIDENT (in Cantonese): Ms LEE, debate is not allowed during the Question session.

MS STARRY LEE (in Cantonese): *Fine. I wish to ask the Secretary to provide us the study on moulds later.*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, we can provide the relevant information for Members' reference. (Appendix II)

MS STARRY LEE (in Cantonese): *Okay. Thank you.*

PRESIDENT (in Cantonese): Third question.

Free Telecast of London 2012 Olympic Games

3. **MS STARRY LEE** (in Cantonese): *President, the London 2012 Olympic Games (the Games) is due to open on 27 July this year. It has been reported that the Hong Kong Cable Television Limited (Cable TV), which has been awarded the exclusive telecast right of the Games, believes that as its free broadcaster licence application has not yet been approved, all the statutory procedures may not be completed in time before the opening of the Games, and as the other two free television broadcasters have so far not discussed proactively with Cable TV issues relating to the telecast of the Games, it is therefore expected that quite a number of competitions of the Games cannot be watched on free television channels. There have been comments that half the number of the people of Hong Kong will be deprived of the chance to watch the Games and there have been criticisms that commercial interest has overridden public interest. In this connection, will the Government inform this Council:*

- (a) *of the latest progress in vetting and approving the three applications for free television programme service licence; whether the Government will, to avoid obstruction to free telecast of the Games, interfere and collaborate with the trade to put forward a contingency plan to allow members of the public to watch various major competitions free of charge; if it will, of the details; if not, the reasons for that;*
- (b) *whether the Government will consider imposing terms and conditions to safeguard public interest when it discusses licence renewal with television broadcasters in the future, so as to ensure that members of the public can watch various major international competitions through live telecast free of charge; if it will, of the details; if not, the reasons for that; and*
- (c) *whether it will examine the feasibility of using public funds to acquire the telecast right for large scale competitions such as the Games; if it will, of the details; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, in general, organizers of international and regional large-scale sports events will, in accordance with their policies and regulations, award the screening or broadcasting rights concerned to the highest bidders, which are qualified media corporations or their affiliated companies. We are aware that a subsidiary company of i-Cable Communications Limited has been awarded the exclusive rights to telecast the Games in Hong Kong. Since the distribution of the broadcasting rights of the Olympic Games is a commercial matter, we will respect the commercial decisions made by the broadcasters concerned. Nevertheless, we have appealed to these broadcasters to take into account the expectations of the viewing public in negotiating the broadcasting arrangements.

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

- (a) City Telecom (Hong Kong) Limited, Fantastic Television Limited and Hong Kong Television Entertainment Company Limited have separately submitted their applications for domestic free television programme service licences. Under the existing Broadcasting Ordinance (BO), the Communications Authority (CA) shall consider applications for a domestic free television programme service licence and make recommendations thereon to the Chief Executive in Council. After considering the recommendations made by the CA, the Chief Executive in Council may grant a domestic free television programme service licence to the qualified applicant.

Earlier on, the Broadcasting Authority (BA) (now known as the CA) completed the assessment in accordance with the BO and established procedures, and made recommendations on the three applications to the Chief Executive in Council. As the outcome of the applications will have profound impact on the domestic free television programme service market, the Government has been processing the recommendations submitted by the BA expeditiously and prudently in accordance with the statutory requirements and established procedures. The outcome will be announced after the Chief Executive in Council makes a decision.

With regard to the broadcasting arrangements of the Games, I must point out that this is a matter completely independent of the domestic

free television programme service licence applications, and thus should be handled separately. As I have said at the outset, the bidding of broadcasting rights of sports events involves commercial decisions. It will thus be most desirable for the broadcasting arrangements to be decided through commercial negotiations. Experience shows that generally when a pay television broadcaster is awarded the exclusive broadcasting rights, it would negotiate a commercial agreement on the broadcasting arrangement with the free television broadcasters before the event. Experience also shows that apart from watching television at home, the public can watch sports events through different means, such as through the Internet and mobile networks, and in different places, such as in shopping malls, pubs and restaurants. The Government will continue to encourage broadcasters to reach a commercial agreement which takes into account the expectation of the viewing public.

- (b) Major sports events are held around the world each year. The broadcasting arrangements of such events are made by the organizers having regard to the nature of the events and the organizers' operational needs. It is therefore difficult to tell which organization will acquire the broadcasting rights of a particular event, whether the organization concerned is a licensee, and whether the rights involved are exclusive. The inclusion of prescriptive clauses in the licence cannot guarantee that the public can watch major international competitions for free. Since the bidding of the broadcasting rights of events involves commercial decisions, we consider it most desirable for the broadcasting arrangements to be decided through commercial negotiations.
- (c) Whether to bid for the broadcasting rights of international sports events is a commercial decision. In general, governments will not directly participate or intervene in such activities, and Hong Kong is no exception. The price for securing the broadcasting rights of a sports event is determined by market forces, and depends mainly on the popularity of the event, the nature of the event, as well as the policy of the organizer. The acquisition of the broadcasting rights of world-renowned and spectacular sports events such as the World Cup and Olympic Games often involves hundreds of millions of

dollars. If the Government were to bid for such rights, the propriety of such use of public funds might be called into question and any adverse effects would need to be considered. Hong Kong prides itself as one of the most liberal broadcasting markets in the region. Government's involvement in bidding for the broadcasting rights of sports events would be regarded as market intervention. Not only would this affect normal market operation, but the Government would also be considered to be competing with the commercial sector. This would undermine Hong Kong's reputation and status as a broadcasting hub in the Asia Pacific region.

MS STARRY LEE (in Cantonese): *President, I recall that in the yesteryears, my classmates and I would earnestly look forward to the quadrennial World Cup and Olympic Games. During the World Cup and the Olympic Games, we would go home immediately after school to watch television. Of course, in those days, there was free telecast, and we could review the highlights of important matches or competitions. At that time, the atmosphere in the whole community would be heated up with the free telecast of the World Cup and the Olympic Games. But it seems that those days were gone forever.*

I am most worried that our future generation, especially young children from families not subscribing pay television services, may not even know when the quadrennial World Cup and Olympic Games will be held, and they cannot watch the Olympic Games and the World Cup at home directly. I think that is a serious regression, an utter regression from the perspective of sports promotion.

The Secretary's reply is very disappointing indeed. All in all, he considered that the matter was a commercial decision, and any actions taken by the Government would be regarded as market intervention. I would like to ask the Secretary: concerning part (a) of the main question, does his reply mean that, even if no free television broadcaster can telecast the Games, the Government will not formulate any contingency plan, so that members of the public can watch the spectacular sports events of the Games free of charge? I ask this question because the Secretary has not replied the question on contingency arrangements.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Thanks to Ms LEE for her concern. I agree that members of the public have expectations in this regard, but as the negotiation, distribution and bidding of the broadcasting rights of these mega sports events are commercial matters, the Government should not get involved and compete with the commercial sector. I have already explained this stance in the main reply.

Nonetheless, last year, that is, in January 2011, the former BA still wrote to the relevant broadcasters, including Cable TV, Television Broadcasts Limited and Asia Television Limited, appealing to them to take into account the expectations of the viewing public in their negotiations. The Government will continue to keep watch on the development of the matter, with the hope that various broadcasters can reach an agreement as soon as possible to facilitate public viewing of the Games.

Of course, the Government is happy to take up the role of a facilitator in this regard if necessary. Nonetheless, I must remind Members that as the authorities are processing the applications for free broadcaster licences, other departments concerned will assist in mediation if necessary, so as to avoid role conflicts or questions on procedural fairness.

DR SAMSON TAM (in Cantonese): *President, I think Members have always respected the long-established mode of business operation in Hong Kong, which also brings along competition to a certain extent. However, looking back to the situation in the past few years, this mode of business operation has not been working well, so that many people have high expectation of the Government's intervention.*

Monopolistic practices have seemingly emerged in the market of Hong Kong. So long as a consortium can pay a high premium and get the telecast rights, it can compel subscribers of other television broadcasters to switch to its services. It seems that this phenomenon is far from healthy. I would like to ask the Government whether it has studied the situation of our neighbours, that is, whether their free television broadcasters likewise cannot telecast the relevant programmes? If such programmes can only be viewed via pay television broadcasters, we can only accept the reality. But if these programmes are

telecast by free television broadcasters in most of these places, will the Government consider changing the existing mechanism?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Thanks to Dr TAM for his question. Dr TAM has just used the word "monopolistic". As we all now, the Competition Bill is now undergoing the legislative process. A judgment on whether the case in point constitutes market monopoly should not be made on the basis of telecast arrangements for a single event; instead, the overall situation should be considered.

Regarding questions about whether the Government will interfere and government practices in other places, past experiences have shown that there is no consensus view on the commercial decisions made by media organizations in this regard. Regarding the enactment of legislation to regulate telecast rights in other countries around the world, relevant laws have been made in the United Kingdom, Australia and Singapore, but not in the United States and Canada. Hence, it is clear that legislation has both advantages and disadvantages. But if Hong Kong should go down the path of legislation, a wide range of issues would be involved, and as I have just said, Hong Kong's status as a regional broadcasting hub would be undermined. Therefore, we have no such plan for the time being, but will continue to keep watch on and make reference to the developments of other countries.

MR CHIM PUI-CHUNG (in Cantonese): *President, my supplementary question may be slightly off the subject of the main question. But as indicated by the Secretary in part (a) of the main reply, the Government is planning to issue three additional free television programme service licences. I recall that some 20 to 30 years ago, Hong Kong used to have a third free television broadcaster, namely, Commercial Television, but it went into liquidation shortly after service.*

My supplementary question is: Has the Government carefully and thoroughly considered the financial soundness and sustainability of the three applicants, so as to avoid repeating the fleeting history of a short-lived television broadcaster some 20 to 30 years ago, which had brought shame to Hong Kong? At the same time, has the Government paid attention to the source of capital of these companies, as well as their political backgrounds and intentions?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): As the applications for free television programme service licences are being processed, I cannot disclose any information in this regard. Nonetheless, regarding the supplementary question raised by Mr CHIM Pui-chung, I would like to point out that our licensing system is very clear. In addition to the relevant provisions under the BA, the CA has issued the Guidance Note for Those Interested in Applying for Domestic Free Television Programme Service Licences in Hong Kong, which sets out various assessment criteria on applications for domestic free television programme service licences, including financial soundness and commitment to investment. Of course, we need to consider many other factors as well, but the factor of financial soundness just mentioned by Mr CHIM has already been included in the Guidance Note.

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

MR CHIM PUI-CHUNG (in Cantonese): *President, I just asked whether this aspect has been considered by the Government, but the Secretary replied that this criterion has already been included in the Guidance Note. However, in case it is eventually revealed that such consideration has not been made, will the Government bear all the consequences?*

PRESIDENT (in Cantonese): The Secretary has already replied.

MR TAM YIU-CHUNG (in Cantonese): *President, when the last World Cup was held, I asked a question similar to that of Ms Starry LEE in this Council. I mentioned that citizens who had not subscribed to pay television services could not watch the World Cup matches, and made a suggestion to the Government for consideration. At that time, the Secretary indicated that consideration would be given to my suggestion, that is, the Hong Kong Jockey Club (the Jockey Club), as the largest charity organization in Hong Kong, should be given the resources to bid for the broadcasting rights, so that it could distribute such rights to all pay and free television broadcasters after it had won the bidding. Then everybody could watch the programmes concerned. However, it seems that nothing has*

been done so far to follow up on this suggestion. I would like to ask the Secretary whether consideration has been given to the viability of this arrangement?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Thanks to Mr TAM for his supplementary question. I have reviewed the relevant records. When Mr TAM last raised the question on the broadcasting rights of the World Cup, he had indeed made enquiry in this regard. I would like to point out that Cable TV has in fact won the bidding for the broadcasting rights of the Games long before that.

Nonetheless, regarding the viability of Mr TAM's suggestion for the Jockey Club to bid for the broadcasting rights, as far as we understand, bidding for the broadcasting rights of such large-scale sports events would generally be undertaken by broadcasters, and these broadcasters must also formulate a broadcasting plan to support their bids. If the Jockey Club is going to bid for the broadcasting rights, it will be up to the organizers concerned whether its bid should be accepted, and whether its bid is the highest among other competitors. As stated by the former Secretary Mrs Rita LAU, we will remain open on the said proposal.

MR IP KWOK-HIM (in Cantonese): *President, regarding the broadcasting of major sports events, the viewing of such events by the general public will play a pivotal role in promoting sports development in Hong Kong. In fact, the Panel on Home Affairs of this Council has already held in-depth discussion on the matter. Hence, the Secretary's reply today, which repeatedly emphasizes the commercial nature of the broadcasting arrangements, as well as the Government's non-intervention in the relevant commercial decisions, has indeed created much adverse impact on the promotion of sports development in Hong Kong.*

I would like to ask the Secretary: While he stated in the main reply that in general, governments would not directly participate or intervene in such activities, he was just referring to the general situation, are there any special cases in this regard? If so, why can't the Government consider adopting the same arrangement? Hong Kong does not lack the financial resources to do, and we can also proceed on a commercial basis. But the question is that it would

require the participation of the Government. Why can't the Government do so? Apart from the general practice, has any other places adopted some different arrangements which Hong Kong can make reference to in serving the purpose?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Thanks to Mr IP for the question. As I just said in reply to Mr TAM Yiu-chung's supplementary question, the decision on whether laws should be enacted to regulate telecast rights must be made after consideration of many factors. In this regard, I also said that relevant laws had been made in the United Kingdom, Australia and Singapore, but not in the United States and Canada, and there was no consensus view in this matter. In other words, when giving overall consideration to the pros and cons of the matter, due regard must also be given to the local conditions.

Hence, as I just said, there are a wide range of issues to be considered in this matter, and we must balance the need for legislation against the special conditions of Hong Kong. In this connection, we will of course continue to make reference to the practices adopted by other countries, and we welcome any views from Members and members of the public.

PRESIDENT (in Cantonese): Fourth question.

Transition of Present Government and Government of Next Term

4. **MS AUDREY EU** (in Cantonese): *President, since his election as the fourth-term Chief Executive, the Chief Executive-elect has openly expressed his views on the governance of the present Government on several occasions, while the incumbent Chief Executive has indicated that he will "work with full dedication until the last second of office". The situation has been criticized by the public as leading to the situations of "two Chief Executives co-existing in one single Special Administrative Region", "the Chief Executive-elect doing the work of the present Government" and "the present Government being turned into a lame duck administration". In this connection, will the Government inform this Council:*

- (a) *given that the Food and Health Bureau indicated on 6 April this year that it had reached a consensus with private hospitals on the quota for admission of pregnant Mainland women whose spouses are not permanent residents of Hong Kong (doubly non-permanent resident pregnant women) giving birth in Hong Kong in 2013, and before the relevant details are announced, the Chief Executive-elect stated in public on 16 April that a "zero quota" should be set for private hospitals in 2013, and that children born locally to doubly non-permanent resident pregnant women would not be guaranteed the Hong Kong permanent resident status, whether the authorities have assessed if it is ultra vires for the Chief Executive-elect to make open comments on the governance of the present Government, and if what he said has caused confusion to civil servants; if an assessment has been made, of the details, if not, the reasons for that; whether the Government has followed up the aforesaid situation in order to restore the morale of civil servants; if it has, of the details; if not, the reasons for that;*
- (b) *given that it has been reported that the Environment Bureau intended to seek funding approval from this Council to construct an incinerator for treating solid waste, yet the Chief Executive-elect cited it as an example to illustrate the importance of the political stratagem of principal officials under the accountability system, whether the authorities have assessed if the related remarks will arouse a feeling among civil servants that the present Government was implicitly satirized and, as a consequence, they are unable to do as well as they would wish at work; if an assessment has been made, of the details; if not, the reasons for that; whether the Government has followed up the aforesaid situation in order to restore the morale of civil servants; if it has, of the details; if not, the reasons for that; and*
- (c) *given that it was proposed in the election platform of the Chief Executive-elect that the number of Policy Bureaux should be changed from 12 to 14 and two posts of deputy secretary be created to co-ordinate inter-departmental policies, but the Secretary for Constitutional and Mainland Affairs has indicated that the present Government has not received any instruction to carry out related work, and I have learnt that some civil servants are worried that a*

substantial re-organization of Policy Bureaux will lead to a multi-layered governing structure and reduced efficiency of governance, whether the Government has followed up the aforesaid situation in order to restore the morale of civil servants; if it has, of the details; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, the current-term Government and the next-term Government share the same objective, that is, to serve the public. In the remaining term of office, one of the important tasks of the current-term Government is to ensure a smooth transition in all areas and to facilitate the Chief Executive-elect to make preparations for the work of the new-term Government, with a view to achieving a seamless transition.

The Administration wishes to reiterate that policy formation and execution is under the purview of the current-term Government until 30 June, while the next term Government will take up the responsibility with effect from 1 July. The current-term Government will seek the views of the Chief Executive-elect on the implementation of any important new policy measure which goes beyond the term of the current-term Government, with a view to ensuring a smooth transition of policies and the least disruption to public services.

The Chief Executive's Office will continue to maintain close liaison with the Chief Executive-elect's Office to co-ordinate the work relating to transition of government.

Under the Civil Service Code, civil servants are required to give their best in serving the Chief Executive and the Government of the day. In a letter issued to all civil servants on 26 March this year, the Chief Executive indicates that the current-term Government will ensure the effectiveness of its governance until 1 July and will give its full support for the transition between two terms of governments. The Civil Service will uphold its fine traditions to support the work of the current-term Government with dedication, loyalty and professionalism. After 1 July, the Civil Service will also make every effort to support the fourth-term Chief Executive and the new-term Government in implementing the policy programmes.

Our replies to the three specific questions raised by Ms Audrey EU are as follows:

- (a) The SAR Government is gravely concerned about the issue of non-local pregnant women giving birth in Hong Kong and has been making every effort to address this issue. It is our established policy to ensure that local pregnant women are accorded priority and are provided with quality service. We will only consider making obstetric services available to non-local pregnant women when we have spare service capacity. Last year, we put forward and implemented a number of measures to further control the number of non-local pregnant women giving birth in Hong Kong. These include capping the delivery places for non-local women in 2012 at the level of 35 000.

As for delivery bookings by non-local pregnant women in Hong Kong in 2013, we had been holding discussions with private hospitals, although a consensus had yet to be arrived at. Since this issue will be carried forward to the next-term Government, we have also maintained communication with the Chief Executive-elect.

The Chief Executive-elect has advised that, as promised in his election manifesto in 2013, private hospitals should cease making delivery appointments for non-local pregnant women whose spouses are not Hong Kong residents before we conduct an overall assessment of the impact their giving birth in Hong Kong may have on our social services, such as medical, maternal and child care, and education services. We appreciate and respect the views of the Chief Executive-elect. Private hospitals have unanimously agreed to cease making delivery appointments for non-local pregnant women whose spouses are not Hong Kong residents in 2013.

- (b) Hong Kong faces an imminent waste management problem which has to be dealt with through a three-pronged strategy including waste reduction and recycling, introduction of modern waste treatment facilities, and timely extension of landfills. Under this three-pronged waste management strategy, the Environment Bureau has been maintaining a dialogue with the Legislative Council and the wider community over the past year. The waste management strategies as proposed by the Chief Executive-elect in his election platform are consistent with our current policy objectives. The Government has also communicated with the Chief Executive-elect

on this issue. Due to the objection of the Legislative Council Panel on Environmental Affairs, the current administration could not proceed further with the procedures in seeking funding approval for the introduction of Integrated Waste Management Facilities Phase 1 and the extension of the three strategic landfills. Yet, we will continue to progressively implement various ongoing waste reduction initiatives.

- (c) The Chief Executive has indicated publicly on 20 April that the present Government will fully co-operate with the Chief Executive-elect in restructuring the next-term Government. In this connection, the Government has set up a working group under the supervision of the Chief Secretary for Administration, and headed by the Permanent Secretary for Constitutional and Mainland Affairs. Members include representatives of the Department of Justice, Civil Service Bureau, Financial Services and the Treasury Bureau, Administration Wing and relevant Policy Bureaux and departments. The working group will provide technical and procedural support, which include:
- (i) amendment of relevant legislation;
 - (ii) creation of posts and application for funding; and
 - (iii) arrangement of office accommodation for the relevant bureau and departments after the re-organization of the Government Secretariat.

MS AUDREY EU (in Cantonese): *President, I have cited three examples in the main question. The first two examples are not much a cause of concern, for society and the legislature have already had extensive discussion about the issues. I also propose in my street banners that quotas for "doubly non-permanent resident pregnant women" should be temporarily stopped.*

President, regarding the issue in part (c), no discussion has been conducted in society. According to the main reply, consultation with the Civil Service has not been conducted. In the past, as in the colonial era, more often than not, policies were carried out by a bottom-up approach, so no great

problems had arisen. However, at present, policies are often carried out by a top-down approach, where the policies are determined at the senior level and handed down for implementation at lower levels. The consultation of civil servants has never been mentioned.

Hence, when I put forth the question in part (c) on the restructuring of the Government — President, you may note from the content of my question that the Secretary has indicated that the present Government has not received any instruction to carry out the related work. However, after I have put forth this question, the Government has come forward recently to indicate that it would assist the next-term Government in shortening the lead time with a view to passing the relevant resolution and funding application before 1 July. Yet, up to now, we have not received any relevant papers enabling us to check the number of persons, ranks, remunerations and benefits, subordinate relationship, distribution of functions or division of work, and so on. No information has been provided. However, we have learnt a lot from the press reports. There are reports that talents will be selected from the Hong Kong Federation of Trade Unions and the Democratic Alliance for the Betterment and Progress of Hong Kong, and that a certain number of political assistants will be employed. Lately, certain names have been reported. But still, we have not received any paper about the restructuring.

I would like to ask the current-term Government how it plans to consult civil servants, for they will definitely be affected. I recall that when we discussed the posts of Political Assistant in 2008, the incident had sparked a big storm, the public had responded vigorously, and this would affect civil servants. Hence, may I ask the current-term Government how it will consult civil servants and the public? How can the authorities expect us to agree with all the amendments before 1 July, irrespective of the number of persons, remunerations and benefits and ranks involved, as well as all other relevant issues? How can we have enough time? How will the authorities consult the public and civil servants?

PRESIDENT (in Cantonese): Which Secretary will answer this question? Secretary for Constitutional and Mainland Affairs, please reply.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I would like to thank Ms Audrey EU for her

supplementary question. Regarding the arrangement for the restructuring of the next-term Government, I wrote to the Chairman on the Panel on Constitutional Affairs last week to ask the Panel to convene a special meeting in early May so that we can explain the specific arrangement in respect of the restructuring, including the various specific issues mentioned by Ms Audrey EU earlier. Later, we learnt that the Panel Chairman has temporarily scheduled a meeting on 9 May. We will definitely submit the relevant papers before that date to the Legislative Council, for Members' reference and discussion. This is the first point.

Secondly, the incumbent Chief Executive announced on the 20 April that he would make every effort to facilitate the work of the Chief Executive-elect in this respect. On that afternoon, I directed the Permanent Secretary of the Constitutional and Mainland Affairs Bureau to immediately set up a working group, members of which mainly include colleagues in the Civil Service at the ranks of Permanent Secretary and Deputy Secretary from the departments I mentioned earlier. In the few days following the 20 April, they had conducted a detailed deliberation of the relevant proposals, and had exchanged views with the Head of the Chief Executive-elect's Office at a meeting convened by the Chief Secretary for Administration. I had also attended that meeting. At the meeting, many colleagues in the Civil Service, particularly Permanent Secretaries and Deputy Secretaries, who have relatively good experience in operation in the past, had put forth a lot of precious views.

I believe when we submit the concrete content about the arrangement to the Legislative Council for discussion next week, the paper will not only reflect the restructuring and co-ordinating proposals set out in the manifesto of the Chief Executive-elect, but will also incorporate the experience and views of incumbent government officials, particularly colleagues in the Civil Service like Permanent Secretaries and Deputy Secretaries, so as to facilitate a smooth arrangement of the restructuring. As for the details, we will give an account of it next week.

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

MS AUDREY EU (in Cantonese): *I asked about the consultation of the public. Up to now, issues relating to the expenditure incurred, who*

PRESIDENT (in Cantonese): You only need to repeat your supplementary question.

MS AUDREY EU (in Cantonese): *the Secretary has not mentioned anything about public consultation. From now till 1 July, how is he going to consult the public about these questions?*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, it may be more appropriate to give a specific account about this issue next week. However, I would like to bring forth a point in reality, that is, the restructuring mainly seeks to provide better support to the next Chief Executive in delivering his policy agenda, particular the work he mentioned in his manifesto. Hence, I believe the main objective of the restructuring is to enable him to better realize his manifesto. This is the first point.

Second, it is stipulated in the existing legislation that the election of the Chief Executive should be carried out on a Sunday, 100 days before the change of term of Government on 1 July. More often than not, during the change of term of the government, the Chief Executive-elect will only have 100 days to prepare. How can he incorporate the views of various sectors during this period? In this connection, I believe the Chief Executive-elect and his team, as well as incumbent government officials, would all like to listen to more views.

I believe the views of Legislative Council Members, who are the representatives of public opinions, are relatively important, which will also be a point of reference to us. We will give a detail account at the Legislative Council next week.

MR ALBERT HO (in Cantonese): *President, the incumbent Chief Executive Donald TSANG said that he will fully co-operate in order to achieve the so-called smooth transition and transfer. Yet, I think the crux of Ms Audrey EU's question today is about co-operation. First, effective governance of the current-term Government should be maintained during its remaining period of time. Second and more importantly, certain constitutional traditions respected by this Council all along should be upheld.*

Members heard earlier that the reform involved the creation of two deputy secretary of departments and the addition of two Policy Bureaux. This is a significant reform, which does not only involve resources, but also policy changes, including changes of the operation of civil servants under the bureaux, as well as the views of society towards the policy changes brought about by the establishment of these Policy Bureaux. This will lead to considerable disputes.

President, my question is straightforward. Even though a smooth transfer of power is warranted, the long-cherished tradition of this Council should be maintained, that is, society should be extensively consulted when significant policy change is involved. According to the practice in the past, for a proposal involving such significant changes, the period of public consultation would at least be two to three months.

Now, I request the Secretary to give a guarantee, he cannot just say that to support the undertakings made by the next Chief Executive in his manifesto Please be reminded that he is not selected by all electors in Hong Kong. You are now doing all kinds of co-ordination and preparation for him with your eyes closed. You should respect the tradition and carry out proper consultation. Will you give this promise and respect the tradition of conducting public consultation?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, regarding the request or question raised by Mr Albert HO, I, being an incumbent government official, am not in a proper capacity to respond. Certainly, if the Chief Executive-elect or colleagues from the Chief Executive-elect's Office need our support in receiving the views of the public, we will definitely be more than willing to do so.

MR ALBERT HO (in Cantonese): *I asked the Secretary whether he would undertake to respect the constitutional tradition which this Council has all along respected. Will consultation be carried out whenever significant issues are involved?*

PRESIDENT (in Cantonese): Do you have any thing to add?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I think I have already replied this question just now.

MR ALAN LEONG (in Cantonese): *President, I notice that in the Secretary's reply to part (c) of Ms Audrey EU's question and her supplementary question, he stated repeatedly that the current-term Government will make every effort to co-operate with the Chief Executive-elect in the restructuring of the Government.*

I think the crux and key of this part of Ms Audrey EU's question is whether the co-operation is provided blindly, mechanically and in a "puppet-like" manner, or whether certain principles will be upheld. In a nutshell, the reply reflects that they do not admit that the current-term Government is a "lame-duck" Government. If that is the case, does the Secretary agree with the repeated remarks of the Head of the Chief Executive-elect's Office, Mrs Fanny LAW, that is, the proposed restructuring this time is of a smaller scale than the one in 2007, so it is not necessary to consult civil servants and the public, and discussion with several Permanent Secretaries will be sufficient? As the current-term Government is not a lame-duck government, will the Secretary accept every proposals, and — according to his reply — provide full co-operation and work accordingly without any doubt? I would like the Secretary to state clearly.

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, as I have explained in my earlier reply, on 20 April, the Chief Executive announced that the current-term Government would fully co-operate with the work in this respect. We then made immediate arrangement to follow up the relevant work and exchanged views with the Head of the Chief Executive-elect's Office. Regarding the initial proposals put forth by the Chief Executive-elect's Office, incumbent government officials and colleagues in the Civil Service had shared their experience in the operation over the past few years and put forth some counter-proposals to examine the need for adjusting the restructuring. I believe that in the paper we are going to submit to the Legislative Council for discussion next week, as I said earlier, the specific contents will touch on the arrangements to be made to the structure which the Chief Executive-elect considers conducive to the implementation of the various measures proposed in his manifesto, and the insights, experience and views on operation expressed by colleagues in the current-term Government will also be incorporated.

In this connection, we have had discussions and adequate communication in the past dozen of days, striving to get the job done properly. Officials and colleagues of the Civil Service of the current-term Government have experience in operation. Moreover, we are now handling many relevant policy issues, so we have our views about the supportive arrangement on the structure. I believe the Chief Executive-elect and colleagues of the Chief Executive-elect's Office will incorporate our views properly.

MR ALAN LEONG (in Cantonese): *The Secretary has not answered my supplementary question. My supplementary question is related to the remark of Mrs Fanny LAW who said that the restructuring in 2007 was of a larger extent than the present restructuring, thus it was not necessary to consult civil servants and the public. As an official of the current-term Government, does the Secretary agree with this? He has not answered this question.*

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, from next week onwards, we will commence the discussion on the restructuring proposal with the legislature. Regarding the approach to incorporate views of other sectors or members in society, the Chief Executive-elect will give consideration, particularly after listening to the views expressed by Members today. As I have reiterated earlier, if the Chief Executive-elect and colleagues form the Chief Executive-elect's Office would like the current-term Government to co-operate in this respect, we are more than willing to do so.

MS CYD HO (in Cantonese): *President, there is no mechanism or framework for the transfer of power in Hong Kong at present. As the new Government does not have to shoulder political accountability at the moment, it only appoints a Head of the Chief Executive-elect's Office to brief us of the proposal, leaving the current-term Government, the "sunset government" to take up the blame.*

May I ask the Secretary how you will "work with full dedication until the last minute of service" so to safeguard the rights of the public to express their views? For such an important restructuring, the authorities have only consulted certain political organizations and groupings, but not civil servants and the

public. Are you working with full dedication until the last minute of service to safeguard the rights of the public, or are you depriving them of their rights?

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, I think Ms Cyd HO does not have to jump to a premature conclusion in this respect. Over the years in the past, both before and after the reunification, the structure of the Government had undergone several times of restructuring. The objectives of the restructuring were to support the delivery of governance or to make adjustment to the structure in response to the priorities of certain policies. As I said earlier, the concept of restructuring is certainly proposed by the Chief Executive-elect and the Chief Executive-elect's Office, where the incumbent Chief Executive and his governing team will undertake to co-operate. I have stated earlier that if it is necessary to gauge the views of various sectors, I think the Chief Executive-elect's Office will hear the views expressed by Members today. When co-operation of the current-term Government is needed, we are willing to do so.

PRESIDENT (in Cantonese): This Council has spent 23 minutes on this question. Fifth question.

Sea Burials

5. **MR WONG YUNG-KAN** (in Cantonese): *President, in recent years, some members of the public choose to handle the cremated ashes of their deceased relatives by scattering the ashes at sea (sea burial), and the Food and Environmental Hygiene Department (FEHD) has also designated a number of sea burial locations for members of the public to scatter ashes legally. However, as some of the designated locations are close to the Tung Lung Chau marine fish culture zone, the fishing community is concerned that the ashes and offerings may spread to their marine fish culture zones and fishing grounds, thereby polluting the marine produce and affecting the health of the public. In this connection, will the Government inform this Council:*

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

- (a) *whether the Government will conduct detailed research and assessment to find out if there are residual germs or other pollutants in the ashes scattered at sea, and assess the health risk members of the public are exposed to in consuming marine produce contaminated by ashes, so as to address public concern;*
- (b) *whether the Government will conduct a study to remove the waters east of Tung Lung Chau from the list of designated sea burial zones and identify other waters (for example, the waters east of the Ninepin Group) far away from fisheries activity zones for conducting sea burials; and*
- (c) *given that the Government does not comprehensively monitor the sea burial services provided by private operators at present, and only relies on the self-discipline of the industry, whether the Government will consider introducing measures to prevent such operators from scattering ashes at waters outside the designated zones, and dumping the offerings or ash containers at sea which will pollute the waters?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, the Government encourages the scattering of cremated ashes of the deceased at sea or in Gardens of Remembrance, as this helps promote the disposal of cremated ashes of the deceased in a more sustainable way and is in line with some people's choice for returning cremated human ashes to the embrace of nature. In 2011, the FEHD processed about 660 applications for scattering of cremated ashes of the deceased at sea, representing 1.7% of all cremation cases in the year. The scattering of ashes which have been cremated at high temperature at sea does not pose any threat to public health. Besides Hong Kong and the Mainland, scattering of cremated ashes at sea has been practised in other parts of the world like Korea and Taiwan. This approach is environmental-friendly and can facilitate sustainable development under limited resources. Furthermore, it offers an additional choice to the public.

Since January 2010, to further encourage the scattering of cremated human ashes at sea, the FEHD has been providing free ferry services. In mid-January 2012, the FEHD has enhanced its services by employing a bigger vessel to offer a

more stable and comfortable sea voyage. A funeral director will also be on board to assist family members in the memorial ceremonies.

The reply of the Food and Health Bureau to the three parts of the main question raised is as follows:

- (a) With the cremation at high temperature of 850 degree Celsius, the main contents left in the human ashes are inorganic phosphorus and calcium which do not carry any pathogens. They are therefore innocuous to the health of human and marine products. Hence, even marine products have been in contact with the ashes, consuming them will not pose any harmful effect to human and there should not be any public health concerns.
- (b) Currently, there are three designated areas for scattering of cremated human ashes at sea, namely east of Tap Mun, east of Tung Lung Chau and south of West Lamma Channel. The above areas were selected in consultation with relevant government departments, including Marine Department, Environmental Protection Department (EPD), Agriculture, Fisheries and Conservation Department (AFCD) and Leisure and Cultural Services Department (LCSD), and so on. In selection of the above areas, the Administration has considered and assessed various factors in detail with an aim to minimizing the impact on the surrounding environment (including fish culture zones). We have also consulted relevant District Councils. The FEHD, being the implementation agent, has been closely monitoring the operation of the scattering of cremated ashes at sea and will review the situation if necessary. Since end-January 2011, due to the rough sea condition during winter times, the FEHD will only visit the east of Tung Lung Chau for scattering of cremated ashes during summer times (that is, April to September). The FEHD will continue to closely monitor the situation and take appropriate actions. Relevant departments have not observed any significant impact on the surrounding environment after the implementation of scattering cremated ashes at sea.
- (c) At present, apart from taking the FEHD's free ferry services, the public can arrange their own vessels for scattering of cremated human ashes at sea with prior approval from the FEHD. The FEHD has imposed stringent requirements on the scattering of

cremated human ashes at sea and after consulting relevant departments, the FEHD has stipulated a set of conditions for approval which cover the specified time and location, as well as other requirements to be observed. The conditions clearly require that scattering of cremated human ashes shall only take place within the approved area and only the cremated ashes of the deceased and a handful of natural flower petals can be thrown into the sea. No food, ritual offerings or any other object shall be thrown into the sea. Furthermore, in case other fishing vessels, and so on, are present within the approved area, the scattering of cremated ashes should be conducted away from the vessels, or in case dolphins are present within the approved area, the scattering of cremated ashes should be conducted after all dolphins have left. After granting an approval, the FEHD will inform relevant government departments, including the Marine Department, EPD, AFCD and LCSD, and so on, so that they can carry out appropriate monitoring and enforcement actions in accordance with their mandates and having regard to the circumstances.

MR WONG YUNG-KAN (in Cantonese): *Deputy President, given that a bigger vessel has been employed by the Government since 2011 for providing sea burial services, why sea burials still have to be carried out in waters near Tung Lung Chau but not in more distant waters? Despite that sea burials will only be carried out in the aforesaid waters during April to September according to the Government's reply, many fishing vessels actually fish in the aforesaid waters in those months. Will the Government seriously consider changing to other locations for sea burials?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, as I have just said, we have to consider several factors. To begin with, if our ferry service is engaged for carrying out sea burials at a certain Saturday, we will have to consider how long the sea voyage will take. As Members may be aware, families opted for scattering cremated ashes at sea generally do not wish to have a long ferry voyage. The ferry can now accommodate up to 25 families. If these families have to travel to distant waters to scatter cremated ashes or the condition of the designated waters is very rough, the families may have a very hard time. We wish to make the ferry voyage as comfortable for them as possible.

The existing ferry is already larger than the previous one, but its body still rocks a lot if it sails to distant Hong Kong waters, particularly when the sea condition is rough. If Members have ever gone to places such as Ninepin Group, they should know that the waters there are very rough and people can get seasick or even vomit. Hence, under such circumstances, we will have to strike a balance. At present, cremated ashes will only be scattered into the sea if the ferry is away from other vessels or away from locations where fishing activities are in progress. We hold that the present arrangement is appropriate.

Certainly, we will take into consideration the upcoming development as we plan to increase the ferry schedule in the latter half of this year, so that more people can use this service. If the number of service users increases, we will certainly consider whether we should locate more designated sea burial zones.

MR FRED LI (in Cantonese): *Deputy President, not long ago I went to the Mainland and I note that the same problem exists there. Burial places can be very expensive and each burial place may easily cost several tens of thousands of Renminbi. Local governments, such as those of Dalian, Beijing and Shanghai, provide subsidies for people to arrange their own vessel to scatter cremated ashes at sea.*

The Hong Kong Government now only provides this service in two calendar days each month and the number of application processed is only 660, which is far too low; and the number of application is getting lower, rather than higher. Will the Government increase the number of calendar days for the sea burial service? If the authorities wish to encourage this policy, they should draw reference from the practice in the Mainland and provide cash subsidies for the people. Given that the Government allows people to arrange their own vessel for scattering cremated ashes at sea, whether it will consider providing cash subsidies as an incentive for people to duly follow the requirements on sea burials laid down by the authorities? Besides, the authorities should find a few more locations for sea burials.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, in the past two or three years, the number of people using this service has increased. The service is free. As I have just said, we are considering stepping up the service in the latter half of the year. The service is now provided on two

Saturdays each month, and we plan to increase the service frequency to three Saturdays each month, so that more ferry trips can be provided for families to choose from. Depending on the number of applications received, the Government will then make adjustments on the service frequency. If this arrangement can secure increasing support, we will further step up the service.

In respect of providing cash subsidies for families as an incentive, we must consider it prudently. I believe the main concern of these families is not money, but rather, they wish to respect the wish of the deceased or they wish to handle the ashes of the deceased in a respectful way.

MR IP KWOK-HIM (in Cantonese): *Deputy President, the Secretary has highlighted just now in his reply that a number of factors would be taken into consideration in selecting a location, including the distance, sea conditions, as well as whether it will have a negative impact on the fisheries industry.*

Given that at present, sea burial service is not provided by the private sector, if such private services are to be launched, may I ask whether there will be a specific licensing system? Moreover, apart from the existing sea burial locations, whether the scope of locations can be expanded to provide more options?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, as I have just said, the public can now arrange their own vessel to scatter cremated ashes not conducting sea burial of a deceased body but scattering of ashes because the body has already been cremated At present, the public are required to scatter cremated ashes at the three designated locations. In formulating this policy, we have consulted different stakeholders, including the relevant District Councils. They are of the view that if families are allowed to scatter cremated ashes anywhere they wish, monitoring would be difficult and the scattering of ashes may also have adverse environmental impact or even psychological impacts to residents in the area. Hence, we consider that the present arrangement of scattering cremated ashes at the three designated waters is appropriate.

Certainly, if there is increasing public support for handling cremated ashes by sea burials, we will consider providing more locations. We may consult the

District Councils on providing more suitable sea burial zones for people to choose from. However, I hope Members would understand that the three locations are already very distant from human habitation. Let me briefly say that the ferry trip to the waters east of Tung Lung Chau takes two to three hours; the ferry trip to West Lamma Channel takes almost four hours and the ferry trip to the waters east of Tap Mun takes even longer. In this regard, we also need to take into consideration the feelings of the families and how they would feel on the day of sea burial. If the sea is very rough, it may also have an impact on the families because elderly people taking a ferry ride may feel unwell. I do not wish to see this happen.

MR WONG YUNG-KAN (in Cantonese): *Deputy President, as the authorities now permit people to conduct sea burials by their own vessel, some fishermen found ash containers in their trawl nets. Hence, the fishing community is very concerned that people who have rented a private vessel to scatter cremated ashes at sea may recklessly discard ash containers into the sea without reaching the designated waters when the sea condition is rough. In this connection, may I ask the Government whether there is any regulatory measure to monitor sea burials conducted by private vessels and what the defining criteria are? While large vessels, such as the ferry used by the Government, are equipped with a global position system which enables the authorities to know the location of the vessels, other vessels may not have such a system, how do the authorities monitor these vessels? Moreover, it is impossible for the authorities to know at which part of the sea these vessels have discarded the ash containers, not until these containers are dredged up by fishermen. Hence, should the Government formulate some mechanism to put private sea burials under its scope of monitoring?*

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, as I have mentioned in the main reply, the public can arrange their own vessels for scattering of cremated ashes at sea with prior approval from the FEHD. The approval will provide the specified location and time. We will inform the Marine Department when necessary of the time and location of sea burial carried out by private vessels. We have also laid down certain conditions, for instance, only cremated ashes of the deceased and a handful of natural flower petals can be thrown into the sea and other objects are forbidden to be thrown into the sea.

Generally speaking, very few people will throw the ash container into the sea. It is hard to know whether this would really happen as the general practice now is that only the cremated human ashes are scattered into the sea. There are two ways of ashes scattering. First, the ashes are orderly slid into the sea through a chute like a slide; or second, the ashes are thrown into the sea in a water-soluble bag which will dissolve in about half an hour without leaving any residue in the sea and the ashes will be dissipated by the water. I believe it is disrespectful to the deceased if the ash container is also thrown into the sea. I hope Member can understand this. If fishermen or anyone encounters such incidents, I hope they can inform us so that follow-up work can be done.

MR WONG YUNG-KAN (in Cantonese): *Deputy President, this is exactly what we have encountered*

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

MR WONG YUNG-KAN (in Cantonese): *I ask the Secretary how regulatory actions will be taken because we notice that some problems are beyond the monitoring of the authorities, including the fact that it is impossible for the authorities to confirm whether these vessels have scattered the ashes at the designated locations.*

DEPUTY PRESIDENT (in Cantonese): Mr WONG, please sit down. Secretary, Member's question focuses on how the authorities will take regulatory actions.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): The incident mentioned by Mr WONG may be encountered by them. If they have any specific witness or evidence, I hope he can provide us with detailed information so that the relevant departments can follow up.

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

Liberal Studies Curriculum Support Grant

6. **MR CHEUNG MAN-KWONG** (in Cantonese): *Deputy President, quite a number of principals and teachers have relayed to me that they are not satisfied with the Education Bureau ceasing to disburse the Liberal Studies Curriculum Support Grant (LS Grant) at the amount of \$320,000 per school with effect from this September. They have pointed out that as the LS Grant is mainly used for hiring teaching assistants (TAs) to develop school-based teaching materials, and so on, it is anticipated that around 1 000 TAs who are conversant with school practices on Liberal Studies (LS) will be laid off, affecting the effectiveness in teaching achieved by schools through their utilization of the LS Grant, and in turn further increase the workload of the LS subject teachers. They have also pointed out that as LS has been introduced for just a short period of time and without a solid teaching foundation, the LS subject teachers are still exploring and adapting to the scope or level of difficulty of the curriculum, and are very much in need of manpower support. They worry that reduction in or cessation of the LS Grant right at the beginning of the 2012 academic year will further add to the already heavy workload of teachers. In this connection, will the Government inform this Council:*

- (a) *how the authorities address the demand of principals and teachers for the LS Grant; whether they have assessed the impact on schools and subject development to be brought by the cessation of the LS Grant at the critical moment when the New Senior Secondary (NSS) academic structure has just completed its first cycle of teaching and assessment; whether they will consider extending the LS Grant or providing additional recurrent funding or permanent teaching posts, so as to enable the healthy development of LS and relieve the workload of the LS subject teachers;*
- (b) *apart from the LS Grant, whether the authorities have provided any recurrent or non-recurrent funding or grant for other core subjects newly created under the NSS academic structure; and*
- (c) *of the respective names, uses, years of first disbursement, annual amount received by each school, as well as each item of government expenditures incurred in respect of the various recurrent or non-recurrent funding or grants provided by the authorities for the*

implementation of the NSS academic structure; among them, the non-recurrent funding or grants of which the authorities plan to cease or reduce, or have at present already ceased to disburse or reduced the amount provided, when the cessation or reduction in amount provided will be or have been made, as well as the rationale for ceasing to disburse or reducing the amount provided in the particular year concerned; the anticipated impact on the manpower of teachers or supporting staff; whether any comprehensive assessment and consultation with schools will be conducted in the light of teachers' current workload, the actual teaching needs and impact on students' study before ceasing to disburse or reducing the amount of the funding or grants concerned?

SECRETARY FOR EDUCATION (in Cantonese): Deputy President,

- (a) The Education Bureau provided a one-off LS Grant of \$320,000 to each government-aided secondary school in the 2010-2011 school year for a period of two years to enable schools to create, at the initial stage of implementing the new academic structure, favourable conditions for the introduction of LS so as to lay a sound foundation for its future development. Schools can decide for themselves allocating various financial resources and manpower to any subject, including the LS subject.

We understand that the utilization of the LS Grant by schools is lower than expected. As at April 2012, among the 294 aided secondary schools which submitted the annual accounts for 2010-2011, 92 (about 31%) recorded an unspent balance of 70% or above in the 2010-2011 school year while 33 (about 11%) did not use any of the grant.

As most schools do not fully utilize the LS Grant, the Education Bureau has proposed to extend the grant for a year till 31 August 2013 so that schools which have unspent balance will have more time to use the grant. If necessary, schools may also apply for additional LS Grant for use before 31 August 2013. The Education Bureau will consider the applications in the light of the situation of

individual schools, including their use of the LS Grant and financial position.

- (b) Apart from LS, the Education Bureau has not provided any recurrent or non-recurrent funding or grant for other NSS core subjects under the new academic structure.
- (c) The report *The New Academic Structure for Senior Secondary Education and Higher Education — Action Plan for Investing in the Future of Hong Kong* (Education and Manpower Bureau, 2005) set out the plan for implementing the new academic structure in senior secondary education in 2009. The Education Bureau provided additional resources to enable schools to adequately plan and prepare at an early stage for the implementation of the NSS curriculum. In addition to improving the teacher-to-class ratio, we also introduced a series of support measures including various grants (please see Annex for details).

Of the grants mentioned, the Teacher Professional Preparation Grant, the NSS Curriculum Migration Grant and the LS Grant are non-recurrent in nature. While the first two grants, which ceased to be disbursed after the 2008-2009 school year, aimed to help schools prepare for the implementation of the NSS curriculum and meet the start-up expenses, the one-off LS Grant aimed at providing additional resources at the initial stage of introducing the LS curriculum thereby helping to lay a sound foundation for its future development.

In addition, as reflected from the audited annual accounts, schools in general have adequate financial resources. They may flexibly deploy other grants. We stress that should schools have difficulty meeting their learning and teaching needs from school funds or operating reserves, they could contact the Education Bureau which would consider their situation on a case by case basis. Moreover, the Education Bureau will continue to provide a wide range of professional development programmes, learning and teaching materials and school-based support services to facilitate the smooth implementation of the NSS curriculum.

Various Grants provided by the Education Bureau for the
Implementation of the NSS Curriculum

(1) *Teacher Professional Preparation Grant (TPPG)*

A TPPG was provided to schools in the 2005-2006 to 2008-2009 school years to enable schools to release teachers to undergo professional development. Depending on the number of classes, the grant ranges from \$100,000 to \$500,000. Schools may keep the balance of the TPPG until the end of the 2011-2012 school year. As at the end of March 2012, the total expenditure on the TPPG was around \$813 million.

(2) *New Senior Secondary Curriculum Migration Grant (NSSCMG)*

The NSSCMG disbursed in the 2006-2007 to 2008-2009 school years provided schools with a grant that ranges from \$30,000 to \$110,000, depending on the number of classes. Schools may keep the balance of the NSSCMG until the end of the 2011-2012 school year. Schools with financial difficulties may also apply for an additional NSSCMG, subject to a ceiling of \$300,000. As at the end of March 2012, the total expenditure on the NSSCMG was about \$137 million.

(3) *Enhanced Senior Secondary Curriculum Support Grant*

The Education Bureau advanced the disbursement of the Senior Secondary Curriculum Support Grant (SSCSG) by one year in the 2008-2009 school year and enhanced the SSCSG during the four-year transitional period (that is, from 2008-2009 to 2011-2012 school years) by increasing the rate of the grant from a cash provision equivalent to 0.1 Graduate Master/Mistress (GM) to 0.15 GM per NSS class. The SSCSG received by each secondary school offering the NSS curriculum in the 2008-2009 to 2009-2010 school years was at least equivalent to the mid-point salary of a GM. Starting from the 2012-2013 school year, this recurrent grant will be disbursed at its original rate, that is, the provision will be equivalent to 0.1 GM per NSS class. The SSCSG received by a school operating 15 NSS classes in the 2011-2012 school year was about \$1 million. As at the

end of March 2012, the total expenditure on the SSCSG was about \$965 million.

(4) *Diversity Learning Grant (DLG)*

Apart from the LS Grant that I have just mentioned, starting from the 2009-2010 school year, the Education Bureau has provided, upon application, a DLG to schools to support their offer of a diversified curriculum, including Applied Learning (ApL) courses, Other Languages courses (for example, French, German, Hindi) to cater for students' different learning needs under the NSS curriculum. To alleviate the financial burden of schools, the Education Bureau has reviewed the funding arrangements of the DLG for ApL courses and increased the rate of the DLG starting from the third cohort (that is, the 2012-2014 cohort). As at the end of March 2012, the total expenditure on the DLG was about \$136 million.

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, first of all, I would like to give my regards to the Secretary and wish him good health.*

According to the main reply, the LS Grant is the only grant which will be extended for a year for the implementation of the NSS curriculum. The other three grants in respect of curriculum and teacher professional preparation will all be ceased in 2012. Meanwhile, as there is no matriculation stream under the NSS academic structure, more teachers will be laid off accordingly. I have received complaints from some larger schools which have five classes, saying that they have to lay off a total of seven teachers and TAs this year. As for some smaller schools which only have three classes, their situation is even worse as they have to cut classes.

With staff reduction and cutback in grants, schools are likely to lay off more than 2 000 teachers and TAs this year. The double blows of adding insult to injury and removing the bridge after crossing the river have seriously affected school morale; the pressure and unrest resulted can be well imagined. Will the Government consider ceasing the reduction of grants? Or will it consider converting these grants into recurrent grants or increasing the number of permanent teaching posts, so that the implementation of the NSS academic structure can proceed to phase two smoothly?

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, I think Mr CHEUNG must have known that, before the implementation of the NSS academic structure, we had already considered the workload of teachers and hence had provided provisional grants for different specific aspects on a one-off basis. These grants are not recurrent in nature; all of them are time-limited. At that time, we thought that assistance in the form of grants will allow schools to deploy their manpower. One should be aware that these grants are time-limited.

Regarding the LS subject under the NSS curriculum, which is the issue of our present discussion, I have stated in the main reply that, as shown in the school accounts, about 75% of schools have spent less than half of their grants. It means that schools still have resources in hand. We learn from the accounts that the situation is not, as claimed by the schools, that they do not have sufficient funds or they have difficulties in recruitment. As a matter of fact, many schools have not made use of their grants after such a long time. Therefore, we do not think it is necessary to provide additional grants to schools for this purpose.

I acknowledge that some schools have almost exhausted their grants. Yet, in the main reply, I have already stated that they may apply for additional grants if necessary. We will announce the details of application in due course. Schools may submit their applications before July, and we will announce the application results by the end of this August.

MR CHEUNG MAN-KWONG (in Cantonese): *Deputy President, the Secretary has, in his main reply and response, stated that as schools have not fully utilized their grants, the use of the unspent balance is thus extended for a year. However, this arrangement is unfair because the grant was only granted after the school term ended, and hence many schools might not be able to make use of the grant in the first year. Furthermore, since the grant is allowed to be used for a period of two years, some schools may have planned to utilize most of the grants in the year when the Diploma of Secondary Education Examination is introduced. Yet, the Secretary only provides the data of the first year but not those of the second year. In any case, many schools have already exhausted their grants.*

In the main reply, the Secretary has stated that schools may apply for additional grants if they have really exhausted their grants, and that the Government will consider their applications in the light of the financial situation of individual schools. Does it mean that, for schools which have abundant

reserves, the Government may not necessarily provide them with additional LS grants and they will have to make use of their own reserves? Will it be unfair to schools with reserves?

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, what I mean is that when we process the applications of schools, the amount of school reserve will be one of our considerations. Of course, many schools do not have much reserve. We have set our benchmark at the level of six months' operating expenditure. If a school has a reserve more than its six months' expenditure, it will be considered as financially sound; if not, its application may be worthy of our consideration. The amount of school reserve is one of the factors, rather than the only factor, that we will consider.

MS CYD HO (in Cantonese): *Deputy President, the Education Bureau often tells us that (Member moved her microphone) Deputy President, the Education Bureau often tells us that we have to "teach students according to their aptitude", and it has thus provided grants to schools for language teaching. While some schools have exhausted their grants to meet their own needs, some have an unspent balance of 70%, some even have not utilized the grants at all. Now that the authorities cease the grant to all schools on the ground that a few schools have not exhausted their grants, is this a violation of the principle of "teaching students according to their aptitude"? Why should schools, which are in need of this grant, be deprived of the chance to help their students with their studies on the LS subject?*

SECRETARY FOR EDUCATION (in Cantonese): Deputy President, I think the crux of this question is that Members want us to provide this grant across the board to all schools. However, we do not think it is necessary to do so. As stated in the main reply, many schools still have a lot of money in hand. There is no need for us to provide them with additional grants. For schools which have financial difficulties, we have made it clear that we will consider their situation on a case by case basis and provide them with the grants needed.

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

WRITTEN ANSWERS TO QUESTIONS**Entry Arrangements for Non-local Students who Wish to Enter Hong Kong for Study**

7. **MR TOMMY CHEUNG** (in Chinese): *President, the Chief Executive proposed in the 2009-2010 Policy Address to develop six industries, including education services, where Hong Kong enjoys clear advantages. The objective of the development of education services is to enhance Hong Kong's status as a regional education hub, thus boosting Hong Kong's competitiveness and complementing the future development of the Mainland. Regarding the complementary measures of the policy on attracting more non-local students to study in Hong Kong, will the Government inform this Council:*

- (a) *of the restrictions on visa/entry permit (visa) applications from Mainland secondary students for studying in Hong Kong under the existing immigration policy on entry of non-local students to study in Hong Kong; whether such students can apply for visas to attend summer courses (including preparatory summer courses organized by local universities) in Hong Kong; if they can, of the number of visas approved in the past three years; if not, the reasons for that as well as whether it will consider relaxing the restrictions;*
- (b) *given that at present, the Immigration Department (ImmD) specifies that the entry arrangement regarding application for studying in Hong Kong does not apply to nationals of certain countries/regions (for example, Korea (Democratic Peoples' Republic of), Cambodia and Vietnam, and so on), whether the Government had received visa applications from such persons in the past three years for studying in Hong Kong; if it had, of the number of applications rejected; whether it will consider relaxing the restriction; if it will, the details; if not, the reasons for that; and*
- (c) *of the number of visa applications received by the ImmD in the past three years from non-local students for entering Hong Kong to attend full-time locally-accredited post-secondary short-term courses, as well as the number of applications which had been approved; whether the Government will consider extending the visa*

arrangement for short-term courses to other courses approved by the Education Bureau; if it will, of the details; if not, the reasons for that?

SECRETARY FOR EDUCATION (in Chinese): President, on the development of education services, HKSAR Government's objectives are to enhance the position of Hong Kong as a regional education hub, nurture talents for other industries, attract talents from all over the world, enhance Hong Kong's competitive edge and facilitate the long-term development of Hong Kong, the Pearl River Delta and our nation. To this end, we have been introducing support measures to attract non-local students to study in Hong Kong. Over the past five years, the number of non-local students attending publicly-funded programmes has increased significantly by nearly 90% to more than 10 000. Together with those studying self-financing post-secondary programmes, about 18 000 students from over 70 countries/regions attended post-secondary programmes at tertiary institutions in Hong Kong in the 2010-2011 academic year. My reply to the question raised by Mr Tommy CHEUNG in *seriatim* is as follows:

- (a) Under the prevailing policy, Mainland secondary school students, accompanied by their teachers, may apply for entry to Hong Kong to attend short-term exchange programmes at secondary school level approved by the Education Bureau with a maximum period of stay of two weeks. In the past three years, the ImmD has not received any application.

The Chief Executive also mentioned in his 2009-2010 Policy Address that the Government will explore the possibility of allowing Mainland senior secondary students to study in Hong Kong (for example, taking short-term courses offered by degree-awarding tertiary institutions in Hong Kong). We are exploring the feasibility of implementing such arrangements with the Mainland authorities concerned.

- (b) According to the prevailing immigration policy, visa application to enter Hong Kong for study does not apply to nationals of Afghanistan, Albania, Cambodia, Cuba, Laos, Korea (Democratic Peoples' Republic of), Nepal and Vietnam. However, the ImmD

would consider special situation of individual applicants from these countries on a case-by-case basis. In the past three years, the ImmD has received a total of 184 applications to enter Hong Kong for study from nationals of relevant countries; 18 applications were refused in the same period.

When formulating immigration policy, we will consider all relevant factors, including the social, economic and political situation of the countries and territories concerned, immigration control and security considerations, and so on, in order to accord facilitation to genuine visitors and overseas talents while maintaining prudent and effective immigration control. The Government reviews the concerned immigration policy from time to time, and makes adjustment as necessary to serve the public interest and meet the needs of Hong Kong.

- (c) The ImmD does not maintain the relevant statistics.

In addition to full-time locally-accredited post-secondary programmes, non-local students (except those from the Mainland, Macao⁽¹⁾ and Taiwan) may also apply for entry to Hong Kong to attend full-time programmes on the register of non-local higher and professional education courses set up under the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493).

In addition, the Working Group on the Development of Education Services in Hong Kong under the Education Commission submitted a report to the Administration on the development of education services in Hong Kong, making a number of recommendations, including allowing Mainland students to study in non-local courses in Hong Kong, with a view to promoting the development of Hong Kong as a regional education hub and the internationalization of our post-secondary education sector. The Administration is considering the recommendations so as to work out the long-term goals and strategies for their implementation.

(1) Former Mainland Chinese residents in Macao who were not settled there on or before 14 January 1979.

Posters Not Permitted by Housing Department to be Displayed in Public Housing Estates

8. **MR WONG YUK-MAN** (in Chinese): *President, it has been reported that since March this year, the Housing Department (HD) has been stopping District Council (DC) Members or political parties from putting up posters with the heading of "The Chief Executive has become corrupted", posters calling on members of the public to take part in the "June 4 march and candlelight vigil" this year or posters on "Safeguarding of a corruption-free Hong Kong and upholding core values", the practice of which differs from the past standard of the HD under which the posting of posters was permitted. The HD staff even ripped off posters objecting to MTR fare increase and criticizing the Chief Executive-elect. In this connection, will the Government inform this Council:*

- (a) whether the HD had informed the relevant DC Members and public rental housing (PRH) tenants before changing its past standard under which posting of posters was permitted;*
- (b) whether the aforesaid practice of the HD was related to the directions given by Policy Bureaux, Chief Executive's Office or Chief Executive-elect's Office; and*
- (c) of the legal basis for the scrutiny of the poster contents by the HD; if there is no legal basis for that, whether it will allow afresh relevant DC Members and political parties to put up the aforesaid posters?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): *President, the HD is firmly committed to providing a safe, clean and tranquil environment for all PRH estate residents. The welfare and well-being of residents are always the top priority. The HD has set up notice boards in public areas in PRH estates to allow a convenient channel through which Members of the Legislative Council, DC Members, Non-governmental Organizations and residents associations may display publicity materials (PMs), including publicity posters, so that residents can receive information on the services, activities and other information of general public interest.*

The arrangements for the display of PMs (including publicity posters) have been operating smoothly since their adoption in 1999. According to the existing arrangements, PMs should be informative, service or welfare-providing in principle, and non-profit-making in nature. They should not carry any messages that are unlawful, obscene, defamatory or having insinuations. These requirements are clearly stated in the notice to applicants.

The HD has all along been maintaining a basis of neutrality, transparency and fairness in processing the applications for the display of PMs. Applications will be approved as long as they comply with the established arrangements.

With limited space on the notice boards in PRH estates, however, it is necessary for the HD to formulate a system to ensure that the space available on the notice boards is fairly allocated so that all eligible parties enjoy equal opportunities to disseminate their information.

In 2011, the HD received a complaint from an individual that he had been maliciously criticized in a PM. With a view to upholding the basic principle that PMs should not be used to criticize individuals regardless of their position, the HD clarified its guidelines on the arrangements in July 2011, making it clear that PMs should not carry negative or derogative remarks against individual persons or parties. This is in line with the HD's aim of setting up such notice boards, which is, to provide a simple information platform. These notice boards are not intended to be used to criticize individual persons or parties, or let individual persons or parties criticize each other.

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

(a) and (b)

The HD has not changed its arrangements on display of PMs and the principle of handling applications, which have been adopted since 1999. All along, the HD has been processing applications for the display of PMs in a neutral manner and on the basis of openness, transparency, fairness and impartiality.

We noticed that there has been some inconsistencies in the processing of applications for the display of PMs by individual PRH

estates, and that individual applications have not been handled in a consistent manner. Having investigated into the cases, the HD found that such inconsistencies have arisen because some estate management staff, particularly those managing outsourced public housing estates, have taken up their duties for a short period of time and have yet to familiarize themselves with the guidelines on handling the display of PMs. Such cases are not related to any Policy Bureaux, the Chief Executive's Office or Chief Executive-elect's Office.

Also, the HD has introduced a new measure to avoid as far as possible the reoccurrence of such inconsistencies in future by requiring the respective Estate Offices to refer applications for the display of PMs with controversial content to Housing Managers of the HD Headquarters for scrutiny. In addition, should applicants be dissatisfied with the vetting outcome, they can request that their cases be reviewed by a Chief Housing Manager at the HD Headquarters.

- (c) In managing PRH estates, the HD has the responsibility to provide a safe, clean and tranquil environment for all PRH estate residents and accords top priority to their welfare and well-being. Owing to the limited available space on the notice boards, and in order to ensure fair allocation of the space of notice boards so that all eligible parties can enjoy equal opportunities to disseminate their information, the HD has the right and need to formulate appropriate guidelines on the regulation of the display of PMs. As mentioned above, as long as the contents of PMs comply with the established principles, the HD will normally approve their display.

Motorcycle Parking Spaces

9. **MR LEUNG YIU-CHUNG** (in Chinese): *President, I have recently received quite a number of complaints about the general shortfall of public parking spaces for motorcycles in Hong Kong, which is very inconvenient for motorcyclists. In this connection, will the Government inform this Council:*

- (a) *how the authorities assess the demand for parking spaces for motorcycles in Hong Kong at present; of the assessment results, with a breakdown of the figures and relevant information by the 18 District Council districts (18 districts);*
- (b) *of the discrepancy between the number of public parking spaces for motorcycles and the actual demand at present, with a breakdown of the figures and relevant information by the 18 districts; and*
- (c) *whether the authorities have plans to cope with the shortfall in public parking spaces for motorcycles at present; if they have, of the details; if not, the reasons for that?*

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

The Transport Department (TD) assesses the overall demand for motorcycle parking spaces based on the number of licensed motorcycles. As at February 2012, there were about 38 800 licensed motorcycles in Hong Kong. The total number of designated motorcycle parking spaces in the territory is about 28 500 (breakdown by district is at Annex). This number does not include non-designated parking places, which are parking places that do not cause obstruction, such as those in private garages and residential premises.

The actual demand for motorcycle parking spaces in individual districts varies with changes in the economic situation and the travel patterns of local residents. According to the TD's assessment, there is no serious shortage of motorcycle parking spaces on the whole. The TD has been closely monitoring and reviewing the supply and demand of motorcycle parking spaces, and will implement suitable improvement measures when necessary. Measures already in place include:

- (i) providing additional on-street motorcycle parking spaces in various districts;
- (ii) requiring the provision of a certain number of motorcycle parking spaces inside private buildings; and

- (iii) requiring temporary car parks providing motorcycle parking spaces to clearly indicate at the entrance the availability of such parking spaces and the relevant parking fees, as a measure to promote motorcycle parking at temporary car parks.

Since 2008, the total number of designated motorcycle parking spaces in Hong Kong has increased by over 3 500. We will continue to implement various measures to improve the supply and demand of motorcycle parking spaces by providing more motorcycle parking spaces as needed, so far as circumstances permit.

Annex

Number of Designated Motorcycle Parking Spaces* by District

<i>District</i>	<i>Motorcycle Parking Space</i>
Central and Western	1 210
Wan Chai	920
Eastern	2 430
Southern	1 680
Yau Tsim Mong	1 590
Sham Shui Po	1 810
Kowloon City	1 510
Wong Tai Sin	2 190
Kwun Tong	3 350
Tsuen Wan	1 070
Tuen Mun	1 250
Yuen Long	1 050
North	630
Tai Po	680
Sai Kung	2 120
Sha Tin	2 340
Kwai Tsing	2 310
North Lantau and Islands	330
Total	28 470

Note:

* not inclusive of non-designated parking places

Records of Chief Executive's Office

10. **MS CYD HO** (in Chinese): *President, will the Government inform this Council:*

- (a) *whether the Office of the Chief Executive-elect is required to comply with General Circular No. 2/2009 "Mandatory Records Management Requirements" (the requirements) issued by the Administration Wing in handling records; of the rank of the staff responsible for managing the record system of the Office of the Chief Executive-elect;*
- (b) *whether the items and details discussed during the Chief Executive-elect's meetings with various sectors since he was elected on 25 March this year, including his meetings with the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG), have already been properly recorded and filed;*
- (c) *whether the meetings of the first-term Chief Executive and the incumbent Chief Executive with the LOCPG officials, as well as the details of the issues discussed when they met, have been properly recorded and filed, of the respective linear metres of records they created in respect of the meetings and the issues discussed, and among such records, the number and linear metres of classified records (list by the level of confidentiality in the table below); and*

<i>Level of confidentiality</i>	<i>Quantity</i>	<i>Linear metres</i>
<i>Top Secret</i>		
<i>Secret</i>		
<i>Confidential</i>		
<i>Temporary Confidential</i>		
<i>Restricted</i>		
<i>Personal</i>		

- (d) *whether the first-term Chief Executive transferred the records listed in part (c) to the incumbent Chief Executive or the Government*

Records Service (GRS); if so, among such records, of the number and linear metres of classified records (list by the level of confidentiality in the table below); and the number of those which were destroyed after the appraisal conducted by the GRS, and whether any record was destroyed without prior appraisal conducted by the GRS?

<i>Level of confidentiality</i>	<i>Quantity</i>	<i>Linear metres</i>
<i>Top Secret</i>		
<i>Secret</i>		
<i>Confidential</i>		
<i>Temporary Confidential</i>		
<i>Restricted</i>		
<i>Personal</i>		

CHIEF SECRETARY FOR ADMINISTRATION (in Chinese): President, regarding the question raised by Ms Cyd HO, our reply is as follows:

- (a) The Office of the Chief Executive-elect manages records according to General Circular No. 2/2009 the requirements issued by the Administration Wing. Presently, a Chief Executive Officer takes charge of the relevant work.
- (b) The minutes of the Chief Executive-elect's meetings with various sectors of the community have been filed according to the requirements.
- (c) and (d)

The minutes of meetings of the first-term Chief Executive and the incumbent Chief Executive with various sectors of the community have been filed in accordance with the requirements. Generally, we would not openly comment in details about our communications with officials of the LOCPG.

Elderly Health Centres

11. **MR CHEUNG KWOK-CHE** (in Chinese): *President, the Government encourages the elderly to maintain physical and mental well-being, and 18 elderly health centres (EHCs) have been established by the Department of Health (DH) in various districts of Hong Kong since 1998, offering a total of some 38 500 membership quotas each year. Calculated on the basis that there are currently some 940 000 elderly people aged 65 or above in Hong Kong, EHC membership quotas represent only around 4% of the population in that age group. Moreover, some elderly people have indicated that they are often unable to obtain information about the services provided by EHCs due to ineffective flow of information on such services. In this connection, will the Government inform this Council:*

- (a) *of the respective annual membership quotas, the quotas for accepting new members and the numbers of members from other districts in each EHC in 2010-2011 and 2011-2012 (set out in the table below);*

EHC	Membership quota		Quota for accepting new members		Number of members from other districts	
	2010-2011	2011-2012	2010-2011	2011-2012	2010-2011	2011-2012
<i>Aberdeen</i>						
<i>Sai Ying Pun</i>						
<i>Shau Kei Wan</i>						
<i>Wan Chai</i>						
<i>Kowloon City</i>						
<i>Lam Tin</i>						
<i>Nam Shan</i>						
<i>San Po Kong</i>						
<i>Yau Ma Tei</i>						
<i>Lek Yuen</i>						
<i>Shek Wu Hui</i>						
<i>Tai Po</i>						
<i>Tseung Kwan O</i>						
<i>Kwai Shing</i>						
<i>Tsuen Wan</i>						
<i>Tuen Mun</i>						

<i>EHC</i>	<i>Membership quota</i>		<i>Quota for accepting new members</i>		<i>Number of members from other districts</i>	
	<i>2010-2011</i>	<i>2011-2012</i>	<i>2010-2011</i>	<i>2011-2012</i>	<i>2010-2011</i>	<i>2011-2012</i>
<i>Wu Hong</i>						
<i>Yuen Long</i>						
<i>Tung Chung</i>						

- (b) *of the number and rate of member turnover (that is, the number of members who did not renew their membership and the percentage of which in the total number of members) of various EHCs, as well as the average waiting time required for joining EHC membership in each of the past five years, broken down by EHC;*
- (c) *given that the authorities also acknowledge the keen demand for services provided by EHCs, of the criteria based on which the authorities decide to establish only one EHC in each district; the existing staff establishment of various EHCs;*
- (d) *as some EHC members have complained that they had to wait for as long as 18 months in order to have a physical check-up at an EHC, of the waiting time for such service under the original estimation of the authorities, and the actual average waiting time at present; whether the authorities will provide additional resources to shorten the waiting time required for EHC members to have physical check-ups; if they will, of the details; if not, the reasons for that; and*
- (e) *of the existing number of EHCs installed with automatic main entrance doors and the number of those installed with "push open" main entrance doors, and whether the authorities will replace such "push open" doors with automatic doors; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, the DH has established 18 EHCs in Hong Kong, one in each district, to provide comprehensive primary healthcare services, including health assessment, physical

check-up and curative treatment, to persons aged 65 or above. The focus of the services is on provision of individual counselling and health education to elders with such health risks as propensity to fall, overweight, insufficient physical activities or unhealthy diet. At present, the 18 EHCs in the territory offer a total of about 38 500 membership quotas each year.

- (a) In 2010 and 2011, the total number of members, the number of new members and the number of members from other districts (with residential address in other districts) in each of the 18 EHCs are as follows:

<i>District (EHC)</i>	<i>Total number of members</i>		<i>Number of new members</i>		<i>Number of members from other districts</i>	
	<i>2010</i>	<i>2011</i>	<i>2010</i>	<i>2011</i>	<i>2010</i>	<i>2011</i>
Central and Western (Sai Ying Pun)	2 140	2 120	312	197	585	561
Eastern (Shau Kei Wan)	2 226	2 210	512	235	44	62
Wan Chai (Wan Chai)	2 125	2 153	363	290	1 031	1 059
Southern (Aberdeen)	2 147	2 128	329	238	58	46
Sham Shui Po (Nam Shan)	2 228	2 206	360	271	829	798
Kwun Tong (Lam Tin)	2 229	2 214	500	353	76	61
Yau Tsim Mong (Yau Ma Tei)	2 141	2 124	455	346	809	791
Wong Tai Sin (San Po Kong)	2 120	2 122	447	415	499	478
Kowloon City (Kowloon City)	2 221	2 211	543	433	1 009	957
Sha Tin (Lek Yuen)	2 149	2 199	438	507	72	63
North (Shek Wu Hui)	2 152	2 120	429	351	104	116
Sai Kung (Tseung Kwan O)	2 145	2 135	398	428	305	305
Tai Po (Tai Po)	2 122	2 124	319	155	325	357
Islands (Tung Chung)	2 256	2 259	443	454	1 461	1 417
Tsuen Wan (Tsuen Wan)	2 137	2 109	508	499	729	739
Tuen Mun (Tuen Mun Wu Hong)	2 144	2 130	421	423	99	76
Kwai Tsing (Kwai Shing)	2 195	2 202	453	424	535	557
Yuen Long (Yuen Long)	2 232	2 219	368	350	64	74

- (b) Between 2007 and 2011, the number of EHC members in various districts who did not renew their membership and their percentage in the total number of members are as follows:

District (EHC)	2007		2008		2009		2010		2011	
	Number of members who did not renew their membership	% in the total number of members	Number of members who did not renew their membership	% in the total number of members	Number of members who did not renew their membership	% in the total number of members	Number of members who did not renew their membership	% in the total number of members	Number of members who did not renew their membership	% in the total number of members
Central and Western (Sai Ying Pun)*	415	20%	440	21%	377	18%	327	15%	217	10%
Eastern (Shau Kei Wan)	445	21%	489	23%	817	38%	182	10%	251	11%
Wan Chai (Wan Chai)	412	20%	406	19%	443	21%	325	16%	262	12%
Southern (Aberdeen)	476	23%	468	22%	398	18%	425	19%	257	12%
Sham Shui Po (Nam Shan)	440	21%	439	21%	412	19%	301	14%	293	13%
Kwun Tong (Lam Tin)	567	27%	558	26%	491	23%	476	22%	368	17%
Yau Tsim Mong (Yau Ma Tei)	684	29%	433	21%	430	20%	456	21%	363	17%
Wong Tai Sin (San Po Kong)	426	20%	444	21%	442	21%	447	21%	413	19%
Kowloon City (Kowloon City)	456	22%	452	21%	498	23%	516	24%	443	20%
Sha Tin (Lek Yuen)	638	27%	441	21%	405	19%	456	21%	457	21%
North (Shek Wu Hui)	431	21%	436	21%	380	18%	438	20%	383	18%
Sai Kung (Tseung Kwan O)	338	16%	471	22%	400	19%	388	18%	438	20%
Tai Po (Tai Po)	363	17%	303	14%	339	16%	319	15%	153	7%
Islands (Tung Chung)	0	0%	468	22%	381	18%	399	18%	451	20%
Tsuen Wan (Tsuen Wan)	677	29%	481	23%	485	23%	497	23%	527	25%
Tuen Mun (Tuen Mun Wu Hong)	416	20%	420	20%	409	19%	407	19%	437	20%
Kwai Tsing (Kwai Shing)	664	28%	414	20%	392	18%	467	21%	417	19%
Yuen Long (Yuen Long)	369	18%	356	17%	289	13%	339	15%	363	16%

Note:

* The EHC in the Central and Western District was relocated from the Kennedy Town Clinic to the Sai Ying Pun Jockey Club Polyclinic in May 2010.

Between 2007 and 2011, the average waiting time (month) (median) for enrolment as new members of EHCs in various districts is as follows:

<i>District (EHC)</i>	<i>Average waiting time (month) (median) for enrolment as new members</i>				
	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Central and Western (Sai Ying Pun)*	19.8	14.2	3.6	2.9	7.5
Eastern (Shau Kei Wan)	50.1	47.3	42.2	20.5	8.4
Wan Chai (Wan Chai)	48.2	43.3	42.1	30.9	25.4
Southern (Aberdeen)	30.5	18.5	9.7	4	5.1
Sham Shui Po (Nam Shan)	13.8	5.1	3	6.9	13.8
Kwun Tong (Lam Tin)	39	34.3	21.3	7.4	3.9
Yau Tsim Mong (Yau Ma Tei)	48	45.2	42.7	38	32.9
Wong Tai Sin (San Po Kong)	41.8	40.4	37.4	29.7	11.4
Kowloon City (Kowloon City)	48.9	47.1	42.2	34.5	16.2
Sha Tin (Lek Yuen)	45.5	47.8	49.7	46.4	43.5
North (Shek Wu Hui)	40.4	33.5	23.9	14	9.3
Sai Kung (Tseung Kwan O)	25.4	27	23.8	21.7	16.6
Tai Po (Tai Po)	26.1	26.1	25.7	18.6	17.5
Islands (Tung Chung)	13.6	3.6	4.2	5.5	6.5
Tsuen Wan (Tsuen Wan)	48	50.4	50.5	43.8	19.7
Tuen Mun (Tuen Mun Wu Hong)	21	16.6	14	9.7	8.9
Kwai Tsing (Kwai Shing)	37.6	25.8	21.6	8.8	6.2
Yuen Long (Yuen Long)	16.6	11.4	6	6	5.9

Note:

* The EHC in the Central and Western District was relocated from the Kennedy Town Clinic to the Sai Ying Pun Jockey Club Polyclinic in May 2010.

- (c) Since 1998, the DH has established 18 EHCs in Hong Kong, one in each district, to enhance primary healthcare for the elderly. At present, each EHC has a permanent establishment of one doctor, two to three nurses and one to two clerical staff.

- (d) As the service charge of EHCs is very low (the annual membership fee is \$110) and is heavily subsidized, there is a huge demand for EHCs' services. To shorten the waiting time for EHC membership, EHCs have simplified the questionnaire used for health assessment and streamlined the items and procedures of health assessment for existing members, with a view to allocating additional manpower and resources to meet the needs of elders on the waiting list. To narrow the gap in waiting time among different EHCs, each EHC provides information on those EHCs with shorter waiting time for enrolment as members. Elders may choose to apply for membership at these EHCs. After the implementation of the above measures, the waiting time of elders has been reduced significantly.

The ageing population has led to an ever increasing demand for primary healthcare services for elders. The provision of substantially subsidized primary healthcare services by EHCs is not the most cost-effective and sustainable way to deliver services to elders in Hong Kong. It is also not possible to meet the healthcare needs of all elders through EHCs alone. Apart from EHCs, the general out-patient clinics under the Hospital Authority (HA), private medical practitioners and some health centres operated by non-governmental organizations (NGOs) also provide primary healthcare services to elders. At present, promotional and publicity materials on health assessment services offered by NGOs which are reasonably priced are also maintained by each EHC to provide elders with an additional choice. Under the Elderly Health Services of the DH, collaboration with other elderly service providers will continue to be enhanced. The Government at present has no plan to increase resources for further expansion of the EHC services.

As at the end of February 2012, the average time lapse from the last health assessment of members receiving health assessments at EHCs in various districts is as follows:

<i>District (EHC)</i>	<i>Average time lapse from the last health assessment (month) (median)</i>
Central and Western (Sai Ying Pun)	21.5
Eastern (Shau Kei Wan)	18.9

<i>District (EHC)</i>	<i>Average time lapse from the last health assessment (month) (median)</i>
Wan Chai (Wan Chai)	18.0
Southern (Aberdeen)	18.0
Sham Shui Po (Nam Shan)	18.9
Kwun Tong (Lam Tin)	17.2
Yau Tsim Mong (Yau Ma Tei)	18.7
Wong Tai Sin (San Po Kong)	17.9
Kowloon City (Kowloon City)	21.0
Sha Tin (Lek Yuen)	21.2
North (Shek Wu Hui)	18.9
Sai Kung (Tseung Kwan O)	19.4
Tai Po (Tai Po)	15.8
Islands (Tung Chung)	14.4
Tsuen Wan (Tsuen Wan)	16.7
Tuen Mun (Tuen Mun Wu Hong)	20.1
Kwai Tsing (Kwai Shing)	18.9
Yuen Long (Yuen Long)	15.7

Existing members who do not feel well during the waiting period for health assessment may, at any time, seek medical consultation at EHCs without waiting for the next health assessment.

- (e) Among the 18 EHCs under the DH, six are located inside the HA's general out-patient clinics and do not have separate main doors. Among the 12 EHCs which have separate main doors, one has adopted the "automatic door" design whereas the other 11 have adopted the "push open door" design. In collaboration with the relevant departments, we are carrying out improvement works to the barrier-free facilities of these EHCs in two phases in accordance with the Design Manual: Barrier Free Access 2008 of the Buildings Department under the premise of providing convenience to elders, after taking into account factors such as the environment and visitor flow. It is expected that the improvement works will be completed in 2014.

Minor Works Control System

12. **MRS REGINA IP** (in Chinese): *President, the Minor Works Control System (MWCS), which came into operation on 31 December 2010, facilitates members of the public in carrying out small-scale building works for private buildings in accordance with simplified statutory requirements, with a view to enhancing the safety of buildings in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *given that the authorities have pointed out in its paper submitted to the Panel on Development of this Council that, as at 31 December 2011, the Buildings Department (BD) has approved over 12 500 applications from industry practitioners for registration as Registered Minor Works Contractors (RMWCs), whether among them there is any application for provisional registration; if so, of the number of such applications and, according to the authorities' estimation, the time required for training institutions to provide all these industry practitioners under provisional registration with relevant top-up training, so as to enable them to obtain full registration as RMWCs;*
- (b) *given that under MWCS, building owners or agents who are responsible for the appointment of contractors have the legal obligation to ensure that the contractors so appointed are qualified to carry out the minor works, and they may be liable to prosecution if they knowingly appoint some unqualified contractors instead, whether the authorities have compiled statistics on the prosecutions instituted since the implementation of MWCS; if they have, of the statistics; and*
- (c) *given that under MWCS, prescribed registered contractors should only undertake the minor works for which they are registered, while both prescribed building professionals and prescribed registered contractors should comply with the relevant statutory and safety requirements and have the responsibility to provide accurate advice concerning the works to those parties making the appointment of contractors, otherwise, they may be subject to disciplinary action or prosecution, whether the authorities have compiled statistics on the*

disciplinary actions taken or prosecutions instituted since the implementation of MWCS; if they have, of the respective statistics?

SECRETARY FOR DEVELOPMENT (in Chinese): President, the MWCS, which came into full operation on 31 December 2010, aims to provide an alternative to the established statutory procedures for building owners to carry out small-scale building works in a lawful, simple, safe and convenient manner. To facilitate the implementation of the MWCS, the BD has made substantial efforts in the past three years on the registration of minor works contractors, training for industry practitioners, as well as publicity and public education. Since its implementation, the MWCS has been operating smoothly, and is generally welcomed by both the industry and the public. As at 31 March 2012, the BD had approved over 14 300 applications for registration as RMWCs. A total of over 40 000 minor works submissions were received in 2011 (that is, the first year of implementation of the MWCS), exceeding our original estimate of around 36 000 minor works submissions per year.

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

- (a) Under the MWCS, the works are classified into three classes (that is, Classes I, II and III) in accordance with their nature, scale, complexity and risks. Industry practitioners can apply for registration as RMWCs either in the capacity of a company or an individual, although contractors registered in the capacity of an individual are only allowed to carry out Class III minor works items. For anyone wishing to be registered as a RMWC, the BD will consider the academic qualifications and actual work experience in the relevant fields of the applicant⁽¹⁾, irrespective of whether the application for registration is made in the capacity of a company or of an individual. As regards applications for registration as RMWCs made in the capacity of a company, applicants possessing relevant work experience but without the requisite academic qualifications may enrol in the top-up training courses offered by four local training institutes (namely the Construction Industry

(1) As far as applications for registration made in the capacity of a company is concerned, the companies concerned have to nominate to the Building Authority at least one Authorized Signatory for each class and type of minor works when making the application.

Council Training Academy, the Hong Kong Institute of Vocational Education, the Industrial Centre of The Hong Kong Polytechnic University and the School of Professional and Continuing Education of the University of Hong Kong) and apply for full registration as RMWCs upon completion of the course. As a transitional arrangement, industry practitioners who were attending the top-up training courses could rely on their work experience to register as provisional RMWCs before the end of 2011. The above transitional arrangement is not applicable to RMWCs registered in the capacity of individuals.

Among the 12 500 approved applications for RMWCs registration mentioned in the question, around 5 300 are applications for provisional registration. As at 31 March 2012, nearly 1 000 provisional RMWCs had been successfully registered as RMWCs. The BD will take measures to encourage the provisional RMWCs to complete the relevant registration procedures as soon as possible, including issuing reminder letters to the contractors concerned and liaising with relevant contractors' associations.

As regards the enrolment situation of the top-up training courses, information provided by the four training institutes reveals that, as at 31 March 2012, around 16 000 industry practitioners, some of which are authorized signatories of provisional RMWCs, had completed the courses since they were first offered in end 2009. The BD does not have the statistics of the number of provisional RMWCs who have not enrolled in the top-up training courses.

- (b) Since the implementation of the MWCS, the BD has not come across any case in which an unregistered or unqualified contractor is knowingly appointed for the carrying out of minor works. However, the BD has discovered a case where an owner unknowingly appointed an unregistered contractor to carry out minor works and other unauthorized building works. The BD had instigated prosecution against the contractor in this case, who was just convicted and fined in a Magistrate's Court in April 2012.

- (c) Apart from the prosecution case mentioned in part (b) of the reply, the BD has not taken any disciplinary action or instigated any prosecution against prescribed building professionals or prescribed registered contractors under the MWCS. The BD will, in accordance with the established procedures, continue with its random checks on minor works submissions prepared by prescribed building professionals and prescribed registered contractors, as well as completed minor works. If there is any contravention of the Buildings Ordinance, the BD will take enforcement action, including requiring the owner to rectify the irregularities, and instigating prosecution or taking disciplinary action against those who are involved in the works.

Television and Telecommunication Signals in Frontier Closed Areas

13. **MR LAU KONG-WAH** (in Chinese): *President, I received complaints from residents of Lin Ma Hang Village in Sha Tau Kok, alleging that despite the opening of the frontier closed area gradually, television (TV) signals received in quite a number of frontier areas, including Lin Ma Hang Village, are still unclear, and mobile phone network signals are also weak, or mobile phones are frequently switched to mobile phone networks on the Mainland, causing much inconvenience to them in their everyday life. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have conducted surveys to identify in which frontier areas TV signals, including digital terrestrial TV (DTT) or analogue TV signals, cannot be received or are not clear; if they have, of the respective locations with no or poor reception of TV signals; the reasons for no or poor reception of TV signals at such locations; if not, the reasons for that;*
- (b) *whether the authorities had tested the strength of local mobile phone network signals received in the frontier areas in the past three years; if they had, of the findings, including the locations where there was no local network coverage, and where mobile phones automatically searched and switched to mobile phone networks on the Mainland owing to problems such as varying signal strengths, and so on; if not, the reasons for that and whether after the opening of the frontier*

closed area detailed tests will be conducted in order to make improvement; and

- (c) *whether the authorities will take measures to rectify the problem of poor TV and telecommunication signal reception in the frontier areas; if they will, of the details and the time of implementation; if not, the reasons for that?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the Government's reply to the question raised by Mr LAU Kong-wah is as follows:

- (a) Since the commencement of DTT service in Hong Kong in late 2007, two domestic free TV programme service licensees, namely, Asia Television Limited (ATV) and Television Broadcasts Limited (TVB), have been building and extending their digital broadcast networks in phases, with a view to expanding the coverage of their DTT services progressively to the whole territory. At present, a total of 29 DTT transmitting stations have been completed by ATV and TVB, with their coverage reaching over 96% of the population.

Even though ATV's and TVB's digital broadcasting stations are located at hilltops/rooftops of high-rise buildings for wide area coverage, their broadcasting signals may be blocked by hills/buildings nearby, resulting in weak TV signals which caused reception problems in certain areas. The two broadcasters will further enhance their DTT networks so as to maximize the overall DTT coverage.

From time to time, the Office of the Communications Authority (OFCA) takes measurements of analogue TV signals and DTT signals across the territory. It also offers advice to members of the public who seek help in respect of TV signal reception, and conducts follow-up on-site investigation, as necessary. According to the OFCA's measurement records, areas near the boundary that cannot receive or clearly receive Hong Kong's analogue TV signals or DTT signals include Lin Ma Hang, Sha Tau Kok and Ta Kwu Ling.

- (b) Owing to the close proximity of Hong Kong to Shenzhen, it is inevitable that there is some overlap in the coverage of the mobile networks of Hong Kong and the Mainland in certain locations, especially along the boundary, and overspill signals cannot be avoided completely.

To minimize the occurrence of inadvertent roaming (or so-called "network jumping"), the OFCA and relevant Mainland authorities have already put in place a co-ordination mechanism to take measurements regularly along the boundary (including the frontier closed area at Sha Tau Kok recently opened to the public) so as to monitor overspill signals. If the strength of such signals is found to exceed the agreed limit, the mobile network operators concerned will be required to reduce the signal strength. In the past three years, both sides jointly conducted 12 measurements of overspill signals and found that the strength of such signals was in general below the agreed limit. For those specific areas where overspill signals were found exceeding the agreed limit, the mobile network operators concerned would act in accordance with the co-ordination mechanism to reduce the signal strength.

The OFCA advised that, for users near the boundary or in remote areas, they should check the displays of their mobile phones first before they make or answer a call. If their mobile phones indicate that they are connected to a Mainland network, users could select their Hong Kong networks by "manual network selection" to avoid incurring additional charges as a result of "network jumping".

- (c) The Government has introduced a number of measures to facilitate the installation of base stations in country parks and remote areas (including the sections of frontier closed area now open to the public) by mobile network operators to improve their service coverage in such areas. Measures include allowing operators to use existing Government buildings and hilltop sites, subletting Government land at nominal rent, allowing operators to use microwave stations to connect to their base stations in remote areas, and assigning additional radio spectrum to operators at no charge. Taking country parks as an example, the number of base stations

serving the country parks and their nearby remote areas has been increased from seven to 24 since 2005. For the hiking trails, about 95% of the hiking trails under the management of the Agriculture, Fisheries and Conservation Department have been covered by at least one local mobile phone network.

As regards the improvement of reception of domestic free TV services, the OFCA is working with ATV and TVB to explore ways to enhance TV reception in areas where reception is poor (including areas near the boundary). For example, technical feasibility studies will be conducted on increasing the transmitting power of some transmitting stations to further enhance DTT coverage.

Illegal Fuel Filling Stations

14. **MR WONG SING-CHI** (in Chinese): *President, it has been reported that an illegal fuel filling station in the vicinity of residential areas at Shek Wu Tong Tsuen in Pat Heung of Yuen Long was reopened early this year after it had been cracked down by the police in July last year, and the law-breakers arranged a large number of modified sedans to illegally carry low-priced fuel from the Mainland to unload at the said illegal filling station to make profit, disregarding the safety of the residents nearby. Besides, it has been reported that an outside goods vehicle visits a Food and Environmental Hygiene Department (FEHD) refuse depot at Tin Wan in Aberdeen at regular times every week to refuel the vehicles of the FEHD's various outsourced cleaning service contractors, thereby turning the refuse depot into an illegal fuel station. It has also been reported that the spokesperson of the Fire Services Department (FSD) has confirmed that approval has not been granted by the FSD for the said goods vehicle to convey diesel oil in bulk, which is a kind of dangerous goods in Category 5 (substances giving off inflammable vapour). In this connection, will the Government inform this Council:*

- (a) *of the number of illegal fuel filling stations cracked down by the police in the past three years, together with the number of illegal fuel filling stations cracked down and re-opened; whether the authorities have reviewed the adequacy of their combat efforts and made sure that the illegal fuel filling stations will not be re-opened; regarding*

the issue of law-breakers carrying illegal fuel from the Mainland into Hong Kong, whether the various law-enforcement departments (including the Police Force, the FSD and the Customs and Excise Department (C&ED)) will jointly establish a mechanism for preventing and combating the operation of illegal fuel filling stations; if they will, of the details and work schedule; if not, the reasons for that;

- (b) *whether it knows if, apart from the FEHD's contractors, any outsourced contractor of other government departments has used the aforesaid illegal method to refuel their vehicles; whether the FEHD has conducted any territory-wide investigation in relation to the aforesaid case of illegal fuel filling station, with a view to ensuring that other refuse depots will not be turned into illegal fuel filling stations and preventing other vehicles from participating in illegal fuel filling; if it has, of the details; if not, the reasons for that; whether the FEHD has set up any monitoring mechanism in relation to the refueling and related operation for its vehicles and its contractors' vehicles; if it has, of the details; if not, the reasons for that; and*
- (c) *whether it has assessed if the aforesaid goods vehicle involved in the case breaches the laws of Hong Kong in conveying dangerous goods in category 5 without the FSD's approval; if assessment has been made, of the details and the respective law-enforcement actions taken by the Government; whether the FSD has provided any code of practice at present to ensure that such dangerous goods are conveyed and handled appropriately by the personnel concerned; if it has, of the details; if not, the reasons for that, and the methods adopted to ensure that such dangerous goods will not cause accidents of a massive scale?*

SECRETARY FOR SECURITY (in Chinese): President,

- (a) Under the enforcement purview of the C&ED, illegal fuel means duty-not-paid fuel under the Dutiable Commodities Ordinance (Chapter 109). Since the waiver of the duty for Euro V diesel by the Government in July 2008, the illegal fuel activities (including

import, distribution and retail) combated by the C&ED mainly involve petrol. In the past three years, the C&ED has cracked down a total of 982 cases of illegal fuel activities.

The FSD is responsible for combating illegal storage, conveyance, use and sale activities of Category 5 dangerous goods (including petrol and diesel) under the Dangerous Goods Ordinance (Chapter 295) and Fire Services (Fire Hazard Abatement) Regulation (Chapter 95F). In the past three years, the FSD has taken 469 prosecution actions against such illegal activities.

Starting from 2006, the C&ED and the FSD have established a co-operative mechanism in combating illegal fuel activities, which includes mutual exchange of intelligence and conducting joint operations. For black spots likely to be used for illegal fuel activities, the two Departments will maintain close surveillance and gather intelligence to step up actions. Where circumstances require, the police will assist relevant departments to take enforcement actions.

(b) and (c)

In general, the contracts between the Government and the contractors will stipulate that the activities of the contractor shall comply with the laws of Hong Kong. As regards the case mentioned in the question relating to suspected illegal fuel filling of a cleansing service contractor of the FEHD, the FSD first received the report of such illegal fuel filling activities outside the refuse collection point at No. 9 Tin Wan Path, Aberdeen on 14 February 2012. The FSD officers carried out inspection at the location on the same day without any finding. During the follow-up inspection at the said location on 17 February, the FSD found a lorry loaded with diesel (classified as Category 5 dangerous goods) without a valid licence. The FSD removed the dangerous goods concerned and is considering to take prosecution action against the person concerned. The FSD officers carried out further inspections at the location in February, March and April and no illegal fuel filling activity was found.

In the past three years, the FEHD was not aware of any case in which its refuse collection points were used as illegal fuel filling stations. The department's cleansing service contracts stipulate that vehicles and equipment, and so on, used by the contractor in performing the services should comply with the provisions of the cleansing service contract concerned and relevant laws of Hong Kong. If any non-compliance is discovered, the FEHD will take penalty actions and refer the case to relevant departments for follow-up action.

Pursuant to section 6 of the Dangerous Goods Ordinance, no person shall convey Category 5 dangerous goods more than the exempted quantity except under a licence granted by the FSD. Otherwise, the person shall be guilty of an offence. Upon conviction, he/she shall be liable to a maximum fine of \$25,000 and imprisonment for six months. In granting the licence, the FSD will formulate the required fire safety requirements having regard to the types of dangerous goods to be conveyed by that vehicle and will issue a licence only when the vehicle has complied with all such requirements. If a licenced vehicle is found to have breached the licensing requirements (for example, the fire extinguishers on the vehicle cannot function properly), the FSD will take prosecution actions in accordance with section 9B of the Dangerous Goods Ordinance. Upon conviction, the person shall be liable to a maximum fine of \$10,000 and imprisonment for one month.

Provision of Elevators, Escalators and Footbridges in Public Housing Estates

15. **MR JAMES TO** (in Chinese): *President, in January 2009, the Government reported to the Panel on Housing of this Council that the Hong Kong Housing Authority (HA) would take forth a plan to enhance the existing pedestrian access in identified public housing estates (PHEs) (enhancement plan), under which new lifts, escalators and footbridges would be provided in external areas of housing blocks within PHE boundaries to connect elevated platforms with large-level differences, and lift towers would be added in existing housing blocks in PHEs which were built without lift service. The whole*

enhancement plan was expected to be completed in 2012. At the same time, the Government also indicated that it would continue to implement the lift modernization programme in PHEs to replace aged lifts of over 25 years which were currently in use (modernization programme). In this connection, will the Government inform this Council:

- (a) of the respective numbers of PHEs needed to be provided with new lifts, escalators and footbridges under the enhancement plan; the number of PHEs in which the relevant works were completed each year; regarding PHEs in which such works have not yet completed, of the present work progress and the anticipated completion dates; if such works cannot be completed within this year as scheduled, of the reasons for that;*
- (b) of the number of housing blocks in PHEs which were built without lift service and lift towers have already been added at present, broken down by year when lifts were added and by housing estate; the latest progress of the works for the addition of lifts which have not yet completed and the anticipated completion dates; if such works cannot be completed within this year as scheduled, of the reasons for that;*
- (c) given that the Government indicated that it had awarded contracts in 2009 for the modernization of 124 lifts in eight PHEs and such works were expected to be completed in phases in three years, of the annual number of PHEs for which the modernization works were completed each year; the latest progress of such works which have not yet completed and the anticipated completion dates; if such works cannot be completed within this year as scheduled, of the reasons for that;*
- (d) apart from PHEs covered under the enhancement plan and modernization programme, whether the Government will extend such plan and programme to other PHEs; if it will, of the details; if not, the reasons for that; and*
- (e) given the HA's recent announcement on the re-development of Pak Tin Estate in Sham Shui Po, in which the works for the addition of*

lifts were completed earlier, how the Government's improvement plans for PHEs will tie in with re-development plans in the future (for example, whether new improvement works will commence only after re-development projects for PHEs are confirmed), so as to avoid wastage of resources?

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, to enhance the pedestrian access in public rental housing (PRH) estates to cater for the needs of PRH tenants on barrier-free access, in particular the elderly and the disabled persons, the HA will provide additional lifts, escalators and footbridges in the external areas of PRH blocks within estate boundaries to connect elevated platforms with large-level differences. Where technically feasible, the HA will also add lift towers to PRH blocks which were built without lift services. This enhancement programme is scheduled for completion in 2012.

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

- (a) The HA will install a total of 26 lifts, six escalators and 18 footbridges in the external areas of PRH blocks within estate boundaries of 19 PRH estates. As at end April 2012, seven lifts and six escalators were installed. The remaining works are under construction, and are scheduled for completion in 2012.
- (b) The HA will install 44 lifts in the PRH blocks without lift services in 12 PRH estates. As at end April 2012, 15 lifts were installed. The remaining works are under construction, and are scheduled for completion in 2012.
- (c) The HA awarded contracts in 2009 for the modernization of 124 lifts in eight PRH estates and the work was launched in accordance with the planned schedule. As at end April 2012, the modernization works for 55 lifts were completed while another 29 lifts are under construction, and are scheduled for completion in 2012. For the remaining 40 lifts, the works will be carried out in phases so as to accommodate the needs of the tenants. The HA expects that the

relevant works will be completed in phases from the second quarter of 2013 to mid-2014.

- (d) The programme of installing additional lifts, escalators and footbridges in the external areas of PRH blocks within estate boundaries to connect elevated platforms with large-level differences; and adding lift towers to PRH blocks which were built without lift services is in full swing and is scheduled for completion in 2012. The HA will re-examine the need for similar enhancement works for other PRH estates upon completion of the current programme.

The lift modernization programme for existing PRH estates is a continuous rolling programme. The HA will appraise lifts which have operated for over 25 years. The replacement time table is planned in accordance with the conditions of the individual lifts. The HA's present target is to carry out the modernization works for about 100 lifts in PRH estates each year.

- (e) For those PRH estates aged at about 40 years, the HA will conduct Comprehensive Structural Investigation, so as to consider whether clearance and re-development, or Estate Improvement Programme (EIP) should be carried out for the estates concerned. To better utilize resources, the HA will not carry out EIP for individual estates before a decision on re-development is made. Having decided that there is no re-development plan for an estate, the HA will carry out EIP for the estate concerned.

Press and Demonstration Areas Outside Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region

16. **MS EMILY LAU** (in Chinese): *President, in recent years, many members of the public have staged demonstrations outside the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG). Some media has pointed out that the police impose numerous restrictions on their covering these demonstrations, and this has drawn public criticism on the*

authorities for suppressing freedom of the press. It has been reported that the police's controls over the media covering a number of demonstrations and petitions outside the LOCPG in April this year, including ordering reporters to stay far away from the front gate of the LOCPG for covering news, surrounding reporters who are staying outside the press area with mills barriers, and allowing only the four television stations to stay in the press area outside the planter at the front gate for covering news, had aroused strong dissatisfaction among the media, which lodged complaints with the Independent Police Complaints Council. In this connection, will the executive authorities inform this Council:

- (a) given that the existence of a large planter outside the LOCPG has reduced the width of the footpath from 9 m to 3 m, which is below the minimum width standard of 4.5 m for through zones of the land uses of "government, institution or community facilities" as recommended in the Transport Planning and Design Manual, and the police occupy much space for setting up action area and putting up a large number of mills barriers, leaving the space outside the LOCPG available for demonstrations and news coverage extremely limited, and it has been learnt that the police do not give permission for demonstrations and news coverage to take place outside the LOCPG on grounds of the cramped environment, whether the executive authorities constructed the planter in the public area outside the LOCPG at the request of the LOCPG; whether the authorities will re-consider removing the planter to expand the space for covering news and demonstrations; if not, of the reasons for that;*
- (b) of the reason why members of the public are allowed to pass the front gate of the LOCPG freely but reporters are confined to the press area when demonstrations take place; the criteria based on which the police decide that it is necessary to designate press areas; if it is based on the number of participants of the demonstrations and safety concerns, of the reason for the police to designate a press area even when, as pointed out by the media, only 10 odd members of the public were taking part in a peaceful demonstration; and*
- (c) whether the police have assessed if the criteria for dealing with demonstrations and the media covering news outside the LOCPG*

are more stringent; whether the police had received or taken the initiative to consult the LOCPG on its views before dealing with the demonstrations in April; whether the authorities have assessed if the approach of the police in dealing with the media covering news last year had a tendency to tighten the room for covering news?

SECRETARY FOR SECURITY (in Chinese): President,

- (a) According to the information provided by the Transport and Housing Bureau, the Government proposed in 2002 to carry out traffic improvement works on Connaught Road West to improve the road and traffic condition thereat. The proposed works included re-locating the exit of a layby previously located at the section of Connaught Road West between Western Street and Water Street to a position that would provide a better driving sightline, away from the stairs of the Western Street footbridge. The proposed works would improve the undesirable situation that vehicles had to weave in and out of Connaught Road West with poor driving sightline. The construction of the planter at the relevant section of Connaught Road West was part of the works project and was meant for appropriate beautification of the road section concerned. The width of the footway is 3 m after the road improvement works, which is in line with the width of the road section of Connaught Road West to which it is connected, that is, both road sections are 3 m wide.

According to the information provided by the Transport Department, the actual pedestrian flow of the section of the footway in question during the busiest hours in the morning is eight persons per minute on average. According to the Transport Planning and Design Manual, if the pedestrian flow at a footway is less than 60 persons per minute, the minimum width of the footway should be 2 m. As such, with a width of 3 m at present, the section of the footway conforms to the transport planning and design standards. The Administration considers that there is no need to carry out any alteration works at that section of the footway.

- (b) The police respect press freedom and the media's right of reporting, and recognize the importance of facilitating media coverage and maintaining effective communication with them. The police also implement measures to facilitate media coverage as far as practicable. In handling public order events, the police will, having taken into account the specific situations and various factors concerned, such as the geographical constraints of the venue concerned, the nature and content of the event, the anticipated number of participants and the actual situation of the demonstration, as well as balancing the impact on local residents, traffic conditions and road users, consider setting up designated public activity areas and designated press areas (DPAs), with a view to facilitating the conduct of public order events and media coverage and ensuring public safety and public order. If the demonstration is staged in a crowded place or if it is assessed that the demonstrators may resort to more radical means to express their aspirations, setting up of DPAs would enhance the safety of media workers and help reduce the risks involved with the movement of large video recording equipment. The relevant arrangement is intended to strike a balance between maintaining public order and meeting the needs of the media. It is hoped that the media would on the basis of mutual respect and understanding, consider the arrangements made by the police in support of mutual co-operation.
- (c) Hong Kong residents have the rights and freedom of speech which are protected under the Basic Law and the Hong Kong Bill of Rights Ordinance. The police always handle public meetings and processions in a fair, just and impartial manner in accordance with the laws of Hong Kong. The operational policy of the police is to endeavour to strike a balance by facilitating all lawful and peaceful public meetings and processions on one hand and, on the other, reducing the impact of such meetings and processions on other members of the public or road users and to ensure public order and public safety. Generally speaking, upon receipt of a notification of a public meeting, the police will contact the event organizers as early as possible and maintain close communication with them to understand their needs and aspirations and to provide advice and

assistance on crowd management. In handling public order events outside the LOCPG, the police always strictly follow the abovementioned principle and render assistance in such public order events so that they can be conducted in a peaceful and orderly manner. As such public order events are held in public places, the police do not need to consult the LOCPG, local groups or the shops nearby.

The police respect press freedom and the media's right of reporting, and maintain a co-operative relationship with the media on the basis of mutual respect and understanding. The police will endeavour to provide assistance to facilitate the media in their reporting work.

Low-platform Buses

17. **MR ALBERT CHAN** (in Chinese): *President, on 6 April 2011, I raised a question at the meeting of this Council on the issue that most of the trips on the bus routes to and from Tin Shui Wai were not serviced by wheelchair-accessible low-platform buses. It has been learnt that as most of these trips are still not serviced by low-platform buses at present, wheelchair users often have to wait for more than 30 minutes for such buses. In this connection, will the Government inform this Council:*

- (a) *of the respective numbers of low-platform buses added to the fleet of each franchised bus company during the period from April 2011 to April 2012 and the respective percentages of such additions;*
- (b) *of the daily number of trips on the bus routes to and from Tin Shui Wai which are run by low-platform buses at present, and the percentage of such number in the total number of relevant bus trips, and how such figures compare with the relevant figures in April 2011; and*
- (c) *whether it will re-consider adding a clause to the franchise agreements with bus companies in the future, requiring them to retrofit facilities on all in-service non-low-platform buses to make it*

convenient for wheelchair users to board and alight buses; if it will, of the details; if not, the reasons for that?

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

- (a) The total number of wheelchair accessible low-floor buses in the franchised bus fleet has increased from 3 271 in end-April 2011 to 3 575 in end-March 2012⁽¹⁾, representing a growth of 9.3%. The number of low-floor buses of the franchised bus companies is shown at the Annex.
- (b) In end-April 2011, the total number of bus trips to and from Tin Shui Wai was 3 321 per day, of which 2 497 trips were made by low-floor buses. They made up of about 75% of the total daily trips made under the relevant routes. In end-March 2012, the total number of bus trips to and from Tin Shui Wai was 3 320 per day, with 2 820 trips made by low-floor buses. They made up of about 85% of the total daily trips made under the relevant routes. As far as the number of trips is concerned, that made by low-floor buses to and from Tin Shui Wai in end-March 2012 has increased by 323 per day when compared with end-April 2011.
- (c) All franchised bus companies, except New Lantao Bus Company (1973) Limited (NLB), have agreed and implemented since 2001 that all new buses purchased as additional or replacement vehicles will be wheelchair accessible models. According to the current bus replacement plans, it is expected that all franchised buses will be low-floor and wheelchair accessible by around 2015-2016.

As a low-floor bus requires a purpose-made frame for its structure and facilities, it is not feasible to modify serving non-low-floor buses into low-floor ones to avoid affecting the structure of the vehicle.

As regards the NLB, since low-floor buses are not suitable for operation on some roads with steep gradient and sharp bends in

(1) The figures of end-March 2012 are the latest available figures.

South Lantau, the company can only procure as far as possible wheelchair accessible low-floor buses for use on bus routes other than those which cover such roads in South Lantau.

Annex

Number of Low-floor Buses of Franchised Bus Companies

<i>Franchised bus companies</i>	<i>Number of low-floor buses (Total number of buses)</i>		<i>Change in number of low-floor buses</i>
	<i>End-April 2011</i>	<i>End-March 2012</i>	<i>End-March 2012 versus End-April 2011</i>
Kowloon Motor Bus Company (1933) Limited	2 091 (3 752)	2 353 (3 901)	+12.5%
Citybus Limited (Hong Kong Island and cross harbour routes)	199 (764)	238 (759)	+19.6%
Citybus Limited (Airport and North Lantau routes)	168 (172)	166 (170)	-1.2% ⁽¹⁾
New World First Bus Services Limited	610 (715)	615 (707)	+0.8%
Long Win Bus Company Limited	165 (165)	165 (165)	0.0%
NLB	38 (104)	38 (104)	0.0%
Total	3 271 (5 672)	3 575 (5 806)	+9.3%

Note:

- (1) Owing to the maintenance arrangement for one low-floor bus, Citybus Limited (Airport and North Lantau routes) suspended the renewal of the licence of that vehicle in end-March 2012. Another low-floor bus of its fleet was retired upon reaching the age for replacement.

Regulation of Trading of Endangered Species

18. **MR KAM NAI-WAI** (in Chinese): *President, according to the Red List of Threatened Species of the International Union for Conservation of Nature and Natural Resources, Atlantic bluefin tunas (bluefin tunas) are among the*

endangered species in the world, and the legitimate trade of bluefin tunas is regulated and supervised under the International Convention for the Conservation of Atlantic Tunas (Convention) drawn up by the International Commission for the Conservation of Atlantic Tunas. Currently, China is a signatory to the Convention but Hong Kong has not yet come under the regulation of the Convention. On the other hand, to enforce the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government strictly regulates the trade of the endangered species listed in the Appendices of the Trade Convention through enacting the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) (the Ordinance). Appendix I of Schedule 1 to the Ordinance lists species which are threatened with extinction and their import and export are strictly prohibited except for certain special purposes such as scientific study and display in museum; Appendix II includes species which may become extinct unless their trade is under control; and species in Appendix III are those identified by any Party to the CITES as requiring international trade regulation, so as to protect them from over-exploitation. According to the provisions of the Ordinance, licences are required for the import and export of the controlled species as mentioned above. In this connection, will the Government inform this Council:

- (a) whether at present the Government has any policy and regulation to monitor the legitimate and illegitimate trade of bluefin tunas in Hong Kong;*
- (b) whether any plan is in place for Hong Kong to implement the provisions of the Convention so as to ensure that Hong Kong will not become an illegal trading centre for bluefin tunas;*
- (c) in the past five years, of the number of persons prosecuted and convicted for contravening the Ordinance, and the highest and lowest penalties imposed on the convicted persons (with a breakdown by year and case involving the species listed in Appendices I, II and III); the number of persons who were granted licences for the import and export of controlled species, and the respective numbers of imported and exported species (with a breakdown by year and species);*

- (d) *in respect of the species listed in Appendix I, of the respective numbers of animals and plants which were allowed to be imported and exported for certain special purposes such as scientific study and display in museum, and so on, as well as the species to which they belong (with a breakdown by year and species) in the past five years; how the Government ensured that such animals and plants were used for the specified special purposes only; and*
- (e) *whether it regularly reviews and updates the species included under the Appendices of Schedule 1 to the Ordinance; if it does, of the details, and whether it has any plan to include bluefin tunas in the Appendices; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Chinese): President, the Convention and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) fall within the policy areas of the Food and Health Bureau and the Environment Bureau respectively. Having consolidated the information provided by the Food and Health Bureau in response to parts (a) and (b) of the question, our reply to various parts of the question raised by Mr KAM Nai-wai is as follows:

- (a) The application of the Convention (including the regulatory measures relating to bluefin tunas under the Convention) has not been extended to the Hong Kong Special Administrative Region.

The Hong Kong Imports and Exports Classification List (Harmonized System) (the Harmonized System) of the Census and Statistics Department (C&SD) currently includes the commodity description and trade code of bluefin tunas. A customs declaration shall be filed and the correct commodity description and trade code under the Harmonized System shall be provided for the import and export of bluefin tunas. At the request of the Secretariat of or the Contracting Parties to the Convention, we will assist with the investigation of suspected cases of import of bluefin tunas not in compliance with the regulatory system under the Convention. For instance, we will provide the relevant import and export information for follow-up by the Secretariat or the Contracting Parties.

- (b) The import volume of bluefin tunas into Hong Kong is not substantial. Based on the information provided by the C&SD, the import of bluefin tunas into Hong Kong last year accounted for about 1% of the total allowable catch set by the Convention. We will continue to monitor the trading of bluefin tunas in Hong Kong. Where necessary, we will review if the measures relating to bluefin tunas under the Convention should be implemented in Hong Kong.
- (c) Below are the numbers of prosecutions and convictions for contravention of the Ordinance with the penalties imposed in the past five years:

		2007	2008	2009	2010	2011	
Appendix I Species	Number of prosecutions	19	24	35	28	18	
	Number of convictions	19	24	34	26	17	
	Maximum penalties*	Imprisonment	-	4 months	8 months	8 months	6 months
		Fine	\$40,000	\$60,000	\$60,000	\$60,000	\$60,000
		Community service order	-	-	-	-	-
Minimum penalties (Fine)	\$800	\$500	\$100	\$500	\$2,000		
Appendix II Species	Number of prosecutions	86	84	84	89	99	
	Number of convictions	85	77	77	87	97	
	Maximum penalties*	Imprisonment	2 months	2 months (suspended for 18 months)	-	-	4 months
		Fine	\$26,000	\$5,000	\$8,000	\$10,000	\$8,000
		Community service order	120 hours	-	240 hours	160 hours	-
Minimum penalties (Fine)	\$100	\$100	\$100	\$100	\$100		
Appendix III Species	Number of prosecutions	-	-	2	-	-	
	Number of convictions	-	-	2	-	-	
	Maximum penalties*	Imprisonment	-	-	-	-	-
		Fine	-	-	\$1,000	-	-
		Community service order	-	-	120 hours	-	-
Minimum penalties (Fine)	-	-	-	-	-		

Note:

- * According to records, the Court imposed the penalty of imprisonment, a fine or a community service order on the individual merits of each case. The table above lists the maximum penalties laid by the Court in individual cases under different categories of penalties.

As regards the number of licence holders in respect of the import and export of controlled species and the volume of import and export by

species, the Agriculture, Fisheries and Conservation Department (AFCD) has no statistics on either. The Department, however, keeps track of the number of licences issued each year (note: each licence is valid for one shipment only). Below are the numbers of import licences and export licences issued by the AFCD in the past five years:

	2007	2008	2009	2010	2011
Import licences	905	955	1 084	814	851
Export licences	15 036	15 182	12 775	14 559	16 057

- (d) Below are the numbers and species of CITES Appendix I species permitted for import and export for special purposes such as scientific research or display in a museum in the past five years:

Import

	2007	2008	2009	2010	2011
African elephant	Ivory cut pieces (2 pcs)	-	-	-	-
Peregrine falcon	-	-	-	Extract (12 ml)	-
Chinese white dolphin	-	-	-	-	Tissue sample (58 pcs)

Export

	2007	2008	2009	2010	2011
Black finless porpoise	Skin sample (10 pcs), teeth (20 pcs)	-	-	-	-
Chinese white dolphin	Skin sample (20 pcs), teeth (20 pcs)	-	Skin sample (18 pcs)	-	-
Pygmy slow loris	-	Tissue sample (1 tube)	-	-	-
False gavia	-	Tissue sample (6 pcs)	-	-	-
Lesser panda	-	-	Serum (4 ml)	-	-

	2007	2008	2009	2010	2011
Hawksbill sea turtle	-	-	-	-	Case (4 pcs), handbag (1 pcs)
Elephant	-	-	-	-	Handbag (2 pcs), vase (1 pcs), tray (2 pcs), case (8 pcs)
Buffon's macaw	-	-	-	-	Swab (6 ml), serum (1.4 ml)

In order to ensure that the species concerned are only used for special purposes as specified, when processing an application for the import and export of an Appendix I species, the AFCD will verify the information submitted by the applicant, including the necessary supporting documents, the nature of business of the applicant's organization (for example, a scientific research institution or a museum) and the source of the species concerned. In addition, the AFCD will specify on the licence the purpose of import or export. When importing or exporting the species concerned, authorized officers will examine the specimen concerned to ensure consistency with the information set out in the CITES licence.

- (e) The Government's established practice is to strictly follow the CITES regulations and bring all the species controlled under CITES within the scope of control under the Ordinance. The Parties to the CITES hold regular Conferences of the Parties (CoP) to discuss in detail the species to be controlled under the CITES. This includes listing certain species in the Appendices to the CITES for control and deleting certain species which no longer require control. Once a proposal is adopted in the CoP, Hong Kong will follow the CoP decision and amend the scope of control under the Ordinance accordingly.

The last CITES CoP was held in Qatar in March 2010, and the meeting discussed whether bluefin tunas should be listed as a CITES Appendix I species. As the proposal was not carried ultimately, bluefin tunas is currently not subject to control under the Ordinance. We will closely follow the relevant discussions at the CoP and timely bring new species adopted for listing under the CITES within the scope of control under the Ordinance.

Sexual Offences Committed by Juveniles

19. **MISS TANYA CHAN** (in Chinese): *President, it has been learnt that there were cases of sex crimes, including rape, unlawful sexual intercourse and indecent assault, which involved minors under 18 years of age in the past. In some of the cases involving boys under 14 having sexual intercourse with girls, the boys involved could not be convicted of the offences of unlawful sexual intercourse or rape, as the existing law refuses to accept that boys under 14 years of age are capable of sexual intercourse. In December 2010, the Law Reform Commission of Hong Kong (LRC) published a report on "The Common Law Presumption that a Boy under 14 is Incapable of Sexual Intercourse", pointing out that this common law presumption has been abolished in a number of jurisdictions, and that the aforesaid presumption is at odds with reality and should therefore be abolished. In this connection, will the Government inform this Council:*

- (a) *in the past five years, of the number of cases of sexual offences involving persons under 18 years of age, the age distribution of the offenders and victims, and the number of offenders convicted (set out in the table below);*

<i>Offence</i>	<i>Number of cases of sexual offences involving victims under 18</i>	<i>Number of cases of sexual offences involving offenders under 10</i>	<i>Number of cases of sexual offences involving offenders aged at or above 10 but under 14</i>	<i>Number of convicted cases of sexual offences involving offenders aged at or above 10 but under 14</i>	<i>Number of cases of sexual offences involving offenders aged at or above 14 but under 18</i>	<i>Number of convicted cases of sexual offences involving offenders aged at or above 14 but under 18</i>
<i>Indecent assault</i>						
<i>Rape</i>						
<i>Unlawful sexual intercourse</i>						

- (b) *in the past five years, of the number of cases of sexual offences involving minors under 18 years of age in which the Government had not instituted prosecution; among such cases, of the number of*

those in which the suspects, despite the fact they indeed had sexual intercourse with the victims, could only be charged with indecent assault instead of rape or unlawful sexual intercourse, based on the aforesaid common law presumption, because the suspects were boys under 14; and

- (c) *regarding the situation of juveniles involving in sexual offences, of the measures adopted by the Government to prevent juveniles from committing sexual offences, and to provide counselling and support to underage victims of sexual offences as well as minors committing relevant offences; whether it will consider reviewing the existing sex education curriculum; if it will, of the work plan; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Chinese): President, under the existing common law, there is an irrebuttable common law presumption of criminal law that a boy under 14 is incapable of sexual intercourse. After reviewing the presumption and its implications, the LRC issued a report in December 2010 recommending that the common law presumption should be abolished.

In order to implement the LRC's recommendation, the Government has proposed that a new provision be inserted in the Crimes Ordinance to abolish the common law presumption. The Legislative Council's Panel on Administration of Justice and Legal Services discussed this recommendation at its meeting on 28 February 2011. Members generally supported this recommendation. On 20 April 2012, the Government published in the gazette the Statute Law (Miscellaneous Provisions) Bill 2012 (the Bill) which adds a provision to the Crimes Ordinance to abolish the common law presumption that a boy under 14 is incapable of sexual intercourse. The Bill will be introduced into the Legislative Council for scrutiny on 2 May 2012.

Our replies to the specific questions are as follows:

- (a) and (b)

In the past five years, the number of arrests and convictions of cases of sexual offences involving offenders under 18 years of age, and the number of crime reports of sexual offences cases including child

victims under 18 years of age are set out at the Annex. The Government has not kept any separate figures on cases involving offenders under 18 years of age in which no prosecution has been instituted.

- (c) Juvenile sex crimes involve complicated social issues. To combat such crimes effectively and enhance the self-protection awareness among juveniles, concerted efforts from different parties are required.

The police have been developing and implementing strategies to combat juvenile crimes through an "interdepartmental" and "multi-agency" approach. The police will take part in seminars organized by the Education Bureau and brief the participating school principals and teachers on sex crimes and legislations relating to computer networks in order to enhance their knowledge of sex crimes. The police will also continue to implement the "School Liaison Officer Scheme" to strengthen communication with schools, instill proper values and the ability to discern right from wrong among primary and secondary students, and enhance youngsters' awareness of sex crimes. Talks will also be held at schools for teachers and social workers to enhance their knowledge in this area.

Moreover, following the theme of "Protect Yourself from Sexual Assault" in the 2011-2012 fight crime publicity campaign, the Fight Crime Committee will adopt "Guard against Sexual Assault" as one of the themes in the 2012-2013 publicity campaign. The police will continue to display banners and distribute publicity materials in schools in Hong Kong and places of interest to raise awareness on the importance of personal safety.

As preventive education, the Education Bureau is committed to the promotion of sex education in schools, with an aim of helping students understand sex-related issues during their personal growth and nurture positive values and attitudes, thus to facilitate their whole-person development. Through a holistic school curriculum incorporating sex education, complemented by sex-related preventive and developmental guidance activities for students, it helps students develop a healthy attitude towards sex and proper

values. In addition, the Education Bureau conducts talks and seminars annually to enhance the awareness of education professionals about the protection of children against sexual abuse.

To address the developmental needs of contemporary youth, the Education Bureau constantly reviews the school curriculum. Sex education related learning objectives and relevant life events are spelt out in the revised Moral and Civic Education curriculum framework launched in April 2008. In the New Senior Secondary Curriculum implemented since 2009, elements of sex education are also covered in Liberal Studies, Ethics and Religious Studies as well as Health Management and Social Care. The update of General Studies curriculum was completed in 2011 and the part on sex education was strengthened. Life and Society, scheduled to be implemented in September 2012, includes learning elements in relation to the development of proper conceptions of and attitude towards sex.

The Social Welfare Department (SWD) provides young people with a range of preventive, developmental and remedial services to help them build up positive values and prevent them from having delinquent behaviour, including committing sex offences, during their developmental stage. The services concerned include the "one school social worker for each secondary school" scheme implemented in all secondary schools over the territory to offer appropriate support and counselling to students encountering difficulties in their academic studies as well as social and emotional development. The Government has also subvented 138 integrated children and youth services centres across the territory to provide young people with socialization programmes and holistic supportive services at the neighbourhood level to assist them in developing positive values. In addition, 16 district outreaching social work teams and 18 overnight outreaching teams for young night drifters proactively approach and offer counselling, guidance and support to youths at risk.

In providing support to underage victims, the SWD will, being notified of suspected cases of sexual abuse involving underage victims, contact the victims and their families immediately for

provision of necessary support services, including counselling, medical treatment, clinical psychological service and temporary accommodation, and so on. Social workers may also apply for Care or Protection Order for the victims concerned under the Protection of Children and Juveniles Ordinance. Besides, the SWD will arrange support persons to accompany the victims during court proceedings to reduce their fear and anxiety as necessary.

As for minor offenders, the SWD subvents five Community Support Service Scheme (CSSS) teams to assist young people who are under the Police Superintendent's Discretion Scheme, including youths involved in sexual offences. Through providing guidance, counselling, treatment groups and community services, and so on, CSSS teams help them reintegrate into mainstream education or work force with a view to reducing likelihood of repeated offences. Furthermore, upon conviction, the Court will consider the young offender's background and decide if it is appropriate, according to the Probation of Offenders Ordinance, to place him/her under a probation order and to receive statutory supervision from a probation officer of the SWD for a specified period of one to three years. Apart from counselling services for young offenders, probation officers will also refer individual probationers to receive psychological treatment, welfare and residential services according to their needs, so as to help them start afresh and reintegrate into the community.

Annex

Table 1: Number of crime reports of cases of sexual offences involving victims under 18 (2007-2011)

	2007	2008	2009	2010	2011
Rape	38	38	54	43	37
Indecent Assault	549	581	490	635	519
Unlawful sexual intercourse	310	359	333	265	288

Table 2: Number of arrested sexual offenders aged at or above 10 but under 18 (2007-2011)*

	<i>Offenders aged 10 to 13</i>	<i>Offenders aged 14 to 17</i>
2007		
Rape	1 [#]	13
Indecent assault	66	88
Unlawful sexual intercourse	6	159
2008		
Rape	0	21
Indecent assault	94	85
Unlawful sexual intercourse	2	172
2009		
Rape	0	20
Indecent assault	55	122
Unlawful sexual intercourse	10	135
2010		
Rape	1 [#]	24
Indecent assault	87	135
Unlawful sexual intercourse	2	119
2011		
Rape	0	6
Indecent assault	64	107
Unlawful sexual intercourse	7	130

Notes:

* The Government does not keep figures of cases involving "offenders under 10" and the number of cases of sexual offences in which the Government has not instituted prosecution.

The offenders of the two cases were aged below 14. Although the police arrested the offenders for raping, the two young male offenders were eventually charged with indecent assault due to the lack of evidence or the common law presumption that a boy under 14 is incapable of sexual intercourse.

Table 3: Number of convicted sexual offenders aged at or above 10 but under 18 (2007-2011)

	<i>Offenders aged 10 to 13</i>	<i>Offenders aged 14 to 17</i>
2007		
Rape	0	2
Indecent assault	16	28
Unlawful sexual intercourse	0	49

	<i>Offenders aged 10 to 13</i>	<i>Offenders aged 14 to 17</i>
2008		
Rape	0	4
Indecent assault	15	32
Unlawful sexual intercourse	0	83
2009		
Rape	0	1
Indecent assault	8	40
Unlawful sexual intercourse	0	50
2010		
Rape	0	2
Indecent assault	2	38
Unlawful sexual intercourse	0	59
2011		
Rape	0	1
Indecent assault	13	29
Unlawful sexual intercourse	0	46

Promoting Development of Convention and Exhibition Industries in Hong Kong

20. **MR PAUL TSE** (in Chinese): *President, recently, a financial television programme which analysed the development of the tourism, exhibition and convention industries has reported that in Singapore and Shanghai, designated departments or tourism authorities are responsible for developing their tourism, exhibition and convention industries in a "through-train" manner (including hardware facilities and complementary policies) and have achieved excellent results. The programme has also pointed out that the Hong Kong Convention and Exhibition Centre (HKCEC) in Wan Chai cannot fully facilitate the development of the convention and exhibition industries due to limitation in space, and that the AsiaWorld-Expo (AWE) in Tung Chung is all along under-utilized (with an average utilization rate of about 8% only) because of a lack of ancillary tourism facilities such as transport, hotels, restaurants and attractions. Some members of the trade have relayed that despite the huge expenses incurred by the Hong Kong Tourism Board (HKTB) on promotion all these years, there is still no concrete planning for the development of the tourism, exhibition and convention industries in Hong Kong, and that their development is slow and promotion is ineffective. In this connection, will the Government inform this Council:*

- (a) *of the policies to be adopted by the present Government in the remainder of its current term to promote the development of the convention industry and to raise the utilization rate of AWE; whether it has assessed if the lack of policy support and ancillary facilities, such as transport, hotels and shops, and so on, to tie in with the operation of AWE has caused Hong Kong's convention industry to lag far behind Singapore;*
- (b) *given that it has been reported that the Chief Executive-elect will split the Commerce and Economic Development Bureau and an "industry, commerce and tourism bureau" will be formed, whether the "industry, commerce and tourism bureau" will handle issues relating to the tourism, exhibition and convention industries in a centralized manner as well as follow the practices adopted by Singapore of providing integrated development for the relevant industries in a "through-train" approach;*
- (c) *whether it knows the HKTB's expenditure on promoting the convention and exhibition industries in each of the past three years; whether it knows and whether it has compared the current actual revenues generated from the convention and exhibition industries in Hong Kong and Singapore; whether the Government has assessed if the development of Hong Kong's convention and exhibition industries can compete with that of Singapore after years of substantial spending by the HKTB on the promotion of the industries; if the assessment outcome is in the negative, of the reasons for that; the respective numbers of exhibitions, conventions and exhibition cum convention activities held at HKCEC and AWE in each of the past three years, as well as the respective numbers of participants; whether it has assessed if factors such as the limited space of the convention and exhibition venues, insufficient transport and ancillary facilities, inadequate policy promotion efforts, as well as poor planning and development, and so on, are the reasons for the impeded development of the relevant industries;*
- (d) *whether the Government has assessed if HKCEC and AWE are at present in a competitive relationship; of the policy co-ordination provided by the Government or whether it will offer incentives to encourage and foster co-operation between them on diverting*

exhibition and convention activities, so as to optimize the use of the capacities of the two venues; and

- (e) *whether the Government has assessed if the present situation of HKCEC and AWE being operated by two separate management companies reflects the absence of aligned management, and whether such situation has hindered the co-operation between the two exhibition venues and the production of synergy effect; of the policies to be implemented by the Government to promote the co-operation between the two companies to enhance the competitiveness of Hong Kong's convention and exhibition industries?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the Government has been striving to enhance Hong Kong's advantages and appeal as a capital for international Meetings, Incentive Travels, Conventions and Exhibitions (MICE). The Government has not only invested in the construction of Hong Kong's two major convention and exhibition facilities, namely HKCEC and AWE, but has also established the Meetings and Exhibitions Hong Kong (MEHK) office under the HKTB in November 2008, to promote Hong Kong as one of the prime destination for MICE events and travel.

Since its establishment, MEHK has supported over 4 000 MICE events staged in Hong Kong. Amongst them, about 1 400 events have been secured through MEHK's lobbying efforts. Large-scale MICE events includes the Asian Aerospace International Expo and Congress, SWIFT International Banking Operations Seminar, InfoComm Asia, World Congress of Nephrology, FDI Annual World Dental Congress, Spoon Art Fair HK 12, IAAPA Asian Attractions Expo, International Trademark Association Annual Meeting, News World Summit, and so on.

The expenditure on MICE promotion incurred by the MEHK established under the HKTB in the past three years is summarized as follows:

<i>Financial Year</i>	<i>Promotional Budget (\$ million)</i>
2009-2010	47.4
2010-2011	39.2
2011-2012	47.4

We do not have any information on the MICE related investment and benefit in Singapore. For Hong Kong, the number of overnight MICE visitor has continued to increase over the past two years. In 2011, there were 1.56 million MICE overnight visitors, an increase of 9.3% over 2010. These MICE visitors are usually high-spending visitors. The per capita spending of overnight MICE visitors in 2011 was \$9,187, an increase of 8.4% over 2010 (\$8,475) and 25.3% higher than the per capita spending of overall overnight visitors in 2011 (\$7,333). Hong Kong was selected as "Asia's Best City for Business Events" by the prominent MICE publication *CEI Asia* in 2011 and as "Best Business City in the World" for three consecutive years (that is, 2009 to 2011) in the readers' poll organized by another business magazine, *Business Traveller Asia Pacific*. According to the MICE survey conducted by the HKTb, nearly 90% of the interviewees considered Hong Kong a major MICE destination in Asia Pacific. The above has reflected the effectiveness of Hong Kong's work on the promotion of MICE tourism.

The number of exhibition, convention and exhibition cum convention staged at HKCEC in the previous three years is as follows:

	<i>Exhibition</i>	<i>Convention</i>	<i>Exhibition cum Convention</i>
2009	109 (3 836 100)	11 (7 030)	15 (10 274)
2010	110 (4 608 559)	15 (11 009)	26 (44 088)
2011	117 (4 604 532)	13 (23 212)	19 (31 913)

Note:

Figures in () refers to the total number of participants in that year.

Separately, the number of exhibition, convention and exhibition cum convention staged at AWE in the previous three years is as follows:

	<i>Exhibition</i>	<i>Convention</i>	<i>Exhibition cum Convention</i>
2009-2010	34 (330 000)	27 (117 800)	2 (2 200)
2010-2011	40 (360 000)	37 (168 700)	1 (1 300)
2011-2012	41 (380 000)	50 (249 500)	1 (500)

Note:

Figures in () refers to the total number of participants in that year.

HKCEC and AWE, each having its own advantages, are major convention and exhibition facilities in Hong Kong. Since HKCEC was established much earlier and its location being much more convenient than that of AWE, the venue has all along been enjoying a higher utilization rate. While HKCEC has been operating for over 23 years, AWE has only been established for about six years and still needs more time to build up its customer base and business. The Government will continue to work on improving the utilization of the existing convention and exhibition facilities, including encouraging the Hong Kong Trade Development Council (TDC) and other organizations to stage more exhibitions at AWE and to better utilize the existing convention and exhibition facilities through the adoption of "one show, two venues" or "two shows, two venues" approaches as well as further strengthening the public transportation arrangements for AWE. With the joint efforts of the Government and various parties, AWE has started to gain recognition from the industry and public in recent years, resulting in more MICE events staged in Hong Kong. In fact, the number of major exhibition and convention at AWE experienced double digit growth in both 2009-2010 and 2010-2011.

HKCEC and AWE, operated by two management companies, provide the market with two different choices of venues. HKCEC, located in the downtown area, has been a popular venue for consumer products related trade fairs in Hong Kong. The column-free, high ceiling design of AWE is suitable for hosting exhibitions involving large exhibits. AWE offers convenient access for exhibitors and visitors from the airport and has superb connections to the Mainland via bus services. Hence, the types of exhibition held at AWE and AWE's clientele are not exactly the same as those of HKCEC. Having said that, there has been co-operation between the two venues from time to time. In 2011, the TDC has organized a total of five exhibitions at AWE, including the Hong Kong International Printing and Packaging Fair, Sports Source Asia, Hong Kong International Building and Decoration Materials and Hardware Fair, Eco Expo Asia-International Trade Fair on Environmental Protection and the first Better Living Expo, which was organized together with the Paper Communication Exhibition Services in July last year. During the staging period of these fairs, there were also exhibitions with related topics like the Book Fair, Gift Fair and Lighting Fair staging at HKCEC. The TDC has arranged shuttle bus services between AWE and HKCEC, to increase the attraction of these fairs. Apart from this, the TDC has co-operated with Global Sources to provide free shuttle bus services between AWE and HKCEC for the buyers during mega exhibitions in

April and October since 2010. More than 11 000 people have benefited from this service. The direct connection services were well received by visitors to the fairs.

The Office of the Chief Executive-Elect is making preparation for the establishment of the new Government on 1 July 2012, including the reorganization of Policy Bureaux. The relevant arrangements will be announced in due course. Meanwhile, the existing government policy of promoting Hong Kong as one of the MICE capitals in the world will continue.

BILLS

First Reading of Bills

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012

CLERK (in Cantonese): Statute Law (Miscellaneous Provisions) Bill 2012.

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

Second Reading of Bills

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012

SECRETARY FOR JUSTICE (in Cantonese): Deputy President, I move the Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2012.

It is the practice of the Department of Justice to introduce, at regular intervals, to the Legislative Council a Statute Law (Miscellaneous Provisions)

Bill, proposing amendments to various Ordinances that are largely technical and non-controversial but are important for the purpose of updating or improving existing legislation. Since the enactment of an Ordinance of this kind in 2008, the Administration has considered it necessary to introduce a new Statute Law (Miscellaneous Provisions) Bill to propose amendments of this kind in a consolidated manner. Parts 2 to 12 of the Bill contain the relevant proposed amendments and the following is a brief description of such proposed amendments.

Part 2 of the Bill seeks to amend the Legal Practitioners Ordinance (Cap. 159). The relevant proposed amendments are contained in five divisions respectively.

Division 1 of Part 2 proposes to amend section 31C of that Ordinance to clarify that employed barristers are not required to be insured.

Division 2 of Part 2 seeks to repeal the finality provision in section 40M of the Legal Practitioners Ordinance to allow an appeal to be lodged with the Court of Final Appeal against any order made by a Notaries Public Disciplinary Tribunal. This provision is similar to the finality provision in another provision of the Ordinance, which was repealed in 2005 as a result of a judgment of the Court of Final Appeal. The Bill now seeks to repeal the relevant finality provision in section 40M. A related amendment to section 40R of the Ordinance is also proposed.

Division 3 of Part 2 contains proposed amendments to sections 25, 39 and 40P of the Legal Practitioners Ordinance which are consequential to the earlier amendments made to sections 13(1) and 37B(1) of that Ordinance.

Division 4 of Part 2 seeks to amend section 50B of the Legal Practitioners Ordinance to clarify that a foreign lawyer or firm must not take a solicitor or barrister into partnership if the solicitor or barrister holds a practising certificate.

Division 5 of Part 2 contains proposed amendments to section 72 of the Legal Practitioners Ordinance which are consequential to the repeal of section 27A of the same Ordinance under the Legal Practitioners (Amendment) Ordinance 2000

MR WONG YUK-MAN (in Cantonese): Deputy President, a quorum is not present in the Chamber now.

DEPUTY 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 returned to the Chamber)

DEPUTY PRESIDENT (in Cantonese): A quorum is present, the meeting continues.

SECRETARY FOR JUSTICE (in Cantonese): Deputy President and Honourable Members, before the ringing of the summoning bell, I am just talking about the amendment on Division 5 of Part 2 of the Statute Law (Miscellaneous Provisions) Bill 2012 (the Bill), and I will now go on explaining the content of it.

Division 5 of Part 2 contains proposed amendments to section 72 of the Legal Practitioners Ordinance which are consequential to the repeal of section 27A of the same Ordinance under the Legal Practitioners (Amendment) Ordinance 2000.

Part 3 of the Bill seeks to amend section 3 of the Administration of Estates by Consular Officers Ordinance (Cap. 191). This provision stipulates that the Chief Executive may by order notified in the Gazette under the hand of the Chief Secretary for Administration vary the Schedule to the Ordinance. In other words, two steps are required for variation of the Schedule: the first step is for the Chief Executive to make an order; and the second step is for the Chief Secretary for Administration to sign a notice of the order. It is proposed that the second step be dispensed with so that an order made by the Chief Executive in Council under section 3 could be directly published in the Gazette so as to streamline the gazettal requirement of orders made under that section.

Part 4 of the Bill seeks to implement the recommendation of the report of the Law Reform Commission of Hong Kong published in December 2010 that the

irrebuttable common law presumption that a boy under the age of 14 is incapable of sexual intercourse should be abolished. It is proposed that a new section 118O be added to the Crimes Ordinance (Cap. 200) to implement this recommendation. The Administration has consulted the Legislative Council's Panel on Administration of Justice and Legal Services on this proposal and the Panel expressed support to it.

Part 5 of the Bill proposes to repeal section 12(6) of the Customs and Excise Service Ordinance (Cap. 342). At present, section 12(6) stipulates that an officer under interdiction may not leave Hong Kong without the permission of the Commissioner of Customs and Excise. This provision is proposed to be repealed because it may not be compatible with the freedom to travel as enshrined in the Basic Law and in the Hong Kong Bill of Rights.

Part 6 of the Bill seeks to amend the Toys and Children's Products Safety Ordinance (Cap. 424) to simplify the formulation adopted in the definitions of "children's product standard" and "toy standard" and the format of Schedules 1 and 2 to that Ordinance which set out the applicable safety standards specified for toys and children's products. The proposals will facilitate further updating of the standards.

Part 7 of the Bill proposes to amend the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (Loose-leaf Ordinance) to facilitate the editorial work involved in preparing and updating the Laws of Hong Kong. The proposed amendments include making the ambit of editorial powers for the loose-leaf edition to be in line with the new legislation database regime under section 12 of the Legislation Publication Ordinance, adding the power to insert after a reference to the title of an Ordinance the chapter number given under the Loose-leaf Ordinance or under the Legislation Publication Ordinance, and adding the power to insert after the definition of a word/expression its Chinese or English equivalent.

Part 8 of the Bill contains various proposed amendments which are aimed to facilitate the introduction of solicitor corporations as a form of legal practice. In this regard, the Law Society has proposed that all the relevant provisions relating to solicitor corporations in the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (1997 Ordinance) be brought into operation at the same time when the Solicitor Corporation Rules prepared by the Law Society

comes into operation. Since the 1997 Ordinance was enacted quite some time ago, some of the amendments in the 1997 Ordinance have been overtaken by subsequent amendments to the Legal Practitioners Ordinance made after 1997. As a result, the Bill proposes that further amendments be made to these two Ordinances so as to enable the relevant provisions of the 1997 Ordinance and the Solicitor Corporation Rules to be brought into operation at the same time. Besides, we also propose to re-enact the new section 7L of the Legal Practitioners Ordinance as enacted by the 1997 Ordinance to clarify the extent to which the Companies Ordinance is to apply to a solicitor corporation.

As a result of the establishment of the legal office of Assistant Principal Solicitor (APS) in the Intellectual Property Department, Part 9 adds references to APS to the relevant provisions of various Ordinances. The proposed amendments are to ensure that APSs are eligible to be appointed as certain judicial officers.

Parts 10 to 12 of the Bill contain certain minor and technical amendments to various Ordinances and subsidiary legislation which are proposed to be made for miscellaneous purposes, for example, to correct or update references appearing in certain enactments; to achieve internal consistency in terminology and consistency between the Chinese and English texts of certain enactments; and to repeal various items of subsidiary legislation that have ceased to be in force.

Deputy President, as I mentioned at the beginning of this speech, the Bill is part of our continuing effort to collate and make technical and non-controversial statutory amendments which are important for the purpose of updating and improving the Laws of Hong Kong.

With these remarks, I would like to appeal to Members to support this Bill.

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

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

Resumption of Second Reading Debate on Bills

DEPUTY PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Legislative Council (Amendment) Bill 2012.

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2012**Resumption of debate on Second Reading which was moved on 8 February 2012**

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

MR TAM YIU-CHUNG (in Cantonese): Deputy President, in my capacity as Chairman of the Bills Committee on Legislative Council (Amendment) Bill 2012 (the Bills Committee), I would like to report on the major deliberations of the Bills Committee.

The Legislative Council (Amendment) Bill 2012 (the Bill) seeks to impose a restriction on the candidates nominated to stand for the Legislative Council by-elections to prohibit a person who has resigned, or is taken to have resigned, as a Member of the Legislative Council from standing for a by-election to be held in the same Legislative Council term within six months of his resignation.

The Bills Committee has held five meetings to study the Bill and listen to public views. Discussions of the Bills Committee mainly focused on whether the Administration's proposed arrangement for filling vacancies in the Legislative Council is constitutional. The Bills Committee has carefully considered the legal viewpoints raised by the Administration and the advice given by the Hong Kong Bar Association (the Bar Association) on the constitutionality of the proposed arrangement.

The Administration explained to the Bills Committee that the right to vote and the right to stand for election as guaranteed under Article 26 of the Basic Law and Article 21 of the Hong Kong Bill of Rights may be subject to reasonable

restrictions prescribed by law so long as the "proportionality test" applies. The Administration held that the Bill has not imposed restriction on the right to vote, but has only imposed restriction, to some extent, on the right to stand for election. Imposing restriction on the right to stand for election is a reasonable, necessary and proportionate measure in serving a legitimate purpose to deter the practice of a Member resigning in order to trigger a by-election in which he intends to stand and seek to be re-elected. Therefore, the Bill is constitutional.

The Bills Committee noted that the broad-brush approach proposed in the Bill to restrict the re-election of the resigning Member regardless of their reason is considered unjustified by the Bar Association. Also, the relevant measure has unnecessarily restricted the electors' right to vote in a by-election.

Some members agreed with the viewpoints of the Bar Association and opposed the Bill. They opined that the Administration should not deprive electors of the right to express their support or otherwise for the resigning Member in their vote in the by-election. What is more, the Bill has failed to address the mischief to be remedied by the Administration because persons belonging to the same political party of the resigning Member or persons who share his political views can still stand in a by-election. Thus, in any event, the by-election will incur expenditure of public funds. These members pointed out that the proposal's scope of application is too broad as the restriction also applies to Members who have chosen to resign not at will but for health or other personal reasons. They held that the restrictions imposed by the Bill on the right to vote and the right to stand for election do not meet the proportionality test.

Some members, on the other hand, have expressed support for the Bill. They are of the view that the Bill has answered the strong call from the community to plug the loophole whereby Members can resign at will in order to trigger a by-election in which they intend to stand and seek to be re-elected. They have also expressed agreement with the Administration's position because a vacancy arising mid-term under Article 79 of the Basic Law will continue to be filled by a by-election, whereas a Member who fails to discharge his duties for health or other personal reasons can preserve his right to stand in a by-election by way of vacating his office under Article 79 of the Basic Law. These members have stressed that the Bill has struck a right balance between the need to prevent possible abuse of the existing by-election system and the need to protect the right of the Hong Kong people to vote in a by-election. Furthermore, it is vital to

maintain the integrity of and respect for the electoral system, and elected Members are obliged to honour their undertakings by discharging their duties within a complete Legislative Council term.

When the Administration briefed us on the six-month period of restriction proposed in the Bill, it explained that a by-election in a geographical constituency is normally held within four months of the vacancy arising, and according to the Legislative Council Ordinance, a by-election to fill a vacancy is not to be held within the four months preceding the end of the current term of the Legislative Council. Some members are of the view that the proposed six-month period of restriction may not be adequate. Some even worry that in some exceptional circumstance, a resigning Member may be able to stand in a by-election if it is held after the six-month period of restriction.

According to the Administration, even if a resigning Member is able to stand in the resulting by-election which is held due to exceptional circumstances after the six-month period of restriction, it maintains that the imposition of the less than six-month period of restriction on the resigning members is an appropriate and proportionate measure.

Deputy President, the following is my personal view on the Bill.

Before expressing the views of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) and I on the Bill as well as the amendments proposed by other Members, I am obliged to recap the purpose of this Bill and the circumstances leading to the development of the incident.

In 2010, the Civic Party and the League of Social Democrats had, without regard to public criticisms and oppositions, instigated the so-called "five geographical constituencies referendum" by having five of their Legislative Council Members resigning from offices and then standing for the by-elections. Such meaningless by-elections had not only incurred more than \$150 million of public funds in the end, but had also recorded a record low turnout rate of 17.1%, thereby seriously jeopardizing the integrity of the Legislative Council and the entire electoral system.

As reflected in the public opinion polls conducted by various organizations after the Civic Party and the League of Social Democrats had instigated the

so-called "five geographical constituencies referendum" up till this so-called "referendum" ended in a disaster, more than half or the majority of people requested that legislative amendments should be made to plug the loophole which had allowed Members to resign and seek re-election, with a view to preventing the recurrence of another "referendum" fiasco.

Last year, in order to plug the loophole, the HKSAR Government had made references to countries which also practice proportional representation voting system in parliamentary elections, hoping that the loophole could be plugged by replacing by-elections with a replacement arrangement. As a result, the Legislative Council (Amendment) Bill 2011 was introduced.

Regarding the Administration's proposal to replace by-elections with a replacement arrangement, some people considered that members of the public might lose their right to vote in by-elections and queried the constitutionality of the proposed arrangement. Subsequently, some Members from the pro-establishment camp requested the Administration to postpone the Second Reading of the Bill and conduct another consultation exercise, hoping that it would come up with various options and listen to public views during the consultation period.

The HKSAR Government subsequently conducted public consultation exercises and made reference to the relevant result. The present Bill, introduced in February 2012, seeks to prohibit a Member of the Legislative Council from standing for a by-election to be held in the same Legislative Council term within six months of his resignation.

Despite the controversies, conflicts and disputes that have arisen from the policies introduced by the HKSAR Government to plug the loopholes of Members resigning at will to stand for re-election, we noticed that the mainstream wish of the community to plug this loophole has remained strong without any sign of fading. Therefore, the standpoint of the DAB on this issue is that the Government should respond to public aspirations and plug the loophole which had allowed Members to resign at will to seek re-election.

To the DAB, the amendments to the Bill may not completely prevent Members from resigning at will and may necessitate the holding of by-elections that are uncalled for, but the Bill itself can minimize the possible abuse of the

existing by-election system on the one hand, and protect people's right to vote in a by-election on the other. A proper balance has therefore been struck and is also best received by the general public. Therefore, on the premise of respecting public views, the DAB supports the Bill and the amendments proposed by the Administration.

We are aware that Mr Albert CHAN and Mr WONG Yuk-man have prepared more than 1 300 amendments to this Bill. Yesterday, we learnt from television that Mr Albert CHAN and Mr WONG Yuk-man — Mr Albert CHAN in particular — feel so proud of being able to propose more than 1 000 amendments, which add up to a total of 500 hours of speaking time.

This morning, a member of the public said something to me, which also speaks my heart. The member of the public said (I quote) "Mountains need not be high to be famous if fairies are around. Waters need not be deep to be enchanted if hidden dragons are found. Amendments need not be voluminous to be good if crucial points are highlighted. Speeches need not be lengthy to be outstanding if the public can be enlightened." (End of quote) He opined that the amendments proposed by the two Members are "not meant to be meaningful, but for putting up a show; not meant to be passed, but for delaying".

However, I think that the amendments proposed by the two Members

(Mr WONG Yuk-man rose to his feet)

DEPUTY PRESIDENT (in Cantonese): Mr WONG Yuk-man, what is your point? Do you have a point of order?

MR WONG YUK-MAN (in Cantonese): A quorum is not present now.

DEPUTY PRESIDENT (in Cantonese): Do you have a point of order?

MR WONG YUK-MAN (in Cantonese): A quorum is not present now.

DEPUTY PRESIDENT (in Cantonese): Yes, a quorum is not present.

MR WONG YUK-MAN (in Cantonese): Won't let you feel so high in talking nonsense.

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

(While the summoning bell was ringing, the President resumed the Chair)

MR IP KWOK-HIM (in Cantonese): President, a point of order. May I ask which Member requested a headcount? Is it reasonable for the Member who requested a headcount to leave the Chamber?

PRESIDENT (in Cantonese): The Member who requested a headcount has not returned to the Chamber.

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

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, please continue with your speech.

MR TAM YIU-CHUNG (in Cantonese): The Democratic Alliance for the Betterment and Progress of Hong Kong considers that the filibuster tactic adopted by Mr Albert CHAN and Mr WONG Yuk-man this time has seriously wasted the precious time of the Legislative Council, thereby disrupting the normal operation of the Council and damaging people's impression of the Legislative Council.

In my opinion, the amendments proposed by the two Members are mostly meaningless textual changes which should not be allowed to be proposed.

Being the Chairman of the Committee on Rules of Procedure, I am disappointed that the existing provisions of the Rules of Procedure cannot prohibit such amendments. I have informed the Secretariat that a relevant item will be included in the meeting agenda of the Committee on Rules of Procedure to be held on 8 May (next Tuesday), so as to see if the relevant provisions of the Rules of Procedure can be effectively amended to prevent the recurrence of similar incidents in future. Also, we will make reference to overseas experiences.

With these remarks, President, I support the Legislative Council (Amendment) Bill 2012 and the amendments proposed by the Administration.

MR ALBERT HO (in Cantonese): President, the bill introduced last year concerning the replacement mechanism, namely the Legislative Council (Amendment) Bill 2011, was a draconian law which the Government tried to force through the Legislative Council without adequate consultation. The bill subsequently attracted severe public criticisms and the Government had to withdraw the bill in the end. The Government reintroduced another bill in 2012, that is, the Legislative Council (Amendment) Bill 2012 (the Bill). On the face of it, this new Bill has responded to the strong criticisms raised by the community and members from the legal sector, but the relaxed proposals have actually failed to address various concerns. Nor have they properly responded to the legal justifications and political reasons for the strong opposition against the replacement mechanism.

Although the Bill under discussion today only prohibits the resigning Members from standing for a by-election to be held in the same Legislative Council term within six months of his resignation, people opposing the replacement mechanism (including colleagues from the pan-democratic camp) will continue to oppose the Bill on legal and political grounds today.

Obviously, this amendment Bill is a political mission to be achieved by the SAR Government as instructed by the Central Government in view of the civic referendum instigated by some Members through resignation the year before last. Unfortunately, it seems that the SAR Government has taken the instruction and planned to accomplish the task in order to show its allegiance. This gives us an impression that the Government has not upheld the position that it should take on the premise of "one country, two systems".

The Democratic Party opposes the deprivation of any person's right to stand for election, especially when the candidate is a resigning Member. We think that the Bill is not only unnecessary and unreasonable, but has also unproportionately deprived people of their rights to stand for election and to vote, thereby violating the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights Ordinance. The Hong Kong Bar Association also shares this view.

President, five Legislative Council Members resigned the year before last and subsequently stood for the by-election, with a view to promoting a civic referendum campaign. Regardless of whether Members now present at the meeting agree with the underlying rationale or tactics of this campaign, it is legally acceptable for resigning Members to stand for by-elections according to the existing law. After all, similar cases were occasionally found in many democratic countries. Some Members of the parliament may resign and stand for by-elections to seek the public's mandate for some extremely controversial political agendas. If we look around at other countries, such decisions of voluntary resignation are obviously conscious political behaviour, which is not uncommon, both in the past and I believe, in the future as well.

I must stress that, regardless of whether the decision is right or wrong, electors will make a fair judgment with their votes. If the resigning Members fail to win the hearts of the people, they may risk losing their seats or the relevant agenda, and thus they have to pay a price for the decision. How can the Government unilaterally impose restrictions on the excuse that Members' resignation has exposed some loopholes in laws, and thus propose legislative amendments to completely deprive people of their right to make political statement?

Mr TAM Yiu-chung, a supporter of this Bill, just now said that this amendment Bill seeks to uphold the dignity of the Legislative Council. I nonetheless think that the Bill has not only failed to uphold the dignity of this Council, but has also deprived electors of their right to vote and their dignity. It is therefore downright unnecessary for the Government to propose and force the Bill through the legislature. Our system does not have any legal loopholes that necessitate mandatory amendments. I must stress again that the amendments may contravene the legal obligation as enshrined in the International Covenant on Civil and Political Rights.

The Administration now wishes to prohibit resigning Members from standing for by-elections at present or in the future. Yet, even if the draconian bill can force its way through the legislature, can it genuinely prohibit Members from resigning to conduct a civic referendum? No, it cannot, because Members who wish to resign can still proceed, and people who share the same political philosophy may stand for the by-election on their behalf. Prohibition can never achieve its effect and the draconian bill actually has no practical meaning at all.

In this connection, the Democratic Party will vote against the Bill during the Second Reading. Our stance is the same as that of last year, we oppose the Government for manipulating its majority votes in the Council to brutally force through a bill which contravenes the International Covenant on Civil and Political Rights and the Hong Kong Bill of Rights Ordinance. Therefore, after the Second Reading, the Democratic Party will walk out in protest with our pan-democratic friends.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, as a saying goes, "Was he not without posterity who first made wooden images to bury with the dead?"¹ Will those who initiate unworthy practices suffer in the end?" We

PRESIDENT (in Cantonese): Mr LEUNG, have you put on your microphone?

MR LEUNG KWOK-HUNG (in Cantonese): Thank you. As a saying goes, "Was he not without posterity who first made wooden images to bury with the dead?" (始作俑者，其無後乎?) I do not care if Members pronounce the word "俑"(yung2) as "仲"(zung6). After Chairman MAO launched the Great Leap Forward and caused the deaths of many people, he said "Was he not without posterity who first made wooden images to bury with the dead? Is my son's death really retribution?" There will be retribution according to Chairman

¹ The works of Mencius <<http://ctext.org/>>

MAO. To deal with barbaric men, there is no choice but to use force; to deal with ridiculous men, even more absurd methods have to be used. This is the case today.

Why did we have to initiate the "five geographical constituencies referendum"? We should discuss this issue thoroughly, as we have plenty of time today. When the Basic Law was enacted, the principle of "one country, two systems" had been laid down, and the timetable for the implementation of universal suffrage had also been set. Nonetheless, the Chinese and British Governments played a tug-of-war game, and Hong Kong people did not have a part to play. The final outcome was the inclusion of Annexes I and II, the President should know about that. LEUNG Chun-ying was the then Secretary General of the Basic Law Consultative Committee of the HKSAR; he was in his youthful days at that time, looking bright and smart. They created something which was supposed to be approved 10 years later. Originally, someone proposed to approve by way of a referendum, but it was rejected. Just imagine, if the then Drafting Committee for the Basic Law — which was certainly controlled by the Communist Party and so was the Consultative Committee Just see how the Communist Party groomed LEUNG Chun-ying, a member of the Consultative Committee, he has now ascended to the Chief Executive throne. His archaic achievements are still well remembered and he can now become the Chief Executive. His achievements are great, and will not be forgotten.

Whose idea is it for all such fuss? Even the Drafting Committee under their control proposed to let Hong Kong people decide their political development by a referendum 10 years later. And yet, the proposal was rejected. In this bird's cage and animal farm under close supervision, this one and only proposal which has a greater "human touch" was rejected. I wonder if Members have read the immortal novel *Animal Farm*, in which the characters gradually speak like pigs and dogs. I always say that though the environment here is beautiful and pleasant, no one (including me) speaks like human beings. I have no choice. If I do not speak like animals, how can they understand? Just take a look at "Piggy WONG".

"Every injustice has its perpetrator and every debt its debtor". They controlled the enactment process of the Basic Law, and even rejected the proposal to implement a referendum. Now 10 years later, only Annexes I and II are "cold cases" to be solved. President, you had proposed great reconciliation at that

time and LEUNG Chun-ying is just parroting. I remember that you had proposed great reconciliation and made a pilgrimage to Beijing as early as 2003. I think this is not fair to you because according to the Copyright Ordinance, this is LEUNG Chun-ying's parody of your remarks and you must sue him. Great reconciliation, if my memory does not fail me, is your idea. He has merely produced mash-up works and advocated great reconciliation again.

I have a question for Members of the royalist camp, they accused other people for wasting public money. If they had sincerely fought for Hong Kong people, do they remember what Mr LAU Kong-wah had said when I contested with a member of the Democratic Alliance for the Betterment and Progress of Hong Kong in 2004? He pledged to implement dual universal suffrage in 2007 and 2008. I will not forget because there are video recordings. As they made verbal promises that do not materialize, they feed on their own faeces, and that ingress and egress cannot be distinguished. They have cheated Hong Kong people and sowed the seeds of this fiasco. Who would be the majority party in this Council if they had genuinely fought for dual universal suffrage in 2007 and 2008 and stood by the pan-democratic camp? It was them for sure. Am I right, Mr IP Kwok-him? If they had honoured the pledge Does he want to deny or clarify? Take a look at the video recordings. How can they still accuse others of creating troubles? What do they mean? What are their mouths for? To defecate or to speak?

PRESIDENT (in Cantonese): Mr LEUNG, please face the President when you speak.

MR LEUNG KWOK-HUNG (in Cantonese): President, may I ask the party which Mr IP belongs to whether their mouths are used for defecating or eating. If a person never goes back on his words, and means what he says

MR ALBERT CHAN (in Cantonese): President, may I ask Mr LEUNG Kwok-hung to explain how the mouth can be used for defecating?

PRESIDENT (in Cantonese): Mr LEUNG, please continue with your speech.

MR LEUNG KWOK-HUNG (in Cantonese): This is really very difficult to explain and this is exactly where the difference between human beings and animals lies. There is such case. I know that some inferior features which reproduce asexually, such as paramecium, feed on their own faeces. Such inferior creatures do exist.

Today, they accused us of creating troubles. However, if they did respond to the President's call for great reconciliation at that time, be it ZENG Qinghong or

(Mr Albert CHAN stood up)

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

MR ALBERT CHAN (in Cantonese): It seems that a quorum is not present in the Chamber now.

PRESIDENT (in Cantonese): Do you request a headcount?

MR ALBERT CHAN (in Cantonese): Yes, I request a headcount.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

MR WONG TING-KWONG (in Cantonese): Referring to Mr IP Kwok-him's previous question of why the Member who requests a headcount can leave the Chamber, they are poops on the altar — a nuisance to the gods and the devils. I do not know why they do so. According to the Rules of Procedure, can the Member who requests a headcount leave the Chamber?

PRESIDENT (in Cantonese): The Rules of Procedure does not specify which Member can or cannot request a headcount, nor does it require the Member requesting a headcount to stay in the Chamber. You have expressed your view.

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

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please continue with your speech.

MR LEUNG KWOK-HUNG (in Cantonese): President, I remember I mentioned about you. I said if the royalist camp — led by the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) — did respond to President Jasper TSANG's "call for great reconciliation", perhaps we would not have such a debate today. What is meant by "great reconciliation"? The pan-democratic camp absolutely wants reconciliation for just one reason, and that is, an undertaking to implement universal suffrage. Or, taking a step back, it is fine to have the so-called roadmap if universal suffrage cannot be implemented at once. It is also acceptable if someone can give me a timetable. If someone tells me, there is a timetable stating the time for implementation or works to be done, that is also acceptable. However, the Government is reluctant to do so.

As the saying goes, "every injustice has its perpetrator and every debt its debtor". The Basic Law was drafted by the Central Government of the People's Republic of China through its legislative consultative body — the Drafting Committee — which drafted a proposal for approval by tiers of rubber stamps under the so-called "five-step mechanism" — sometimes there are three steps, but sometimes there are five, whatever they say. Nonetheless, everything is ready except one thing is missing, that is sincerity. If the DAB had been willing to do good for others and responded to your call for "great reconciliation", we would have got an undertaking for the implementation of universal suffrage back then. As I had said during the debate at that time, I could have gone home and take a nap if you undertook to implement universal suffrage. With your consent, I will quit right away, so as to save you the trouble to make the fuss of discharging my

duties. With your consent, I can "xia ke"² (*Putonghua*). I also want to leave office, I can then have a baby, cook a good meal, and do what I am supposed to do. However, you refuse to give consent. How can you force others into doing something merely for the sake of implementing your manifesto? How can there be such barbaric acts? Since you have become an outlaw, you can do whatever you like, no one can criticize you. Yet, you cannot say, "I am now a bad guy, so you should not be a good guy."

President, this is where the problem lies, here we are — you had said so from the time you formed the Democratic Alliance for Betterment of Hong Kong. The Hong Kong Progressive Alliance subsequently joined in, but your party had internal strife. Now, we have the DAB, its full name is a tongue twister, I don't know what it represents, like a mongrel — this is the point. How can you accuse the pan-democratic camp of creating troubles and causing widespread discontent in the community today? This is you who remain silent on the 4 June incident and then simply "xia ke". So please get yourself occupied by inviting someone for tea, for a drink, go to the racecourse, and do not stage more farces here. No one in this world will behave like you.

How dare you act like that on this issue! Do you really think that there is no moral standard at all? You once said that when those who died a wrongful death on 4 June came to you, you would make a fair comment. However, today, you accused us of making things up, and said that it was wrong to have the "five geographical constituencies referendum" and *en masse* resignation. Let me tell you, we are absolutely obliged to do so. This is obligatory. So long as he believes this is the right thing to do, and such a belief is supported by other people, his electorate or conscience, he will certainly go for it. President, whether we have done well or not is another issue, right? We are not doing too bad. But I still want to cite one more example. EINSTEIN once told a story about making chairs. A teacher scolded a student for not making a good chair, driving him to tears. Then, the teacher asked whose chair was even worse than that one. EINSTEIN raised his hand and said, "Yes, here it is." Do you know the teacher cried when hearing this? He found that it was wrong to scold the students because at least, the student had made a chair. How about you? You

² the original meaning of "xia ke" (下課) is finish class, the extended meaning is to leave office, resign, or fall out of power

have also made a chair for Hong Kong people, but it is a "tiger's chair". How long have you deprived us of our right to universal suffrage? You have shelved this proposal year after year, and every time you run in the election, you said you would give us what we want. Yet, nothing has been done afterwards.

President, do you know why Members resigned to trigger a referendum? Trust me. Mr Fernando CHEUNG had proposed to conduct a referendum back then but was voted down in this Council. Being an illiterate, I scribbled a referendum bill which was again banned by Elise LEUNG, not because the bill was substandard, but because it was not approved by the Central Authorities. What can we do then? We want to follow your rules and fight to get the rights that are supposedly granted to us, the right that had once been considered of granting to us, but were eventually recalled. So, what can we do then? Do you think that I really want to have a "*de facto* referendum"? Perhaps you can try introducing a referendum bill to this Council. You can see that I collected people's signatures in the streets every day, and there were as many as 200 000 or 400 000 signatures. Is this a referendum? You have not done so. Then how can you blame other people?

President, if you ask who should be held responsible for the referendum issue, I would certainly say that the Government which has deprived us of our right is the culprit. Who should be held responsible for instigating the "*de facto* referendum"? People who have deprived Hong Kong people of their inherent right to universal suffrage, a right which they should have 10 years later, should be held responsible. Should we be held responsible? The Chinese Communist Party is not led by us, President, you should know that. We follow the principle of "one country, two systems". It is like engaging an agent to buy a flat. If a person cannot find an ideal flat after numerous searches, he can engage an agent to help him. You are the agent, you are instructed by the Chinese Communist Party to stop the move. What else can be done then? However, you have put the blame on us instead. I have advocated this idea for a very long time. If we are lucky, we may succeed. If we are lucky, we may trigger a referendum. Let me tell you, President, if someone is to be blamed, it would be the authority which controls Hong Kong with its special powers and thus allow such injustice to continue. As for the accomplice No one is listening to my speech. President, a quorum is not present.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please continue with your speech.

MR LEUNG KWOK-HUNG (in Cantonese): President, just now I have raised an issue: Who actually is to be blamed? It is the Government and its supporters, that is, the so-called "royalist party", which have procrastinated in implementing the universal suffrage. Simply speaking, using their logic, elections are certainly corrupted and have problems. Problems arise whenever there are people. So, will you abolish elections? Elections should be abolished according to their logic. In the absence of elections, there will be no corruption; in the absence of elections, there will be no buying of votes. It is better to abolish elections. This is the logic of the Communist Party. Elections are dispensable. The electorate can simply confine to peers or family members through inbreeding, thereby saving the need to buy votes.

As I have said time and again, the resigning Member may be penalized when he seeks affirmation from his electors after resignation as he is at the same time seeking non affirmation from his electors. The penalty mechanism is built-in and there is no need for you to trespass into other people's pasture. If you do not believe in what I said, perhaps your party members can resign to see what will happen.

President, what is the crux of the issue? We are accused by others of doing something meaningless by filibustering to stall a bill which will deprive Hong Kong people of some or most of their rights to vote. We have, on behalf of Hong Kong people, indicated in unequivocal terms our opposition to your employment of such tactics. You ask why we frequently request a headcount, I can tell you that this is a tactic, and that is it. If you think this is very ridiculous, then think about all the ridiculous things that you have done. Do you feel ashamed? You have visited the parliaments of many countries, have you seen

any parliament, except that of Myanmar, having half of its members returning from functional constituencies? Have you seen any presidents or premiers (*The buzzer sounded*) elected by just 800 or 1 200 people

PRESIDENT (in Cantonese): Mr LEUNG, your speaking time is up.

MR LEUNG KWOK-HUNG (in Cantonese): Thank you, President.

MR RONNY TONG (in Cantonese): President, if Members look back at history or the current world trend, they may find that human rights are most frequently being trampled by either political considerations or political acts. In fact, politics has been the most commonly used tactic to trample on human rights both in the past and the present. Today, what we see in this Council best illustrates the trampling of human rights for a political cause.

In this Council, we are discussing whether the so-called "five geographical constituencies referendum" meets with public aspirations or whether it is an abuse of the procedures. Looking from a certain angle, the "five geographical constituencies referendum" is certainly not an absolutely convincing move. And yet, if we examine the issue more carefully with a calm and reasonable attitude, is the "five geographical constituencies referendum" an abuse of the procedures? I believe people with a brilliant mind will consider that this is not an illegitimate move that contravenes the spirit of this Council.

President, I will first talk about whether or not such practice is legitimate. In fact, not much explanation is needed. Simply speaking, if this is an illegitimate move, the Members who had participated in the "five geographical constituencies referendum" would have been prosecuted or even imprisoned. Has the Rules of Procedure been contravened? No, certainly not. No matter how hard I try, I fail to identify which provision prohibits Members from standing for re-election after resignation. Is this an abuse of the procedure? Again, this is not for sure.

We can find plenty of examples in many civilized countries. When a pretty controversial or important issue arises in the community, the elected

governments would be willing to end their governance at an earlier date in most cases and advance the general election, so that electors can indicate if they still trust the existing leadership or the important policies introduced by it.

President, can Members from the pro-establishment camp or government officials say that the abovementioned cases are examples of abuse of the election or parliamentary procedures? On the contrary, we all agree that advancing the general election is the most appropriate decision which best respects the electors. Thus, if a colleague considers that when and how universal suffrage should be implemented is an important social issue — which I guess Members would agree — but Members fail to identify a proper way or even a reasonable solution in this Council, then what is wrong for him to suggest resting the decision with the electors through a general election?

In my opinion, during this discussion process, the number of people who have indicated support to this approach is not a matter of concern. As Members may be aware, I do not support this approach and for this, I have been subjected to numerous attacks. Some of the attacks are utterly unreasonable. Such attacks have yet to stop, but so what? Just now, Mr TAM Yiu-chung — he is not in the Chamber now — said that only 17.5% of the electors have voted, but so what? Even if only one person has cast his vote, he is exercising his right. Do not forget that the remaining 2 999 999 electors who have not cast their votes are also exercising their rights. Exercising one's right to vote does not necessarily mean casting a vote. A person can also withhold his vote or cast blank vote. These are different ways of exercising one's right to vote. In the eyes of those who support or oppose the so-called "five geographical constituencies referendum" campaign, the decision or preference of the electors is indeed a gesture. We cannot use the low turnover rate or severe opposition to the campaign as an excuse to exploit people's basic human right. I think this is the most despicable and unacceptable hypocrisy.

President, during the deliberation of the Bill, the Government has, as in the past, quoted the legal advice of Lord PANNICK QC. However, as I have said earlier, no one can deny that the issue under discussion is a political rather than legal one. Furthermore, I said that the so-called "five geographical constituencies referendum" campaign has not violated any law, which is also indisputable. The legal advice given by Lord PANNICK QC is pretty funny. He merely said, "The legal criteria require that the relevant consideration or

judgment must be proportionate. Members should be able to decide." President, how can this be a convincing argument that provides sufficient legal justification for the establishment of a mechanism to govern the replacement arrangements? President, I fail to see why.

To rule by law is indeed a violation of the rule of law, which is even more horrible than ruling without law. The Government should not think that having control over the Council is tantamount to having the power to endorse legislation which is only acceptable to it, or all justifications will favour the Government. To rule by law is exactly the practice adopted by Emperor Qin Shi Huang. Nonetheless, this is not the meaning of rule by law. Rule by law puts emphasis on fairness and justice.

Another point that I must highlight is, at this juncture when the political climate is dominated by "great reconciliation" and the spirit of a "Hong Kong camp", the Government is so naïve as to think that alternate views can be suppressed by political forces, and even have them removed from this Council. This is nothing but an act to deceive yourself as well as others.

Numerous examples in history have illustrated that the greater the political suppression, the larger the voices of opposition. People might be forced to take even more radical — or using the term of the pro-establishment camp, to take more unacceptable — actions to show their opposition. President, what happened today is the best example. The Government, being the majority, bullies the minority — this only happens inside the Council, as the Government will become the minority bullying the majority outside the Council — The Government attempts to deprive people of their right to vote in by-elections by way of political suppression, or deprive Members or people interested in politics of their right to stand for the by-elections. Consequently, those who disagree with such an approach will be forced to take even more radical actions, which are unacceptable to the Government, to fight against the suppressive acts. In the end, this will only achieve the opposite result and increase internal friction which the Government and Chief Executive Donald TSANG have frequently highlighted.

Why does the Government not allow resigning Members to stand for a by-election and leave their fate in the hands of the general public, and see if their suggestion is the mainstream view? Why does it refuse to accept the criteria that

are acceptable to the rest of the world? If the Government considers Members' actions unacceptable, is it in any position to penalize these Members? Or, in the end, members of the public should be required to show their agreement or disagreement to Members' actions by voting?

President, I think that this legislation is a serious disrespect to the spirit of the Legislative Council, basic human rights

(Mr Albert CHAN stood up)

MR RONNY TONG (in Cantonese): and Hong Kong people

MR ALBERT CHAN (in Cantonese): I request a headcount.

MR RONNY TONG (in Cantonese): President, although I do not agree with the "five geographical constituencies referendum", from the political perspective

PRESIDENT (in Cantonese): Mr TONG, Mr Albert CHAN requested a headcount, please be seated.

MR RONNY TONG (in Cantonese): President, is the timer still running?

PRESIDENT (in Cantonese): No, it has been stopped. Please be seated.

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

PRESIDENT (in Cantonese): Mr Ronny TONG, please continue with your speech.

MR RONNY TONG (in Cantonese): I will say no more as my line of thinking has been interrupted. Yet, I do have a few more words to say. I hope that colleagues requesting a headcount would show respect to the colleague who is speaking. Actually, he can put forward his request after the Member has finished his speech. There is no need to suddenly make such request when the Member is in the middle of a speech or a sentence, and is then forced to sit down. I think this is pretty disrespectful to the colleague who is delivering a speech. If a Member wishes to request a headcount, he can wait until the colleague has finished speaking. There should not be any problem.

Sorry, President, I forgot to say the line: I oppose the Second Reading.

MS EMILY LAU (in Cantonese): President, I rise to speak against the resumption of the Second Reading of the Legislative Council (Amendment) Bill 2012 (the Bill).

President, Mr Albert HO has just clearly stated the stance of the Democratic Party. I am a member of the Bills Committee. As we all know, last year, the threatening gestures of the Government had infuriated the people, and only because of that, the Government and the "royalist camp" were willing to stop pushing forward and carry out public consultation.

President, I need not remind you how the then Secretary Stephen LAM had enraged Hong Kong people. His hideous face should serve as a grave warning to all principal officials and civil servants. I learnt that his successor, Secretary Raymond TAM, is more reasonable. Unfortunately, he has still put forward this detestable Bill, even though it is different from the previous version. President, the previous bill was introduced to plug the loophole, prohibiting resigned Members from participating in any by-elections to give effect to a *de facto* referendum. It was only when the Government found that it was impossible to push through the bill that it replaced that bill with this newly amended Bill. Under the current proposal, a Member will be prohibited from standing for a by-election to be held within six months after his resignation. Yet, is this not a deprivation of basic civil rights?

As a matter of fact, the Government has actually expressed its concerns and worries. If a Member is allowed to stand for a by-election after he has resigned

for more than six months, why should he be prohibited to do so within six months after his resignation? I do not know how the current proposal can be justified in terms of law, constitution and human rights. The Government will soon have to report to the United Nations Human Rights Council on how it enforces the International Covenant on Civil and Political Rights. This restriction, together with other issues concerning universal suffrage, will certainly be brought to the forum of the United Nations. The Government, by proposing this Bill, has unnecessarily put itself in an undesirable position. What is more, this Bill cannot address the Government's concerns at all.

As stated by some Members just now, the Government proposed the initial bill to stop *de facto* referendums. When it found that such approach did not work, it drafted the current Bill to impose punishment, barring resigned Members from standing for any by-elections within six months after their resignation. Yet, this Bill can only serve the purpose of punishing the Members concerned. Members who want to seek a *de facto* referendum may still proceed with their plan after the passage of the Bill, and the number of resigned Members can be one, three, six, seven, and so on. Even if the Government succeeds in prohibiting the resigned Members from running in by-elections, their party members may still throw their hats into the ring. President, as the Bill cannot address the issue of *de facto* referendum, which has caused fear of the SAR Government and the Central Government, the Government should stop antagonizing the people, so that they will not instigate *de facto* referendums. Now that the Government has, for no reasons at all, prohibited Members from standing for any by-elections within the six months after their resignation, it must be shuddering right now because some people have proclaimed that there would be judicial reviews, countless legal actions and opposing actions should the legislation be enacted. Then, what is the point of doing so?

In view of the above, we will definitely oppose to the Government's proposal. While the Government cited discontentment of some citizens, which is certainly true, many citizens say that, no matter what they think, they, being adults, are mature enough to handle this issue. As a matter of fact, by-elections have existed for a long time and there is a mechanism to handle such election. I do not find anything wrong with this mechanism. Whether people support or whether they are willing to vote in a by-election is a matter of their right under the Basic Law as well as in some other ordinances and conventions. Currently, they do not want the Government to deprive them of this right, nor do they want

the Government to take away the right to stand for election and their right to choose. All these are their basic rights and such rights are particularly important at a time when most Hong Kong people do not have the right to select their SAR Government. If that is not the case, we would not have witnessed more than 200 000 people queuing up to vote in the mock election held by Dr Robert CHUNG Ting-yiu, in which crumpled cartons were used as ballot boxes and voters had to write down their choices on ballot papers. From this, we can see that the public are very eager to have universal suffrage. However, the Government does not only deprive them of the right of universal suffrage, but even proposes a bill to take away some of their other rights. President, is it not ridiculous?

Secretary, the way you speak is more pleasant and the way you act is also more reasonable. I hope other principle officials can learn from you. President, for most of the time, our discussion focuses on the issue itself rather than the officials-in-charge. Yet, some officials really drive us mad. President, I am sure you understand why there is varying degree of indignation inside and outside the Council.

I know that the Secretary is a reasonable man. The Government knows that the Bill is meaningless as it cannot avoid what it intends to avoid. Therefore, the Government narrows the scope of the Bill to restrain specified persons, that is, resigning Members from standing for a by-election within six months. However, as stated by some Members earlier, there is a chance that the Government cannot run a by-election in six months' time. The Government has also admitted this possibility. In light of this, Mr LAU Kong-wah suggests that resigning Members should not be only barred from standing in a by-election for six months but for the entire term. He is really ruthless, singing the same tune with "the Wolf", LEUNG Chun-ying. Yet, the Government dares not take his advice. Perhaps, "Wolf LEUNG", will make another amendment after he comes to office. While Mr LAU Kong-wah, the Legislative Council Member who also serves on the Executive Council, has suggested prohibiting resigning Members from standing for any by-elections in the entire term, the Government says no to him and limits the prohibition period to six months only. I think the Government well understands that it is stepping on the borderline and finds it difficult to justify its proposal to Hong Kong people and the international society.

President, I do not know how the meeting is going to end today. You should have been psychologically prepared for today's meeting. Perhaps, you may ask the Clerk to give you some more cushions so that you can sit comfortably. In my view, the Government should bear a great responsibility in this controversy, which causes strife among Members. We, the Democratic Party, oppose to the Second Reading as well as the Third Reading. We hope that the Government can withdraw the Bill before it is too late. In that case, as stated by the President, the meeting will not have to last till next Monday or Tuesday. I do not think the withdrawal will bring any undesirable consequences. After all, heaven will not fall.

I so submit. I oppose to the resumption of the Second Reading.

MR LEE CHEUK-YAN (in Cantonese): President, on behalf of the Labour Party, I oppose unequivocally the present Bill in relation to the replacement mechanism because this Bill is not only meaningless and frivolous, but also infringes the basic rights of the people, namely the right to stand for election and the right to vote. These basic rights are not to be infringed upon.

Actually, dishonourable history lurks behind the present Bill. The dishonour originated from the then "resignation *en masse* of Members returned from five geographical constituencies as a referendum". Speaking of the "resignation *en masse* of Members returned from five geographical constituencies as a referendum", we must, first of all, ask why Members had to resign *en masse* to trigger a *de facto* referendum? That can be traced back to an even earlier time. First of all, the National People's Congress vetoed the implementation of dual universal suffrage in 2007 and 2008; then it vetoed again the implementation of dual universal suffrage in 2012. Under such circumstances, some Members had initiated the campaign of "resignation *en masse* of Members returned from five geographical constituencies as a referendum", with the objective of reflecting whether dual universal suffrage should be implemented in 2012. Of course, if a referendum law was enacted in Hong Kong, it would not be necessary to conduct a *de facto* referendum. However, we do not have a referendum law in Hong Kong.

Speaking of referendum, it is of course most famous in California. In a democratic society, people may sometimes even consider the system of representative government in the legislative assembly inadequate, and hence they

resort to direct democracy by holding a referendum. However, there is nothing of such in Hong Kong. The Council itself is undemocratic and completely devoid of direct democracy. Given this void in democracy, Members were forced to take this course of action.

Regarding the campaign of "resignation *en masse* of Members returned from five geographical constituencies as a referendum", the Central Authorities ordered a total boycott. Hence, eventually, only representatives from Tertiary 2012 and resigned Members belonging to the Civic Party and the League of Social Democrats had taken part in the by-election. If the Central Authorities had not made the order, the matter could be left to the decision of electors. But once the Central Authorities had made an order, the pro-establishment camp must follow the instruction meekly and boycott the by-election completely. Without exception, the pro-establishment camp, including Donald TSANG, would follow the instruction given by the Central Authorities, and they will continue to do so in future. Given the Central Authorities' instruction that the loophole must be plugged, the Government came forth with the replacement mechanism. The replacement mechanism initially proposed by the Government was even more detestable, unsatisfactory, frivolous and outrageous. The proposal to fill the vacancy by the second candidate on the same candidate list as that of the vacating Member would take away the opportunity for the public to vote. Given the ensuing public outcry and queries about the constitutionality of this proposal, the Government was eventually forced to withdraw the original bill.

I strongly oppose to the Government's current remark that the loopholes must be plugged. Actually, what are the loopholes to be plugged? If a Member has resigned, a by-election should be held. Does the Government consider that Members resign for fun? There is a price to be paid by the resigning Member because he may not necessarily be re-elected. In a normal democratic society, a by-election would be held after a Member has resigned, so that the decision is left to electors. But given the Central Authorities' order to boycott the by-election completely and prevent the electors from making their decisions, the outcome was inevitable. In fact, any acts of resignation should be left to the decision of electors. Without the instruction from the Central Authorities, electors can decide whether they approve the act of resignation. If electors approve such act, they would vote for the Member concerned; otherwise, they would not vote for him. One can say that the best way is to leave the decision to electors.

The Government's current revised proposal likewise deprives members of the public of their right to stand for election and the right to vote because the Member concerned is prohibited from taking part in a by-election within six months of his resignation. On the one hand, the proposal deprives the Member's right to stand for election, and while his right to stand for election is deprived, the right to vote by members of the public has also been taken away as they are two sides of the same coin. Hence, we oppose to the present proposal, and consider it frivolous and meaningless. The simplest way is to leave the decision to electors.

Nonetheless, the Government is still defending an indefensible case. Just now, Ms Emily LAU said that Raymond TAM is more reasonable, but his boss is utterly hopeless. I have no idea what will happen to his boss Stephen LAM. According to some reports, he would stay in office but with a slashed salary. That really serves him right. He should have accepted his responsibility and resigned long ago. While neglecting the important duty of promoting the development of democracy, he has spent so much time on this meaningless replacement mechanism. He should have accepted the blame and resigned for not making enough efforts to promote the development of democracy long ago. Nevertheless, the Central Authorities may eventually make some good arrangements for him because after all, he has made such a great effort to serve the Central Authorities and follow their instructions. The Central Authorities should make some arrangements for him.

Turning back to this Bill, the Labour Party will oppose it definitely and unwaveringly. Now, in the midst of such unwavering voice of opposition comes the so-called filibuster strategy. First of all, our stance is that we acknowledge that filibuster is a type of parliamentary procedure. Filibuster is practiced in democratic legislative assemblies all over the world, even those formed by direct elections; the purpose is to safeguard a minority of Members or Members belonging to minority parties so that they can express dissenting views on legislative proposals they find unsatisfactory through all practical means on behalf of their electors. Hence, filibuster is but a very normal parliamentary procedure in democratic societies, not to mention that democracy is basically non-existent in Hong Kong's legislature as we still have Members returned by functional constituencies. Therefore, it is even more necessary to leave some scope for a small minority of Members or Members belonging to minority parties to engage in filibuster.

As I just said, filibuster is frequently practiced in legislative assemblies all over the world, such as the United States. In the Senate of the United States, senators are allowed to speak freely. A senator who engages in filibuster can read from the *Bible* cover to cover if he so wishes. However, it has also been provided under their system that a filibuster can be stopped if supported by 60 votes. Hence, if the Senate consists of 59 Republicans and 41 Democrats, both sides can engage in filibuster.

We can see from historical records that the most notable case happened in the French Parliament, where a total of 130 000 amendments had been proposed. Hence, if the Secretariat should study the parliamentary procedure of overseas countries, France should be the best choice. Under the French parliamentary procedure, all amendments would be voted together; if that is the case in Hong Kong, the Secretariat would not have been that disturbed. However, voting on the amendments together does not mean that Members of the Parliament cannot speak on the amendments, and Members can still speak for one whole year on the 130 000 amendments. Even so, the Secretariat might find it better because a lot of work can be saved if the amendments are voted on together. Hence, I agree that the Secretariat should go study the French experience.

In terms of speaking, we should also learn from France and understand how their Members spoke on the 130 000 amendments. In fact, why did the 130 000 amendments come into being in the first place? The relevant legislative proposal sought to reduce the stake of government ownership in a state enterprise from 80% to 35%. In a bid to obstruct the privatization of the state-run gas company in question, the opposition submitted 130 000 amendments. Nonetheless, the situation did not arise eventually because both sides had resolved their differences through negotiation.

Hence, it is in fact nothing special at all. We should regard filibuster with a relaxed attitude because it should be something permissible under the scope and procedure of a normal legislative assembly. If the pro-establishment camp wants to stay here, be my guest; if they consider a need to defend the Bill, they are duty-bound to stay in this Chamber. We oppose this Bill, and consider that the authorities should better withdraw it so that this Council needs not consider it anymore. For these reasons, the Labour Party will vote against the resumption of Second Reading of the Bill, and then leave the Chamber. We will not take

part in the discussion of this meaningless and totally unjust Bill which deprives members of the public of the right to vote and the right to stand for election.

In fact, Members of the pro-establishment camp can also leave the Chamber. Although some people query what will happen if the meeting is adjourned for a lack of quorum, this can give the Government an opportunity to reflect on the question as to whether the passage of this Bill is something that nobody wants because if Members are not present, it means that they do not want to have the Bill enacted; otherwise, they would have stayed in the Chamber. If Members do not want to enact this legislation, they should not stay here, so that the Government is forced to withdraw the Bill. Given that this utterly meaningless Bill, if enacted, will only come into operation upon the commencement of the next term of the Legislative Council in October, the matter might as well be left to be handled in the next term because no Member will resign immediately after assuming office.

Our stance is that this Bill should not have been presented to this Council in the first place. This Bill should not have been formulated because that is just a waste of efforts. Hence, on behalf of the Labour Party, I speak against the Bill and we will vote against the resumption of its Second Reading later on. Afterwards, we will leave the Chamber to protest against this meaningless Bill which deprives electors of their right to vote and the right to stand for election.

I so submit. Thank you, President.

MR LEE WING-TAT (in Cantonese): President, I speak to oppose the resumption of the Second Reading of the Bill.

President, the matter under debate today is in fact related to the problem of democratization of the political system, which has been left unresolved for decades.

President, I recall that when I first met you, you were a member of the Basic Law Drafting Committee, or perhaps not No, it was Mr CHENG Kai-nam who sat at the Drafting Committee. At that time, you and I took part in many forums related to this issue. The same issue has been discussed from the time when we were in our youthful days to the present moment when we have both become more mature. It is indeed rare that discussion on a single issue can

span more than three decades in society. This issue, which has been discussed for over three decades, has yet to be resolved. Views on this issue have been repeated over and over again. Even though the issue of democratization of our political system has been discussed in this Chamber for over three decades, people still find our debate original and not boring. I think it reflects that we have already become somewhat of an expert for we can still debate on the same issue even after more than three decades.

The issue was first raised in the course of Sino-British negotiations and the drafting of the Basic Law. At that time, only a handful of people had a better understanding of the Central Government or were "pro-Beijing". Time was needed to groom those people and maintain the stability of the regime. Hence, the Basic Law was drafted in a highly conservative manner, with many barriers imposed throughout.

I recall that during the discussions by the Drafting Committee and the Consultative Committee, I would sometimes argue with James TIEN because he considered democracy a great scourge. Once, we travelled on the MTR together from Kwai Tsing to Central, and we engaged in a fierce argument during the trip. Passengers around us must be wondering what these two young people, one tall and one short, were arguing about? At that time, James TIEN was an appointed member of the Kwai Tsing District Council, and I was an elected member. Of course I believed in democracy, but he did not. He considered that democracy was a great scourge, and with democratization, the working class would demand benefits from the Government. While I am more refined now, I was a hot-blooded young man in his twenties then, and I almost fought with him in the train compartment when we travelled together. Eventually, we did not fight, but we argued for some 20 minutes from Kwai Tsing to Central. I still remember that incident, and I wonder whether James also remembers what had happened.

James has improved now

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr LEE, please wait. Mr Albert CHAN, what is your point?

MR ALBERT CHAN (in Cantonese): President, I mean no disrespect to Mr LEE Wing-tat, but it is a disrespect for Members not to be present in the Chamber. Hence, I request a headcount.

PRESIDENT (in Cantonese): Mr Albert CHAN requested a headcount. Clerk, please ring the bell to summon Members to the Chamber.

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

PRESIDENT (in Cantonese): Mr LEE, please continue.

MR LEE WING-TAT (in Cantonese): President, as I just said, the issue has been debated repeatedly over the past three decades. Is that what you mean by hope? On the face of it, it seems that the Central Government now agrees that we can elect the Chief Executive by universal suffrage in 2017. But if we look at Mr LEUNG Chun-ying's Manifesto, political development is the one topic he talks least about, which spans only a few paragraphs and contains nothing new. Simply put, he would consult public views and make a decision after listening to those views. It sounds like nothing has been said really.

At a meeting with the Chief Executive-elect, Mr LEUNG Chun-ying, the day before last, we raised a question to him on this issue. Although 2017 seems a long time from now, with five more years to go — President, you know about these all too well — we must follow the "five-step mechanism" in terms of political development, and it takes a long time to move from one step to another. In other words, if the mechanism is not initiated as early as possible, we will neither have enough time to consult the public nor forge a general consensus in society through discussions and negotiations amongst various stakeholders and organizations in the community.

We have already presented our view to him — we dare not say it is "advice" for fear that it sounds condescending — we have put forth our view to Mr LEUNG that the "five-step mechanism" should be initiated as soon as possible, preferably in 2013 or immediately after he has come into office. It is

because he is responsible for writing the first report to be submitted to Beijing, proposing whether any changes should be made to the constitutional arrangements in 2017. Of course, it is the hope of the pro-democracy camp and pan-democratic camp that the nomination threshold for candidacy in the Chief Executive election should be as low as possible. The Labour Party has even come up with a highly innovative idea that nominations should not only be made by members of the Election Committee, but if a candidate has the nominations of a specific number of people, certain mechanism or rules of the Election Committee (that is, the Nominating Committee in future) should be put in place to allow that candidate to stand for election. For instance, if that candidate has the nominations of 50 000 people, that would be quite something because there are altogether 3.3 million electors in Hong Kong, 10% would be some 300 000 people, and 50 000 people are about 1% to 2%. That is quite a large number considering the total number of electors.

Therefore, if the relevant discussion can be initiated at an earlier time, people will be more convinced of his sincerity in taking the matter forward. When interviewed on a radio programme after winning the election, Mr LEUNG expressed his disagreement of having too many candidates in the Chief Executive election because mathematically, having too many candidates meant that it would be difficult for any candidate to get half of the direct election votes. But, President, the Basic Law has not specified that the Chief Executive candidate must get half of the direct election votes — there is no such requirement — and it is alright so long as that candidate wins in the election. Secondly, no matter it is half, 40% or 30% of the votes, that number must surely be greater than the 1 200 or 1 600 members of the Election Committee — the number is certainly much greater. If you really want to get more than half of the votes, you can adopt the voting method of France. The French presidential election involves two rounds of voting. Candidates with the support of a certain number of voters will take part in the first round of election. If no candidate obtains an absolute majority of all valid votes cast in the first round, the top two candidates will take part in the second round of election held one month later to determine who is elected to office. Currently, the second round of election is pending in France, and the winning candidate must get more than 50.0001% of the votes, even after deducting the blank and invalid votes. If the people support this relatively complicated procedure, and are willing to spend two Sundays to vote in the elections, I think the Government should also consider this voting method. But I do not hope that Mr LEUNG would say that this voting method is too complex

and hence would not adopt it. He does not like the situation where the winning candidate cannot get over 50% of the votes.

Hence, is there any hope or chance in this regard? Seemingly, the 2017 election will be a major change. Of course, whether such hope can come true is of utmost importance for the general public. Over meal with an academic a few days ago, I shared with him my worry that it was unlikely that a candidate selected after internal co-ordination to represent the pan-democratic camp or pro-democracy camp would be allowed to stand for the election, because I believed that an extremely high safety threshold would be set by the Communist Party or Beijing for these universal suffrage elections. The safety threshold will be so high that even candidates from the pro-establishment camp might have to be screened, as some people in the pro-establishment camp can occasionally be disobedient. Of course, for those who are out-and-out disobedient, they definitely cannot stand for election. Therefore, the prime concern is not the high popularity rate of a candidate, but his absolute obedience. While no control will be imposed in the day-to-day administration, it must be certain that this person or this Chief Executive will comply with the orders and decisions from Beijing on matters of significant concerns. While no interference will be made in the day-to-day administration of Hong Kong in matters such as housing and healthcare policies, should there be any cases related to Taiwan or Hong Kong in future, or should Radio Television Hong Kong (RTHK) become "unruly" suddenly — although I consider such a chance highly unlikely because RTHK should have been "enlisted" by that time — or officials from the Taipei Economic and Cultural Office in Hong Kong should talk about the disadvantages of the Independence of Taiwan again, it might be necessary to "enlist" them by tightening control.

Hence, I said over that meal that I had little confidence that Beijing would be so open as to allow LEUNG Chun-ying and the people of Hong Kong to adopt a highly open approach such that candidates from the pro-democracy camp could stand for election. Of course, when there is *bona fide* universal suffrage, the matter is no longer decided by 1 200 persons. If it turns out that there are only two candidates who are both from the pro-establishment camp and very lousy, members of the public can of course cast blank votes against them, which is exactly the effect achieved by Robert CHUNG's voting campaign for this Chief Executive election. Hence, it is not surprising that during that time, the person who was under the most severe attack by the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region and

several "leftist newspapers" was not Mr Albert HO, Ms Audrey EU or Mr Alan LEONG, but Robert CHUNG, because he had initiated a campaign which was tantamount to a people's voting campaign. That is exactly what the Communist Party dislikes most. Moreover, blank votes were cast by many citizens in that voting campaign.

Hence, I would like to remind Mr LEUNG Chun-ying or the Beijing Government, they can implement a system which precludes candidates from the pan-democratic camp, but unless the right of universal suffrage is withdrawn totally, people can still exercise their right to vote and cast as many as 100 000, 500 000 or even 1 million blank votes in the election. This must surely become an international joke. Imagine the situation where Hong Kong, as a special administrative region of the powerful nation of China, is given the undertaking that its people shall have the right to choose their leader, yet that leader was eventually elected with only some 300 000, 400 000 or 500 000 votes, but as many as 1 million blank votes were cast in the election. Indeed, that would be a great shame. However, will this be a matter of concern for the Communist Party? It can be, but being a rather pessimistic person, I do not think candidates of the pan-democratic camp will be allowed to stand for election.

President, it is the same for the replacement mechanism discussed presently, that is, whether the regime believes in people. If the regime believes in people, there is no reason why it should introduce a system to impose control, such that Members are prohibited from proposing political agendas under the system through resignation and then seeking re-election to the Council in by-elections. Of course, members of the public can have different views as to whether they agree with this course of action, yet they should never be deprived of the right to vote.

Sometimes, strange reasons would be given by some people who queried why so many resources had to be wasted to allow the resigning Members to take part in elections. Actually, to put it in the extreme, that logic is tantamount to saying that democracy is a waste of resources. Considering that Legislative Council elections are held once every four years, and protracted debates are held in the Council with replies given by government officials, together with the resource allocation for the Legislative Council Secretariat, indeed, hundreds of millions of dollars are spent annually on consultation and the democratization process.

Yet, this is a price that should be paid by society. This price is not paid, say, in places and countries with dictatorships; but will stability prevail in those societies? According to Prof Dixon SING, an increasing number of countries have opted for democracy since the World War II. The number has increased since the 1960s, particularly in the Third World, with the upsurge of independence movements. Why did people in those places still prefer a democratic system even though they considered democracy superfluous, complicated, protracted and costly? It is not the best system, yet there is nothing better in the world — no second-best, third-best, or fourth-best, no nothing — no country, president or people can tell us that there is a system better than democracy.

President, this system is not without its shortcomings because it can be very annoying at times. What is so annoying? For elected Members like me who have participated in direct elections for many years, I still felt upset when I was told off during community visits. There was once an episode which I must hold Mr LEE Cheuk-yan accountable. On that occasion, I was distributing leaflets in Tsing Yi when somebody approached me and said, "LEE Wing-tat, you are despicable." He then went on scolding me for three minutes. What was he mad about? He blamed me for advocating the statutory minimum wage, which cost him to lose his job. Of course, I supported the implementation of statutory minimum wage, and had no regrets about it. Yet the originator was still Mr LEE Cheuk-yan. As a matter of fact, I am not tall; why had he mistaken me for Mr LEE Cheuk-yan? That is puzzling. Moreover, I am not as smart-looking as Mr LEE Cheuk-yan. President, it is of course not a pleasant experience when being told off for three or four minutes. We also get told off because of Members not returned by direct elections. Sometimes, when I distribute leaflets in the streets, persons who support Honourable colleagues of the pro-establishment camp, such as Mr LAU Kong-wah, would also scold me.

People who support democracy should accept this situation for members of the public may disagree with your political views. That is why I have great admiration for Mrs Regina IP. Although we have different political views, she is willing to go into the community and face the scolding. When distributing leaflets, she had been scolded by members of the public as "Broom Head". President, when you took part in direct elections, have you been scolded? Not all people supported you when you distributed leaflets in the streets, right? I admire all persons from the industrial and commercial sectors who participate in direct elections because they would become more humble after going through the

baptism of popular elections for they will understand that their own views are not necessarily the best. While the views of ordinary members of public may be crude, they will learn about the feelings of simple folks.

Once, I tried to persuade Mr Jeffrey LAM to take part in direct elections, and I asked him, "Why does Economic Synergy not participate in direct elections?" They could have won in the elections, but why not? While James TIEN has lost previously, I think he can win if he takes part in this year's elections. I have also lost in elections, but that is nothing unusual. President, if they take away other people's rights with some implausible reasons, even they themselves will become unconvinced over time.

We believe in democracy, but they do not. They consider the system of democracy a waste of money and resources, but it is the same for systems of democracy in many countries unless we go down the road of dictatorship. Why should we choose which is a good or bad system on behalf of the people? Why do we not leave the decision to members of the public themselves? Should a Member resign and seek re-election without paying attention to people's wish, members of the public will not vote for him.

Some people consider the system very annoying because a candidate can win by only getting a few percentages of the votes. However, this system was devised by the pro-establishment camp. It was suggested by the "wise guy", LAU Siu-kai, to prevent the pro-democracy camp from winning by a great margin under the single-seat-single-vote system. Is that not silly to re-discuss the issue again now? Any system should be devised with logic. By adopting the proportional representation system in the first place, the intention was to prevent the pro-democracy camp from winning by a great margin under the single-seat-single-vote system; now they criticize that the views of some political parties, groupings or organizations are too radical and they can win so long as they get a few percentages of the votes. They should have known about this when devising the system for they wanted to get benefits out of it. President, that is not quite right, is it?

Hence, President, I think such an arrangement will only drive the Government and the pro-establishment camp to a dead end. If the Government believes in people, it will not set so many barriers, such that the same are now regarded as stupid by history. Thank you, President.

MR JEFFREY LAM (in Cantonese): President, I believe Members all know that today's Legislative Council (Amendment) Bill 2012 (the Bill) is intended to plug the loophole created by Members of the Legislative Council who have abused the system of resignation. The Bill intends to avoid further mischief created by Members who resign to trigger a by-election or the so-called *de facto* referendum in order to serve their own political purpose.

President, I recall that about two years ago, five Members resigned on their own initiative with the intention to seek re-election again; this triggered a by-election of the Legislative Council in all five geographical constituencies (GCs) over the territory. A low voter turnout rate of 17% was recorded for that by-election. Notwithstanding the re-election of the five resigned Members eventually, we cannot deny that the farce did not have the support of the people, and taxpayers were required to foot the bill of about \$130 million for conducting the by-election.

President, after the incident, the five Members concerned and their respective political parties neither admitted that such political manoeuvre did not have the support of people, nor listened to public opinion. On the contrary, they repeatedly obstructed the Government's proposal to plug the loophole. President, two Members propose more than 1 300 amendments to the Bill today. I can only say that this is again a waste of time and resources. First and foremost, I must state the stance of Economic Synergy: we support the motion and the amendments proposed by the Government, and oppose all other amendments proposed by Members.

President, as shown by the result of the 2010 by-election, the people's eyes are clear and bright. They did not think the by-election was necessary, and most of them considered that it was not only a waste of public funds and resources, but also a deliberate attempt to create disputes and division. Our view is that Members of the Legislative Council are elected by voters of different functional constituencies (FCs) and GCs, and they already have sufficient and ample scope to express their views peacefully and rationally in the platform of the Legislative Council according to their respective stances. Elected as Members of the Legislative Council, we must fulfil our undertaking to serve Hong Kong people throughout the four years of our term of office. Unless prevented by objective factors such as serious illness or death, we should continue to serve the people steadfastly. Should a Member resign in mid-term of his own accord to express a

political demand or stance, it might be his own political decision or the strategy of his political party, but it did not necessarily accord with their voters' expectation. After the said by-election resulting from Members' resignation, strong voice has been heard in society for the Government to plug the loophole in order to avoid the recurrence of similar incidents. We agree that it is necessary to plug this loophole, and the method concerned must strike a balance amongst various concerns expressed by different sectors in the community on the issue of by-election.

Under the Government's initial proposal, a vacancy would be filled by a replacement mechanism using the same candidate list, followed by leaving the seat vacant when the list is exhausted. This proposal has aroused certain concern in society and some people considered that it might impact on the people's right to stand for election safeguarded under the Basic Law. The outcome of consultation by the Government shows that the option of restricting resigning Members from participating in any by-election in the same term received more public support than other options under consultation. Regarding this option, adjustments to a larger extent have been made by the Government correspondingly to safeguard the people's right to stand for election.

Under the present proposal, a Member returned by a GC, the District Council (second) FC or any other FC who has resigned from office of his own accord under section 13 or section 14 of the Legislative Council Ordinance would be prohibited from standing in any by-elections in the same term of the Legislative Council within six months of his resignation. This restriction only applies to a Member who resigns of his own accord, and will not affect his right to serve the public by standing for election in the subsequent term of the Legislative Council or after six months of his resignation.

According to some legal opinion, this arrangement would nonetheless affect the right of members of the public to participate in by-elections, while others expressed the view that the right of a Member to stand for Legislative Council elections to serve the public originally commenced at the moment of his election, which was a power conferred by the people. Should a Member resign of his own accord in order to express his political stance, serve his own political objective, or create attention or influence in the media, it means that this Member has relinquished the power conferred by the people on his own initiative, and he should bear the political responsibility accordingly.

The implementation of the relevant legislation may still be subject to legal challenges, and the Government has to study and prepare for the matter thoroughly. I believe that once the loophole is plugged, the Legislative Council can serve the people and monitor the Government in an even better and stable manner. I also believe that people can see through any ploy of Members who deliberately make use of the loopholes in the system, just like the several thousands of amendments to be moved today, and make a fair judgment accordingly.

With these remarks, President, I support the motion and amendments proposed by the Government, and oppose all the amendments proposed by Mr Albert CHAN and Mr WONG Yuk-man.

MISS TANYA CHAN (in Cantonese): President, I will read out a resignation letter.

President, a quorum seems to be lacking now.

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

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

PRESIDENT (in Cantonese): Miss Tanya CHAN, please continue.

MISS TANYA CHAN (in Cantonese): President, "I will resign from the office of a Member of the Legislative Council on 29 January 2010 for the sake of the campaign of 'resignation *en masse* of Members returned from five geographical constituencies as a referendum', to allow members of the public the opportunity to express their demand for expeditiously implementing genuine universal suffrage and abolishing the functional constituencies. Notwithstanding Hong Kong's strive for democracy for over 20 years, the goal of universal suffrage remains elusive while within reach seemingly. At this juncture, our democratic

movement undoubtedly needs the injection of fresh thoughts and new momentum."

President, sorry, less than 30 Members are in the Chamber now.

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 returned to the Chamber).

PRESIDENT (in Cantonese): Miss Tanya CHAN, please continue.

MISS TANYA CHAN (in Cantonese): President, "I will resign from the office of a Member of the Legislative Council on 29 January 2010 for the sake of the campaign of 'resignation *en masse* of Members returned from five geographical constituencies as a referendum', to allow members of the public the opportunity to express their demand for expeditiously implementing genuine universal suffrage and abolishing the functional constituencies. Notwithstanding Hong Kong's strive for democracy for over 20 years, the goal of universal suffrage remains elusive while within reach seemingly. At this juncture, our democratic movement undoubtedly needs the injection of fresh thoughts and new momentum.

"People's rights and well-being must be the basis of democracy. Apart from having a clear objective, my friends who passionately strive for democracy must learn to fight inch by inch. Although we are sometimes the underdog who must go against the tide, we still need to stand upright and hold true to our promises because I firmly believe in democracy and hence, the people's judgment. I choose to walk with the people on the road to democracy. I firmly believe that the greatest strength of democracy lies not with the seats held by particular political parties and groupings, or individual political figures, but the people themselves.

"I resign today for the sake of achieving territory-wide direct participation in the campaign for electing the Chief Executive and all Members of the Legislative Council by universal suffrage. Will democracy ever come? With the long wait of over 20 years and the feelings of disappointment time and again, many friends start to have second thoughts about collective wisdom and strength. As nobody can tell what the future holds, some people may feel increasingly perplexed amidst the hardships and difficulties. These complex feelings also manifest in civic society, yet most people are still undeterred in their strong hope that dual universal suffrage can be implemented in 2012.

"Has Hong Kong become the protagonist of 'Waiting for Godot'? Since the reunification, I have asked myself the same question more than once. Starting from the interpretation of the Basic Law by the Standing Committee of the National People's Congress (NPCSC) in 2004 which rejected the implementation of universal suffrage in 2007 and 2008, to the NPCSC's decision of not implementing universal suffrage in 2012, the constitutional reform proposals made by the Government, as well as the remarks made by some people recently have made me worry about the prospect of whether universal suffrage will ever be implemented in Hong Kong. I must get this out of my chest. If friends who strive for democracy do not stand up and speak out against these injustices unanimously, I worry that I can achieve nothing single-handedly even if I shout at the top of my lungs.

"Nonetheless, I believe that the dream of democracy embraced by Hong Kong people has remained unchanged; I believe in the gung-ho spirit which is the long-held pride of Hong Kong people; and I believe in the campaign of 'five geographical constituencies referendum' triggered by the resignation of five Members of the pan-democratic camp today, which presents the opportunity for all people to participate.

"I resign today solely to achieve a referendum campaign which truly belongs to Hong Kong people, so that they can seriously ponder on the important issue of 'expeditiously implementing genuine universal suffrage and abolishing the functional constituencies', and then have their wish quantified and their clear preference crystallized. I do so because I firmly believe that we can only get out of this impasse by handing the decisive vote back to the people and changing from passivity to proactivity.

"We have witnessed ourselves the greatness of people's power in the 1 July march in 2003, where hundreds upon thousands of Hong Kong people took to the streets to obstruct the enactment of the legislation on Article 23 of the Basic Law, which seemingly would be succeeded. In the beginning, nobody believed that it could be the starting point of change, yet Hong Kong people had made it happen. Today's battle against the constitutional reform proposal is by no means easier than that against Article 23 seven years ago. The campaign of 'five geographical constituencies referendum' is no longer about an abstract timetable; rather, this is a critical moment for us to reflect on what can we do ourselves to contribute to the development of democracy in Hong Kong?"

"Like many people in Hong Kong, I did not get involved in the democratic movement right from the start. I joined the fight for democracy half-way. In 2006, a group of comrades in the pursuit of democracy and I formed the Civic Party to fight for justice and democracy. One year later, I decided to stand for the District Council election and received the baptism of direct election for the first time. I went into politics. That was a life-changing decision. Without that election, I would not have stood for the Legislative Council election. In the Legislative Council election two years ago, I pledged to voters that I would fight for dual universal suffrage and strive to build a more equitable Hong Kong. With the support of voters, I was fortunate enough to get elected as a Member of the Legislative Council.

"Nonetheless, the more involved I get, the more aware I am that no matter how hard Honourable colleagues try, we are ultimately bound by an undemocratic framework. I reckon that in the course of promoting social justice, it is just as important to go into the community as fighting for people's cause in the Council as democracy and livelihood must go hand in hand. In the past year or so as a Member of the Legislative Council, I witnessed for myself how obsolete this parliamentary system has become. Even the SAR Government admitted that the existing functional constituencies system did not comply with the principles of universality and equality, while the resulting separate voting system had also made it more difficult for Members' motions to be passed.

"I felt strongly about the said situation as we fought against the funding request for the Express Rail Link project. As a new Member in the Council, I am likewise extra motivated, hoping to change the society and striving to change the society, so that people would know the Legislative Council has properly

performed its constitutional duties. Yet I am most resigned by the functional constituencies system. Like many people in Hong Kong, I would sometimes feel dejected because of the unique design of this system, and wonder how this Council can be accountable to the people if it does not understand their voice. How can such a system not be saddening?

"Perhaps this campaign is a battle between David and Goliath, yet I firmly believe that by my resignation, Hong Kong people will rethink the true meaning of democracy, and use their votes to hasten the progress of constitutional reform and achieve genuine participation of all people. People is no longer an abstract concept.

"I hope members of the public can understand and accept our resignation; this is not an act of abandoning Hong Kong or going against the votes you gave us in the election. To date, I still remember steadfastly the pledge I made to you, and I use it to remind and caution myself constantly. Actually, my resignation today is an act to make good the pledge I made about striving for democracy and universal suffrage. Arming myself with the courage and commitment I had then to stand for election, I forego my seat in order to give you the opportunity to express your true wish with your votes.

"Later on, when I promote the campaign of 'five geographical constituencies referendum' on the streets, I hope to meet you; I hope you can understand and support my decision; I hope you can greet me with a smile showing support for the *de facto* referendum. If you have any reservation or doubt, my team of volunteers and I will be most happy to explain my decision of resignation to you. This is a new democratic movement which goes into the community. With this campaign, I hope you can join me in the continuous fight for democracy so that we can make history together.

"Democracy is Hong Kong's mission, and my mission as well. How would you, the people of Hong Kong, react to this *de facto* referendum campaign today? I wish each and every citizen of Hong Kong can feel the same and give us a friendly hand of support by participating actively and speaking out righteously.

"My dear Honourable colleagues, today is a moment of change, and a moment of history as well. This is a moment of make or break. To those

Honourable colleagues who stay on in this Council, I wish to thank you for guarding your positions and performing the role of monitoring the Government continuously. I believe that we will definitely create a new horizon for Hong Kong's democracy with our complementary efforts. I also implore all Hong Kong people who vote for democracy to support the *de facto* referendum campaign. With a strategy that is both legal and reasonable, this campaign allows members of the public the opportunity to directly participate in the new democratic movement for 'expeditiously implementing genuine universal suffrage and abolishing the functional constituencies' by using their tangible, invaluable and solemn votes powerfully.

"I wish the campaign of 'resignation *en masse* of Members returned from five geographical constituencies as a referendum' achieved by my departure today will eventually lead to the formation of a democratic legislative assembly and the election of the Chief Executive by one-man-one-vote, that is, a system truly accountable to the people. I firmly believe that an equitable system, democratic policy-making and a better Hong Kong are all within our grasp."

The above resignation letter I just read out is the one I did not have the opportunity to read out on 29 January 2010. On that day, some Members deliberately caused the meeting to be adjourned for the absence of a quorum to prevent us, the five resigning Members, from reading out our resignation letters in the Legislative Council. Today, should a headcount be called now, I think the President would know for sure that less than 30 Members are present in the Chamber. Nonetheless, by reading out this letter today, I hope all Honourable Members, particularly Members of the pro-establishment camp, will have the opportunity to listen to our reasons of resignation then, and how unfair their comments are today.

In respect of the replacement mechanism, the stance of the Civic Party is very clear. When undertaking the "five geographical constituencies referendum", we firmly believe that the people should always come first. The original replacement mechanism proposed by the Government was illegal and unconstitutional. Eventually, the Government only withdrew the proposal when more than 200 000 people took to the streets under the scorching heat. Subsequently, the Government proposed the present proposal which was neither fish nor fowl. The so-called "loophole" as claimed by the Government previously is, firstly, non-existent, and secondly, cannot be plugged. Yet, today,

the Government still wants to force through the relevant Bill with the support of most Members of the pro-establishment camp. The stance of the Civic Party is very clear, and we will oppose the resumption of Second Reading of the Bill.

I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): President, I believe we all understand that this Bill introduced by the Government is directed against the *de facto* referendum two years ago, with a view to avoiding the recurrence of a similar situation. However, I think the Government is just "chopping off the toes to avoid insect bites", it fails to address the crux of the problem, and on the contrary, members of the community are even more dissatisfied with the Government's act in stopping a *de facto* referendum.

President, I make this comment because the Government has not seriously considered why some Members were willing to sacrifice their seats to participate in the *de facto* referendum at that time, which was the crux of the issue. It is a great pity that the Government has, up till now, failed to conduct a review or give an account of this issue. As Mr Jeffrey LAM has just said, the Government has only stated that Members' resignation should be prevented as it was a waste of public money and efforts.

Nevertheless, in holding this view, the Government has only focused on the superficial impacts of the problem and it has smeared the incident, without seriously considering that there is a lack of channels in our society for people to express their views. Referendum is one of these channels. In fact, under the present system, a referendum cannot be held whereby the public can express their views on important social issues. In fact, referendums have been held in many countries and they have been very effective. It allows the public a chance to express their views. Yet, why has the Hong Kong Government kept ignoring this problem and trying to prevent and suppress it?

A referendum is actually an important channel which gives people an opportunity to express their views

MR ALBERT CHAN (in Cantonese): Excuse me, Mr LEUNG Yiu-chung; I would like more Members to enter the Chamber and listen to your remarks, thank you. Will President please count the number of Members present?

PRESIDENT (in Cantonese): Clerk, please ring the bell.

(While the summoning bell was ringing, a number of Members left their seats and talked to one another)

PRESIDENT (in Cantonese): Will Members please return to their seats so that I can do a headcount?

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

PRESIDENT (in Cantonese): Mr LEUNG Yiu-chung, please continue to speak.

(Some Members had not returned to their seats)

PRESIDENT (in Cantonese): Will Members please return to their seats?

MR LEUNG YIU-CHUNG (in Cantonese): President, just now I was talking about a referendum. Many countries are now using this option as a means to allow the people to decide on some important issues, or express their views. For example, as we know, many European countries allow the people to express their views on whether their countries should join the European Community through a referendum.

As regards our neighbouring areas, Taiwan which is closest to us, often holds referendums. On one occasion, Taiwan held a referendum on the following issue: do you agree that the Government and the Chinese Communist Party should commence consultations to promote the establishment of an interactive structure for cross-strait peace and stability, so that the two sides of the

Taiwan Straits can reach a consensus and the welfare of the people can be safeguarded. Members, especially President, should note that Taiwan allows its people to express their views and make a decision on this important issue that is closely related to their welfare, which is of great significance.

Unfortunately, it has always been difficult for clear positions to be stated in this Council, and people in Hong Kong rarely have a chance to express their views on many major issues. I remember that Dr Fernando CHEUNG, a Legislative Council Member in the last term, proposed legislating on a referendum but regrettably, he failed to introduce a bill, and the proposal could not be passed.

If the Government wishes to stop a *de facto* referendum, why not formally consider introducing a referendum law, so that the public can take part in it, and the Government does not need to make so much effort to stop Members from resigning and standing for election again to trigger a *de facto* referendum? Why is such an open and formal approach not adopted? If the Government does not handle the issue this way, others may take this opportunity to do something; hence, the Government has introduced this Bill.

Is the introduction of this Bill desirable? Many Honourable colleagues have just stated that this is absolutely undesirable because some problems have been reflected. First, the Government lacks confidence in its policy implementation. President, why do I say so? It is because the Government worries that Members may, owing to its poor governance, frequently resign to launch a *de facto* referendum. This reflects that the Government does not have confidence in its governance. If the Government is confident of its governance, does it have to get frightened? Does it have to get frightened if the policies it implemented are accepted by the public? Just because the Government does not have confidence in its governance, it is afraid that any new policy implemented will be met with public objection, and Members may again resign and launch a *de facto* referendum. The Government is so worried that it has introduced this legislation to stop the situation.

Apart from the fact that the Government lacks confidence in its governance, it is also afraid of one thing. What is it afraid of? Should a similar *de facto* referendum really take place and there is active and extensive public support with a large number of participants, the Government is at a loss as

how it should handle the situation. Luckily, the voting rate was not high last time; if there was a high voting rate last time, the Government would not know how it should settle the issue. A high voting rate will reflect that the public strongly protests against the Government's policies and governance. The Government is afraid of that and has thus introduced this Bill.

I think the amendments proposed by the Government have reflected a lot of problems. As I have just said, the Government has not provided any channel for the public to express their views and it has not enacted a referendum law. This also reflects that the Government is panicking and fears that its governance may not be accepted or identified by the people. If the Government really wants to tackle these problems, it should gain the community's acceptance. As Donald TSANG has remarked, its policies and governance should be people-oriented, such that the public will feel that the Government's policy objectives comply with their demands or aspirations. Then, serious problems will not arise.

It is a great pity that the existing system or mechanism is not like that. For instance, when I met with LEUNG Chun-ying, the Chief Executive-elect, the day before yesterday, he repeatedly said that the new proposal on government restructuring ought to be introduced. According to him, if we did not follow his steps and facilitate the passage of his proposal before 1 July, livelihood problems, such as public housing and Home Ownership Scheme projects would be affected. This is a high-handed approach which does not respect the Council system.

In fact, the present replacement mechanism has also not respected the Council system. As Members are elected by the public, whether or not they should continue to take up their seats in this Council should be decided by the public, not by the Government. If the Government makes the decision, it will be exceeding its functions and seizing the right to decide, which will be a grave mistake. In a democratic election, electors have the greatest power and they have the right to decide who can or cannot take up the seats in this Council. How can the Government deprive them of this right under this Bill and disallow others to stand for election? If it disallows someone to stand for election, it deprives people of the right to make a choice, and logically, I absolutely cannot support this idea.

Furthermore, it is specified in the Basic Law that Hong Kong must proceed towards democracy in the future. As such, how can we proceed towards

democracy if this Bill is passed? In proceeding towards democracy, we cannot deprive electors or the public of their rights to stand for election and be elected. If this Bill is passed today, legal provisions are stipulated and we can never proceed towards democracy. This is going to be a big joke and a satire on the direction set out in the Basic Law. We know that the Basic Law has set out a direction but not a timetable, meaning that we do not know when genuine democracy can be realized. If this Bill is passed, we will evidently not have democracy because the relevant provisions have already deprived the public of the rights to elect and be elected. I believe this is unacceptable.

I must take this opportunity today to mention one point again. While I do not support this Bill, I must reiterate that I still do not support the "five geographical constituencies referendum" two years ago. The most important reason for my stance was that, I do not oppose the referendum in principle, but I considered that the result and effects of the "five geographical constituencies referendum" were not specific and explicit.

President, I wrote a book after the "five geographical constituencies referendum" two years ago, expressing my personal views on some social issues, and I also expressed my views on the said referendum. In my view, "resignation *en masse* of Members returned from five geographical constituencies as a referendum" could be regarded as a referendum in form, because electors could vote to indicate whether or not they supported the candidates' platforms. However, the most unacceptable point was the fact that a by-election had actually been held, and the final voting result would still determine which candidate would be elected; hence, the effect would hardly be comparable to that of a referendum.

President, why did I make such comments? In fact, five Members resigned to trigger the "five geographical constituencies referendum". When these five resigned Members put forward their platforms in the election, they hoped that the public would only vote on the basis of their platforms but not on them. It was indeed difficult for the public to do so. I had asked the views of many people, and they indicated that it was difficult for them to consider the platforms alone, without paying any attention to the candidates. They would sometimes consider the platforms and the candidate, or they would put equal weights to both factors. Regarding this aspect, there is a gap between this kind of referendum and a formal one. As I found that this idea was not clear enough,

I indicated at that time that I would not support the "five geographical constituencies referendum".

My support or otherwise of the said referendum is not the most important point. Today, the most important point is how we are going to perceive the *de facto* referendum held. As I have just mentioned, the last *de facto* referendum reflected that there are a lot of problems in our society. For example, there is no referendum law. As there is no chance for the public to vote on a territory-wide basis on some important issues, Members are forced to resort to take such action.

On the other hand, the Government's governance very often lacks accountability and is not people-oriented. Therefore, the public and Members are greatly dissatisfied. Through what channels can they express their dissatisfaction? There is no such channel, and they are forced to express their dissatisfaction through this kind of channel. If today, the Government wishes to review the last "five geographical constituencies referendum", it should not impose the current restrictions; instead, it should think of better ways to allow the public to express their views. This is the right move. On the contrary, the present approach will deprive the public of their rights to elect and be elected, which is not in line with the spirit of the Basic Law. Hence, I oppose this Bill.

I so submit, President.

MR ALAN LEONG (in Cantonese): President, when the legislature fails to uphold justice, when the legislature under the representative mechanism still fails to handle problems after two to three decades, it is only natural that Members striving for a democratic system will resort to direct democracy, so as to provide Hong Kong people with an opportunity to state whether they want to abolish the functional constituency election and whether they wish to see the implementation of universal suffrage by "one man, one vote" in the election of the Chief Executive and all Members of the Legislative Council. This is the origin of the "five geographic constituencies referendum" campaign.

Actually, the aspiration to strive for dual universal suffrage and the universality and equality of election had come into bud in the 1980s. According to the provision of the Basic Law, we initially presumed that changes would be introduced to the election of the Chief Executive and the Legislative Council

conducted in 2007 and 2008 respectively, 10 years after the reunification, so as to make the election genuinely held by universal suffrage. However, the interpretation of the Basic Law in 2005 served as an awakening call to us that the Central People's Government was reluctant to see the implementation of dual universal suffrage in Hong Kong in 2007 and 2008. At that time, many people believed that though universal suffrage could not be implemented in 2007 and 2008, it would be implemented in the next election, that is, 2012. Unexpectedly, this hope was shattered again in 2007 by a resolution passed by the Standing Committee of the National People's Congress, and we recognized that our aspiration would not be realized in 2012.

Last year, the Government introduced the 2012 constitutional reform package. When comparing this proposal with the one in 2005, we found that our constitutional development was backsliding. When all kinds of means, including marches, signature campaigns and sea-jumping protests and so on, had been employed to strive for democracy but to no avail, what options were available to scientifically quantify Hong Kong people's aspirations for abolishing the functional constituencies and the implementation of election with genuine universality and equality under the constitutional system in Hong Kong? The legislature had been dealing with this problem for over 20 years, but it remained in a stalemate. The Chief Executive had no intention of offering mediation to facilitate the implementation of an election system upholding universality and equality. It was against this background that five Members, including myself, had resorted to direct democracy, so that we can quantify the number of Hong Kong people who supported the abolition of functional constituencies scientifically and comprehensively.

President, I had explained back then that when I ran in the election of the Legislative Council in 2008, I had wholeheartedly promised the electors of the East Kowloon constituency that I would strive for dual universal suffrage in 2012. As a Member who had made such a promise, when I noticed that the 2012 constitutional reform package put forth by the Government in 2010 was going further away from universal suffrage, I could not help seeking options, other than signature campaigns, marches, assemblies and even sea-jumping that certain friends in the democratic camp employed as a gesture of protest I mentioned earlier, to solve the problem in a scientific manner. Naturally, I thought of the possibility of tendering resignation to trigger a legitimate by-election, which in actuality was a referendum on whether or not functional

constituencies should be abolished. There are actually some limitations in Hong Kong in pursuing this, for a referendum law has not been enacted in Hong Kong.

I am quite sure that had the Beijing authorities not requested Members from the pro-establishment camp and political parties and groupings to boycott the by-election, had Members from the pro-establishment camp participated in the election in East Kowloon, I believe the effect of the referendum would have been more prominent. Certainly, I also heard different views from members in the democratic camp, who considered that it might not necessarily be worthy to carry out the *de facto* referendum. In gist, I would express my understanding and respect to these views. Regarding friends in the democratic camp who focused more on the outcome than the process and came to the conclusion that the referendum should not be carried out, I think it is understandable.

However, in retrospect, in the course of the "five geographic constituencies referendum" campaign, members of the public came to learn more and were more aware about how the functional constituencies were dragging Hong Kong's feet, preventing the realization of universality and equality in election and causing the persistent deep-rooted conflicts. During the six-month period, we had not only planted the question deep in the hearts of the public, but had also enabled the participation of people from various sectors. Some of them wrote songs and lyrics, while some of them used drawings, cartoon creation and photographs to express their views. The various forms of participation had renewed the democratic campaign, bringing in new impetus. I can boldly point out that to date, no one can clearly assess the role to be played by people, enlightened and moved in the six-month period in respect of the *de facto* referendum campaign, in the future of Hong Kong as well as the democratic movement in our mother country.

President, I have spent almost seven and a half minutes to explain why I had determinedly resigned to trigger the legitimate by-election and carried out a *de facto* referendum. I have to give a detailed account of the concept at the time for I heard many Members of this Council, as well as certain public opinions mooted in the community, saying that if the action of using resignation to trigger a *de facto* referendum is not stopped, it will end up in endless abuses. I will say that these discussions or arguments have utterly disregarded the reality. The President definitely understands that when a Member decides to give up his or her seat to provide electors in Hong Kong with the opportunity to be consulted, it

absolutely would not be a simple and hasty decision. Hence, the arguments and justifications mentioned are definitely not valid.

Soon, TSANG will leave the scene and LEUNG will take the centre stage. It is an indisputable fact that Chief Executive Donald TSANG has ignored public opinions, yet there is hearsay that Chief Executive-elect LEUNG Chun-ying has also been assigned four major political missions. May I ask in what way is a Member of the Legislative Council wrong if he chooses to resign for returning the rights to be consulted to the people of Hong Kong at a critical moment? Yet, this last resort is seemingly to be stifled by the Government now.

As in the case of elderly, though they install the emergency alarm system at home, they do not intend to use the service every day. However, when they are alone at home and feel sick, they can use the emergency alarm service to call for help, the emergency alarm system will be a matter of life and death. Hence, I hope Members of this Council will regard this mechanism or channel of resignation for the sake of returning the rights to be consulted to the people of Hong Kong as a kind of emergency alarm system, and the debate today may indeed resulted in the removal of this emergency alarm system.

President, in reviewing the first version of the Bill submitted to the Legislative Council last year and the final version today, I will say that it is redundant and meaningless. It can at most be described as a proposal put forth by Donald TSANG in refusal to admit his failure. He has, for the sake of face-saving, obstinately put forward an indefensible proposal, which is fragmentary and incomplete after all the amendments made. However, some people still claim that the proposal will be conducive in saving government expenditure. I cannot but ask what kind of expenditure will be saved? If an emergency alarm system is to be installed, what is the value of human life? More importantly, under the present proposal, only the resigning Member is prohibited from standing in the election within the six months after the resignation, the comrades in his political party may still run in the election. If so, how can the Government mislead the public by saying that this proposal, if endorsed, will save public expenditure?

President, I recall that when the replacement mechanism was first submitted to the Legislative Council on 17 May last year, the Government proposed that the vacancy arisen would be filled by the candidate with the largest

number of votes in the list. It was neither fish nor fowl. Later, on 22 June, Dr Margaret NG pointed out unequivocally that anyone who advocated for the rights of electors would not conspired with the authorities, and after making this vehement remark, Members of the pro-democratic camp who attended the meeting of the Bills Committee walked out of the meeting in protest. Then, on 1 July, it was reported that some 200 000 people took to the streets to oppose the replacement mechanism. As a result, Henry TANG announced postponing the Second Reading of the Bill. On 20 January this year, the Government announced the result of the consultation and made another volte-face, and today's proposal was the revised version.

We must remind ourselves once again, it is evident that the Bill to be examined by us today is completely different from the original proposal submitted on 17 May last year. The two versions are completely unrelated and totally different, why do the authorities have to push through the Bill?

President, the proposal gives no respect to democracy. If the authorities respect democracy, it should let the public make the decision. The public should be given the opportunity to show their support or otherwise of the political decision of the resigning Member by casting a vote in the by-election. The right of resigning Members to stand for elections should not be deprived of by Secretary Raymond TAM; and moreover, Secretary Raymond TAM or Chief Executive Donald TSANG should in no way deprive the electors of their right to express their opinion through ballot boxes. As this Bill deprives the public of the right to nominate candidate and stand for election, the Civic Party will definitely not render its support. On behalf of the Civic Party, I declare clearly our opposition to the resumption of the Second Reading of the Bill. After voting against the resumption of the Second Reading of the Bill, we will walk out in protest. I have to reiterate a remark made by Dr Margaret NG on 22 June last year at the meeting of the Bills Committee that anyone who advocate for the rights of electors should not continue to conspire with the pro-establishment camp and the Government. I so submit.

MR FREDERICK FUNG (in Cantonese): President, the Hong Kong Association for Democracy and People's Livelihood (ADPL) opposes any act of changing the present situation by making legislative amendments to stop Members from resigning and instigating a referendum. The above approach

tends to get immediate result by distorting the effective by-election system, depriving the public of the choice to vote, and even violating the right to stand for election and the right to elect as conferred by the Basic Law and international conventions.

I wish to make it clear that the ADPL did not take part in the "five geographical constituencies referendum" and I think the issue under discussion today should be handled separately from the "five geographical constituencies referendum". The ADPL's strategies and practices in striving for democracy may be different from those of other pan-democratic members or groups. Some are more radical, some are more moderate; some prefer resistance and opposition, others prefer negotiation and discussion. However, a difference in strategies should not lead to different attitudes and stances on the replacement proposal because this is related to our principles and positions on democratic values. Therefore, the ADPL will not support the amendments proposed by the Government, and I will vote against the amendments at the Second Reading.

In our view, even if a Member resigns to trigger a by-election, or if some form of a referendum is conducted to solicit the views of the public on a certain issue by the number of votes cast this election system has been effective all these years, and a by-election should be held when there is a vacancy in the Legislative Council arising from illness, death or resignation of a Member. This mechanism should not be changed due to the ideas of individual Members.

Basically, we should not be afraid of the so-called *de facto* referendum triggered by a by-election, and it should not be an issue of our concern. This practice is permissible under a democratic system. Politicians always initiate discussion on issues affecting public interests, they may even resign to trigger by-elections and subsequently voting; whether it is a kind of referendum is insignificant. It is a mechanism for Members to be returned in a by-election when a vacancy in the Legislative Council arises. By-elections had been held in Hong Kong during the British rule.

As Members may recall, Mr LAU Chin-shek resigned after a debate on wages and a by-election was triggered. At the by-election, Mr LEE Cheuk-yan, who also belonged to the Hong Kong Confederation of Trade Unions, stood for election in place of Mr LAU Chin-shek, and he became a Member of the Legislative Council. This can be regarded as a *de facto* referendum though it

was not named as such at that time. In fact, quite a number of places or countries, including Canada, the United Kingdom, India and North Ireland, have held *de facto* referendum or by-elections following the resignation of Members. Is that anything unusual? What big deal is that? Why should we get worried and frightened?

I would like to talk about the whole course of events. On 25 January 2010 when we were arguing about the second constitutional reform package, five Members of the League of Social Democrats and the Civic Party from five different geographical constituencies submitted their resignations to the Clerk to the Legislative Council. According to section 35 of the Legislative Council Ordinance, the Clerk to the Legislative Council declared the existence of five vacancies in the membership of the Council, by notice published in the Gazette on 5 February 2010, and the resignation by the five Members took effect on 29 January 2010.

Section 36(1)(a) of the Legislative Council Ordinance specifies that the Electoral Affairs Commission (EAC) must, in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap. 541), arrange for a by-election to be held on the making of a declaration by the Clerk to the Legislative Council as to the existence of a vacancy in the membership of the Legislative Council. Under section 16 of the Legislative Council Ordinance, a person who ceases to be a Member is, subject to section 39 (When person is disqualified from being nominated as a candidate and from being elected as a Member), eligible for re-election as a Member. The EAC conducted a by-election on 16 May 2010 to fill the five vacancies and the five resigned Members were all re-elected.

The Government subsequently considered it necessary to plug this loophole and put forward the original proposal in order to avoid wasting public money. For certain reasons, a mid-term vacancy in the Legislative Council would be filled by a candidate from the list with the largest remainder votes. The Government intended to cut the Gordian knot; the Legislative Council (Amendment) Bill 2011 was read the First time and Second time at the Legislative Council meeting on 8 June 2011, and it was expected to be read the Third time and passed one month later on 13 July. This could be described as "hijacking" at the expense of procedural justice, attempting to seize the majority advantage of the pro-establishment camp to force through the legislation, with no

regard to the opposing views, and without any public consultation, discussion or consensus.

The authorities even went further to interpret the extremely low voting rate at the "five geographic constituencies referendum" last year as support of the majority of the Government's replacement mechanism proposal. It sophistry had caused public outcry. Although the Government proposed an amendment in late June 2011 for a vacancy to be filled by someone on the same list, if nobody on the same list is interested or willing to fill the vacancy, the vacancy would be filled by a candidate from the list with the largest remainder votes.

Nonetheless, the new proposal still did not get popular support. Eventually, hundreds of thousands of people took to the streets on 1 July, putting the pro-establishment camp, especially functional constituency Members under great pressure. In view of insufficient votes, the Government was forced to postpone the scrutiny of the Bill on the replacement mechanism

MR ALBERT CHAN (in Cantonese): Excuse me, Mr Frederick FUNG, I would like more Members to listen to your brilliant remarks. Will President please do a headcount?

PRESIDENT (in Cantonese): Albert CHAN requests a headcount. Clerk, please ring the bell?

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

PRESIDENT (in Cantonese): Mr Frederick FUNG, please continue.

MR FREDERICK FUNG (in Cantonese): the Government has finally withdrawn the proposal and re-introduced a consultation document to consult the public until 24 September.

The authorities have proposed four options in the consultation document. Option 1: restricting resigning Members from participating in any by-election in the same term (prohibiting resigning Members from standing for election). This option not only has an element of discrimination, but may also violate Article 2 of the International Covenant on Human Rights which specifies that a person shall not be deprived of the right to stand for election because of his political views.

Option 2: as previously proposed by the Government, a replacement mechanism using the same candidate list; if there is no suitable candidate on the same list or nobody on the same list is willing to fill the vacancy, the vacancy would be filled by a candidate from the list with the largest remainder votes. This option may be contradictory to the principle of the values of electioneering and the voters' will.

Option 3: Similar to the mechanism in Option 2 but it does not cover causal vacancies arising from death, serious illness or other involuntary circumstances; these vacancies will be filled by a by-election. This Option excludes non-voluntary factors, but as the vacancy would also be filled by a candidate from the list with the largest remainder votes, it is still contradictory to the principle of the values of electioneering and the voters' will as mentioned above. Since this Option does not cover a proportional representation system and the system under which a candidate with the largest number of votes shall be elected, there is an inconsistency between a by-election and a general election.

Option 4: a replacement mechanism using the same candidate list, followed by leaving the seat vacant when the list is exhausted. This Option obviously violates the provision in the Basic Law specifying the number of seats in the Legislative Council.

After the conclusion of the consultation, the authorities introduced the Legislative Council (Amendment) Bill 2012 into the Legislative Council on 8 February 2012. Having Option 1 in the consultation document as a blueprint, resigning Members are restricted from participating in any by-election in the same term. To put it simply, the aim of the Bill is to propose a restriction, prohibiting Members who have resigned or are deemed as having resigned from their Legislative Council seats from standing for a by-election within six months after their resignation in the same term.

The aim of this Bill is to implement the following arrangements from the fifth Legislative Council term onwards for filling the vacancies in the Legislative Council: (a) a vacancy arising mid-term in a geographical constituency (GC), the District Council (second) functional constituency (DC (second) FC) or any other functional constituency (FC) under section 15 or section 72 of the Legislative Council Ordinance (LCO) or Article 79 of the Basic Law would continue to be filled by a by-election; (b) a Member returned by a GC, the DC (second) FC or any other FC who has voluntarily resigned from office under section 13 or section 14 of the LCO would be prohibited from standing in any by-elections in all GCs, the DC (second) FC and other FCs in the same Legislative Council term within six months of his resignation; and (c) the restriction would not apply to general elections. If the six-month prohibition spans over a current Legislative Council term and the following Legislative Council term, the prohibition will not be applicable to the by-elections in the following Legislative Council term.

Ever since the Government's re-introduction of the original proposal, no consultation has been conducted and it basically fails to complement the procedural justice. The Government only decided to postpone voting and launch a public consultation under immense pressure and in view of insufficient votes. On the face of it, the consultation complied with procedural justice; but, it was obviously just a stratagem to gain a respite, with a view to speciously from the time the Bill was gazetted to stop Members from resigning to trigger a by-election.

The consultation paper has a lot of leading questions; for example, wordings such as "involving a considerable amount of public funds" and "Members resigning at will" have repeatedly been used, which intends to mislead the public to support the Government. It has been repeatedly stated in the document that maintaining the *status quo* involves a considerable amount of public funds. Nevertheless, the replacement mechanism is a long-standing mechanism; why were by-elections held in the past not described by the Government as involving a considerable amount of public funds? Evidently, the authorities have put labels on these acts in order to terminate Members' resignation to trigger a by-election.

The public think that the existing by-election system does not have problems and amendments are unnecessary. Yet, the public consultation has just guided public discussions about which option is better, and this practice is setting a trap for the people. Since the time Legislative Council Members were

returned by election, all vacancies in the Legislative Council had been filled by by-elections. This method has proven to be effective and no amendment is needed. Why is it considered necessary to change the present system following the sporadic political action of "a *de facto* referendum in five geographical constituencies"?

The Government has recently introduced an amendment Bill, prohibiting Members who have resigned or are taken to have resigned as Members of the Legislative Council from standing for a by-election to be held within six months after their resignation in the same term of office of the Legislative Council. This proposal is not as strict as the original proposal and it does not contain any arrangement to cancel a by-election, evidently depriving the public of the right to choose. In other words, if a resigning Member is the preferred candidate of some voters but he is restricted from standing for election, this will also affect the voters' willingness to vote and their right to vote.

If a resigning Member triggers a by-election in the form of a so-called *de facto* referendum in response to a major social issue, this will enable the public to have more thorough discussions and express support for this proposal. The Government should not deprive voters of their rights to vote or not to vote for the resigning Member in the election because the Member should bear the political consequences, and the Government does not need to determine if this practice is right or wrong under a certain system.

Furthermore, this Bill cannot solve the abuse as mentioned by the authorities because a person belonging to the same party or holding the same political views as the resigning Member can still stand for a by-election. In any case, by-elections will incur public expenses and involve the use of public funds. So, it does not make sense to say that this should not be done because public funds are involved.

Lastly, the position of the Hong Kong Bar Association is that the proposed restrictive measure will limit the voters' choice of candidates in a by-election, which is not essential and lack sufficient grounds. According to the Hong Kong Bar Association, the Administration has not given reasonable explanations or provided adequate and reasonable reasons to illustrate why Members who resigned because of health, personal or other reasons should be deprived of the right to stand for a by-election, and why the voters' right to vote in support of

these Members should also be deprived. In that case, the voters will not have the right to choose when they exercise their due rights to elect and be elected.

President, based on the above, I will vote against the Second Reading of this Bill and I will leave this Chamber in protest after voting.

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

(Mr LEUNG Kwok-hung raised his hand in indication)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you can only speak once. Does any other Member wish to speak?

MR ALBERT CHAN (in Cantonese): President, before I speak, I hope Members of the pan-democratic camp will leave first, because I wish to make all Members of the pro-establishment camp stay in this Chamber to hear me read out the manifesto which I wrote two years ago for the "five geographical constituencies referendum". If you remember, at that time Members of the pro-establishment camp went away so that we could not read out this manifesto. To repay this historical old debt

(Mr LEUNG Kwok-hung stood up)

MR LEUNG KWOK-HUNG (in Cantonese): President, I hope Members of the pro-establishment camp can listen to what he says.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

MR LEUNG KWOK-HUNG (in Cantonese): I request a headcount.

PRESIDENT (in Cantonese): You request a headcount?

MR LEUNG KWOK-HUNG (in Cantonese): Yes.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung requests a headcount. Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, I am very grateful that Members of the pro-establishment camp are here to hear me read out the valedictory manifesto written some two years ago. I hope you will stay here in these 10 minutes. If you leave, I will request a headcount again.

President, there are not enough Members present right now.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): I am most eager to have Mr CHAN Kam-lam listen to my valedictory manifesto. Just now I requested all Members of the pan-democratic camp to leave so as to enable Members of the pro-government camp to listen to my valedictory manifesto. Mr Albert HO, please leave unless you admit that you are a Member of the royalist camp.

President, this time I resign jointly with Mr WONG Yuk-man, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Alan LEONG, upholding "resignation *en masse* of Members returned from five geographical constituencies as a referendum" as the principle of our resignation

President, the number of Members is not enough. I request a headcount.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, I feel very grateful that 29 Members of the royalist camp are so interested in my manifesto. However, I would like to tell Mr Abraham SHEK, this is not a manifesto for this year. It is the manifesto which was written two years ago. Just now he looked very happy as he thought I was really going to read out a resignation statement. I hope that in the following 10 minutes, they will quietly sit here and listen to my whole manifesto. Otherwise, we will have to do a headcount again, and that is not too good.

President, a quorum is not present.

(Some Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, this time I resign, because I am discontented that collusion between the Government and the business sector and transfer of benefits still exist. This time I resign, for I am discontented with the widening wealth gap and exacerbating poverty while such problems have never

been improved. I resign in the hope of bringing a greater change to the stagnant democratic system, in the hope of fostering a new mentality and pushing forward the democratic political system in Hong Kong. "The foundation of the country lies in the people". We absolutely cannot witness Hong Kong people's rights being trampled without taking any action.

President, a quorum is not present. I wish to have a headcount.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Will Members please return to their seats.

(Some Members had not returned to their seats)

PRESIDENT (in Cantonese): Mr Paul TSE, please go back to your seat. Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, if Hong Kong people work like Legislative Council Members in meetings, they return to their office, sit awhile and leave, I believe the factories in Hong Kong will certainly close down, and many companies which operate in Hong Kong will also go bankrupt for sure. Right? Such a practice of the royalist camp in the Legislative Council is applicable only to the bosses. If workers work this way, it will be disastrous. If workers, like their bosses, return to the office, sit awhile and then leave as though they have worked, the whole territory will certainly collapse, and Hong Kong's economy will substantially regress for sure.

President, it seems there is a lack of quorum again. Will you please do a headcount?

PRESIDENT (in Cantonese): Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): I wonder when Miss Tanya CHAN became a member of the royalist camp. Earlier, I have called on Members of the royalist camp to sit here and listen to my valedictory manifesto. So, will those who do not belong to the royalist camp please leave.

I hope the royalist camp will be a role model to Hong Kong people: when a meeting is being held, one should sit and attend the meeting properly. Do not just sit awhile and leave. Is that right?

President, a quorum is not present.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, I hope Members of the royalist camp will not set a bad example to students and children. Otherwise from now on, teachers will have to scold their students for disappearing instantly right after they have set foot in the school; and no one will attend classes. Members of Hong Kong's royalist camp are acting like bad students now. So, I hope you will sit properly and listen to my speech which lasts for some 10 minutes. Supposedly, this is a duty of a Member. No wonder some Hong Kong people say that it is easy and comfortable to be a Member. With a monthly salary of

\$70,000 to \$80,000, they just sit awhile in meetings and that's all. As such, why not simply put a "paper Member" or a "paper doll" here? Hence, I hope you will quietly listen to my speech.

A government returned by "one-man, one vote" of equal value

(Mr Abraham SHEK raised his hand in indication)

MR ABRAHAM SHEK (in Cantonese): President, a quorum is not present at the moment. Now I know why

PRESIDENT (in Cantonese): Mr Abraham SHEK, what is your point?

MR ABRAHAM SHEK (in Cantonese): President, a quorum is not present at the moment. I know why other Members are not here to listen. It is because his speech is rubbish.

PRESIDENT (in Cantonese): Are you requesting a headcount? Clerk, please do a headcount.

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

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, I think when Hong Kong people see this hallowed Chamber, they will be very disappointed. It turns out that it is so difficult to ask Members with a monthly salary of \$70,000 to \$80,000 to sit down for some 10 minutes to attend a meeting. You need to summon them repeatedly, and only some 20 Members of the royalist camp show up. President, a quorum is not present right now.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing, are you leaving the Chamber?

(Mr WONG Kwok-hing returned to his seat)

PRESIDENT (in Cantonese): Mr CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, all Hong Kong people can see the ridiculous side of this Chamber. No matter in meetings or at work, one should comply with the rules, and there are principles and discipline. Students should sit properly in attending classes, while employees should duly stick to their posts, unlike those Members President, a quorum is not present.

PRESIDENT (in Cantonese): Clerk, please ring the bell.

(During the ringing of the summoning bell, THE PRESIDENT'S DEPUTY, MS MIRIAM LAU, took the Chair)

(While the summoning bell continued to ring, THE CHAIRMAN resumed the Chair)

PRESIDENT (in Cantonese): I now suspend the meeting for 30 minutes.

6.42 pm

Meeting suspended.

7.29 pm

Council then resumed.

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): It seems a quorum is not present right now.

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 returned to the Chamber)

PRESIDENT (in Cantonese): Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): President, in guarding and protecting the regime, sometimes the royalist camp needs to pay a price. In the past 15 years, the royalist camp in Hong Kong has led an easy life. Very often they would perfunctorily attend Council meeting, stayed in the Chamber for a couple of minutes, voted and left. They were subsequently awarded with posts and titles. Some received the Bauhinia Medals (GBM) and were appointed to join some committees. They enjoyed endless glory and wealth. Hence, sitting in this Chamber to hear me speak for 10 more minutes is a little price which you need to pay. In the next few days, you may have to continue to hear me and Yuk-man speak for 40 to 50 hours. Then you will vote, and afterwards, it is possible that more GBMs will be awarded to you.

President, let me continue to read out the resignation manifesto for the "five geographical constituencies referendum" written by me some two years ago:

"Despite the continuous decline in the people's quality of life, Hong Kong's democratic development has still stayed put. I had participated in promoting direct election in 1988. I am also a signatory of the '190 proposal'. In 1990, I even went on a hunger strike for 50 hours at the entrance of the New China News Agency in opposition to the 'Cha-Cha proposal' of the Basic Law. I had organized countless rallies, petitions and signature campaigns in strive for

expeditious implementation of universal suffrage. However, under a feudal and closed system, people's longings and appeals for democracy remained neglected. I had tried all sorts of rational methods to persuade government officials and various political parties and groupings to accept genuine democracy, but all efforts ended in vain.

"Originally, the reunification of Hong Kong with the mother country in 1997 should bring new hopes for the democratic development in Hong Kong because the Basic Law had given considerable room for democratic development. Hong Kong could have progressively put forward and established a balanced democratic system step by step, but eventually, owing to the bias of the system, constitutional reform was repeatedly delayed. Twelve years have passed since the reunification, but the day of realizing genuine universal suffrage for Chief Executive and the Legislative Council is still far away.

"Faced with such gloomy prospects of the democratic development, we cannot continue to yield in silence. Neither can we accept such cruel reality. It is because accepting the reality is tantamount to courting death. It is tantamount to seeing hundreds of thousands of people suffer without lending a hand. It is tantamount to seeing the disadvantaged being oppressed without saying a word. It is tantamount to witnessing the tilt of the system without raising any objection. Lu Xun said, 'Silence, silence! Unless we burst out, we shall perish in this silence!'³ Hong Kong people who have been terribly oppressed should no longer remain silent, or else they will be swallowed up in silence."

President, it seems there is a lack of quorum again.

PRESIDENT (in Cantonese): Please continue with your speech.

MR ALBERT CHAN (in Cantonese): "The campaign of *de facto* referendum in five geographical constituencies will further open up a new direction for the democratic development in Hong Kong. In the past democratic movements, the objective was also to fight for a universal and equal democratic system, but they often lacked mobilization and participation of the masses. In the *de facto*

³ Translated by Ingrid Tung, Yuk Hui, <www.040607.cyberrepublic.net/doc/>, 2007

referendum campaign, the by-election is not simply an election to choose the people's representatives. It also allows the public to jointly participate and decide the way forward of democracy in Hong Kong. Through the *de facto* referendum, members of the public who have been unable to master their own fate over the years can directly express their stance on the directions and modes of constitutional development with the sacred votes in their hands. The *de facto* referendum campaign will enable the public to learn about the preciousness of direct democracy, which will then take root in people's hearts and become the ultimate goal and new direction in the fight for democracy by Hong Kong people.

"Before the reunification, Hong Kong people were regarded as second-class citizens of a British colony. Yet after the reunification, under the undemocratic, deformed political system, Hong Kong people have been degraded to what NI Kuang called third-class citizens, because first-class citizens are those who have the right to vote for the Chief Executive, vote for Members returned by functional constituencies and vote for those returned by geographical direct elections, but the general public only have the right to vote for Legislative Council Members in direct elections.

"Since we have already returned to the embrace of the mother country, we should all the more live as Chinese people with dignity and should not yield to oppression and exploitation in silence. MAO Zedong said that Chinese people had stood up. Now Chinese people in Hong Kong should stand up as well. They should no longer rely on alms handed out by the Government which was returned by undemocratic election or the Central Authorities. Instead, they should seize this golden opportunity of the *de facto* referendum to grasp their own future as well as the political rights of the next generation in their own hands, making use of their precious vote to say no to totalitarianism and yes to dual universal suffrage with clarity. Hong Kong people have strived for universal suffrage for more than 20 years, we should not wait indefinitely. SUN Yat-sen said, 'Do not ask others to do what you should do yourself; do not leave for tomorrow what you should do today.' Today is the time for Hong Kong people to use the sacred vote in their hands to start an uprising together.

"Lastly, President, I wish to cite a poem of TAN Sitong titled 'Writing on the Prison Wall' to extend my encouragement to all those friends who participate in the *de facto* referendum campaign, especially the four Honourable colleagues

who have resigned from their position as Legislative Council Members. The poem reads:

'Facing the door in refuge, I commemorate ZHANG Jian;
In defiance of death I await to be treated like DU Gen;
To the impending sword I laugh, facing heaven;
In life or death, our souls shall meet at Kunlun with no regret.'⁴.

President, this resignation manifesto for the "five geographical constituencies referendum" was published in this booklet entitled "Five Resignation Letters which Cannot be Read Out". At that time the royalist camp manipulated the Council rules and stayed away from the meeting *en masse*, causing the meeting to be cancelled due to a lack of quorum. Thus, as a matter of fact, it was the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) which took the lead in exploiting the Council procedures in the Chamber. President, back then, Legislative Council Members belonging to the DAB left the Chamber *en masse*, causing a lack of quorum for the meeting. Hence, with regard to exploitation of the Council procedures and abuse of the Council rules to bring forth cancellation of meetings due to a lack of quorum, after the establishment of the Hong Kong Special Administrative Region, it was the DAB which took the lead in playing such a trick. Therefore, we are just learning from the DAB in, for example, making use of the Council procedures to do a headcount.

At that time Mr CHAN Kam-lam stood up very bravely in the Chamber to request a headcount. Not a single Member of the royalist camp was present. So the DAB was the pioneer in making use of the Council procedures to deprive Members of their right to speak. At the time Members wanted to read out their resignation manifestos, yet they could not do so due to such tactics. President, to safeguard the people's rights, two Members of the People Power have proposed more than 1 300 amendments, with the clear intention of expressing our discontent and indignation through the Council rules and procedures.

President, speaking of filibuster, over the past century (not decades), many parliaments with elected representatives among all democratic countries have

⁴ Reference: scene 13 at <<http://www.sino.uni-heidelberg.de/representations/gonghe/series/part21.html>>

extensively adopted the practice of filibuster. Our proposal of some 1 000 amendments is no big deal. In Ontario, Canada, someone has proposed more than 12 000 amendments before, while in France, someone proposed 140 000 amendments a few years ago. Regarding Members' speeches, Mr Martin LEE alone spoke for more than an hour in the era of the former Legislative Council. A Congressman in the United States once spoke for 24 hours. A single person alone continuously spoke for 24 hours.

Hence, with respect to the adoption of an open, civilized and democratic system, Hong Kong still has a lot to learn. In this regard, Hong Kong has not learnt anything, yet it has learnt from the Communist Party. It has learnt from the despotism of the Communist Party, its system which deprives people of their rights, and its brutal tactics. For things which should be open and civil, the situation has become darker and darker since the reunification.

Thus, I know the DAB will certainly use all kinds of tactics to continue their suppression, and they may amend the Council rules and procedures so as to further deprive Members of their rights. I would like to read out a short paragraph in English. The background is the time when the Polish Solidarity had not yet come to power and was suppressed by the Communist Party. WALESIA was Solidarity representative then. These words were said by him to those who arrested him during his arrest: "At this moment, you lost,' he told those who arrested him. 'We are arrested, but you have driven a nail into your Communist coffin You'll come back to us on your knees.'" This is what WALESIA said as Solidarity's leader when he was arrested back then.

No matter what tactics are adopted by the DAB to suppress freedom in the Council, some day the people's voice will definitely trumpet in the sky in Hong Kong. Executioners who have oppressed the people will certainly be punished by the people in the end. So, just bring it on! The People Power will take any challenge for sure.

MS CYD HO (in Cantonese): President, today this Bill merely seeks to hinder members of the public from fighting for direct democracy and prevent them from expressing their views through a *de facto* referendum. This is an unfair and unjust act. It is also contradictory to the Government's pledge to promote democracy.

In 2011, the Government proposed a mechanism to cancel by-election in the hope of hastily and brutally depriving people of their right to vote. The approach was rather high-handed. At that time the pan-democrats indignantly withdrew from the Bills Committee which scrutinized the relevant Bill because we knew that with only some 20 Members in the Council, no matter how many reasons we had raised and no matter how patiently we explained those reasons, we still would not have enough votes to protect the people's right to vote. Nevertheless, members of the public had made praiseworthy efforts themselves. Only 10 days after we raised this issue, members of the public had quickly grasped the information. Within 10 days, 200 000 people were triggered to go to the streets in protest, forcing the Government to stop its brutal and unreasonable deprivation of the people's right to vote. It thus illustrated that Hong Kong people actually attached great importance to the right to vote. Whether they supported or objected to the "five geographical constituencies referendum", they knew that the right to vote was their only channel to monitor the Government, and so they treasured it highly.

Today, the Government introduces into the Legislative Council this Bill which deprives people of their right to choose in a by-election, and similarly, it cannot win the people's hearts as well. If the Government does not want members of the public to air their views through a referendum triggered by Members' resignation and thus blocks the channels of expression of views on various fronts, it indicates that the pledge made by the Government to Hong Kong people to implement dual universal suffrage in 2017 and 2020 is only a false illusion. It is merely a policy to stall democracy.

The matter has developed to such a state simply because there is no proper procedure for Hong Kong people to express their views. Yet the Government refuses to stage a referendum. Even though Members resigned to hold a *de facto* referendum, giving up their own seats to provide a platform for the public to air their views, they were suppressed by various parties. Why did members of the public participate in the *de facto* referendum? Because the Government always presented figures through distorted opinion surveys, insisting that it had the public support. For instance, Secretary Stephen LAM said that as only 17% of the public had voted, it indicated that 83% of the public did not support a referendum. What he said is indeed ridiculous.

Now, the final version is just a fight swayed by personal feelings, since by-election is retained, but resigning Members are punished by prohibiting them

from standing for election again within six months. Its only effect is to prevent members of the public from expressing their support for the resigning Members. This is merely a fight swayed by personal feelings of those in power in the Government. President, the Labour Party will object to the resumption of Second Reading of the Bill. After voting against it, we will leave the Chamber.

Actually nowadays, members of the public do not only request representative democracy but also direct democracy. They also ask for a bigger and bigger share of democracy. In 2007, we already exercised a plan to put universal suffrage into practice. Last time when Mr Alan LEONG and Donald TSANG contested for the post of Chief Executive, we conducted a civic referendum. At that time we set up 28 polling stations. Originally we could set up 46 polling stations, but a number of schools were pressurized by the Government. The Education Bureau and the Home Affairs Bureau kept calling to exert pressure on them. In the end, some schools could not bear the pressure and flinched at the last moment.

(Mr LEUNG Kwok-hung stood up)

MR LEUNG KWOK-HUNG (in Cantonese): I request a headcount.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung requests a headcount. Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Ms Cyd HO, please continue.

MS CYD HO (in Cantonese): In the civic referendum in 2007, despite a low voting rate with only 8 800 people voted in 28 polling stations, the way the voting was conducted at the time was stringent and the operation commanded a high degree of credibility. In 2010, a few Members resigned to trigger a *de facto* referendum, and 530 000 people had voted. As we know, that voting was

actually an expression of stance on the Government's proposal on constitutional reform. In 2012, Dr Robert CHUNG of the University of Hong Kong conducted another civic referendum. There were only five physical polling stations, but 220 000 people voted on the Internet or personally travelled to The Hong Kong Polytechnic University to queue up for more than an hour to cast their votes.

Such phenomena are natural consequences of the Government's distortion of public opinion and twisted presentation of figures to create an illusion. Hence, there will only be more and more civic referendums with increasing credibility, since we know that civic referendum is an effective way to express public opinion, and we will not take the way backward.

In the near future, there will be another round of proposal on constitutional reform after 2012. I can tell you that the democratic camp will definitely continue to organize civic referendums, so that public opinion can be aired clearly and accurately. Actually apart from constitutional reform, matters such as the construction of incinerators or reclamation can also be decided by civic referendum. The Government has no way to avoid Hong Kong people's increasing passion in their pursuit of direct democracy.

Some people say that this Bill today seeks to punish Members who resign to trigger a *de facto* referendum. Some say that they have violated their own inaugural speech without completing their four years' term properly, and they have also incurred public expenses.

President, recently, I have taken part in the scrutiny work of the Public Accounts Committee and discovered that the Youth Square had incurred an annual loss of \$33 million due to the wrong contract signed. In fact, there are numerous cases where the Government has wasted the public coffers. Resigned Members' political attitudes and political actions should be left for members of the public to give a political judgment by casting their votes in elections. The public can retain these Members by their votes; or they can kick these Members out. This should also be done by the public themselves. There is no need for the Government to treat members of the public as children and tell them who are to be rewarded and who are to be punished. Actually members of the public want to punish government officials the most. Yet regrettably, you are not returned by election, so they can never kick you out.

The ruling parties in foreign countries totally accept the filibuster strategy. Why? Because there is a changeover of political parties. The ruling party of this year may be the opposition party the next year. Today they are in office, but tomorrow they may be in the opposition. Therefore, they will allow some leeway and will not take away all the tools from the opposition party for expression of views, since they themselves may need to use them in the future.

However, there is no changeover of political parties in Hong Kong. Under the present system, those who have the upper hand will perpetually enjoy the power. The people's representatives may be the majority outside, but here they are still the minority. The so-called changeover of political parties is merely the handover of power from Donald TSANG, who was approved by the Communist Party, to LEUNG Chun-ying, who was approved by the Communist Party. If they have any disagreement, it is only an internal conflict or dispute within the same "stable". Thus, they will not put up with each other.

President, the democratic camp recognized by the public is the minority in this Council. Under this system, it will never take the place of the ruling party. Hence, the Government can pull its teeth or seize its tools as it pleases, since the Government knows that the pro-establishment camp will always stay in power, while the people's representatives — the recognized majority — can only act as the minority opposition party forever. However, let me remind you of a story, the story of SHANG Yang, who made a law and later fell foul to it himself. Today if you introduce a draconian law to strike at other people, some day you may also become the victim of this draconian law. As in the case where Donald TSANG pushed forward interception of communications in surveillance, it turned out that his own communications were also intercepted under surveillance. His privacy had been encroached upon in the same way.

Today is the first time that we have proposed some 1 000 amendments to carry out the filibuster strategy. The amendments concerning the Copyright Ordinance will come next. Here, I would like to extend my apology to the Secretariat, because with a lack of manpower, they are having a hard time at work. Yet I must also salute the Secretariat here, in order to avoid contradictions in the provisions, they must work with strict prudence.

The various amendments can indeed help the public postpone the Second Reading of the Copyright (Amendment) Bill 2011, so that such legislation,

chopped off from Article 23 of the Basic Law, will not be passed under unclear circumstances. So, President, under such a distorted political system, filibustering by proposing amendments is acceptable under the Rules of Procedure. It is a kind of practice permissible in the Council. Hence, I hope members of the public will understand that this is actually the only channel for the people's representatives to express their views and stop the passage of draconian laws in the Council.

Actually, filibuster appeared as early as about 60 B.C. It came about before Christ was born. In Roman times, there were already senators who adopted filibuster to obstruct the passage of laws. Since their Senate had to conclude all business by dusk, the legislation would then be unable to get passed. We hold our meeting until 10 o'clock at night and resume the meeting the following morning. However, President, I hope that Members will not recklessly amend the Rules of Procedure because the democratic camp has found its way to block the passage of draconian laws by resigning to trigger a referendum or by proposing amendments. Do not rashly move the "goal net" because other people have found a way to block the passage of draconian laws. Actually, if you do so, you are simply indicating to the public that those in power want to win it all. When people who have no power or influence wish to stop a draconian law in peaceful, rational and non-violent manners, they will be suppressed by all possible means so that they will not even have a chance to say a word. Hence, I request Members never to support any proposed amendment which will deprive Members of their right and freedom to express opinions in the future discussion about the revision of the Rules of Procedure.

Actually, why did it take as long as two hours today for Mr Albert CHAN to read out a 15-minute speech? As such, Hong Kong is the loser. Yet the ones who made Hong Kong lose are not those who have neither power nor influence, or those members of the public outside the Council. Rather, it is the Government, which shows no leniency when it has the upper hand, and the pro-establishment camp which takes up the majority in the Council, who should be blamed. At present, there is no legislation on referendum, and consequently, members of the public can only rely on Members to resign to trigger a referendum to express their views on major issues. It is merely a means to express their stances. The result of the referendum is not legally binding; it just enables several Members to return to the Council. It simply reflects the public discontent with the Government's distortion of public opinion and frequent

adoption of misleading questionnaires to derive figures in support of the Government. It just reflects the true public opinion and exposes the truth about the figures presented by the Government. If even such channels for airing grievances are smothered, will the Government only stop when the people are suffocated?

As a matter of fact, today's fight is a battle between "eggs" and a "high wall". The several Members who resigned at that time have simply found the opportunity to read out their resignation manifestos which they did not have the chance to read out in the Council back then. Actually, in today's battle between the "eggs" and the "high wall", the "eggs" will certainly lose because we are outnumbered by those returned by functional constituencies, and the system is not democratic, not to mention separate voting. Thus, no matter how many amendments we propose, they will never be passed. Although members of the public who object to this Bill outside the Chamber are in the majority, in this grand Chamber we are just the minority. Our votes will not be able to stop the passage of this draconian law, and we do not have enough Members to cause the meeting to be cancelled for a lack of quorum, so as to stop the passage of this draconian law. Nevertheless, we will work on, and we are prepared to fight a losing battle and run into the high wall. However, if today's meeting can really be cancelled owing to a lack of quorum, and if the "eggs" can really win over the "high wall" today, it just reveals to members of the public that the pro-establishment camp on the "high wall" does not truly support this piece of legislation, and it does not have much commitment either.

The proposal of over 1 000 amendments in the Chamber is actually a challenge to our mental and physical strength. I remember that in 2006, during our discussion of the Interception of Communications and Surveillance Ordinance, Dr Margaret NG and Mr James TO had proposed more than 200 amendments. At that time there were only Mr LEUNG Kwok-hung, Mr Ronny TONG, Ms Audrey EU and Mr Martin LEE, who would deliver a speech time and again so that the Members who proposed the amendments could leave the Chamber to have some water, go to the washroom and eat a little food to replenish their strength. With their efforts, the six or seven of them persisted for 36 hours, leaving a remarkable record of proceedings in Hong Kong. That is commitment. Yet today, as we can see, the pro-government camp is even incapable of protecting the Government. Thank you, President.

MS AUDREY EU (in Cantonese): President, on behalf of the Civic Party, I resolutely object to the Legislative Council (Amendment) Bill 2012.

The Government said that the Bill adopts a reasonable, necessary and proportionate measure to plug the so-called legal loophole whereby Members can resign at will to trigger a by-election in which they intend to stand and seek to be re-elected. Actually, what is meant by "at will"? Some people do not concur with the political ideals, political aspirations or political principles of the resigned Members, so they say this is an act committed "at will". Yet, on the contrary, other people consider that some Members had apparently made many promises in their election platforms, but they did not try their best to fight for them. Why then should they continue to cling to their seats and stay in the Council as Members? Why did they betray their trust and go back on their promises? Some people think that under such circumstances, Members should resign to seek the people's authorization again. Hence, whether an action was done at will should not be determined by the 60 Members in the Council — as the President may not cast his vote, 59 Members excluding the President — or by the Government. It should be judged by members of the public.

As for whether this is a loophole or not, I would like to quote from an article written by HUANG Xian in *Yazhou Zhoukan*. Its title is "Resigning from Office to Stand for By-election and One Country, Two Systems". He said, "The right to resign and then stand for the by-election is a core value of the parliamentary system. It is a mechanism to counter the 'majority autocracy'. Suppression of this mechanism will undermine the original intent of 'one country, two systems'." He also pointed out, "The practice whereby Members resign for major issues and then gauge public opinion through standing for a by-election is an important approach under the parliamentary system. It has worked from the ancient times to the present." In his article, he cited a number of actual examples in the history of the past century where people resigned and then stood for by-elections, among which there were social activists, as well as rich and powerful people. Even two British Prime Ministers had actively participated in and promoted such a practice. It was mentioned in the article that all these actions had benefited the later generations, including every one of us in the Council. The examples he cited include Lionel ROTHSCILD and Charles BRADLAUGH, who resigned and stood for by-elections a number of times so as to fight for freedom of religion; as well as John WILKES, who promoted law reform in the United Kingdom, thus giving rise to the democratic movement.

As pointed out in the article, these incidents where people resigned and then stood for by-elections had a profound impact. I quote, "We have all directly benefited from these several significant incidents in history where people resigned from office to stand for by-elections. In particular, our Honourable Members of the Legislative Council have benefited in various aspects." (End of quote)

Actually, the "five geographical constituencies referendum" held in 2010 had a historical background. As you remember, after the reunification, Hong Kong people were eager for the implementation of universal suffrage in 2007-2008. I believe many Members of the major parties and groupings here would remember that "implementation of universal suffrage in 2007-2008" was also written in their political platforms, including that of your party, President, which had made such a promise as well. Yet regrettably, after the interpretation of the Basic Law by the National People's Congress, not only was there no universal suffrage in 2007-2008, dual universal suffrage in 2012 was also subsequently cancelled. Moreover, there was a clear message that functional constituencies could be retained so long as some slight modifications were made. Thus, when the Government put forward the proposal on constitutional reform in 2005, the democratic camp in the Council — that means our last term, including me — requested a road map and timetable for universal suffrage. We did not accept the proposal on constitutional reform put forward by the Government back then. At that time the democratic camp in the Council, accounting for one third of the votes, negated the Government's proposal on constitutional reform in 2005. For this reason, in 2007 the Chief Executive election had to follow the original practice of holding "small-circle" election. The constitutional system had stayed put.

In 2008, when the Council election for this term was held, almost the same batch of Members of the democratic camp was elected. At that time we had promised in our election platforms to fight for dual universal suffrage in 2012 for members of the public. As some Honourable colleagues have pointed out in their speeches earlier, we had tried every means, such as displaying umbrellas, jumping into the sea, signature campaigns and marches, but what was the result? In 2009, the Government told us that not only did the proposal on constitutional reform to be passed on that occasion lack a road map, it was even worse than the proposal negated by the Council five years earlier. Why was it worse? Because regarding the Chief Executive election, originally it was said that membership of the Election Committee (EC) could be increased from 800 to

1 600, including all the elected District Council members. However, according to the proposal on constitutional reform put forward in 2010, membership of the Chief Executive EC was only increased from 800 to 1 200. In fact, in 2009 it had already been rumoured that the proposal on constitutional reform would not move forward, but would move backward instead. The choice faced by the democratic camp was, either choose a proposal which was worse than the one they had negated five years ago or remain unchanged in its original state. As such, the democratic camp elected to the Council in 2008 was indeed left with no choice. We could not just sit and wait for the doom. We had to strain our last efforts to honour the promise we had made in the election. The resignation *en masse* of Members returned from five geographical constituencies as a referendum was initiated under such circumstances.

Actually, it was the then League of Social Democrats which first raised the suggestion. I remember very well that the first member of the Democratic Party who more or less jumped out to express his support was SZETO Wah. In August, he publicly said on the radio, "Good. Let us do it quickly". He named five Members, including Mr Alan LEONG of the Civic Party, to take part in the campaign. Of course, situations could change. As a matter of fact, not everyone in our democratic camp supported the "five geographical constituencies referendum" campaign in the end. However, that does not mean the "five geographical constituencies referendum" was something illegal or unconstitutional. Its basic aim was to request people to vote to fight for our objective of implementing genuine universal suffrage and abolishing functional constituencies expeditiously. We cannot rely on this Council to abolish functional constituencies because half of the Members here have vested interests. We need the support of two third of the Members in order to abolish functional constituencies.

At first, the pro-establishment camp also geared up for this by-election. We still remember that Michael TIEN, who belonged to the Liberal Party at that time, distributed flyers in the New Territories West, wishing to run in the election. The Democratic Alliance for the Betterment and Progress of Hong Kong was very happy too. It also geared up with the thought that it would certainly win the election on this occasion. Everyone told us, "The Civic Party is having a big trouble this time. Mr Alan LEONG will lose the election for sure." Nevertheless, we understood that if we supported democracy, we should give the right to choose back to the public. Resigning from office to stand for

by-elections is, in fact, an act which the democratic camp often talks about, that is, to return the political power to the people, is it not?

Of course, many people would criticize that the voting rate in that by-election was low. No matter what the reasons were, the voting rate was low. Only some 500 000 people voted, accounting for only 17.9% of the electors. Yet strangely enough, four days after the "five geographical constituencies referendum" — the referendum was held on 17 May, its two-year anniversary is near — four days after the election, that was a Thursday, I received a letter from Chief Executive Donald TSANG, who invited me to attend a live televised debate to discuss constitutional reform. That letter addressed me as the chief spokesperson for the "five geographical constituencies referendum" campaign. According to many opinion surveys, after the debate, more people opposed the constitutional reform. After the debate, the Special Administrative Region Government, the Democratic Party and the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG) made a deal. Subsequently, the proposal on constitutional reform was revised and passed with the endorsement of two third of the Members in the Council. Hence, if we look back in history, regardless of the support for or objection to the proposal on constitutional reform, the "five geographical constituencies referendum" was indeed an essential step in constitutional reform and the fight for democracy.

Actually, people in power are always terribly afraid of public opinion. The then "five geographical constituencies referendum" was certainly a case in point. Even the civic referendum held by Dr Robert CHUNG of the University of Hong Kong on 23 March — as Ms Cyd HO has said, only a few carton boxes were used and voting was made on handwritten slips, there were over 200 000 participants — has aroused fierce criticisms from Mr HAO Tiechuan of the LOCPG (who belonged to the Central Propaganda Department at the time).

Why do we have to deal with this Bill today? It is very simple. That is, those in power are afraid of public opinion and do not want to listen to public opinion. They fear that when they introduce a policy, someone in the Council will find the policy unjust and therefore reach for the masses to seek public consent in the hope that by such an act, the views of the majority and the autocratic practice in the Council will be changed.

Of course, if you say that by-election does not have the people's support, that will be great. Such members will certainly lose the election and fail to get back to the Council. It is because every election will be completely open and fair. No one can command the election alone and claim that the theme of the election is the theme set by him. Other people can also run in the election. If all members of the pro-establishment camp find it undesirable for us to resign and stand for the by-election, they can run in the election under another banner and accuse us of wasting the public coffers. They can do so. Through authorization from members of the public, they can make use of the same by-election to defeat Members whom they do not approve of and whom they think have resigned at will. If they can win the seats, that means they are correct, and that is exactly the true meaning of democracy. Why should we count on the majority in the Council to deprive people of their right to choose?

The initial proposals made by the Government were even worse, causing a large number of people to go to the streets. So the Government withdrew its initial proposal and then put forward the present Bill. The Government advised that this Bill was constitutional. It also cited the advice of Lord PANNICK QC and claimed that there was no problem with this Bill. However, let us look at PANNICK's advice. He said that in the legislature, there is what is called "margin of appreciation". That is to say, if something is passed by the legislature, the Court will have to respect the legislature's opinion in this regard. Yet PANNICK did not point out whether, in view of the composition of our Council, it is a legislature genuinely returned by "one man, one vote".

Half of the Members in our Council are returned by "one man, one vote", while the other half are returned by "small-circle" elections. In this term, 13 Members in the functional constituencies were even returned uncontested. The composition of this Council can rightly reflect that it is a product under an unjust system. The minority can override the majority because, although they may be the minority in society, they are the majority in the Council. Not only do they make use of this mechanism to deprive certain Members of their right to run in election — Members who resign owing to their own political ideals or for other reasons — at the same time they have also deprived members of the public of their right to choose. Hence, President, after expressing our strong objection to the Second Reading of the Bill, we will not participate in the remaining procedure. Thank you, President.

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

(Mr LEUNG Kwok-hung raised his hand in indication)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, you have already spoken. Does any other Member wish to speak?

DR MARGARET NG (in Cantonese): President, the speech of Ms Audrey EU earlier has aroused strong feelings in me.

President, I have been the Deputy Chairman of the Committee on Rules of Procedure for nearly 13 years in the legislature. I have an increasingly strong feeling that this Council only adheres to the Rules of Procedure (RoP) in name, but pays no attention to the spirit of the legislature. Many core values of a legislature are regarded as heretic and unorthodox. For instance, one of the fundamental principles of the RoP is to safeguard the right to speak of all Members, particularly those in the minority. In a democratic legislature, when a consensus cannot be reached, the minority will have to submit to the majority. Hence, in the course of debate, the voice of the minority must be safeguarded, so that they have reasonable opportunities to state their stance clearly. This Council likes to stifle the right to speak of others with the voices, power and violence of the majority, so that they cannot voice their opinions. It is absolutely against the parliamentary spirit.

On the other hand, what is the origin of the Legislative Council (Amendment) Bill 2012 (the Bill) today? It is the *de facto* referendum in the form of the by-election triggered by resignation. In this Council, resignation is regarded as "playing tricks". However, in legislatures around the world where Members are elected by the people, when certain issues cannot be solved inside the legislature, Members will go to the people to let electors decide by expressing their views. This is the meaning of resignation. However, in this Council, no one is willing to appreciate this spirit. President, it is for this reason that we have this ignominious Bill.

Certainly, the current version of this Bill should be regarded as a small victory of the public, for the first version put forth in June last year was even

"harsher". Back then, the Government, counting on the majority votes it could secure in the legislature, attempted to abolish the by-elections of direct election secretly. Fortunately, the public learnt about the incident in time. On 1 July, some 200 000 people took to the streets and the Government realized that it was impracticable to deprive the rights of the public without any public consultation, it then postponed the original bill and came up with this new Bill today.

President, unfortunately, this version is also unacceptable. Why has not the Government heeded the views of the public? Since there is no absolute power directing the Government what to do, why it does not allow the public to choose to retain the existing system until it has come up with a better option? However, the Government insists to have its own way. The Bill involves the right to vote and the right to stand for election. First, the right to vote and the right to stand for election are fundamental constitutional rights. Without the right to vote and the right to stand for election, other constitutional rights and interest of the public cannot be safeguarded. When I took to the streets, I chanted this simple slogan: "Votes mean rights; without votes, everything is mere talk".

Second, the right to vote and the right to stand for election are correlated. We do not only need to have the right to vote but also the right to vote for our favourite candidates. Certainly, not everyone wants to stand for election. However, those who want to stand for election may come forward, and if they get the support of the public, they will be elected. Why is this point so important? Under many totalitarian systems, the primary approach is to curtail the right to be elected, that is, the right to stand for election. A simple example is the restriction on religion. In the Parliament of the United Kingdom, Catholics had been prohibited from standing for election for a long period of time. Even if they stood for election, they would not be able to discharge their duties, for they could not swear in. Due to this restriction, a large group of people did not have a representative representing them in the Parliament, and their voices were not heard in the Parliament. Therefore, the right to stand for election and the right to vote are indeed one issue. If the authorities disallow certain people, or people of certain religions or holding certain political concepts to be elected, or if it disallows people willing to engage in campaigns to be elected, it is indeed depriving certain people of the right to vote. In the selection of the Chief Executive by universal suffrage, why are we unwilling to accept the screening of candidates? For after the screening, only candidate A and candidate B will stand

for the election, yet they are completely the same. How can the right to vote be realized then? The logic is straightforward.

President, the Government tells us that we have the right to vote. Yes, but it is not an absolute right, for the right to vote is now subject to restrictions. I recall that Mr Paul TSE has talked much on this issue, and he may comment on this point later. It is unnecessary for me to repeat here. Today, let us look at the Bill, the Legislative Council (Amendment) Bill 2012. Since the Bill seeks to amend section 39 (when a person is disqualified from being nominated as a candidate and from being elected as a Member) of the Legislative Council Ordinance, the Bill sets out a series of conditions disqualifying a person from standing for election. In the view of the Government, it is only introducing an additional provision to the various conditions disqualifying a person from standing for election, why should this be regarded as unconstitutional and how is it improper?

President, the provision is improper in two aspects. First, under the existing Ordinance, an overwhelming majority of I know that Mr LEUNG Kwok-hung challenges some of those provisions, yet an overwhelming majority of the provisions in section 39 are imposed in many parliaments, which are restrictions of a universal nature. We may take subsection 1(a) as an example. This provision is about the person's identity and the conflicts of identity. Any person who is a judicial officer, a public officer or a member of staff of the Legislative Council is not eligible to stand for election. The other category is related to criminal crime, offence or punishment, and another one is related to bankruptcy. Today, we certainly do not understand why a person should be disqualified for standing for election because of bankruptcy

(Mr LEUNG Kwok-hung stood up)

MR LEUNG KWOK-HUNG (in Cantonese): President, pardon me, Dr Margaret NG says

PRESIDENT (in Cantonese): Mr LEUNG, please put on your microphone before you speak.

MR LEUNG KWOK-HUNG (in Cantonese): Headcount!

PRESIDENT (in Cantonese): Mr LEUNG requests a headcount. Clerk, please ring the bell.

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

PRESIDENT (in Cantonese): Dr Margaret NG, please continue.

DR MARGARET NG (in Cantonese): President, I was talking about section 39 of the existing Ordinance just now. The Government says that a person will be disqualified from standing for election under various conditions at present, so the right to vote is not absolute. Earlier, I mentioned the original conditions rendering a person disqualified from standing for election. Those conditions are completely different with the conditions introduced under the Bill today, which are of an entirely different nature. I have pointed out earlier that the various conditions stated in section 39 of the existing Ordinance are related to conflicts of identities, criminal offences and bankruptcy. According to traditional thinking, people who are bankrupt are regarded as lacking credibility in society. Another condition is about mental incapacity; and another condition is when the person standing for election in functional constituency has ceased to have a connection with the constituency. The nature of the various conditions mentioned above are completely different with the condition proposed by the Government today, that is, a Member is prohibited from standing in any by-elections within six months of his resignation. The Government is stating explicitly — certain Members are more honest than the Government, they point out that this is to punish Members who seek to be re-elected after resignation — that this is a punitive approach. President, the Government says that the amendment will not be regarded as unconstitutional and unlawful provided that it is reasonable, necessary and proportionate. Later, we will examine this point. As a matter of fact, the current proposed legislative amendment is unreasonable, unnecessary and not proportionate.

The Government mentioned earlier that the objective of amending the Ordinance this time was to plug the loophole. What is the loophole? That is Members may resign arbitrarily and at will. The Government wants to punish Members who resign, the reason is that they resign arbitrarily, frequently or repeatedly, leading to a waste of public money.

President, at that time, the pro-establishment camp deliberately caused the meeting to abort, so that the five resigning Members could not read out their resignation manifesto officially and uprightly in the legislature as part of the record. When we examine their reasons for resignation, we will know that they absolutely did not resign at will. President, I will now read out the script of Mr Alan LEONG's speech, approved by you and intended to be delivered on that day. Let me read out the following paragraph: "President, if the Government has to seek the consent of Members from functional constituencies before deciding whether or not functional constituencies should be abolished, and Members from functional constituencies had unequivocally expressed their disagreement, the process towards the implementation of universal suffrage has entered a deadlock. Since the legislature has reached a deadlock on the important issue of abolishing functional constituencies, and the Government has no intent to mediate, the issue should be handed over to the public to make a decision, so as to break the deadlock."

President, Mr Alan LEONG tendered his resignation with a view to breaking the deadlock, so that the public could tell Members of the functional constituencies, "We do not want functional constituencies, please abolish them." The Government could then abolish functional constituencies with the public mandate, and even if functional constituencies could not be abolished immediately, it was still acceptable because our ultimate goal — universal suffrage — could eventually be achieved, and universal suffrage means the abolition of functional constituencies.

President, if Members are not forgetful, they should recall that the Civic Party and other Members from the democratic camp have been hoping to find a way out for the constitutional reform. We had put forth the proposal that if the Government eventually agreed to abolish the functional constituencies, we would be willing to accept a compromised proposal during the interim period. However, the Government refused to discuss the issue at the legislature, bringing

the legislature into a deadlock. Mr Alan LEONG and several Members had no alternative but gave up their seats to allow the public to voice their opinions. Is this arbitrary resignation? Is this resignation at will? This is an extremely solemn action. Certainly, the Government will not recognize this practice.

President, the Government pointed out that the by-election had wasted over \$100 million, can this Bill prevent the need to carry out a by-election? No. Members may still resign, by-elections still have to be carried out and public money still has to be spent. What is the purpose of the Government? It wants to punish Members. If the legislature reaches a deadlock next time and Members want to break the deadlock by involving the public to solve the problem, Members must pay the cost, a much higher cost. Hence, the Bill is not for plugging loopholes but for political censorship.

Return to the earlier issue of whether the amendment is compatible with proportionality and constitutionality, the Hong Kong Bar Association (Bar Association) holds negative views about this. In the initial stage, the Bar Association had issued four declarations in a row to dismiss the argument of the Government. After the introduction of the new Bill, the Bar Association has issued a declaration again to indicate its disagreement with the view that the present practice is constitutional. The Bar Association has pointed out that: First, the right to vote and the right to stand for election are correlated and should not be deprived. Second, electors are capable of handling unwelcome resignation, but the prohibition for standing for election deprives electors of the right to decide. The Bar Association finally comes to the conclusion that, and I quote, "In view of the above, the Bar Association does not agree that the proposed amendment has addressed any 'mischief'. The curtailment of the electors' choice of candidate is neither necessary nor justified."

President, today, since the public have come forward, they work a miracle. However, we cannot expect the public to work a miracle every day, in particular, in the face of LEUNG Chun-ying being elected and under the shadow of "Western District ruling Hong Kong", the check-and-balance of power of the legislature will become increasingly important. When the voice of the minority is viciously drowned by the majority in the legislature, we particularly need to return the right to decide to the public.

Hence, I implore all colleagues of the legislature to oppose the motion today. After voting against the motion, we will leave this Chamber in protest

and will not participate in the remaining discussion under this item (*The buzzer sounded*)

Thank you, President.

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

MR WONG YUK-MAN (in Cantonese): President, say no to lies, overturn draconian laws. "Because the regime is captive to its own lies, it must falsify everything. It falsifies the past. It falsifies the present, and it falsifies the future. It falsifies statistics. It pretends not to possess an omnipotent and unprincipled police apparatus. It pretends to respect human rights. It pretends to persecute no one. It pretends to fear nothing. It pretends to pretend nothing. Individuals need not believe all these mystifications, but they must behave as though they did, or they must at least tolerate them in silence, or get along well with those who work with them. For this reason, however, they must live within a lie. They need not accept the lie. It is enough for them to have accepted their life with it and in it. For by this very fact, individuals confirm the system, fulfil the system, make the system, are the system."⁵

I quote the above paragraph from the article "The Power of the Powerless" written by Václav HAVEL.

President, on 17 January 2010, the Council meeting was aborted because Members of the pro-establishment camp walked out *en masse* to stop the five resigning Members from delivering their resignation manifesto. Today, you have to pay for your evil deeds. You must be well-behaved and sit here to listen to my speech. If anyone leaves the Chamber, I will surely call for a headcount. I will "play with all of you". President, you are so brilliant. You have called them to return to the Chamber and they have to sit here properly.

I will take this opportunity to read out my resignation manifesto intended to be delivered on that day. All of you should listen patiently. It is a well-written

⁵ <<http://history.hanover.edu/courses/excerpts/165havel.html>>

article. The title is "Blessed are those who are persecuted because of righteousness! — A personal interpretation by Mr WONG Yuk-man on Rule 28(A) of the Rules of Procedure of the Legislative Council":

"President, first, I would like to thank you for allowing me and the other four resigning Members to speak, so that we may state the reasons for our resignation and have them put on the record of the Legislative Council, forming part of the historical documents of the legislature of Hong Kong." I have to make a note here that the above remark had not been delivered in reality, for you had walked out of the meeting *en masse*, and the meeting had to be aborted. My resignation manifesto could not be made part of the historical document of the legislature on that day, so I will read out the full version today. I now continue to read out my resignation manifesto:

"I always believe strongly that Hong Kong people should not glibly be defined as economic animals. Hong Kong people have political ideals. The 1 July 2003 march is a good example of Hong Kong people endeavouring to safeguard freedom and democratic values. To date, the democratic development of Hong Kong lags behind all developed regions around the world. I, born at this time and am now in such capacity, can in no way evade the commitment of this generation in democracy. Inheriting the 'spirit of 1 July', I embark on a new wave of democratic movement by making courageous attempts to break the deadlock. So, upon weighing the importance in different aspects, we decide to resign from our seats in the legislature to trigger a by-election to bring about a *de facto* referendum, so as to return the decision power on constitutional development to Hong Kong people.

"A founding member of the Democratic Progressive Party in Taiwan, LIN Cho-shui, said to the democratic camp in Hong Kong at a seminar held after the President Election in 2008, that, 'If democracy has really been established in Taiwan through the twice peaceful handover of political powers, democracy has become the daily life of people in Taiwan but not an aspiration to be pursued. In that case, the pilgrimage to democracy has come to an end, and tranquility will fill the political scene. Yet, friends in Hong Kong need not worry that the exciting election scenes will no longer be seen, for Hong Kong society is still in the fight for democracy, and the lost holiness in Taiwan is predestinated to be reborn in Hong Kong, and you are predestinated to be the participants or leaders

of this pilgrimage.' Honestly, I am deeply moved by these remarks of LIN Cho-shui.

"Yet our attempt is really too condescending and compromising. Since there is no 'referendum act' in Hong Kong, we must first renounce our seats in exchange for Hong Kong people's exercising of their fundamental right to vote on the constitution development. In the coming months, we do not only have to devote huge efforts in promoting the 'five geographic constituencies referendum' campaign, but also have to bear tremendous mental pressure. Frankly, as pointed out by Mr LEUNG Kwok-hung, we are facing the gigantic state apparatus unarmed, and we are too weak to defend. Regarding the various allegations and trumped-up charges in recent days, we can only say that we do not have any weapons at hand but only five resignation letters; what crimes have we committed?"

"At the Second Session of the 11th National People's Congress (NPC) in 2009, Premier WEN Jiabao delivered the Report of the Work of the Government of the State Council. It was mentioned in the report that, 'We will carry out political restructuring in an active yet prudent manner and develop socialist democratic politics. We need to improve democratic institutions, enrich the forms of democracy, expand its channels, and carry out democratic elections, decision-making, administration and oversight in accordance with the law. We will improve the mechanisms of self-governance by the people at the community level and expand the scope of community-level self-governance, improve the system for community-level democratic administration and ensure that the people directly exercise their democratic rights and administer community-level public affairs and public programs in accordance with the law.'⁶

The "five geographical constituencies referendum" campaign has rightly realized WEN Jiabao's remarks to 'enrich the forms of democracy, expand its channels'. The SAR Government is probably the Government with the most favourable conditions in China to 'carry out democratic elections in accordance with the law' and to 'ensure that the people directly exercise their democratic rights in accordance with the law'. However, in the face of the collusion between those with power and influence and people with vested interests, which exert strong force to hinder the democratization of the

⁶ <http://news.xinhuanet.com/english/2009-03/14/content_11009548_7.htm>

constitutional development, no further compromise can be made on the path of constitutional development. The storm of the anti-Express Rail Link campaign and the routine perfunctory consultation on constitutional development have driven home a clear message: People with power and influence in politics have imposed absolute manipulation on the livelihood of the grassroots and the political scene; and as a result, Hong Kong society has landed in a predicament of deep-rooted conflicts, and has to face serious crisis on an unprecedented scale. Even in our mother country which practices socialism, it has at least made superficial declaration to 'carry out democratic elections, decision-making, administration and oversight', but the SAR Government remains indifferent and takes no action. Dignified and self-conscious Hong Kong people aspiring for democracy must make a rational decision at this very moment.

"After quoting the remarks from WEN Jiabao, I would like to talk about history. Back then:

"In July 1945, when the Second Sino-Japanese war was near the end, HUANG Yanpei, a democracy advocate, and MAO Zedong had a conversation in a cave at Yanan, which was the famous 'talk in the cave':

"HUANG Yanpei said, 'Having lived for more than sixty years, disregarding what I have heard, from what I have seen, the situation can be described as 'quick to rise, and quick to fall,' — there is not one person, one family, one group, one place, nor even a country, that can escape being dominated by this cycle In every period of history there are 'lazy government officials'; there are cases that 'the policy ends with the death of leaders' and there are also cases of 'seeking glory but finding shame'. All in all, no one can jump out of this cycle. As I understand, members of the Chinese Communist Party, have been trying, from the past up to now, to find a new path and get out of the control of this cycle.'

"MAO Zedong replied, 'We have found a new path; we can break free of the cycle. The path is called democracy. As long as the people have oversight of the government, the government will not slacken in its efforts. When everyone takes responsibility there will be no danger that policy will terminate when the leader dies.'

"However, over the century or so, in the land of China, the constant struggles between democracy and dictatorship had never been able to step out of the shadow of dictatorship. The totalitarian mindset of 'all places around the world are under my rule' has never been removed.

"Hence, when the 'five geographical constituencies referendum' in the SAR of China was being combated and smeared, which might even be nipped in the bud, people would not be surprised.

"I believe the general public would have known and felt that we, being the advocators of the 'five geographic constituencies referendum' are under tremendous pressure in the course of promoting democracy. In the dark, when the wisdom of man is at its end, I being a Christian can only follow the steps of the saints in the history of the Church by praying to my God.

"I pray that God will grant me the serenity to accept the things I cannot change; unswerving courage to change the things I can; and wisdom to know the difference.

"I then go to the *Bible* for wisdom from Jesus Christ. As I study the Sermon on the Mount again, it gives me great comfort. In the 'eight blessings' recorded in the Sermon on the Mount, 'righteousness' is mentioned twice.

"Jesus promised us justice and asked us to choose the road to righteousness. The 'righteousness' mentions in the 'hunger and thirst for righteousness' in the 'eight blessings' refers to justice. Righteousness means propriety, which means seeking proper treatment. Throughout the ages and generations in the past, tens of thousands of people, and even more, had been seeking proper treatment. Many people around the world have sacrificed for no reasons at war, many are imprisoned for remarks from their conscience, many are suppressed for standing firm in their religion and many are hurt in defending their interests. Man has undergone numerous wars, sufferings, tears, bloodsheds and family separations. We learn from these grievous experiences that civilized approaches should be adopted to treat everyone properly. The concept of 'democracy' from the Greek philosopher of more than 2 000 years ago has developed into the one man, one vote democratic system in developed, mature and modern countries, which is the fruit of the civilization of man. People in non-democratic regions have extreme hunger for social justice. In the 'eight

blessings' mentioned in the *Bible*, I see the promise of Jesus Christ. God says, 'Blessed are those hunger and thirst for righteousness, for they will be filled.'

"Democratic system is but castle in the air. After the reunification, Hong Kong people continue to live under an undemocratic and improper system, where society is overwhelmed by injustice and the people are overpowered by grievance. Without the decision-making power in constitutional development, people's hunger and thirst for justice will not be quenched.

"The following Bible verses have removed every obstacle in my heart, so that I can press on toward the goal:

"Blessed are those who are persecuted because of righteousness, for theirs is the kingdom of heaven. Blessed are you when people insult you, persecute you and falsely say all kinds of evil, against you because of me. Rejoice and be glad, because great is your reward in heaven, for in the same way they persecuted the prophets who were before you."⁷

"Jesus Christ said, 'I tell you the truth, the man who does not enter the sheep pen by the gate, but climbs in by some other way, is a thief and a robber. The man who enters by the gate is the shepherd of his sheep. The watchman opens the gate for him, and the sheep listen to his voice.' He went on to say, 'I am the good shepherd; I know my sheep and my sheep know me — just as the Father knows me and I know the Father — and I lay down my life for the sheep.'

"Hence, the advocacy of 'implementing genuine universal suffrage and abolishing functional constituencies as soon as possible' is to enable people who want to be the servants of the people to enter through the gate uprightly by winning the mandate of the public via participating in the universal suffrage."

Given the limited time, I cannot finish reading the last two paragraphs. Yet, it does not matter. Today, I have to tell Members that on 16 May 2010, the "five geographical constituencies referendum" won the support of over 500 000 people of Hong Kong, creating an unprecedented case in history. You can by no means suppress our determination to strive for dual universal suffrage. In May

⁷ *Holy Bible, New International Version*

2011, to prevent Members from triggering a *de facto* referendum again, the SAR Government rode roughshod over to introduce the replacement mechanism that deprived Hong Kong people of their right to vote. This has developed into a laughing stock today.

Secretary Raymond TAM, you succeed your predecessor in carrying out the task. Yet the Legislative Council (Amendment) Bill 2012 you put forth today is basically a laughing stock. Since this laughing stock has been laid on the table of the legislature, we will surely "play with you" today. I tell you that regarding the thousand or so amendments, I will definitely do my level best to speak for 15 minutes on each one of them. You should sit properly in this Chamber, at least for 15 days, and do not leave. The same applies to all Members of the pro-establishment camp. Or you can be smart and go home early, the meeting will thus be aborted. Let us meet again here next Wednesday. Thank you, President.

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

MR PAUL CHAN (in Cantonese): President, earlier, some Members said that the minority has been suppressed to express their views in the legislature. I absolutely disagree with this point. I have been in the legislature for several years. In my view, the minority has never been lacking the chance to express their views in the legislature, and more often than, their views are presented loudly and fiercely. In the legislature, colleagues

(Mr LEUNG Kwok-hung stood up)

MR LEUNG KWOK-HUNG (in Cantonese): Headcount!

PRESIDENT (in Cantonese): Clerk, please ring the bell. Mr Paul CHAN, please be seated first.

(After the summon bell rang, a number of Members returned to the Chamber)

PRESIDENT (in Cantonese): Mr Paul CHAN, please continue with your speech.

MR PAUL CHAN (in Cantonese): President, I just said that I disagreed that the expression of the minority's views are being suppressed. Having been working in the legislature for several years, I think the minority has never been lacking the opportunities to express their views in this legislature; and their views have often been presented in a "loud and fierce" manner. In the legislature, Members should adopt an embracing attitude towards different views, for the spirit of democracy can only be realized through this.

In the past couple of months, I had led dozens of guided tours in the new Legislative Council Complex. Very often, visitors would ask me why certain unacceptable behaviours would take place in the legislature. Whenever I am asked about this, I will tell them that the Rules of Procedure is tilted towards the minority's views to accommodate divergent views and oppositions, so that the minority is given adequate opportunities to express their views in the legislature. Just now, many colleagues have quoted the saying of a European philosopher, it goes, "I may not agree with what you say, but I shall defend to my death your right to say it."

President, I now return to the subject. I support the resumption of the Second Reading of the Legislative Council (Amendment) Bill 2012 (the Bill) today.

Whenever issues involving election and constitutional development are discussed in the Legislative Council, not only colleagues of the legislature will attach extreme importance to the discussion, members of society will also show grave concern. However, during the discussions of these political issues, more often than not, Members will go to the extreme of "ignoring the right and wrong in defending one's stance", making it difficult to foster a consensus. For this reason, sufficient time should be provided for opinions to be mooted and consulted before these issues are put to discussion, and this should not be expected to be achieved in one go.

In fact, when this Council debated on the motion on relieving Mr LEUNG Kwok-hung of his duties last week, I had expressed my views about the inadequacies in the consultation and handling approach adopted by the

Government on the replacement mechanism, so I will not dwell on it today. I only want to point out that the mooting and formulation of policies should undergo certain procedures to provide stakeholders in various sectors adequate opportunities to express their views. The authorities should never roll out policies arbitrarily, attempting to push through the policies by securing an adequate number of supporting votes. It must go through an interactive process to let stakeholders express their views, which will be conducive in some measure in seeking the recognition of most people in society.

President, the objective of the Bill is to plug the loophole where Members of the Legislative Council may resign in order to trigger a territory-wide by-election in which the Members seek re-election to achieve a kind of referendum. In gist, the Bill includes three main points:

First, during the Legislative Session, when vacancies arise due to the altering of the nationality, death and mental incapacity of Members, or when the Members are declared no longer qualified to hold office for not duly elected or in accordance with Article 79 of the Basic Law, the vacancies will continue to be filled by a by-election. In other words, there is no difference with the present situation.

Second, when a Member resigned from office voluntarily in mid-session, the Member will be prohibited from standing in any by-elections in the same term of the Legislative Council within six months of the resignation. Yet the restriction will not apply to general elections. If the six-month prohibition spans over a current term and the following term of the Legislative Council, the prohibition will not be applicable to any by-election in the following term of the Legislative Council.

Third, this arrangement is applicable to geographical election seats, super seats under the District Councils and other functional constituencies, which means all seats.

Regarding comments that these amendments will deprive the public of their right to vote and their right to stand for election, I am most concerned about whether the Bill is compatible with the provisions under the Basic Law and the Hong Kong Bill of Rights (HKBOR), and whether they are constitutional. President, in this connection, I notice the views and declaration of the Hong Kong Bar Association. Yet, I consider the views given by the Queen's Counsel

PANNICK of the United Kingdom worthy of reference. PANNICK has put forth several points:

- (a) The rights under Article 26 of the Basic Law and Article 21 of the HKBOR are not absolute. Restrictions may be imposed on the right to stand for election: for example, section 37 of the Legislative Council Ordinance prohibits a person under the age of 21 from standing for election, and section 39 disqualifies categories of people such as bankrupts;
- (b) Article 68 and Annex II of the Basic Law give Legislative Council the discretion in determining the contents of the legislation which governs the "specific method" for forming Legislative Council;
- (c) The Administration and Legislative Council are entitled to regard it as an abuse of the power of a Member to resign for him to do so in order to provoke a by-election in which the Member intends to stand and seek re-election;
- (d) It is a proportionate approach for the Legislative Council to pass legislation to address the problem with the proposed arrangement;
- (e) A six month period is long enough to deter abusive conduct and not longer than necessary to address the problem; and
- (f) By-elections will still be carried out under the proposed arrangement when a Member resigns.

President, with reference to the views from PANNICK and after deliberation, I agree that the restriction imposed under the Bill is rationally connected to the legitimate aim, and the restriction is in line with the proportionality test. As such, I think the Bill is lawful and constitutional, where support may be considered.

In fact, according to the Legislative Council Brief provided by the authorities, different jurisdictions are entitled to develop their own electoral systems in different ways to reflect the differences in their own historical background, culture and political development.

President, the second point which I am concerned is the views of society at large and that of the accountancy sector. In deciding my voting preference today, I had conducted a survey via the Hong Kong Institute of Certified Public Accountants to consult the views of members of the accountancy sector. On 23 April, I issued over 30 000 questionnaires via email or in printed form. By 30 April, the end of the survey, I had received 588 replies, a response rate of only 1.78%.

Findings of the survey indicate that 44.9% of the respondents consider the arrangements for filling vacancies in the Legislative Council proposed in the Bill are "acceptable", 12.1% of the respondents consider that "far from satisfactory but acceptable", 41.8% consider that "unacceptable", and 1.2% of the respondents have "no comments/no preference".

The response ratio and percentage of the survey is extremely low in comparison with similar surveys I conducted in the past on the constitutional reform proposal 2010 and that conducted recently on the election of the Chief Executive. This probably reflects that the proposed arrangements for filling vacancies in the Legislative Council put forth by the Government are not very controversial. No matter how, the findings of the survey of the accountancy sector indicate that 57% of the respondents consider the proposal acceptable. Hence, I will vote for the Bill and oppose the thousand or so amendments proposed by Mr WONG Yuk-man and Mr LEUNG Kwok-hung.

President, I so submit.

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

MR PAUL TSE (in Cantonese): President, having listened to the remarks just made by Mr Paul CHAN, I found that he has basically summarized the views of Lord PANNICK, so I need not elaborate further.

On this Bill, President, please allow me to say that, in my view, the Bill has certain constitutional or legal foundation, however, at this time, the community has certain reservations about the need of the proposals made. I will spend some time to discuss this point later.

President, I would like to talk about the speeches made by some Honourable colleagues. In spite of the twists and turns today and the fact that this meeting has been intermittently stopped, I have vaguely heard their views on the "five geographical constituencies referendum" and whether remedial measures should be implemented afterwards. I am sorry that most Members who have spoken in support of the "five geographical constituencies referendum" seemed to have taken this opportunity to restate or loudly recite their resignation manifestos, as they did not have an opportunity to do so previously. This is understandable and I believe members of the public do not mind listening again to the manifestos read out by these Members, disregarding their way of presentation, either vehemently or pathetically and touchingly; or Members may, like actors, act out, speak out or sing out their feelings.

However, that may not be entirely and directly related to the theme of our debate today. In principle, we are here today not to criticize, and should not spend too much time criticizing whether the "five geographical constituencies referendum" is constitutional and lawful, or whether this practice is acceptable to most Hong Kong people. On the contrary, we need to focus on the incidents that have occurred; and after considering the mainstream views, the Legislative Council should consider whether certain measures should be taken, either to plug the loopholes or improve the relevant system, or just to respond to people's dissatisfaction that such practice leads to a waste of public money. It does not matter what words or expressions are used, as we all understand very well the issue being discussed.

President, I have just referred to the views of Lord PANNICK. We all know that Lord PANNICK is a very prestigious Public Law Senior Counsel in the United Kingdom and a Senior Government Counsel often engaged by the Government to handle local cases. Nonetheless, this does not mean that Lord PANNICK would because the Government is his big boss Mr CHIM Pui-chung frequently criticizes that barristers only speak what people who pay him like to hear, but I do not fully agree with him though many people in the community share his opinion. In my opinion, to be fair, we should consider if the views on each case have been provided after a reasonable analysis, or whether there is sufficient legal basis which facilitates follow up.

In this connection, I have asked the authorities for the details of these views. As I have worked in the legal profession for years and I have provided barrister and solicitor services, I fully understand that these views are the answers

to the questions raised. If certain paragraphs have been removed, the views may have loopholes or the comprehension may not be precise. To get a full picture, I think that we should obtain the Brief to find out the criteria for the questions raised by the barrister at the time, and we should then examine the views as a whole. This is the most proper and accurate method, which allows the readers to judge on their own. In particular, there are a number of barristers or solicitors among the Members present while many Members such as Mr LEUNG Kwok-hung and so on have extensive litigation experience; some other Members also have rich social experience and common sense. Thus, they should be able to make more reasonable, wiser and high standard judgment on their own. Alternatively, they can seek second-hand views from their friends in the legal profession.

I am so sorry that, though I have made this point and I remember that Mrs Regina IP has also made such a request, it seemed that we have not had a chance to see the full picture as we only have in hand the summary provided by the authorities. I admit that this report is rather user-friendly and easy to read but it has not covered certain details after all.

After criticizing how the Administration cited the views of Lord PANNICK, I must say that I am very disappointed at the so-called statement of the Hong Kong Bar Association (Bar Association). This statement has just restated its position as it has stated time and again. There is basically no change and it has not analysed the issues and the cases in depth. Even though they have been given the opportunities, they have not responded or refuted the views and reasoning of Lord PANNICK. Theoretically speaking, each side is sticking to its own way; this kind of presentation is not up to standard. If the views of Lord PANNICK only score 80 points because we cannot see the full picture, the views of the Bar Association will only score 20 points because its statement is totally meaningless.

As a matter of fact, there are two very incorrect points in the views of the Bar Association, although it is not surprising at all. Concerning the Copyright (Amendment) Bill 2011, which is another highly controversial Bill these days, I understand that Winnie TAM, Vice-Chairman of the Bar Association who is a rather senior intellectual property barrister, has given views. However, according to her views, it seems to indicate that there are no problems with the Bill, and the Bill can be passed, because she has no comments and no objections. That is a bit odd. Why have members of the community expressed their views,

especially via the Internet, while the barrister and solicitor groups have remained completely silent? She is such a senior intellectual property expert, and I recall that we worked like peers years ago, and both of us were experts in handling these types of cases. I deeply believe that she is fully capable of getting to understand the entire Copyright Ordinance through and through. She is a professional and the Vice-Chairman of the Bar Association but she has remained silent and she has not raised opposition. Miss Tanya CHAN is not an expert in this area, she is not a member of the Bills Committee, she has never taken part in the scrutiny of the Bill and she does not have the relevant business experience; why has she suddenly proposed these amendments? It can be said that she has totally ignored the circumstances of the case, and she has simply shared people's preference or done what the public likes.

Either under the pressure of public opinion or for the sake of giving way to other Bills that urgently need to be passed, the Government has indicated that the resumption of the Second Reading on the Bill should be deferred. I have received a number of views from people who are very surprised and have raised opposition.

(Mr LEUNG Kwok-hung stood up)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, do you have any questions?

MR LEUNG KWOK-HUNG (in Cantonese): I request a headcount.

PRESIDENT (in Cantonese): Clerk, please ring the bell?

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

PRESIDENT (in Cantonese): Mr Paul TSE, please continue.

MR PAUL TSE (in Cantonese): President, I have just made direct and severe criticisms on the views of the Bar Association. Please allow me to explain why I think that its views have an incorrect basis. In paragraph 4 of its statement, the Bar Association stated that the present proposal may "wrongly kill innocent people" because the resignation of Members for health and personal reasons may be affected under the across-the-board proposal. As Honourable colleagues also know, if a Member really resigns because of health reasons, there is another more appropriate way to resign under Article 79 of the Basic Law. If a Member resigns this way, he may, at an appropriate time or where necessary in the future, be qualified for office again through other channels (such as a by-election), and he will not be prevented from doing so. Therefore, if the Bar Association has made inferences based on the above assumptions, though I have just said that its statement scores 20 points, I think this score may be too high.

President, I understand the views of the Bar Association. Dr Margaret NG mentioned my name a while ago and she said that I often made these remarks. She is right because we both ask for justifications

(Mr Albert CHAN was moving around in the Chamber)

PRESIDENT (in Cantonese): Mr TSE, please wait. Mr Albert CHAN, the meeting is in progress; please do not move around in the Chamber.

MR PAUL TSE (in Cantonese): Thank you, President.

President, the Bar Association and many Honourable colleagues have skillfully described Members' rights to stand for election after they have chosen to resign as the voters' right to vote. As the right to vote is certainly the most important, the voters will naturally think that this remark is very pleasant to the ear. However, several Honourable colleagues have just commented that the right to vote is not the most important. In fact, there are many essential restrictions under the law, and the simplest examples are age, the number of nominations, and the requirement for the candidates to pay a deposit.

Talking about age, in China and the overseas today, even a very young person has a chance to become a tycoon because a person with a very sharp mind

will easily stand out among the others in the Internet world. I have come into contact with many young people who have made outstanding remarks online and have posted articles of a very high standard online. So, we should not specify that a candidate standing for election should at least be 21 years old. This restriction itself is not very reasonable and the age limit should be lowered. While we have even specified a lower legal age for sexual activity, why can we not lower the age limit for voting or standing for election? This is really incredible.

There are many past cases, including the case mentioned by Lord PANNICK I am sorry that I am talking about a case initiated by the Department of Justice — the Simon CHAN case. In this recent case tried by Mr Justice CHEUNG, it is clearly stated in the judgment that the Court will not set restrictions on the right to vote, and it cannot accept across-the-board restriction or blanket prohibition. Under this general framework, many restrictions relating to the right to vote is left to be decided by discretion by the Legislative Council (the legislature). The legislature will have this margin of appreciation. The legislature (such as the Legislative Council) should make the relevant decisions after considering people's sentiments. This kind of political judgment should not be made by the Court, and this point is very explicit. Regarding the proposed six-month restriction after resignation, if most Members of this Council made a political judgment after considering people's views and sentiments — after listening to the views of various sectors as Mr Paul CHAN has just said — that it is necessary to enact legislation, the Court should theoretically not strike down the decision. This shows that Lord PANNICK's inference is relatively reasonable while the Bar Association's statement is relatively unreasonable and unjustified. If I have to choose to believe in either one of them, I would rather believe in Lord PANNICK's legal judgment because I consider it relatively reasonable after analysing his justifications.

On the contrary, the statement of the Bar Association, though issued in the name of the Bar Association, it is actually written by one person, although it may have to go through I am sure what formalities are involved but I think that its conclusion contains some incorrect ideas. Furthermore, without any reasons, the Association has not taken the opportunity to respond to, analyse or refute the arguments of Lord PANNICK or the Department of Justice. This carelessness is unacceptable and we cannot accept the Association's acting at others' beck and call.

Yet, taking into account the relatively weak confidence of the Hong Kong community insofar as constitutional development is concerned, I think we should be as relaxed as possible, so as to slightly enhance the public's confidence, without prejudice to the general principle. It seems that these so-called amendments to the Ordinance are made so that the defeat will not be a total loss, which is not really necessary. Hence, I tend not to support the Government's proposal even though I believe that it has not violated the law or the constitution. Thank you, President.

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

DR PRISCILLA LEUNG (in Cantonese): President, politics is an art of compromise, whether a system can be effective often depends upon our spirit of self-restraint. Hong Kong was under the colonial rule for more than 100 years, and I believe that the then colonial government also upheld the spirit of self-restraint, which facilitated the effective operation of a number of mechanisms. However, many new situations have arisen in the Legislative Council and our society today, which have brought new changes to the parliamentary culture. We have to face these new experiences together.

There are 60 Members in the Legislative Council and it can be said that there are 60 sets of truth because each Member considers his belief as the truth. There are different views on each bill, and it is absolutely possible for 1 000 amendments to be moved because each bill may infringe upon the interests of certain people. While the political interests of some people may be restricted today, some interests of the business sector may be regulated tomorrow. Different sectors are represented by different Members of this Council. The fact that over 1 000 amendments are proposed to the Legislative Council (Amendment) Bill 2012 today has proven that the filibustering strategy fully reflects the opposing views of the community. There is no guarantee that the same method will not be adopted by some other Members to express their views when some proposals to be made in the future will infringe upon or undermine the interests of the business sector. Inferring this way, I am not sure how many government motions in the next-term Legislative Council will have over 1 000 amendments if they are opposed by Members from certain sectors, and one Member alone can propose numerous amendments.

In 2010, a Member (I believe he is Mr LEUNG Kwok-hung) called upon all the 23 Members from the opposition camp to resign, and it was finally decided that a Member from each of the five geographical constituencies would resign, so as to achieve their perceived objective of a *de facto* referendum. In fact, it is I who first proposed a study on amending the Legislative Council Ordinance (LCO). My idea was that, under the LCO, a Member may resign today and be re-elected in a by-election to return to the Legislative Council, and he may resign again the following day. I also admit that, due to my occupation and my legal background, I frequently make conjectures and study these mechanisms, imagining that Members may resign again after a by-election and the work of the Legislative Council may come to a halt as a result of the ongoing by-elections. That was my assumption, but I also accepted some Honourable colleagues' comments that my anxious was unwarranted. It was basically impossible for Members to do so because they would make decisions with self-restraint and within reasonable limits under the Legislative Council system.

Initially, my idea was that minimum amendments should be proposed to the LCO. Focusing on the problem, restrictions should be imposed but it would be better if fewer people would be affected and the scope of amendment would be narrower. Thus, my proposal is that Legislative Council Members can resign only once within a term of office. As such, all the 60 Legislative Council Members have the right to resign in relation to an issue within a term of office, hence, there may be 60 resignations in each Legislative Council term, which may hinder the operation of the Legislative Council. Nevertheless, the right to resignation is given to each Member, not just Members of the opposition camp. Pro-establishment Members, Members against the Competition Law or Members against any other motions moved by the Government who consider that the proposals do not have the favour of the voters they represent may choose to resign once within a term of office, followed by a by-election. In other words, there may be 60 resignations at the most within a four-year Legislative Council term. Certainly, this assumption may be unfounded.

Looking back, I have to ask whether such extreme cases will definitely not appear. I have thoroughly and carefully considered this issue, and I found that the answer is in the negative. The case today where a Member has proposed more than 1 000 amendments under the established mechanism and the Rules of Procedure may occur again later; history may repeat itself during the deliberations on the Copyright (Amendment) Bill 2011. This method may be

more extensively used in the next-term Legislative Council because this is permitted under the Rules of Procedure. According to the LCO and the previous assumption, Members may not go that far. Will even stronger actions be taken by Legislative Council Members in future? I believe there is such a possibility.

For this reason, it is reasonable and fair to consider whether more satisfactory restrictions can be imposed on the operation of a mechanism. I have consulted many supporters and I have found that quite a number of people want the Legislative Council to take certain measures to prevent the Legislative Council from being paralysed at any time. I hope that people with different views can take into account the feelings of others.

It can be said that the Government was not interested in my proposal at all, and without the Government's consent, my private bill could not be introduced into the Legislative Council for discussion. The reason given was that the proposal concerning the political system could not be initiated by the Legislative Council; thus, I have shelved the work in this respect. When I asked the then Secretary Stephen LAM whether the Government would amend the LCO, he just hemmed and hawed and he never mentioned that the authorities were considering another option. I understand that my proposal cannot completely eliminate this practice but I always believe in principle that there should be some restrictions so that resigning Members would know that they have a price to pay for their decisions. In each term of office, they should just choose to resign in relation to the issues that they considered the most important, and they should not repeatedly use the trick of resigning to trigger by-elections. Such a restriction can be described as reasonable and fair.

For various reasons, the then Secretary Stephen LAM had not disclosed anything to me and I thought that the authorities might not handle this issue any further. One year later on 8 June 2011, the media and I learnt that the Government proposed a new mechanism which might be more controversial than the proposal I previously made. I need not repeat the details here. As I had previously proposed that examination should be carried out on how to plug the loopholes in the LCO, I naturally became the target of public criticism. I accept the criticisms of the general public and Members who opposed this proposal on how we handled the Government's proposal, and I think the next-term government must learn a lesson from the handling of this proposal last year because the consultation process was hastily conducted and the attitudes were

unsatisfactory. We should admit the deficiencies and learn a lesson. If the next-term government is to introduce such controversial legislative proposals, it should give Members and the public sufficient time to facilitate discussions and consultations, and enhance communication.

I have mixed feelings today in discussing the Government's proposal. The Government has actually made a great detour. It has basically adopted the principles and directions of my initial proposal, and the only difference is that the Government has shortened the time limit further to half a year. I told Secretary Raymond TAM that my proposal is no different from the Government's in facing the threat of a legal challenge. According to my reasoning at that time, the stipulation that Members might not resign more than once within the same term of office would not have violated Articles 26 and 79 of the Basic Law because the right to vote and the right to stand for election in Article 26 were not absolute rights.

Each country has different provisions on the right to vote and the right to stand for election, and the LCO also specifies that people who went bankrupt will not be eligible to stand for election within five years; thus, various places can make provisions on the right to vote and the right to stand for election that are suited to their local situations. Nonetheless, I believe it is more desirable to have as few regulations and restrictions as possible, and amendments should not be made as far as possible. Yet, when new situations arise, I think members of the Committee on Rules of Procedure (including me) are in an awkward situation; we do not want to discuss any amendments for we all know that these discussions may be futile. Every step is difficult and this is the political reality of Hong Kong.

As Legislative Council Members, we have to face a large number of supporters. Quite a number of Hong Kong people still think that the Legislative Council should have a certain attitude towards its mechanism, so as to prove to the public that Members do not want this mechanism of a four-year term of office to be completely relaxed, without subject to any restraints. Members should also consider how this issue can be best handled. I have always had an open attitude; now that my previous proposal was not accepted by the Government, I accept that my proposal may have been poorly conceived. I would be pleased if the authorities would put forward a better proposal.

Under the same spirit and given my understanding of the Government's difficulties, I accept today the proposal to shorten the limit to six months. This does not mean that I find the Government's proposal of a six-month period of restriction very satisfactory but I agree that this can put certain restrictions on Members who choose to resign. To us and our supporters, as well as to people who support taking some actions to maintain the stability and dignity of the Legislative Council, the proposal can be regarded as the first step taken.

Will Members' resignations have no impacts on other Honourable colleagues? I do not think so. As I have just remarked, the internal operation of the Legislative Council will be partially suspended and the operation will only restart after a by-election. The most obvious example is that many committees will have to re-elect a chairman. I really hope that Members can put aside their prejudices; as many have said, Legislative Council Members should take actions to prove that we know how to compromise.

It is clearly specified in the Basic Law that the Legislative Council and the Chief Executive will be elected by universal suffrage in the future. As there are countless Hong Kong people with different political views, how can we let them understand that democracy is desirable rather than something that arouses hatred and aversion? Democracy does not mean that we have to paralyse the operation of the Legislative Council at every turn; instead, it should be more tolerant and accommodating, and different views can be incorporated under a democratic mechanism. In order to prove to the public that democracy is desirable, can we go one step back and try to understand that the Government's proposal is already a great compromise.

Viewing from another angle, many people may still think that this proposal is not stringent enough, as compared with the proposal made last year. Yet, we must draw a line between a proposal that is not stringent enough and a moderate proposal. To take forward the development of our society and political system, we must take the middle road in many respects. I hope Members can put aside their prejudices and set a better precedent for the future operation of this Council (*The buzzer sounded*).

PRESIDENT (in Cantonese): Dr LEUNG, your speaking time is up.

DR PRISCILLA LEUNG (in Cantonese): Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS (in Cantonese): President, first of all, I would like to take the opportunity to thank the Bills Committee on the Legislative Council (Amendment) Bill 2012 for scrutinizing the Legislative Council (Amendment) Bill 2012 (the Bill).

In January 2010, five Members of the Legislative Council resigned and stood in the by-elections. The incident led to considerable concern in the community, with the view that it was an abuse of process for a Member to resign in order to trigger a by-election in which the Member intended to stand and seek re-election. Moreover, the credibility of the electoral process would be adversely affected. Apart from the enormous manpower and financial resources involved, between a Member's resignation and the by-election, the Legislative Council would be deprived of the service of a Member, and the constituents would be deprived of the service of the Member as their representative. There is considerable public opinion calling on the Government to take measures to plug the loophole and prevent occurrence of similar incidents in future.

In May 2011, the Administration proposed to adopt a replacement mechanism for filling vacancies in the geographical constituencies (GCs) and the future District Council (second) functional constituency (DC (second) FC), and introduced the Legislative Council (Amendment) Bill 2011 (the 2011 Bill) into the Council. But in examining the 2011 Bill, there was a large body of opinion that the Government should conduct a comprehensive public consultation on this important issue. Moreover, the relevant Bills Committee was also of the view that the Government should provide more time to consider the suggestions of

Members. In response to the above, we decided in July 2011 not to resume the Second Reading debate or take a vote on the 2011 Bill for the time being, and to conduct a public consultation for two months.

The Government published the relevant consultation report on 20 January this year, which provided a summary of the views received. As indicated by these views, many members of the public consider it necessary to plug the loophole whereby Members can resign at will in order to trigger a by-election in which they intend to stand and seek to be re-elected. Meanwhile, considerable views have been expressed that the arrangement of conducting by-elections should continue. Furthermore, the results of various opinion polls conducted by many universities, media organizations, groups and political parties indicate that over 50% or close to 50% of the respondents consider that the Government needs to plug the loophole through legislation.

Having considered the views above, we introduced the Bill into the Legislative Council on 8 February this year to implement our latest proposal, and the earlier 2011 Bill was withdrawn on 22 February in accordance with the relevant procedures.

Under the Bill, a Member who has voluntarily resigned from office under section 13 or section 14 of the Legislative Council Ordinance would be prohibited from standing in any by-elections in the same term of the Legislative Council within six months of his resignation. The restriction would not apply to general elections. Electors can continue to exercise their right to vote under this arrangement, which involves the least change to the existing electoral system. Regarding the legal aspects, we have sought legal advice on the latest Bill from the Department of Justice and Lord PANNICK QC, and they confirm that the proposal under the Bill is constitutional.

The Bill represents a narrowly focused, constitutional, fair and reasonable proposal from the Administration after considering the community's call to plug the loophole of the existing system, and taking into account public views on various options. We hope the Bill will be enacted with the support of the Legislative Council, and come into operation with the commencement of the Fifth Term of the Legislative Council.

President, I move the resumption of the Second Reading of the Bill. I so submit.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Legislative Council (Amendment) Bill 2012 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

PRESIDENT (in Cantonese): Mr Albert CHAN 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.

Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou and Dr Samson TAM voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

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

THE PRESIDENT announced that there were 49 Members present, 29 were in favour of the motion and 19 against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Legislative Council (Amendment) Bill 2012.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 9 am tomorrow.

Suspended accordingly at one minute to Ten o'clock.

Appendix I**WRITTEN ANSWER****Written answer by the Secretary for Commerce and Economic Development to Dr Samson TAM's supplementary question to Question 2****Assistance provided by HKSAR Government to Hong Kong-funded Enterprises in Exploring the Domestic Sales Market of the Mainland**

There are various channels for Hong Kong enterprises to engage in domestic sales in the Mainland market. Some enterprises may export goods and services from Hong Kong to the Mainland, while some may invest directly in the Mainland, and sell their products in the domestic market. Hong Kong enterprises have made a lot of investments in the Mainland, especially in the Guangdong Province, which involve different businesses.

Against the above background, we are not able to provide a comprehensive and accurate set of figures relating to Hong Kong enterprises engaging in domestic sales in the Mainland market. Nonetheless, there are some statistics which could give us a general picture. For example, according to the information provided by the Census and Statistics Department, the value of domestic exports from Hong Kong to the Mainland have increased from around \$26.7 billion in 2009 to around \$31.2 billion in 2010 and \$30.7 billion in 2011. In addition, based on the information provided by the Department of Foreign Trade and Economic Cooperation of Guangdong Province, of the about 11 000 enterprises engaging in processing trade in the Guangdong Province (which are not legal persons), 4 450 had successfully been restructured into one of the three types of foreign-funded enterprises with legal person status by end 2011 (about 90% of them are Hong Kong-funded enterprises), hence fulfilling the basic requirements for engaging in domestic sales in the Mainland market. As compared with end 2010 and end 2009 when there were only about 2 400 and 960 of such three types of foreign-funded enterprises in Guangdong Province (about 90% of them were Hong Kong-funded enterprises), the number of Hong Kong-funded enterprises fulfilling the requirements for engaging in domestic sales in the Mainland market has been rising.

WRITTEN ANSWER — *Continued*

Apart from the above, we have to emphasize that Government's support measures aim at enhancing the competitiveness of Hong Kong enterprises. Whether these enterprises ultimately can successfully open and develop the domestic market also depends on other factors, including their marketing strategies, the quality of their products/services and the economic situation, and so on. Therefore, in considering the effectiveness of the measures implemented by the Government, we should take into account not only the figures on domestic sales, but also the number of persons and enterprises benefited from the measures. Relevant information of the Small and Medium Enterprises (SME) Development Fund, SME Export Marketing Fund (EMF) and The Support and Consultation Centre for SMEs (SUCCESS) of the Trade and Industry Department (TID) is as follows:

(a) SME Development Fund (SDF)⁽¹⁾

From 2009 to April 2012, the TID approved 18 applications relating to development of brands and domestic sales under the SDF, involving funding support of around \$25 million. For example, funding was provided to the Hong Kong Auto Parts Industry Association for setting up the "Hong Kong Auto Parts Product Showcase Gallery" in Guangzhou, so that manufacturers of automotive parts and accessory systems (APAS) could establish contacts with potential buyers and distributors in the Mainland, and promote various Hong Kong products relating to APAS. The project lasted for 16 months, involving funding support of \$1.45 million. It was estimated that over 1 500 SMEs had benefitted from the project.

In addition, the SDF also provided funding support for the Federation of Hong Kong Industries to organize "2012 Hong Kong Shopping Festival in Chongqing". The project provided Hong Kong SMEs with the opportunities to showcase their brands, gain experience in brand promotion and domestic sales, as well as establish sales channels and expand their business network. SMEs could also share their deliverables and experiences through the project's supporting activities including experience sharing session, seminar and webpage. Around 30 Hong Kong SMEs

(1) SDF provides financial support to non-profit-distributing organizations, such as trade and industrial organizations, professional bodies and research institutions, to implement projects which aim at enhancing the competitiveness of SMEs in general or in specific sectors. The maximum amount of funding support for each approved project is \$2 million or 90% of the total approved project expenditure, whichever is lower.

WRITTEN ANSWER — *Continued*

participated in the shopping festival held in Chongqing early this year, which attracted some 60 000 visitors, and over 14 000 SMEs participated in the relevant activities. The entire project received a total amount of funding support of \$2 million from SDF.

(b) SME EMF⁽²⁾

From the implementation of the EMF in 2001 to April 2012, the TID approved about 16 900 funding applications for participating in activities to explore the Mainland export market. The funding support amounted to over \$260 million, benefiting over 7 200 enterprises.

(c) The SUCCESS

From 2009 to April 2012, SUCCESS organized, co-organized or supported 82 programmes relating to brand development and promoting domestic sales in the Mainland. More than 15 000 people participated in these activities.

Whether to explore the domestic market is a commercial decision of individual enterprises after taking into account various factors. The Government will continue to implement different measures to provide support to those enterprises interested in developing the Mainland market. We will also review the relevant measures from time to time, with a view to providing appropriate assistances to the enterprises.

(2) EMF aims at helping SMEs expand their business through participation in export promotion activities such as exhibitions, trade missions, placing advertisements on trade publications and eligible websites. The fund subsidizes 50% of the approved expenses, subject to a ceiling of \$50,000 per application. The cumulative funding ceiling for each SME is \$150,000.

Appendix II**WRITTEN ANSWER****Written answer by the Secretary for Financial Services and the Treasury to Ms Starry LEE's supplementary question to Question 2**

As regards "mould", section 39E of the Inland Revenue Ordinance (IRO) is a specific anti-avoidance provision, which aims at limiting tax avoidance opportunities in various forms of machinery or plant leasing arrangements. According to that provision, taxpayers will be denied Hong Kong's depreciation allowance if the machinery or plant owned by them are used outside Hong Kong by other parties. The abovementioned machinery or plant include "mould". Nevertheless, if the "mould" is embedded with any intellectual property rights (IPRs) specified by sections 16E or 16EA of the IRO (namely, patents, rights to any know-how, copyrights, registered designs and registered trade marks) and such IPRs have fulfilled the relevant conditions stipulated in the provisions, the relevant Hong Kong enterprises could apply for tax deduction under sections 16E or 16EA for the capital expenditure incurred in the purchase of the relevant IPRs embedded in the "mould".