

# OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 13 June 2012

The Council met at Eleven o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

**PUBLIC OFFICERS ATTENDING:**

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

THE CHIEF SECRETARY FOR ADMINISTRATION

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

SECRETARY FOR SECURITY

DR THE HONOURABLE YORK CHOW YAT-NGOK, G.B.S., J.P.

SECRETARY FOR FOOD AND HEALTH

MS JULIA LEUNG FUNG-YEE, J.P.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

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

SECRETARY FOR DEVELOPMENT

THE HONOURABLE GREGORY SO KAM-LEUNG, J.P.

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT

**CLERKS IN ATTENDANCE:**

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

**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 entered the Chamber)

**PRESIDENT** (in Cantonese): The meeting commences.

### **TABLING OF PAPERS**

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

Subsidiary Legislation/Instrument	<i>L.N. No.</i>
Mutual Legal Assistance in Criminal Matters (Indonesia) Order (Commencement) Notice.....	104/2012

#### Other Papers

Report No. 22/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

Report of the Bills Committee on Legal Practitioners (Amendment) Bill 2010

Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2012

Report of the Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2012

Report of the Bills Committee on Immigration (Amendment) Bill 2011

Report of the Bills Committee on Buildings Legislation (Amendment) Bill 2011

**ORAL ANSWERS TO QUESTIONS**

**PRESIDENT** (in Cantonese): Questions. First question.

**Consultation on Introduction of Concept of Advance Directives in Hong Kong**

1. **MRS SOPHIE LEUNG** (in Cantonese): *President, in response to the report on Substitute Decision-making and Advance Directives in Relation to Medical Treatment (the Report) released by the Law Reform Commission (LRC) of Hong Kong in 2006, the Food and Health Bureau published in 2009 a consultation paper on the Introduction of the Concept of Advance Directives in Hong Kong to conduct public consultation on this subject. In this connection, will the Government inform this Council:*

- (a) *given that the aforesaid public consultation was completed in 2010, of the outcome of the consultation; when the consultation report will be published;*
- (b) *given that the Government indicated in its reply to my question in 2009 that no patient admitted to hospitals under the Hospital Authority (HA) had shown advance directives to the healthcare professionals in the course of receiving treatment or healthcare services, nor had any of them initiated the making of an advance directive, according to the latest information of the authorities, of the number of patients so far who have shown advance directives to healthcare professionals or made advance directives in the course of receiving treatment or healthcare services; among such advance directives, the number of those which were carried out by the hospitals or doctors; the measures in place to ensure that healthcare professionals understand the concept of advance directives; whether the authorities at present make reference to the model form proposed to be adopted in the Report and prepared a form for use by patients; if so, where the form can be obtained; and*
- (c) *since the publication of the Report, of the details and progress of the specific work of the authorities in implementing the 12 recommendations made therein?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, it is imperative to maintain effective communication and establish mutual trust among patients and their family members and healthcare professionals throughout the whole treatment process. In case of conflict between a patient and his/her family members over the treatment recommended by healthcare professionals, a patient's right of self-determination should prevail over the wishes of his/her relatives, and a doctor's professional decision should always be guided by the best interest of the patient.

Under the common law, a patient may, while mentally competent to make decisions, give advance directives to specify that apart from receiving basic and palliative care, he/she chooses not to receive any life-sustaining treatment or any other treatment he/she has specified when he/she is terminally ill, in a state of irreversible coma or in a persistent vegetative state, or to specify the withholding or withdrawal of futile treatment under specific conditions, which merely postpones his/her death.

The concept of advance directives is based on the principle of self-determination by patients, sparing healthcare professionals, the patients' relatives, or both, making difficult healthcare decisions on the patients' behalf, in particular the decisions of withholding or withdrawing life-sustaining treatment. To this end, the Code of Professional Conduct for the Guidance of Registered Medical Practitioners formulated by the Medical Council of Hong Kong (MCHK) has provided guidelines on care for the terminally ill. Where death is imminent, it is the doctor's responsibility to take care that a patient dies with dignity and with as little suffering as possible. Withholding/withdrawing life-sustaining treatment after taking into account the patient's benefits, wishes of the patient and family, and the principle of futility of treatment for a terminal patient, is legally acceptable and appropriate.

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

(a) and (c)

In a report entitled *Substitute Decision-making and Advance Directives in Relation to Medical Treatment* published by the LRC in 2006, the LRC put forward 12 recommendations which include



introduction of the concept of advance directives in Hong Kong by non-legislative means, as well as development of a guidance note and preparation of a model form of advance directives to assist front-line healthcare professionals in making their judgment as to the applicability of advance directives. Progress of our follow-ups on the 12 recommendations in the Report is set out at Annex.

In general, the Administration shares the LRC's views. In Hong Kong, some people still regard it a taboo to discuss the issue of terminal care and death and the public at large are not fully familiar with the concept of advance directives. As such, we agree that it is not the appropriate time to implement advance directives at this stage through any form of legislation. As the making of an advance directive is in fact entirely a personal decision, we must respect individuals' freedom of making personal decisions. At the same time we should promote suitable public education on this subject with care and allow sufficient time and room for healthcare professionals and the public to understand and familiarize themselves with the concept of advance directives, with a view to introducing the concept of advance directives in Hong Kong in a gradual and progressive manner.

To follow up on the LRC's recommendations, we briefed the Legislative Council Panel on Health Services on the Administration's position on advance directives on 8 December 2008. In December 2009, we also issued a consultation paper entitled "Introduction of the Concept of Advance Directives in Hong Kong" to seek views of the healthcare sector, legal profession, patient groups, and non-governmental organizations providing healthcare-related services for patients.

At the close of the consultation period on 22 March 2010, we received a total of 52 submissions from organizations and individuals. Most of the submissions showed no objection to introducing the concept of advance directives by non-legislative means in Hong Kong. The MCHK indicated that its Ethics Committee would study this subject in greater details and to consider

whether guidelines on executing advance directives should be drawn up for reference by healthcare professionals.

Recently the MCHK advised the Administration that its Ethics Committee had encountered a lot of difficulties in drafting the guidelines on advance directives, such as ascertaining the validity of an advance directive. The MCHK is of the view that a legal framework should be formulated for advance directives to afford protection to both patients and healthcare professionals. In this connection, we will continue to follow up with the MCHK on the matter.

On the other hand, the HA had formulated a guidance note and prepared a model form and a set of concise questions and answers on advance directives in July 2010 for reference by its healthcare professionals and the public.

- (b) As mentioned above, the HA already formulated the guidance note and prepared the model form and the set of concise questions and answers on advance directives in July 2010. Such information is available on the Internet for access by the public. In addition, the HA had organized a total of 10 rounds of forums at its Head Office and hospital clusters to enhance the understanding of its healthcare professionals and staff about advance directives.

At present, when discussing the arrangements for terminal care with patients who are suffering from terminal or serious irreversible diseases, the HA's healthcare professionals will provide information on advance directives and the model form as necessary for reference by the patients. Nevertheless, the HA has not kept statistical data on patients showing their advance directives to the HA's healthcare professionals, or requesting the HA's healthcare professionals for making or executing their advance directives when the patients were receiving treatment or care in hospitals under the HA.

## Annex

Progress of the Administration's follow-ups on the recommendations in  
the LRC's Report entitled Substitute Decision-making and  
Advance Directives in Relation to Medical Treatment

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
1.	<ul style="list-style-type: none"> <li>- The concept of advance directives should be promoted initially by non-legislative means.</li>   <li>- The Government should review the position in due course once the community has become more widely familiar with the concept and should consider the appropriateness of legislation at that stage, taking into consideration three factors, namely, how widely the use of advance directives had been taken up; how many disputes had arisen; and the extent to which people had accepted the model form of advance directive.</li> </ul>	<ul style="list-style-type: none"> <li>- We share the LRC's views. In Hong Kong, some people still regard it a taboo to discuss the issue of terminal care and death and the public at large are not familiar with the concept of advance directives. As such, we agree that it is not the appropriate time to implement advance directives at this stage through any form of legislation.</li>   <li>- In December 2009, the Administration published a consultation paper entitled "Introduction of the Concept of Advance Directives in Hong Kong" to seek the views of the relevant stakeholders.</li> </ul>
2.	<ul style="list-style-type: none"> <li>- The publication and wide dissemination of the model form of advance directive the LRC proposes.</li>   <li>- The use of the model form should be encouraged.</li> </ul>	<ul style="list-style-type: none"> <li>- The model form of advance directives was already included in the Consultation Paper on the "Introduction of the Concept of Advance Directives in Hong Kong".</li>   <li>- The HA prepared the model form of advance directives in July 2010 and uploaded it onto the Internet for reference by healthcare professionals and the public.</li> </ul>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
3.	<ul style="list-style-type: none"> <li>- Appropriate publicity should be given to encourage individuals to consider and complete advance directives in advance of any life-threatening illness.</li> </ul>	<ul style="list-style-type: none"> <li>- The making of an advance directive is entirely a personal decision. We must respect individuals' freedom of making personal decisions and at the same time promote suitable public education on this subject with care and allow sufficient time and room for healthcare professionals and the public to understand and familiarize themselves with the concept of advance directives, with a view to introducing the concept of advance directives in Hong Kong in a gradual and progressive manner.</li> <li>- The HA prepared the model form of advance directives in July 2010 and uploaded it onto the Internet for reference by healthcare professionals and the public.</li> <li>- When discussing arrangements for terminal care with patients who are suffering from terminal or serious irreversible diseases, the HA's healthcare professionals will provide information on advance directives and the model form as necessary for reference by the patients.</li> </ul>
4.	<ul style="list-style-type: none"> <li>- The Government should launch publicity programmes to promote public awareness and understanding of the concept of advance directives.</li> </ul>	<ul style="list-style-type: none"> <li>- Same as the above.</li> </ul>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	<ul style="list-style-type: none"> <li>- The Department of Health and all District Offices should have available for public reference material which provides general guidance to the public on the making and consequences of an advance directive and should provide copies of the model form of advance directive for public use.</li> </ul>	
5.	<ul style="list-style-type: none"> <li>- The Government should endeavour to enlist support of the Hong Kong Medical Council, medical associations, the Bar Association, The Law Society, the HA, all hospitals and clinics, non-governmental organizations involved in care for the elderly, and religious and community groups in this information campaign about the use and effect of advance directives.</li> </ul>	<ul style="list-style-type: none"> <li>- The Administration published the Consultation Paper on "Introduction of the Concept of Advance Directives in Hong Kong" in 2009 and sought the views of the healthcare sector, legal profession, patient groups, and non-governmental organizations providing healthcare-related services for patients.</li> </ul>
6.	<ul style="list-style-type: none"> <li>- For the purpose of making an advance directive, the terms "terminally ill" and "life-sustaining treatment" should be defined as follows: <ul style="list-style-type: none"> <li>(a) the "terminally ill" are patients who suffer from advanced, progressive, and irreversible disease, and who fail to respond to curative therapy, having a short life expectancy in terms of days, weeks or a few months.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The Administration is well aware of the LRC's definition of the two terms "terminally ill" and "life-sustaining treatment" for the purpose of making an advance directive.</li> </ul>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	<p>(b) "life sustaining treatment" means any of the treatments which have the potential to postpone the patient's death and includes, for example, cardiopulmonary resuscitation, artificial ventilation, blood products, pacemakers, vasopressors, specialized treatments for particular conditions such as chemotherapy or dialysis, antibiotics when given for a potentially life-threatening infection, and artificial nutrition and hydration. Artificial nutrition and hydration means the feeding of food and water to a person through a tube.</p>	
7.	<ul style="list-style-type: none"> <li>- The model form of advance directive requires that it be witnessed by two witnesses, one of whom must be a medical practitioner, neither witness having an interest in the estate of the person making the advance directive.</li> <li>- The Government should encourage bodies such as the HA, the MCHK, the Hong Kong Medical Association and other relevant professional bodies to consider issuing guidelines for doctors witnessing the making of advance directives to ensure</li> </ul>	<ul style="list-style-type: none"> <li>- The HA already formulated a guidance note and prepared a model form and a set of concise questions and answers on advance directives in July 2010 for reference by healthcare professionals and the public.</li> <li>- These documents have provided guidance on the requirements relating to witnesses, as well as the applicability, revocation and amendment of advance directives.</li> </ul>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	<p>consistency of medical practice in this area. The guidelines should also provide guidance for the medical profession (a) as to the effect of advance directives and (b) in assessing the validity of an advance directive.</p> <ul style="list-style-type: none"> <li>- If in circumstances an individual is unable to make a written advance directive, he should make the oral advance directive before a doctor, lawyer or other independent person who should not have an interest in the estate of the person making the advance directive.</li> </ul>	
8.	<ul style="list-style-type: none"> <li>- For the sake of certainty and avoidance of doubt, those wishing to revoke an advance directive should be encouraged to do so in writing.</li> <li>- If an advance directive is revoked in writing, it should be witnessed by an independent witness who should not have an interest in the estate of the person making the revocation.</li> <li>- If an advance directive is revoked orally, the revocation should be made before a doctor, lawyer or other independent person who should not have an interest in the estate of the person making the revocation, and where practicable that witness should make a written record of the oral revocation.</li> </ul>	<ul style="list-style-type: none"> <li>- Same as the above.</li> </ul>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	- If medical staff learn that an individual has revoked his advance directive, that information should be properly documented in the individual's medical records.	
9.	- The Government should, as part of its public awareness campaign about advance directives, encourage those who wish to make an advance directive to seek legal advice and to discuss the matter first with their family members. Family members should also be encouraged to accompany the individual when he makes the advance directives.	- According to the guidance note of the HA, those who wish to make advance directives will be encouraged to discuss the matter first with their family members.
10.	- It is recommend that the definition of "mentally incapacitated person" for he purposes of the application of Parts II and IVC of the Mental Health Ordinance (Cap. 136) should be amended along the following lines:  (1) For the purposes of Parts II and IVC, a mentally incapacitated person is a person who is at the material time:  (a) unable by reason of mental disability to make a decision for himself on the matter in question; or	- The Administration notes that in these few years there are ongoing developments in the knowledge and concepts in the field of mental health as well as corresponding changes to the relevant terminologies in the legislation under other jurisdictions.  - In addition, there have been new developments in the overall development of mental health services in recent years. The international trend in treatment of mental illness is to gradually focus on community and ambulatory services, and to allow the early discharge of mental patients when their conditions are stabilized for



	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	<p>(b) unable to communicate his decision on that matter because he is unconscious or for any other reason.</p> <p>(2) For the purposes of subsection (1), a person is at the material time unable by reason of mental disability to make a decision if, at the time when the decision needs to be made, he is:</p> <p>(a) unable to understand or retain the information relevant to the decision, including information about the reasonably foreseeable consequences of deciding one way or another or of failing to make the decision; or</p> <p>(b) unable to make a decision based on that information.</p> <p>(3) In subsection (1), "mental disability" means:</p> <p>(a) mental illness;</p> <p>(b) a state of arrested or incomplete development of mind</p>	<p>treatment in the community. For example, there are proposals that the Government should introduce the Community Treatment Order, the implementation of which would require amendment of the Mental Health Ordinance. The Administration is studying the proposal and will consider the need to amend relevant legal provisions having regard to the result of the study, in order to cater for local needs and at the same time align with the international development of legislation and medical services of mental health.</p> <p>The Administration will examine the definition of the term "mentally incapacitated person" in the overall context of the law in the light of such developments, and consult relevant parties, including mental health experts. Looking ahead, the Administration will consider appropriate legislative changes under a broad and composite proposal in the long term, after a comprehensive review of the relevant mental health legislation, medical and social rehabilitative services.</p>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	<p>which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;</p> <p>(c) psychopathic disorder;</p> <p>(d) mental handicap; or</p> <p>(e) any other disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning.</p> <p>(4) A person shall not be regarded as unable to understand the information referred to in subsection (2)(a) if he is able to understand an explanation of that information in broad terms and in simple language.</p> <p>(5) A person shall not be regarded as unable by reason of mental disability to make a decision only because he makes a decision which would not</p>	

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	<p>have been made by a person of ordinary prudence.</p> <p>(6) A person shall not be regarded as unable to communicate his decision unless all practicable steps to enable him to do so have been taken without success.</p>	
11.	<p>- It is recommend that the definition of "mentally incapacitated person" for the purposes of the application of Part IVB of the Mental Health Ordinance (Cap. 136) should be amended along the following lines:</p> <p>(1) For the purposes of Part IVB, a mentally incapacitated person is:</p> <p>(a) a person suffering from mental disorder;</p> <p>(b) a person who is mentally handicapped; or</p> <p>(c) a person who is unable to communicate his views and wishes because he is unconscious or for any other reason.</p> <p>(2) A person shall not be regarded as unable to communicate his views and wishes unless all practicable steps to enable</p>	<p>- Same as the above.</p>

	<i>LRC's recommendations</i>	<i>Progress of the Administration's follow-ups</i>
	him to do so have been taken without success.	
12.	<p>- The Government should encourage the MCHK or other relevant professional body to issue guidelines or a code of conduct to enhance consistency of medical practice in relation to:</p> <p>(a) the assessment of a person's ability to communicate;</p> <p>(b) the treatment of persons in a vegetative or comatose state;</p> <p>(c) the criteria for basic care;</p> <p>(d) the assessment of the validity of an advance directive; and</p> <p>(e) the implementation of advance directives.</p>	<p>- The Consultation Paper on the "Introduction of the Concept of Advance Directives in Hong Kong" was published in December 2009 to consult stakeholders on whether guidance notes should be formulated on procedural matters relating to advance directives.</p> <p>- The MCHK indicated that its Ethics Committee would study the subject in greater details and to consider whether guidelines on executing advance directives should be drawn up for reference by healthcare professionals.</p> <p>- Recently the MCHK advised us that its Ethics Committee had encountered a lot of difficulties in drafting the guidelines on advance directives, for example, ascertaining the validity of an advance directive. The MCHK is of the view that a legal framework should be formulated for advance directives to afford protection for both patients and healthcare professionals. In this connection, we will continue to follow up with the MCHK on the matter.</p>

**MRS SOPHIE LEUNG** (in Cantonese): *President, I actually feel that I can do nothing to help. The Report was published in 2006 and I raised a question in 2009, asking if any patient had initiated the making of an advance directive, and whether the HA had kept the relevant statistical data on patients when they were admitted to hospital. The HA replied at the time that it had not yet done so. Today, the authorities have still replied that "the HA has not kept statistical data on patients showing their advance directives to the HA's healthcare professionals, or requesting the HA's healthcare professionals for making or executing their advance directives when the patients were receiving treatment or care in hospitals under the HA". It is also quite baffling that the HA seems to be completely unaware of the contents of the Report. The authorities should consider how the public can be provided with this convenience of "autonomy". I wish the Secretary can answer further if the HA currently has such statistical data. Will the relevant statistics data be collected? If there are statistical data, the public can at least be reminded of this arrangement and understand more about their autonomy in this regard.*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, this issue involves two aspects: first, the MCHK considers that a more appropriate approach is to establish a legislative framework after two years of study. We have to find out why they had to discuss so long before making a decision. We also think that we should be notified of the decision earlier, so that we can follow up.

Second, after the HA has issued the relevant guidelines a year or so ago, some hospitals have put these guidelines into implementation. According to the information in hand, five hospitals, including Tuen Mun Hospital (Oncology), Ruttonjee Hospital, Grantham Hospital, United Christian Hospital and Haven of Hope Hospital had started to collect the relevant statistical data on advance directives. Among these hospitals, Tuen Mun Hospital has more experience in this area, and according to a rough estimation, some 280 patients make advance directives each year. As for other hospitals, about dozens of patients make directives each year. Therefore, we still need more research to determine the effectiveness.

However, I must stress that generally speaking, advance directives cannot be immediately made after doctors have made such a suggestion to patients. Very often, doctors have to spend long hours explaining in detail to patients or

communicating with the patients' family members before advance directives can be made. Thus, we have to act more cautiously and the most important objective is to establish close relations between patients and healthcare professionals, so that terminally ill patients can get the most effective treatment and the best hospice care in an environment of mutual trust.

**MR ANDREW LEUNG** (in Cantonese): *As the Secretary has said, the Government shares the LRC's view, but problems will certainly arise in implementation, as this is related to patients' lives; and their family members, as well as doctors are involved. I also agree with the LRC that there are difficulties in drawing up the guidelines, and that is why I propose enacting legislation.*

*How will the Government enact the relevant legislation? This is certainly a task for the next-term Government; but what follow-up actions should the current-term Government leave to the next-term Government? I hope that there would not be consultations after consultations, and the legislation would not only be introduced into the Legislative Council a few years later. Does the Secretary have a timetable and how the legislation can be expeditiously enacted?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, the LRC recommended the introduction of the concept of advance directives by non-legislative means. After we have received the present views of the MCHK, we need to discuss afresh with it to find out what difficulties will be encountered if non-legislative means is adopted. According to my preliminary understanding, the MCHK opines that it is not easy for the guidelines to cover the various conditions of patients. The same problems will be encountered even if the legislation is enacted. As we all understand, there will be problems regardless of whether the legislation is too stringent or too loose.

For patients, especially those who are close to the end of life, there will inevitably be many emotional problems or problems relating to family relationship, and very often, all these problems cannot be set out in a form. In any case, we would like to give healthcare professionals clearer guidelines for their compliance, and leave room for them to communicate with patients or their family members. As regards how such room should be left, and under what circumstances should sufficient statutory powers be given, so that healthcare

professionals and patients can work out a mutually accepted practice, that is definitely not an easy task.

Hence, we would continue to make greater efforts in this connection. In particular, if more trials have been introduced in public hospitals, and more experience accumulated, we will be able to devise a clearer framework that will be conducive to considering the enactment of legislation in the future. Thus, we do not think it is appropriate to set a legislative timetable now. We think that more clinical experience should be accumulated and more statistical data should be collected before professional analyses are made in order to consider the enactment of legislation.

**MR LAU WONG-FAT** (in Cantonese): *President, it is stated in the main reply that the HA will make available the relevant information and form on the Internet, as a relatively small number of elderly persons know how to access the Internet, have the authorities considered providing the elderly with the relevant information through other channels?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, besides enabling the public to have a better understanding of the concept of advance directives through the Internet, it is most convenient and appropriate for doctors to explain the concept to patients. Generally speaking, if the patients are not suffering from serious illness or their conditions are not so serious that their lives may be jeopardized, they may not be very interested in this concept. Nevertheless, when they know that their conditions may be fatal or that their days are numbered, they will make preparation for their death or the arrangement after their death; by then, they may want to find out more about this concept. For this reason, we encourage healthcare professionals to spend more time explaining the concept to patients. We should respect patients' decision of accepting or rejecting the concept. Some patients may not be able to make decision within a certain period of time and sometimes, repeatedly explanation is necessary. In some cases, we have to explain the concept to patients during each follow-up consultation. Healthcare professionals, especially those specialized in oncology or palliative care, have made much effort and have accumulated a lot of experience. We consider that this is the best and most appropriate method.

**DR PAN PEY-CHYOU** (in Cantonese): *President, with an ageing population and the continued emergence of complex medical technologies, it goes without saying that advance directives are important. What the Secretary has just said is right, before further actions are taken, we are now at a research stage; and at least, we should at this stage collect statistical data and make efforts to promote the concept of advance directives to the public.*

*The Secretary has just said that statistical data are not available. Are there any plans to collect statistical data on advance directives through the HA or private hospitals, so that we can have a more systematic understanding of the application of the directives?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): *President, I understand that the HA has taken proactive measure to establish a clinical management information system with a view to acquiring the relevant information. If patients have made advance directives after healthcare professionals' explanation, the HA will have electronic records and information can then be collected. Yet, the most important point is not simply to collect the data but to accumulate experience. We will feel relieved if family members of patient consider the making of advance directives very satisfactory. However, if people think that the making of advance directive is a disrespect of the wishes of patients' family members or there is insufficient communication, we have to reconsider if adjustments should be made to the guidelines.*

*President, we cannot too hastily decide on the next step. I agree that more efforts should be made, such as enhancing education and having extensive communication with patients and their family members in handling this issue.*

**PRESIDENT** (in Cantonese): *Mrs Sophie LEUNG, this is your second supplementary question.*

**MRS SOPHIE LEUNG** (in Cantonese): *President, the Secretary may be somewhat confused about the details of the Report and the efforts made. The concept of advance directives is about the personal decisions to be made by patients when they are sane and healthy, instead of a concept to be promoted by doctors. Moreover, I think that there are contradictions in the Government's*



*main reply. About parts (a) and (c) of the main reply to my main question, the Secretary has stated in the second paragraph that the Administration shares the LRC's views. "In Hong Kong, some people still regard it a taboo to discuss the issue of ..... death ..... we agree that it is not the appropriate time to implement advance directives at this stage through any form of legislation" .....*

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, please state your supplementary question.

**MRS SOPHIE LEUNG** (in Cantonese): *Alright. On the contrary, it seems that the Secretary respects the decision of the MCHK. In my view, for the sake of protecting doctors, the MCHK finds it most appropriate to do less and avoid trouble .....*

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

**MRS SOPHIE LEUNG** (in Cantonese): *Has the MCHK misunderstood the LRC's proposal or has the Secretary misunderstood the LRC's proposal?*

**SECRETARY FOR FOOD AND HEALTH** (in Cantonese): President, we accept the proposal of the LRC that patients should be given the autonomy to make decision. Our experience tells us that patients may make different decisions at different stages. At the early stages of their illness when they are more rational or healthy, patients may decide that they will not do certain things in the future. But, when their conditions worsen and they are feeling bad and pain, or when they are influenced by family members, they may make different decisions. Thus, we must be more careful. As I have just remarked, we must understand the concerns of healthcare professionals that patients may change their mind when their conditions have changed. We must make decisions very carefully because patients' views and decisions can change at certain stages.

Hence, we must not act hastily and we do not have any misunderstanding of this concept. Owing to our respect of life and of the decisions made by terminally ill patients about how they should be taken care of when they are

dying, we think that is a solemn issue and the procedure cannot be streamlined. We should spend more time on this issue and accumulate more experience before handling it under a legislative framework.

**MRS SOPHIE LEUNG** (in Cantonese): *The Secretary precisely fails to understand this point about reversibility.*

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, the Secretary has already answered your question. Second question.

### **Audit Commission's Report on Hotel Accommodation Arrangements for the Chief Executive's Duty Visits Outside Hong Kong**

2. **MR JAMES TO** (in Cantonese): *Last month, the Audit Commission published the "Report on hotel accommodation arrangements for the Chief Executive's duty visits outside Hong Kong" which stated that the incumbent Chief Executive had made a total of 55 duty visits from 2007 to April this year and stayed in hotels for 142 nights, among which 49 nights were paid by the SAR Government and, of these 49 nights, the Chief Executive was accommodated in superior suites for 41 nights. The Chief Executive has been criticized as being insatiably avaricious in acting in such a way. At the same time, the Audit Commission has pointed out that on many occasions, adequate documented justification for the Chief Executive's accommodation in superior suites was not available. The Audit Commission has also made a number of recommendations in the Report, for example, when it is necessary to enhance the subsistence allowance to the Chief Executive, approval should be sought from the Permanent Secretary, Chief Executive's Office, in order to provide consistency in the processing of applications within the Chief Executive's Office. In this connection, will the Government inform this Council:*

- (a) *given that the Audit Commission's "Report on hotel accommodation arrangements for the Chief Executive's duty visits outside Hong Kong" is primarily submitted to the Chief Executive and uploaded to the Audit Commission's website, but under section 13 of the Audit Ordinance, the Director of Audit (the Director) shall report to the*

*President of the Legislative Council a matter which constitutes, in the opinion of the Director, a serious irregularity in the accounting for the expenditure of public moneys, and yet at present the Director has not submitted the Report to the Legislative Council, making it impossible for the Public Accounts Committee to discuss the matter concerned, whether the Director has assessed if his aforesaid practice will render it not possible for the Legislative Council to perform its function of monitoring the Government; and*

- (b) *of the detailed arrangements for implementing the Audit Commission's recommendations (including the one about seeking approval from the Permanent Secretary of the Chief Executive's Office for paying an enhanced subsistence allowance to the Chief Executive) by the current-term and the next-term Governments; whether the Chief Executive-elect has accepted these recommendations, and what his response to such recommendations is; of the timetable for implementing the recommendations; of the recommendations that can be implemented before the term of the incumbent Chief Executive ends on 30 June this year, and the recommendations that can be implemented before the prorogation of the current-term Legislative Council on 18 July this year?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, there have been a number of criticisms concerning the Chief Executive's duty visits over the past couple of months. I am aware that the criticisms have picked up momentum following the publication of the review report by the Director.

On the question of whether the Chief Executive should be accommodated in presidential suites during his duty visits, as pointed out in the Director's Report, we should on the one hand have regard to the "moderate and conservative" principle on the use of government funds, and should on the other hand reflect credibly the Chief Executive's position as head of the Hong Kong Special Administrative Region (HKSAR) as well as Hong Kong's status in the international arena.

With the above considerations in mind, it has been the practice for former Governors before 1997 and for successive Chief Executives after 1997 to be

accommodated in hotel rooms of a class which is above that for standard rooms during duty visits. The arrangements have had regard to operational needs and the representative role of Hong Kong's head.

According to the Report, 93 out of the Chief Executive's 142 nights' of hotel accommodation during his duty visits in the past five years were sponsored by the hosts. For such sponsored accommodation, the Chief Executive was offered accommodation in what the Report has regarded as "superior suites" on over 90% of the occasions. This helps to illustrate that the hosts, taking into account the Chief Executive's position as head of the HKSAR and Hong Kong's status in the international arena, have deemed it appropriate to accommodate the Chief Executive at such hotel rooms. In terms of the class of accommodation, the accommodation funded by the HKSAR Government was generally comparable to that offered by the hosts for cases involving sponsorship.

Perhaps due to the inheritance of a practice established for so many years, we have not been sensitive enough when making the arrangements. We have not always made in-depth analysis into the accommodation choices and compare the options available, as a result of which we, in retrospect, have not made the most appropriate arrangements on some occasions. We understand and respect the criticisms over individual cases. We have generally accepted the Report's recommendations and have started follow-up actions.

As regards the Honourable Member's reference to section 13 of the Audit Ordinance, I must state that the Report has not pointed out any circumstances relevant to that section. In other words, the accommodation arrangements as reviewed by the Director did not involve any irregularity in the accounting of government funds. Nor has the Report pointed to violation of any rules or regulations.

The Report is prepared by the Director at the Chief Executive's special request. It aims to examine the existing mechanism and find out whether and how the arrangements should be improved. The Audit Ordinance does not expressly provide that the Director is required to transmit a copy of this special Report to the Legislative Council. The Director has also explained this understanding when replying to the Public Accounts Committee's written enquiry earlier.

Most importantly, the Report has been published and uploaded to the Audit Commission's website. The Director has also given an account of this Report on various occasions, to help the general public and the Legislative Council better understand its content. There are ample opportunities for the community and the legislature to discuss the Report. We believe such discussions are already effective means for monitoring Government's work in the relevant areas.

As the current term of Government is about to end, we have sent the Report to the Chief Executive-elect's Office in the first instance, for its early reference. The incumbent Chief Executive and the Chief Executive-elect generally agree with the Report's recommendations. The outgoing and incoming administrations have also exchanged views on how to follow up on those recommendations. In this regard, we have started drafting internal guidelines in the light of the Report's recommendations. We aim to submit draft guidelines incorporating the views from departments concerned to the Chief Executive-elect before 1 July, with a view to early implementation. Our objectives are to improve the existing arrangements, by tightening the planning and approval process, enhancing transparency of the expenditure and institutionalizing the improved accommodation arrangements.

**MR JAMES TO** (in Cantonese): *President, I am infuriated after reading the main reply as a number of points are misleading. For example, the third paragraph reads "..... to be accommodated in hotel rooms of a class which is above that for standard rooms during duty visits. The arrangements have had regard to operational needs and the representative role of Hong Kong's head."*

*President, my question is, why must presidential suite be chosen when there are many appropriate options between standard room and presidential suite? You said that the hosts had shown due respect to the Chief Executive and accommodated him at presidential suites, which were of a higher standard, and 93 out of 142 nights were sponsored accommodation. And yet, does it mean that we have to stay in rooms of the same class comparable to that offered by the hosts who show their due respect? I would like to draw an analogy here. President, if someone shows due respect to you and invites you to eat shark's fin and abalone, will you be so disrespectful as to throw the food to the floor? The point is, if the expense is paid by government funds, should you have shark's fin and abalone for each meal?*

*President, I wish to ask if it is the practice of the Government to treat ourselves in a way comparable to that offered by others?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, in this respect, the standard of accommodation is higher. The question is how high it should be. As Mr James TO has said earlier, there are different classes.

As evident from the information on the Chief Executive's overseas visits, the costs of hotel accommodation range from a few thousand dollars to tens of thousands of dollars. Of course, in the Director's Report, some cases have been accounted for. For example, regarding the Chief Executive's accommodation at a certain hotel, three out of four nights of hotel accommodation were sponsored by the host country and one night paid by ourselves. On this issue, what we need to do now is to institutionalize the relevant arrangement by making detailed comparison and analysis of different circumstances, and in the course of it, laying down the rules of choosing hotel of various class of accommodation. Rules will be laid down for compliance by the Chief Executive's Office when approving similar requests in future, thereby enabling it to make similar arrangements for duty visits to different places under different circumstances. We wish to institutionalize the relevant system and enhance its transparency.

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

**MR JAMES TO** (in Cantonese): *President, my supplementary question is, is it necessary for us to be accommodated in the same class of hotel rooms which the host has offered even if it is paid by government funds?*

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

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, I have nothing to add. Even if we have been offered a certain class of hotel accommodation, it is not necessary for us to be accommodated in the same class

of room in the future. All available options must be considered. That is why I said earlier that the arrangements will be systemized and institutionalized for future reference.

**MR KAM NAI-WAI** (in Cantonese): *President, in the Chief Secretary's reply, he said that this is the inheritance of a practice established for so many years. It seems that this is merely an excuse. However, he went on to say that, "..... we, in retrospect, have not made the most appropriate arrangements on some occasions. We understand and respect the criticisms over individual cases." Also, I noticed that the Director of the Chief Executive's Office said that he would take the responsibility, while his predecessor said he would take double responsibility. Members of the public would like to know what responsibility would be taken by the Government and their demand is actually very simple. There is a very practical thing which the Government or Chief Executive can do: Will they pay the money back? The Chief Executive had been accommodated in either superior or even presidential suites for 41 nights, but the Director indicated that there is no justification for his accommodation in these suites. May I ask the Chief Secretary whether the Government has required the Chief Executive to pay for these 41 nights of accommodation in rooms of a class which are above that for standard rooms? Or, has he asked the Chief Executive if he will consider voluntarily returning the money to the Treasury, or simply paying the money back?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): *President, the Report of the Audit Commission has stated very clearly that notwithstanding the differences in the room rates, the hotel accommodation of the Chief Executive is justified in some cases. Hence, we should not accuse him of staying in expensive rooms all the time simply because he had been accommodated in such rooms, given that the room rates are pretty high in some places. In order to fully comprehend the key points of the Director's Report, we must thoroughly examine the existing mechanism to identify the deficiencies. We need to look forward, but not to find out who is to be blamed and impose punishment.*

In fact, the inheritance of a practice established for so many years has rendered us less sensitive. No one has wasted public funds or violated any rules or regulations on purpose. Actually, in the absence of an established fixed indicator, it is impossible to calculate the expenses of every single overseas duty

visit all over again. Therefore, with regard to the pay back request, there is no objective yardstick to determine the amount to be returned. We do not think there is any problem.

**MR KAM NAI-WAI** (in Cantonese): *President, my question is, has he asked the Chief Executive to consider voluntarily paying the money back. My question is whether he has asked the Chief Executive.*

**PRESIDENT** (in Cantonese): Mr KAM, the Chief Secretary has already answered. If you are not satisfied, you may find other channels to follow up on the question.

**MS MIRIAM LAU** (in Cantonese): *President, as the head of the HKSAR, the accommodation arrangement of the Chief Executive's overseas duty visits should take into account his position so as not to bring disrespect to Hong Kong. While I agree with this, it is evident that the Chief Executive was mostly accommodated in those expensive and luxurious rooms for his duty visit to, say, Brazil and many other overseas duty visits as disclosed by the Audit Commission. This has deviated significantly from the "moderate and conservative" principle as mentioned in the main reply, which the Government should consider when using government funds. I believe the Legislative Council will definitely follow up on the Chief Executive's overseas duty visits.*

*Since the Chief Secretary just said that we must look forward, I am going to ask a relevant question. The Audit Commission suggested that a guideline should be formulated, and I hope that it can be formulated and implemented as early as possible. However, I wish to ask: While the Government is formulating the new guideline, will it take into consideration the requirements and restrictions imposed by other countries on the accommodation arrangements of their heads for overseas duty visits? Here, I would like to highlight the case of the United Kingdom. Under the British system, after each overseas duty visit, the Prime Minister is obliged to upload all his expenditures to the relevant webpage for public scrutiny. Will the HKSAR Government consider adopting such an approach?*



**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, our colleagues are collecting views from various departments on this issue. As I have pointed out in the main reply, we hope to expeditiously come up with a proposal and submit the draft guidelines for the consideration of the Office of the Chief Executive-elect. Of course, as Ms Miriam LAU has said, the Report has also clearly set out the experiences of other countries, such as the United Kingdom, Canada and Australia.

Therefore, we are aware of the practices of other countries. Our major consideration is whether Hong Kong can adopt the same practice if similar cases arise in the future. I cannot see why we cannot follow suit. And yet, no one knows the details of the draft guideline before it is finalized after incorporating various views. Neither do I. And yet, I am convinced that the issues will be taken into account.

**MISS TANYA CHAN** (in Cantonese): *President, there is no doubt that members of the public will be pleased to see an enhancement of the transparency. But I want to know if there are clear guidelines for the Government to decide whether the Chief Executive should visit a certain place, or whether it is necessary or essential for him to conduct overseas duty visit? Who will make the decision?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, as Members may be aware, overseas duty visits of the entire Government serve different needs and purposes. The visit to Brazil or other countries, for example, was intended to explore different business opportunities and new markets in different places. As stated in the Audit Commission Report, the visit to the United Kingdom is to continue the tradition of attending the annual Trade Development Council London Dinner. In other words, there is an operational need for all duty visits, say, to promote Hong Kong in the light of our situation. Of course, the frequency of duty visits will have to depend on the situation and the annual provisions set aside for this purpose. Yet, as I have said earlier, I hope that the relevant arrangements can be institutionalized.

**MISS TANYA CHAN** (in Cantonese): *President, he has not answered. Of course, .....*

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

**MISS TANYA CHAN** (in Cantonese): ..... *overseas visits will not be conducted for no reason* .....

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

**MISS TANYA CHAN** (in Cantonese): ..... *My supplementary question is: Who will decide on the overseas duty visits? It is as simple as this.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, as I have said earlier, all overseas duty visits must go through internal discussions of the entire Government, so as to examine the situation and decide on the places which our delegation should visit.

**MISS TANYA CHAN** (in Cantonese): *President, if this is the decision of the entire Government, is this not a serious matter? Who actually makes the decision?*

**PRESIDENT** (in Cantonese): Ms CHAN, the Chief Secretary has replied.

**MISS TANYA CHAN** (in Cantonese): *Okay.*

**MS STARRY LEE** (in Cantonese): *President, the spate of incidents occurring in recent days, including the Chief Executive's accommodation in luxurious presidential suite and the subsequent disclosure of the extraordinarily high expenditure incurred by the Hong Kong Economic and Trade Offices (ETOs) for their preparatory visits, have aroused strong public dissatisfaction with the Government and undermined people's trust in it. May I ask if the scope of review will be further expanded to cover the expenditures of all public officers,*

*including that incurred by the ETOs for preparatory visits, and the formulation of guidelines for them?*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, this is certainly a part of the relevant arrangement. As the Audit Commission Report has highlighted, there is room for improvements in this regard. We will focus on the deficiencies highlighted in the Audit Commission Report and make the corresponding improvements.

**MR FRED LI** (in Cantonese): *President, the rate of a presidential suite per night is even higher than the sum of six months' salary of a grass-roots worker, so I wonder what is meant by the "moderate and conservative" principle. In the main reply, the Chief Secretary has raised two points: "it has been the practice for former Governors before 1997 and for successive Chief Executives after 1997 to be accommodated in hotel rooms of a class which is above that for standard rooms during duty visits" and "the inheritance of a practice established for so many years". They are quoted from the Chief Secretary's reply. Do they mean that Mr TUNG, Chris PATTAN or their predecessors had all stayed in presidential suites in the past? The rooms that they had stayed were not only of a higher standard, but of the highest standard. Is this the inheritance of a practice established by the previous governments? I want a very specific answer from the Government.*

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): We said rooms of "a higher" but not "the highest" standard. Furthermore, according to the Audit Commission Report, presidential suites are not of the highest standard. This is why I have admitted in the main reply given earlier that no in-depth analysis had been made for the choice of rooms. No comparison had been made either. Thus, we will learn a lesson from this and look for an in-between option from the different room classes which best manifests the abovementioned principles.

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

**MR FRED LI** (in Cantonese): *It is obviously not answered. President, he mentioned the practice before and after 1997 or the practice inherited for many years, but can he tell me if this is the practice that has been adopted for many years? While I have no idea if presidential suites are of the highest standard, my question is whether they were all accommodated in rooms of that standard? Has Donald TSANG ever stayed in rooms of that standard? My question is as simple as this.*

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

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, in the main reply, we have also mentioned that the type of accommodation, that is, presidential suite, offered by the host countries has been the same both before and after 1997. Of course, the arrangements may vary with different countries. Therefore, in the main reply, I said that this is the inheritance of an established practice. In case hotel accommodation is paid by ourselves, we should be more cautious. If we have to pay for it, there is no need to stay in rooms of the highest standard. We should better adopt the most prudent approach which credibly reflects our position in the light of the situation.

**PRESIDENT** (in Cantonese): We have spent more than 23 minutes on this question. Third question.

### **Copyright (Amendment) Ordinance 2007**

3. **MR RONNY TONG** (in Cantonese): *Will the Government inform this Council, since the coming into operation of the various amendments in the Copyright (Amendment) Ordinance 2007:*

- (a) *of the number of prosecutions instituted in respect of contravention of the Copyright Ordinance and the reasons for instituting such prosecutions, as well as the number of convictions;*

- (b) *among such prosecutions, of the number of those instituted under section 118 of the Copyright Ordinance, as well as their respective types, the final judgments passed and the penalties imposed; and*
- (c) *whether the authorities have taken law-enforcement actions against online infringement under the Copyright Ordinance; if they have, of the criteria for taking such law-enforcement actions; if not, the enforcement difficulties; and the circumstances under which prosecutions are instituted against suspected online infringement?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, the criminal provisions of the Copyright Ordinance are currently found in sections 118, 119A, 119B, 120, 124, 130 and 273C. Among these, sections 119B and 273C were introduced by the Copyright (Amendment) Ordinance 2007.

With regard to parts (a) and (b) of the question, our reply is as follows:

Between August 2007 (that is, after the first batch of provisions of the Copyright (Amendment) Ordinance 2007 came into effect) and April 2012, the Customs & Excise Department (C&ED) instituted 2 740 prosecutions under section 118 which involved 4 303 charges resulting in 3 532 convictions. The imprisonment sentence ranged from two days to 35 months, and the fine from \$500 to \$80,000. Details of the types of charges, the verdicts and the penalties imposed are set out in the Annex. The C&ED also instituted 60 and 68 prosecutions under sections 119A and 273C respectively which involved 71 and 111 charges resulting in 69 and 88 convictions respectively. During the same period, the C&ED did not institute any prosecution under the other criminal provisions.

With regard to part (c) of the question, our reply is as follows:

The existing Copyright Ordinance already grants copyright owners different exclusive rights. In particular, section 26 specifically restricts the making available of copies of work to the public through the Internet. Any

person who makes available copies of a copyright work through the Internet without the authorization of the copyright owner may attract civil liability.

As regards criminal liability, the various criminal provisions in the Copyright Ordinance may also apply to online infringing activities depending on the circumstances. For example, sections 118(1)(e) and (g) target offences involving the distribution of infringing copies. It has been affirmed by the Hong Kong Court of Final Appeal in *HKSAR v Chan Nai Ming* (commonly known as the "Big Crook" case) that "distribution" instead of being limited to conventional distribution of hard copies also covers distribution of electronic copies through the Internet.

As always, the Government has been taking robust law-enforcement actions against online infringing activities, and has adopted the same criteria in the enforcement and prosecution of online infringement cases as in other types of infringement cases. The C&ED will of course require a copyright owner to prove the subsistence of copyright in a work, and will need to collect evidence showing that copyright infringement has taken place.

The C&ED has established two "Anti-Internet Piracy" Teams to take charge of investigations concerning online infringing activities. The C&ED will continue to make use of advanced computer techniques, computer forensics and network investigation tools with a view to enhancing enforcement effectiveness. An "Electronic Crime Investigation Centre" will also be set up to enhance the capabilities of the C&ED in taking enforcement actions and handling digital evidence.

Given the special nature of online infringement, the C&ED will make appropriate deployment in its investigation and evidence collection work. For example, in view of the organized and transnational nature of online infringement, the C&ED has been striving to work with Mainland and overseas law-enforcement agencies for joint operations so as to effectively deter online infringing activities. Owing to the borderless nature of the Internet, it will be difficult for the law-enforcement agency of any single country or region to wipe out online piracy syndicates alone. The C&ED will continue to enhance co-operation with other law-enforcement agencies to combat online infringing activities.

## Annex

Prosecutions instituted by the C&ED in respect of  
contravention of section 118 of the Copyright Ordinance  
between August 2007 and April 2012

<i>Types of Charges</i>	<i>Charges</i>	<i>Convictions<sup>#</sup></i>	<i>Imprisonment</i>	<i>Fine (\$)</i>
Section 118(1)(a): makes for sale or hire an infringing copy	60	24	2 months to 30 months	5,000 to 10,000
Section 118(1)(b): imports an infringing copy into Hong Kong (otherwise than for private and domestic use)	65	42	14 days to 10 months	3,000 to 70,000
Section 118(1)(c): exports an infringing copy from Hong Kong (otherwise than for private and domestic use)	30	13	2 months to 21 months	3,000 to 14,000
Section 118(1)(d): sells, lets for hire, or offers or exposes for sale or hire an infringing copy for the purpose of or in the course of any trade or business	1 513	1 253	6 days to 15 months	500 to 50,000
Section 118(1)(e): exhibits in public or distributes an infringing copy for the purpose of or in the course of any trade or business which consists of dealing in infringing copies	211	180	28 days to 35 months	500 to 50,000

<i>Types of Charges</i>	<i>Charges</i>	<i>Convictions<sup>#</sup></i>	<i>Imprisonment</i>	<i>Fine (\$)</i>
Section 118(1)(f): possesses an infringing copy with a view to its being sold or let for hire; or its being exhibited in public or distributed which consists of dealing in infringing copies	2 137	1 844	2 days to 20 months	500 to 60,000
Section 118(1)(g): distributes an infringing copy (otherwise than the circumstance mentioned under section 118(1)(e)) to such an extent as to affect prejudicially the copyright owner	49	23	1 month to 3 months	2,000 to 6,000
Section 118(2A): possesses an infringing copy of a computer program, a movie, a television drama, or a musical recording for the purpose of or in the course of any trade or business with a view to its being used by any person for the purpose of or in the course of that trade or business	191	121	2 months to 6 months	1,000 to 60,000
Section 118(4)(d): possesses an article specifically designed or adapted for making copies of a particular copyright work which article is used or intended to be used to make infringing copies of the copyright work for sale or hire or for use for the purpose of or in the course of any trade or business	7	4	8 months to 10 months	10,000 to 30,000



<i>Types of Charges</i>	<i>Charges</i>	<i>Convictions<sup>#</sup></i>	<i>Imprisonment</i>	<i>Fine (\$)</i>
Section 118(8): possesses an article knowing or having reason to believe that it is used or is intended to be used to make infringing copies of any copyright work for sale or hire or for use for the purpose of or in the course of any trade or business	40	28	2 months to 32 months	2,000 to 80,000
Total	4 303*	3 532*	2 days to 35 months	500 to 80,000

Notes:

# Figures cover cases that have been completed in April 2012 or before.

\* Between August 2007 and April 2012, the C&ED instituted 2 740 prosecutions under section 118 which involved 4 303 charges resulting in 3 532 convictions.

**MR RONNY TONG** (in Cantonese): *President, it can be seen from the Annex to the Secretary's main reply that since 2007, 49 prosecutions have been instituted under section 118(1)(g), which is commonly known as "Internet Article 23", with 23 cases convicted and some of the offenders sentenced to imprisonment terms.*

*President, when meeting with organizations and representatives of copyright owners recently, we were given to understand that they were willing to give up their stance on the criminalization of the so-called "mash-up works". I would like to ask the Secretary, given the concession made by copyright owners, will the Government introduce the amendment Bill, with suitable revision to cancel the criminalization provisions, to the Council again within the current term of the Legislative Council?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, thanks to Mr Ronny TONG for the supplementary question. In fact, Mr TONG has presented numerous invaluable views on the

matter in the relevant Bills Committee, which enables us to introduce effective amendments to the Copyright (Amendment) Bill.

Regarding whether another legislative amendment exercise can be conducted within the current term of the Legislative Council, we have established procedures to follow. In the past, I have said time and again that since 2006, many rounds of public consultation have been conducted in relation to the Copyright (Amendment) Bill. Given the extremely tight scheduling of Agenda items for meetings of the Legislative Council in the days to follow, we must keep in view the progress of various government motions. We will also hold cross-departmental discussion on the priority of various government bills to be dealt with in the Council before a decision is to be made. As the situation is ever-changing, we will make a timely decision taking into account such changes.

**PRESIDENT** (in Cantonese): Has your supplementary question not been answered? Please repeat your supplementary question.

**MR RONNY TONG** (in Cantonese): *Copyright owners earnestly hope that the Bill can be enacted within the current term of the Legislative Council. Secretary, given that there are only a few meetings left within the current term of the Legislative Council, can you tell us when the amendment Bill will be presented to this Council again?*

**PRESIDENT** (in Cantonese): Mr TONG, if you want to ask another supplementary question, please wait for your turn again because two Members are waiting to ask their supplementary questions.

**MR RONNY TONG** (in Cantonese): *President, I am asking whether he will present the Bill within the current term of the Legislative Council. He has not answered my question.*

**PRESIDENT** (in Cantonese): Please repeat the part of your question which you think the Secretary has not answered.

**MR RONNY TONG** (in Cantonese): *I ask him to explain to the public whether the Government will present the amendment Bill within the current term of the Legislative Council for enactment? That is the question I asked previously.*

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

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, I am most willing to answer Mr TONG's question. Amendments to the Copyright Ordinance must keep abreast of the times, but such amendments also take time to formulate. Regrettably, there are procedures we have to follow if an exemption for parody as mentioned by Mr TONG is to be provided because we must suitably balance the rights of copyright owners in this regard. Hence, if changes are to be made on the granting of exemptions, we must go through a consultation process, and have to consider if sufficient time is available to propose the relevant amendments in the days to follow. Therefore, we must consider the relevant procedures as well as the tight agenda for meetings of the Legislative Council before a further decision can be made.

**MISS TANYA CHAN** (in Cantonese): *President, my supplementary question is very simple: Regarding the original Blue Bill, that is, the Copyright (Amendment) Bill, or a Bill incorporating the subsequent or intended Committee stage amendments (CSAs), does the Secretary intend to present the same to the Council again before the current-term Legislative Council expires? President, if my memory serves me right, it has been scheduled to resume the Second Reading debate of the Bill; yet the House Committee or Members were subsequently notified by the Government that the Bill would be withdrawn. I wish to ask the Government, can the Secretary give us advance notice today as to whether the Government will present the Bill to the Council again before the current-term Legislative Council expires?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, as I mentioned just now in answering Mr TONG's supplementary question, the scheduling of Agenda items for the remaining meetings of the Legislative Council within the current term is extremely tight,

with a considerable number of government motions awaiting discussion and passage. The authorities will consider the priorities of such matters and hold discussion with other departments before a further decision can be made.

**MISS TANYA CHAN** (in Cantonese): *President, the Secretary has not given a direct answer to my question. Mr TONG's question just now was about the part on parody, whereas my supplementary question is directly related to the original Blue Bill with the CSAs.*

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

**MS CYD HO** (in Cantonese): *President, the Secretary cited the precedent of the "Big Crook" case in part (c) of the main reply. I would like the Secretary to confirm that this case is just a precedent, not a piece of legislation. However, once the law is amended by the authorities, the scope of criminal prosecution will be expanded to seriously hamper the freedom of information exchange on the Internet enjoyed by Hong Kong people. Should the authorities consider withdrawing the Bill or the amendment this year in response to the request of Hong Kong people for safeguarding the freedom of information exchange on the Internet, that is, the part on the expansion of the scope of criminal prosecution?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, I am happy to have the opportunity to explain once again the Government's stance in this regard. Referring to the "Big Crook" case I mentioned earlier, in order to further improve the clarity of the relevant legislation under the framework of the common law, and after taking into consideration some factors in the "Big Crook" case, we have incorporated express provisions in the Bill.

Hence, in the proposed provisions, we have not made any changes to the legal principles for determining whether copyright infringement is involved in a work. In other words, if no copyright infringement is involved in a parody or other online acts under the existing Copyright Ordinance, it would remain the same under the amended Ordinance upon enactment. Therefore, there will be no

impact on the scope of the freedom of expression on the Internet. Actually, the Government has time and again explained the point. Furthermore, I hope Ms HO can read the Bill carefully to identify which provisions she considers would narrow the scope of free speech or the freedom of expression. It is hoped that after Ms HO has studied the Bill carefully, she can explain to the public whether the scope of free speech would be narrowed by the Bill.

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

**MS CYD HO** (in Cantonese): *President, my question just now was actually very clear, but the matter is really very complicated .....*

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

**MS CYD HO** (in Cantonese): *Just now, I asked the Secretary to confirm that the "Big Crook" case was just a precedent, not a piece of legislation. But with the Government's existing legislative amendments, the scope of criminal prosecution would be expanded to possibly hamper information exchange on the Internet, that is, the freedom of information exchange. Will the Secretary please confirm this point?*

**PRESIDENT** (in Cantonese): Secretary, regarding the point raised by Ms HO in relation to expanding the scope of criminal prosecution and hampering the exchange of information on the Internet, do you have anything to add?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Ms HO, there are many lawyers in the Council; perhaps they can study the matter further. In fact, we must follow the precedents of the Court under the framework of the common law. Therefore, it is appropriate for the Government to state the principles of the precedent expressly and explicitly in the legislation. Freedom of expression has absolutely not been narrowed with the

amendments. I hope Ms HO can consider the amendments in this regard carefully.

In this regard, I wish to explain clearly again that we propose to amend section 118(2AA). The relevant amendment is made after detailed scrutiny by members of the Bills Committee and on the basis of many invaluable views. The meaning of section 118(2AA) has already been expressed clearly. Many Members have been involved in the scrutiny process, and the relevant amendment is agreed to by the Bills Committee.

**MS CYD HO** (in Cantonese): *I only want the Secretary to give us a clear confirmation. In fact, as he just mentioned, prosecutions cannot be instituted wilfully without amending the legislation.*

**PRESIDENT** (in Cantonese): Ms HO, Members should not engage in a debate.

**MR WONG YUK-MAN** (in Cantonese): *President, the Secretary has not replied the supplementary question just raised by Miss Tanya CHAN succinctly. While it is true that many agenda items have been scheduled for meetings of the Legislative Council, given the current "congestion", they should be handled according to their priorities. You should answer the question specifically, buddy. Do you know that we have proposed 1 390 amendments? These amendments have already been processed by the Secretariat, and we are ready for you to present the Bill to the Legislative Council again anytime. Do you know that?*

**PRESIDENT** (in Cantonese): Mr WONG, is that your supplementary question? If you have already asked your question, please sit down, so that the Secretary can reply.

**MR WONG YUK-MAN** (in Cantonese): *He should know about that, right? It is a known fact that this Bill has been done with, right?*

**PRESIDENT** (in Cantonese): Mr WONG, please ask only one question at a time.

**MR WONG YUK-MAN** (in Cantonese): *Secretary, you must now tell the public openly that the Copyright (Amendment) Bill 2011 has been screwed up by WONG Yuk-man, and the Government cannot present the Bill to the Council again.*

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

**MR WONG YUK-MAN** (in Cantonese): *The Secretary always fails to reply our questions succinctly. It was the same when he answered the question on the three domestic free television programme service licences last time.*

**PRESIDENT** (in Cantonese): Mr WONG, you are not asking supplementary question now. If you continue to express your views, I will have to discontinue your speech.

**MR WONG YUK-MAN** (in Cantonese): *President, can you please ask the Secretary to answer this question: Can he confirm here and at this moment that there is no way his Copyright (Amendment) Bill can resume Second Reading debate within the current term of the Legislative Council? Please ask him to be specific ..... Pardon me, I want to state my question even more clearly. What I mean is that, the Bill will not be introduced into the Legislative Council again.*

**PRESIDENT** (in Cantonese): The question has already been asked by Members previously. Let me see if the Secretary has anything to add. Mr WONG, please sit down.

**MR WONG YUK-MAN** (in Cantonese): *President, you should allow him the opportunity to reply.*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, what I want to add is that .....

**PRESIDENT** (in Cantonese): Mr WONG, please sit down.

**MR WONG YUK-MAN** (in Cantonese): *Ask him to be specific and not beat about the bush because we must know the answer.*

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

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): President, what I want to add is that the figure just mentioned by Mr WONG Yuk-man was not accurate. There should be 1 782 amendments.

**MR IP KWOK-HIM** (in Cantonese): *President, what I want to know is that if the Copyright (Amendment) Bill under discussion now cannot be enacted, will there are any gaps in terms of copyright protection? If the answer is in the affirmative, what is the gap? What actions will be taken by the Government to deal with the situation?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Thanks very much to Mr IP for the supplementary question. I have a very good opportunity today to explain to Members that the freedom of speech will actually not be undermined by this provision. What is the crux of this provision? Given the rapid development in information technology, new technologies keep on emerging, and advancing technologies will bring about new modes of electronic transmission. Copyright infringement committed by using these new modes of digital transmission might not be effectively caught by the existing legislation. Hence, there is a need to update the Copyright Ordinance so that these situations can be dealt with in a targeted manner. While the relevant offences can be dealt with effectively by the provisions under the



existing Copyright Ordinance in relation to the civil and criminal liabilities arising from copyright infringement, such as online infringement, the pace of technological advancement is so rapid that it is indeed necessary to introduce amendments to the legislation on a technology-neutral basis so that when new technologies emerge in future, we are already capable of dealing with the situation effectively, without having to amend the legislation again specifically for these new developments in the Legislative Council.

Other common law jurisdictions, such as Australia and the United Kingdom, have already introduced the corresponding legislative amendments in 2001 and 2003 respectively. To date, the situation with the freedom of speech being undermined has not happened. Hence, the present amendment is in fact very simple, and the objective is to keep pace with technological advancement. I also hope that Members can make use of this opportunity to explain to the general public that it is indeed necessary to update the existing legislation, and the objective is not to suppress the freedom of speech. Regarding parodies, a number of Members have suggested just now that exemption should be granted. While we adopt an open attitude in this regard, the amendments can only be formulated after a consultation process. Hence, we will work according to the relevant procedures. Nonetheless, it remains our hope that the Bill can be enacted as soon as possible, so that Hong Kong can stay in line with the international community in terms of technologies.

**MR RONNY TONG** (in Cantonese): *President, regarding the prosecutions instituted in respect of contravention of section 118(1)(g) given in the Annex, I want to further ask the Secretary: How many of these cases involved the so-called "mash-up works"?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): There is actually no such prosecution case. To date, there is no prosecution case in relation to the so-called "mash-up works" and parodies.

**PRESIDENT** (in Cantonese): Fourth question.

## Conservation of Heritage and Historic Buildings

4. **MISS TANYA CHAN** (in Cantonese): *President, when attending a radio programme in the morning of 30 May 2012, the Secretary for Development indicated that she would settle matters relating to the conservation of Ho Tung Gardens and the West Wing of the Central Government Offices (CGO) (West Wing) before her departure from the office of the Secretary for Development on 30 June this year, so as to avoid leaving these two "hot potatoes" to her successor to handle. In connection with the latest development of the two aforesaid conservation projects and the long-term government policy on conservation of historic buildings, will the Government inform this Council:*

- (a) *of the current progress in conserving Ho Tung Gardens, and whether the Government has made a final decision on the relevant conservation arrangement; if it has not, of the actions that the Secretary for Development will take to make sure that matters relating to the conservation of Ho Tung Gardens will be properly settled before her departure from office; if it has, of the details of the decision; whether the Government is prepared to declare Ho Tung Gardens as a statutory monument; if so, of the details and follow-up actions; if the Government is not prepared to declare Ho Tung Gardens as a statutory monument, the reasons and how the Government will conserve Ho Tung Gardens;*
- (b) *given that the Government issued a statement on 3 June this year indicating that it had no intention of changing its plan to demolish the West Wing for redevelopment and that the Antiquities Advisory Board (AAB) had yet to submit its assessment of the various buildings of the CGO Complex, whether the Government will revise the demolition plan accordingly when the West Wing is eventually declared a Grade I building by AAB; if it will not, of the reasons for that; and*
- (c) *given that under the proposals for the re-organization of the Government Secretariat for the new-term Government, the policy on conserving heritage and historic buildings will be handed over to another Policy Bureau, whether the Secretary for Development can, before her departure from office, conclude the work in conserving*

*heritage during the current term of the Government, and set out the areas that need to be improved; in addition, whether the Government will consider formulating the basis in principle for certain important conservation policies (including embarking on the specific work for setting up a heritage trust); if it will, of the details; if not, the reasons for that?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, in the first policy address of this term of Government delivered by the Chief Executive in October 2007, the Chief Executive said that cultural life is a key component of a quality city life. The Chief Executive understood that in recent years, Hong Kong people have expressed our passion for our culture and lifestyle, and considered that this is something we should cherish. He promised that the Special Administrative Region Government would press ahead with our work on heritage conservation in the next five years. In accordance with the Chief Executive's policy objective, the Development Bureau announced in October 2007 the new heritage conservation policy, which covers conducting Heritage Impact Assessment (HIA) for public works projects, implementing revitalization for historic buildings, facilitating the preservation of privately-owned historic buildings, and setting up the Commissioner for Heritage's Office to co-ordinate various actions. I am happy to see that the heritage conservation work of this term of the Government has made some achievements with the support of the Legislative Council, various professional bodies, various partners and the public.

My answers to the three parts of the question are set out below:

- (a) For the Ho Tung Gardens case, when it came to our attention that Ho Tung Gardens might be demolished for redevelopment through the internal monitoring mechanism, I, in my capacity as the Antiquities Authority, declared Ho Tung Gardens as a proposed monument in January 2011. The declaration provided Ho Tung Gardens with statutory protection and allowed time for the Antiquities Authority to consider whether Ho Tung Gardens should be declared as a monument under the Antiquities and Monuments Ordinance (the Ordinance). But according to section 2B of the Ordinance, the effective period of a proposed monument declaration for a privately-owned property is only 12 months and cannot be extended.

After Ho Tung Gardens had been declared as a proposed monument, the Antiquities and Monuments Office (AMO) commissioned recognized scholars of the University of Hong Kong to conduct two consultancy studies to fully assess the heritage value of Ho Tung Gardens. The two consultancy studies have further established that the heritage significance of Ho Tung Gardens is beyond doubt. Apart from briefing the AAB on the findings of the two consultancy studies, we have also organized a public forum for the community to discuss the heritage value and conservation of Ho Tung Gardens. Taking into account these studies and opinions, I initiated the statutory procedures to declare Ho Tung Gardens as a monument by consulting the AAB on my intended declaration in October 2011. Having obtained the AAB's unanimous support, I informed the owner of my intention in accordance with section 4(2) of the Ordinance.

However, the owner has been expressing objection against the declaration of Ho Tung Gardens as a proposed monument and monument starting from the beginning. The Chief Executive in Council has earlier directed that the declaration of Ho Tung Gardens as a proposed monument should stand in accordance with section 2C(5) of the Ordinance. As for the intended declaration of Ho Tung Gardens as a monument, according to section 4(5) of the Ordinance, the Chief Executive in Council, upon considering the objection, may direct that (a) the intended declaration be made by the Antiquities Authority in accordance with section 3 of the Ordinance; (b) the intended declaration be so made, subject to such variations or conditions as he thinks fit; or (c) the intended declaration shall not be made. According to section 4(6) of the Ordinance, a direction of the Chief Executive in Council shall be final. We are waiting for the Chief Executive in Council's decision on the objection raised by the owner of Ho Tung Gardens. My earlier expression that I hope to resolve this case within my term of office as the Secretary for Development (that is, before the end of this month) is only my subjective wish.

- (b) The Government-owned Former CGO is a different case. I plan to announce the ultimate option in the near future. Prior to AAB's

agreement in November last year to invite the standing expert panel to grade the Main Wing, East Wing and West Wing of the CGO which are modern architecture and not on the list of 1 444 historic buildings in response to the request of a certain concern group, the Government had proactively commissioned heritage conservation experts from the United Kingdom to fully assess the historical and architectural values of these three buildings, and based on the assessment, announced under the "Conserving Central" initiative in October 2009 that the Main Wing and East Wing will be preserved as the new headquarters of the Department of Justice while the West Wing will be demolished for comprehensive development with the theme of "Restoring Green Central". We note that the expert panel of the AAB had, at its meeting held on 31 May 2012, suggested that the three buildings should be graded in accordance with their different heritage value, with the Main Wing accorded a Grade 1 status, East Wing a Grade 2 status, West Wing a Grade 3 status, and the whole CGO site a Grade 1 status. The expert panel also agreed with the earlier view of the experts from the United Kingdom, that is, the historical value of the CGO site is higher than that of the individual buildings in CGO. Such suggestion will be submitted to the AAB for consideration on 14 June 2012. If the AAB agrees with the views of the expert panel, there will be a one-month public consultation on the proposed gradings before they are finalized.

I would like to point out that historic buildings of different gradings have their own corresponding development and conservation options. This does not mean that no development is allowed. The demolition and redevelopment of the West Wing, which is of lower value, is not only consistent with the economic aim of increasing office supply in Central, but will also improve the efficiency of the city space and design. Under the Government's proposal which was revised at the end of last year, the footprint of the new building at the Lower Albert Road level will be reduced by 46% when compared with the existing West Wing, a public open space with an area similar to the Statue Square will be provided in the upper Central, and the landscape will be restored to its appearance in the mid-1950s. After redevelopment, the office building will be a building of appropriate development density located at a site of

unique historical significance with financial and legal related functional uses. We consider that the proposal is consistent with the Government's new heritage conservation policy, and is also the best option consistent with city planning, land use and the overall interests of Hong Kong.

- (c) In the past five years, the Development Bureau has pressed ahead heritage conservation work in accordance with the new heritage conservation policy. The Development Bureau has launched the "Revitalizing Historic Buildings through Partnership Scheme" and the "Conserving Central" initiative, successfully preserved six privately-owned historic building projects through the provision of economic incentives, preserved the open-air bazaar at Tai Yuen Street, changed the original plan of total demolition of Wan Chai Market and facilitated the Urban Renewal Authority to reach an agreement with the developer to adopt the "core elements preservation" approach, adopted the "Retaining the Building and its Sitting Tenants" approach in revitalizing the Blue House Cluster in Wan Chai, and preserved Wing Lee Street, and so on. The Development Bureau has laid good foundations for heritage conservation work over the past five years. For instance, proponents of all new capital works projects and relevant works departments are required to conduct HIA for the projects concerned, an internal monitoring mechanism to raise our awareness on the possible demolition of privately-owned historic buildings has been established, the "Practice Guidebook for Adaptive Re-use of and Alteration and Addition Works to Heritage Buildings 2012" has been published, and numerous public participation and education activities have been organized. These good foundations of heritage conservation work will not be destroyed with the transfer of functions arising from the re-organization of the Government structure. Instead, putting heritage conservation under the Culture Bureau will be conducive to the integration of the tangible heritage (that is, buildings which are carriers of culture and history) and the intangible heritage of local culture and humanistic spirit. I hope that the new Culture Bureau would bring the heritage conservation work in Hong Kong to a higher level.

We have also commenced the more long-term task of setting up a heritage trust. The Development Bureau commissioned a consultancy study in end 2011 to investigate the feasibility (covering the statutory, financial, organizational and operational considerations), framework and implementation of setting up a statutory heritage trust in Hong Kong to take forward future heritage conservation efforts. The consultancy study is expected to be completed within this year.

**MISS TANYA CHAN** (in Cantonese): *I must make a solemn declaration that the Secretary is misleading the public in her main reply, for in part (b) of the main reply ..... I used to appreciate the Secretary, but her reply this time really makes me angry. The Secretary stated in her earlier reply that, "the whole CGO site" was accorded "a Grade 1 status". However, according to the information on the Internet, the report issued by the expert panel of the AAB is not referring to the site of the CGO. In the English version of the report, as per the document published by the AAB on the Internet I have in hand, the wording "Former Central Government Offices Compound" is used. Yet, in the main reply, this is interpreted as the "site", but this is not the case.*

*President, at present, the three buildings are regarded as a single compound which is accorded the Grade 1 historical building status, but the Government dares to demolish buildings with Grade 1 status. Moreover, may I ask whether the Secretary knows that the International Council on Monuments and Sites (ICOMOS) under the United Nations Educational, Scientific and Cultural Organization (UNESCO) has just released an official heritage alert to the world today? What is it about? It urges the Government to reconsider retaining the West Wing. Regarding the conclusion in the last paragraph, pardon me for reading it out in English, "Besides the cultural and heritage loss, the demolition of the West Wing of the CGO would be seen as a sign of departure from the widely acknowledged commitment of China to the protection and long-term conservation of its cultural heritage and historic sites of all periods, be they ancient or modern."*

*If the Government continues to claim its perseverance in implementing conservation policy on the one hand, but insists on demolishing the West Wing on the other, it is suffering from schizophrenia. Worse still, this will bring shame*

*on our country, for China is a member of the ICOMOS. May I ask the Secretary whether she will withdraw her decision to demolish the West Wing?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I thank Miss Tanya CHAN for her question. Indeed, her question covers several issues.

First, in her so-called "solemn declaration", she alleged that my reply was misleading. I consider this totally unacceptable. In fact, regarding the grades accorded by the expert panel at the request of the AAB, I have the minutes of meeting in hand. Sorry, President, since the minutes of meeting is only available in English, I have to read out its content in English: "The Expert Panel agreed that the assessment exercise should cover four items, namely (1) the post-1950 former CGO site as a whole; (2) the Main Wing; (3) the East Wing; and (4) the West Wing." As such, this was the interpretation adopted by the expert panel in the grading exercise back then, and I am not misleading the public.

On the other hand, Miss Tanya CHAN has mentioned the views of certain conservation advocates in the international community. I know about the case, for they sent us a letter yesterday night. However, I would like to make clear a point here. It is correct that we may refer to certain international basis in heritage conservation work, such as the Burra Charter and the Principles for the Conservation of Heritage Sites in China. However, the demolition of existing buildings and the construction of new buildings in the area of the heritage sites are not prohibited. Besides, the importance of the site in question has not been graded to the level of cultural heritage set by the UNESCO.

Hence, I can reply Miss Tanya CHAN in brief that I have no plan to change our established position. As I pointed out in the main reply, we will explain the ultimate option to the public in the near future.

**MRS SOPHIE LEUNG** (in Cantonese): *President, in my view, conservation is definitely important, yet we have to consider whether the Central district has been overdeveloped, resulting in the crowded situation at present. May I ask the Secretary whether she will consider expanding the greening work, particularly on the concept of creating an "urban lung" in the district, in establishing the public*



*open space? I think a balance must be struck between development and conservation on the whole, but not blindly attaches importance to conservation. Actually, in the past few decades, the development in Central has been so dense and so crowded that .....*

**PRESIDENT** (in Cantonese): Mrs Sophie LEUNG, you have already put forth your supplementary question, and you are repeating the opinion you gave earlier.

**MRS SOPHIE LEUNG** (in Cantonese): ..... *the ventilation of the district has become stale.*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I thank Mrs Sophie LEUNG for her question. In fact, I believe Members should recall that when the public consultation on the development of the CGO was first carried out, the title of the consultation paper was Restoring Green Central, which meant to open a new landscape for the Government Secretariat. The English version of the paper is "Restoring Green Central — The New Landscape of Central Government Offices".

It is self-explanatory that the objective of the entire project is not merely to increase the floor area for commercial purpose. The authorities really wish to create an "urban lung", an open space for the public, in Central, particularly in the district commonly called the "upper Central". In this connection, I have pointed out in the main reply earlier that the urban lung will be of an area similar to the Statue Square, a public open space of 7 600 sq m. To achieve this purpose, the West Wing must be demolished to reduce the coverage of the West Wing significantly. As such, the coverage of the West Wing will be reduced from the existing area of 2 500 sq m by 46%, as I said earlier, to 1 250 sq m, so as to release the space for the creation of the urban lung for public use.

**MR KAM NAI-WAI** (in Cantonese): *President, just now, some colleagues mentioned that the whole CGO site was accorded the Grade 1 status. I note that Mr Bernard CHAN has indicated earlier that whether the landowner of the Government Hill would sell part of the site to commercial organization would*

*arouse significant doubt among the public. I would like to ask the Secretary whether there is a hidden agenda. While she insists on demolishing the West Wing, will the site in question, as well as that of the entire Government Hill, including the Main Wing and the East Wing, continue to be held by the Government after the demolition of the West Wing in future? If that is the case, what is the specific purpose for demolishing the West Wing? If the authorities intend to maintain the West Wing as a building serving financial and legal related functions, it does not necessarily have to demolish the building. If the building is still owned by the Government, it will be ready for use with certain conversion work for financial and legal related functional uses by the organizations concerned as mentioned in the main reply of the Secretary. Does the Government have any intention to do so? Is it possible to do so?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I hope Members would agree that over the past five years, I have been listening to the views of Members and the public attentively, and the policies and measures introduced by the Development Bureau have been widely recognized. Hence, after we had received the initial views, we had made some amendments at the end of last year. For instance, some people hoped that no more shopping malls should be built in Central. This view was shared by a number of Members in the Chamber, and corresponding amendments had been made. As some people worried about the traffic arrangement, we had reduced the number of parking spaces significantly. In response to Mr KAM Nai-wai's question, I can tell Members that there are recently concerns about giving due regard to the ownership of the site, for it is necessary to maintain the completeness of the lot. Another inevitable concern is that the public are very sensitive to real estate hegemony. I can tell Members here that I will announce the ultimate option in the near future, no matter it is regarded as a hidden agenda or a call for patience from me.

As for the specific question raised by Mr KAM Nai-wai about the reason for demolishing the West Wing, I have explained this in my earlier reply to Mrs Sophie LEUNG that we do so for we wish to open a larger and more spacious open space for public use in Central. However, given the coverage of the existing West Wing building, this purpose cannot be achieved. The existing coverage has not only prevented the establishment a open space in Central, but has also made the traffic enhancement work at Ice House Street and Queen's Road Central impossible. Hence, based on this rationale, we wish to open a

pleasing area in Central for the public by demolishing a building of a relatively lower value.

**MR ABRAHAM SHEK** (in Cantonese): *President, I am glad that the Secretary has indirectly explained the future conversation policy of the Government in answering this question. I think clear explanation should be provided in this respect.*

*My supplementary question is about part (b). It is pointed out in that part of the main reply that the coverage of the new building to be constructed after the demolition of the West Wing will be restricted and be reduced by 46%. Why the space of this quality site cannot be utilized to its full plot ratio to build as many floors as possible? Such a quality site can rarely be found in Central, and the arrangement can cope with the demand of the market. Moreover, why the site should be restricted to financial and legal related functional uses, and why the use of the site cannot be decided by the market?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, regarding Mr Abraham SHEK's question, I would say in brief that we have not regarded the demolition and redevelopment of the West Wing as a simple real estate development project. In fact, we look forward to a considerably balanced approach which can meet the needs in various aspects and open a better open space in upper Central. We hope that the controversy about the project can be eased, and we will try to retain some of the features of this lot with over 100-year history. As such, the proposed development parameter is not pitched at a high level. The overall development parameters and plot ratio is only around seven times, and the so-called reduction by 46% is referring to the significant reduction in the coverage to release more area for the establishment of the open space and the improvement of traffic in the area.

As for the arrangement of using the site for financial and legal related purposes and focusing on Government, Institution or Community use, it is made in response to certain views expressed by the public. Since the site has all along been assigned for government uses, land use that ties in with the status of the Central district as the financial centre and the centre of the rule of law of the territory will win the recognition of the public more easily, particularly in regard

to the future location of the headquarters of the Department of Justice in the vicinity.

**PROF PATRICK LAU** (in Cantonese): *Thank you, President, for giving me the opportunity to ask this question. I would like to point out here that the Secretary has made considerable efforts in the conservation of historical buildings and culture, this is obvious to all.*

*I would like to follow up with part (a) of the main question. Since Ho Tung Gardens is private property, there are naturally certain difficulties in implementing conservation, for it involves land ownership and land premium, and so on. In the case of King Yin Lei, the Secretary had adopted the non-in-situ land exchange approach and had been quite successful. Hence, I would like to ask the Secretary to put in more efforts in this respect. For instance, she may offer land exchange or transfer of plot ratio to other sites to the land owners. Will such arrangement be conducive to the conservation of Ho Tung Gardens?*

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, I thank Prof Patrick LAU for the question and his recognition of our efforts in conservation. Regarding the conservation of Ho Tung Gardens, since I announced the Gardens as a proposed monument in 2011, I have contacted and negotiated with the owner in person for nine times at various intervals, hoping to identify an ideal arrangement for the conservation of Ho Tung Gardens with reference to the successful experience of offering economic incentives in the past. I can tell Prof LAU that we have exhausted all the tactics we have adopted in the past, but I am afraid they may not be acceptable to the owner. Hence, the only option available now is to forward the objection of the owner to the Executive Council for follow up.

(Miss Tanya CHAN stood up)

**MISS TANYA CHAN** (in Cantonese): *President, since the Secretary has just queried my remarks, may I request for the minutes of the meeting?*

**PRESIDENT** (in Cantonese): The entire process of this oral question will be put on record.

**MISS TANYA CHAN** (in Cantonese): *I am referring to the minutes of meeting mentioned by the Secretary in her reply to my supplementary question.*

**PRESIDENT** (in Cantonese): Secretary, will you provide the minutes of meeting you mentioned after the meeting?

**SECRETARY FOR DEVELOPMENT** (in Cantonese): President, please allow me to answer this as a supplementary question. Since I have read certain remarks in the newspaper today, including the views of Miss CHAN, I would like to take this opportunity to do justice for the AMO.

I know that recently, there have been a lot of mistrustful, conspiring and smearing remarks, yet the AMO has been completely fair and impartial in handling this case. The entire procedure of grading, including the minutes of meetings I will mention shortly in my response to Miss CHAN, has been carried out in full compliance with the assessment of the expert panel. In fact, we have made extra efforts to address the aspirations made by the concern groups. The CGO is not on the list of the 1 444 historical buildings, but a new item proposed by the public for grading. Actually, nearly 150 items are pending for grading, as in the case that many bills are now waiting for scrutiny, yet we considered that priority should be given to this item, so we requested the AMO to commission experts to handle this item first.

The experts on the Expert Panel include five members, and one of them is the Director of Planning, Mr Jimmy LEUNG. Since the grading exercise was commissioned in the 1990s, he was recommended to sit on the expert panel by the Hong Kong Institute of Planners in the early years. However, to avoid arousing suspicion, Director Jimmy LEUNG and I both considered that he should not take part in this grading exercise and he was thus absent from the meeting.

**PRESIDENT** (in Cantonese): Secretary, please be concise as far as possible, for this Council has spent a lot of time on this oral question.

**SECRETARY FOR DEVELOPMENT** (in Cantonese): As a result, we commissioned Prof David LUNG, and he had checked the large volume of information, including the information from the concern groups.

Regarding the minutes of meeting requested by Miss Tanya CHAN, it is unnecessary for me to provide them to her, as the minutes of meeting will be made public later. In fact, the minutes of meeting were not made public at an earlier time for they are still in the drafting process, which can only be made public and submitted to the AAB after being verified by the five experts concerned. Hence the report will be published shortly.

**PRESIDENT** (in Cantonese): Fifth question.

### **Incidents of Attacks on Cabin Crew Members**

5. **MR LAU KONG-WAH** (in Cantonese): *President, it has been reported that an incident occurred on a passenger flight of Cathay Pacific Airways (CX) returning to Hong Kong from Thailand on the night of 16 April this year, in which a passenger assaulted a female flight attendant and attempted to open the emergency exit door, but fortunately he was brought under control with the help of another male passenger. Later, the passenger who made the attack pleaded guilty in Court to the charges of committing disorderly behaviour and assault on board an aircraft, and he was sentenced to imprisonment. In this connection, will the Government inform this Council:*

- (a) *of the details of the aforesaid incident; of the reasons why CX, the police and the Civil Aviation Department (CAD) had not taken the initiative to make public the incident after its occurrence; given that it has been reported that the male passenger who made the attack had acted "under orders" in attempting to open the exit door to make the plane plunge, which had caused false alarm over terrorist*

*attacks, whether the authorities will improve the existing mechanism of disseminating such kind of information to the public;*

- (b) given that it has been reported that while waiting for the plane to take off, the male passenger who made the attack had been very emotional and only calmed down after he was comforted by a female flight attendant, and after the incident, the police suspected that he was suffering from psychiatric disorder, whether it knows if airline companies will identify people with abnormal mental conditions and refuse to let them board the planes; and*
- (c) given the recent successive incidents of attacks on cabin crew members, whether it knows if airline companies will review and enhance the existing security measures (including provision of self-defence training for flight attendants) as well as improve the mechanism of disseminating information of unforeseen incidents, so as to enhance protection for the safety of aircraft, cabin crew members and passengers?*

**SECRETARY FOR SECURITY** (in Cantonese): President,

- (a) according to the report submitted by CX to the CAD and the police, a male passenger assaulted a flight attendant unforeseeably on Flight CX 712 from Bangkok to Hong Kong when it approached the Hong Kong International Airport (HKIA) for landing on 16 April. The passenger was immediately held back and brought under control by other flight attendants with the help of two other passengers. On receipt of notification by the pilot of the incident, the ground crew of CX notified the police. After the safe landing of the flight at HKIA, the passenger suspected of assault was immediately arrested by the police for investigation. Eventually, the concerned person was charged with two offences, that is, "assault occasioning actual bodily harm" and "disorderly behaviour on board an aircraft". He was found guilty of both offences and was sentenced to three months' imprisonment by the Court after trial.

The flight attendant being assaulted was slightly injured. She was taken to hospital for examination after the incident and was discharged on the same day. The two passengers who helped to bring the person making the assault under control also sustained minor injuries, but hospital treatment was not required. According to the police's investigation, there was no attempt to open the cabin door or the emergency exit door during the flight in the incident.

The police confirmed that information of this incident was released to the media on the material day under the established information dissemination mechanism of incidents.

- (b) The male passenger who assaulted the flight attendant in this incident boarded the plane at Bangkok. According to CX, their ground crew at Bangkok did not observe any sign of abnormality on him when they carried out boarding procedures for the passenger.

In accordance with the Hong Kong Aviation Security Programme (HKASP) made under section 27 of the Aviation Security Ordinance, Chapter 494 of the Laws of Hong Kong, airlines are responsible for providing training on the handling of various anomalous situations which may pose threats to aviation safety, so as to ensure safety of the flights, air crew members and passengers. Part of the training covers the identification and handling of passengers with difficult or destructive behaviour. With regard to the actual situation and basing on the judgment of airline personnel, airlines may refuse to let any passengers suspected to be problematic to board a flight.

- (c) As explained in my reply to part (b), the HKASP stipulates that airlines need to provide training to their flight attendants and ground crew to ensure that they are capable of handling various unforeseen incidents on an aircraft during its flight, including dealing with difficult and destructive behaviour of passengers, so as to ensure the flight safety of the aircraft, air crew members and passengers. We understand that some airlines incorporate self-defence skills into the training for their flight attendants, which enable the aircraft personnel to better safeguard their personal safety.



**MR LAU KONG-WAH** (in Cantonese): *President, assaults which occurred on board an aircraft can be disastrous. In part (b) of his main reply, the Secretary said that currently, airline companies have provided training to their air crew members on identification and handling of passengers with difficult or destructive behaviour. I would like to ask the Secretary, in what ways can such training enable them to identify and handle passengers with difficult or destructive behaviour. Will the skills of subduing be included in the training? If not, how should air crew members respond in case of an assault?*

**SECRETARY FOR SECURITY** (in Cantonese): *President, as I have explained in my main reply, airline companies are responsible for the provision of training. Many airline companies have their own training schools, and some will commission training institutes from outside, such as airport security firms, to train their staff.*

There are some skills that require training. First, how to identify aggressive behaviour which may do harm to the aircraft, air crew members or other passengers. Second, according to my understanding, self-defense skill, that is, how to subdue people with propensity to violence. In short, airline companies are responsible for providing training. They may commission training institutes from outside, such as the airport security firms which I mentioned just now, to provide their staff with relevant training.

**MR LAU WONG-FAT** (in Cantonese): *President, as women are physically weaker than men, female flight attendants might have greater difficulty in subduing a male passenger who has lost self-control. Has the Government considered requiring a certain percentage of male flight attendants for each flight, so that should such incident happen, it will be easier for air crew members to subdue a male passenger who has lost self-control?*

**SECRETARY FOR SECURITY** (in Cantonese): *President, the HKASP is formulated in accordance with the aviation safety standards set by the International Civil Aviation Organization. So far, no other places in the world have stipulated a designated number of female or male flight attendants for each flight. In my opinion, good training is most essential, so that people with propensity to violence can be identified before they board a flight. Airline*

personnel can definitely not allow passengers, whom they consider may endanger the aircraft, air crew members or other passengers, to board the plane. As far as I know, there are no airline companies which stipulate a certain percentage of male flight attendants for each flight, but some airlines may have bodyguards on duty on board their aircrafts. As for Hong Kong, we do not consider it necessary to require airlines in Hong Kong or airlines with flights destined to Hong Kong to have a bodyguard on board each flight.

**MR IP WAI-MING** (in Cantonese): *President, the Secretary pointed out in the last paragraph of part (a) in his main reply that "The police confirmed that information of this incident was released to the media on the material day under the established information dissemination mechanism of incidents." As revealed in the media coverage, however, it seemed that not too many media organizations knew the details of the incident. In this regard, I want to know what kind of information had been disseminated under the established information dissemination mechanism. Besides, will the Secretary provide us a copy of the information disseminated on that day?*

**SECRETARY FOR SECURITY** (in Cantonese): President, when the police received the report of the incident at about 7.30 pm on 16 April, it immediately deployed police officers to conduct an investigation upon the landing of the aircraft. Upon confirmation of the nature of the alleged incident and the conduct of a preliminary investigation, the 999 Command and Control Centre instantly passed the case information to the newsroom of the Police Public Relations Branch (PPRB) under the established information dissemination mechanism. Later that night at 9.30 pm, the PPRB issued the case information in the form of "Attention News Editors" through the Government News and Media Information System of the Information Services Department, so that the media could decide on their own whether or not to cover the incident.

I presume that Mr IP raised this question because the case was presented as a hijacking incident or a terrorist attack by some newspapers two days later, contrary to what the police had reported. Let me state again, this is neither a hijacking incident nor a terrorist attack. As we had stated at that time, someone attacked a flight attendant on board an aircraft. That is the fact.

**PRESIDENT** (in Cantonese): Secretary, can you provide, as requested by Mr IP, the information which had been released?

**SECRETARY FOR SECURITY** (in Cantonese): President, the news released by the Government is public information. I can provide him a copy of the information released if he wants to have it. (Appendix I)

**PROF PATRICK LAU** (in Cantonese): *President, I learned from the newspapers that some flight attendants are actually auxiliary police officers. I would like to ask the Secretary if they could discharge their duties as auxiliary police officers in such incident.*

**SECRETARY FOR SECURITY** (in Cantonese): President, although some flight attendants are auxiliary police officers, they serve on board as flight attendants rather than auxiliary police officers. However, when a passenger violates the conditions for boarding a plane, they have the right to subdue that passenger in such a situation. Concerning the case which is now under discussion, the crew members handed the passenger under control over to the police when the plane landed in Hong Kong.

**MR LEE CHEUK-YAN** (in Cantonese): *An affiliate to the Hong Kong Confederation of Trade Unions has received a complaint from the Cathay Pacific Airway's Flight Attendants Union. According to the Union, that was not an isolated case, in fact, such incidents happen frequently, but there is no mechanism to stipulate that it is necessary to report such incidents to the police.*

*I would like to ask the Secretary for Security, should the HKASP prescribe clear guidelines requiring CX as well as other airline companies to report cases of attack to the police. We consider it inappropriate that, without a guideline, flight attendants have to decide whether or not to report such a case to the police. Clear guidelines should be formulated, requiring the reporting of such cases to the police.*

*Does the Secretary know if such requirements or guidelines are in place? If not, will requirement be imposed on mandatory reporting to the police, so as to ensure the personal safety of air crew members and all the passengers?*

**SECRETARY FOR SECURITY** (in Cantonese): President, as I have just said, the HKASP is devised in accordance with the requirements of the International Civil Aviation Organization and the aviation safety standards, which included various safeguards measures, and the primary purpose is to safeguard aviation safety. Relevant government departments, including the Airport Authority, as well as airline companies and airport security firms should all comply with the HKSAP.

As I have said, most of the safeguard measures have been drawn up in accordance with the guidelines of the International Civil Aviation Organization, such as conducting security checks on passengers as well as the luggage they carry aboard, providing security facilities, protecting staff on board aircrafts, and so on.

Regarding the incidents of harassments and assault that occurred on board the aircrafts, as mentioned by Mr LEE Cheuk-yan just now, they are not covered under the HKASP. Rather, the matter of concern is whether anyone has broken the laws of Hong Kong. The Government cannot interfere if no one has broken the law. Nevertheless, we encourage members of the public to report to the police incidents of violation of the laws of Hong Kong, so that enforcement actions can be taken.

At present, we often find people arguing or pushing each other in the street, we cannot interfere if the parties in dispute have reconciled with each other and do not report to the police. All we can do is to encourage members of the public to report law-breaking incidents to the police. However, we have no objection if the airline company or the flight attendant can reconcile with the passenger in question.

I have noted Mr LEE Cheuk-yan's suggestion. Mr LEE may suggest the management of airline companies to encourage their flight attendants to report to the police whenever there are incidents of dispute, harassment or attack on board an aircraft.

**MR LAU KONG-WAH** (in Cantonese): *President, I asked the Secretary just now what kind of training will be provided to air crew members so that they know how to handle such kind of incidents or bring the trouble-maker under control. The Secretary said in his reply that it was the responsibility of airline companies to provide training. It is certainly correct to say so, but then he went on to say that airline companies could discuss with security firms on how to provide the training. From the perspective of anti-terrorists of the police, if the Hong Kong Police Force has not made adequate communication or co-operation with airline companies with regard to the training of air crew members, do you think this is undesirable? Are there any overseas experiences in this regard that we can draw reference from?*

**SECRETARY FOR SECURITY** (in Cantonese): President, let me reply Mr LAU's question. We are very concerned about incidents of hijacking and terrorist attack. Under the existing HKASP, we will examine from time to time the level of threat posed to Hong Kong's civil aviation safety, in the light of intelligence and other information available. If reliable information indicates that Hong Kong's civil aviation safety is under threat, the police will inform the Security Bureau and the CAD to study ways of enhancing security to combat the mounting threat.

As to whether it is necessary for airline companies to provide every air crew member with training on handling terrorist attacks, according to my knowledge, they have already had such training in place and need not be provided by the police. How should air crew members respond if the aircraft is hijacked? According to my understanding, the airline companies have already provided such training. Should the police involve in training? I think the police's involvement is not necessarily needed because it is the airline companies' responsibility to provide relevant training. The airline company has to undertake full responsibility in selecting the right person to provide training to flight attendants or ground crew.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Hello, Secretary. You feel sorry for failing to legislating under Article 23 of the Basic Law, you are awesome .....*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *Yes. The Secretary has given an irrelevant answer. Mr LEE Cheuk-yan asked whether a system would be established to require the reporting of assaults to the police or the relevant unit; the Secretary in reply, said that it is fine for people fighting in the street to settle on their own. This certainly is a lie. I reported to the police that I was beaten up, but police officers did not handle the case, because the person who beat me up belongs to the royalist camp. The case was so concluded. The old guy who beat me up is still at large while I will be sent to jail tomorrow.*

*He asked you whether a system should be established to requiring the reporting of cases to the police, but you did not reply. I tell you, aircrafts are very dangerous stuff which are totally different from two people's arguing over trivial matters in the street. Fighting in the street or even taking punches is no big deal as long as one can withstand the pain .....*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *Yes, I have grounds.*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *He has made the wrong analogy. Places all over the world have implemented top class security on aviation security, that is why tourists have to spend hours undergoing security inspection procedures. I think the Secretary is giving an irrelevant answer. Do you think airline companies should report to the security unit incidents of assaults? Whether or not to pursue responsibility is another issue. Keeping a case record can help to get the statistical data, should this be done?*

**SECRETARY FOR SECURITY** (in Cantonese): President, in reply to Mr LEUNG's question, I want to tell him that in fact, such a mechanism does exist. If someone is being assaulted, under the current mechanism, he can report the case to the police and in-depth investigation will be conducted.

Referring to Mr LEE Cheuk-yan's question, according to my understanding, there are frequent incidents that passengers on board an aircraft may provoke the flight attendants who may feel being harassed, but they are not necessarily being attacked. Regarding the incident in question, after bringing the person in question under control, air crew members informed the ground crew and they in turn reported to the police. The case had already been dealt with by the police.

Mr LEUNG Kwok-hung asked if a mechanism is in place. Actually, there is a mechanism. Members of the public are encouraged to report to the police any acts that violate the laws of Hong Kong within the territory of Hong Kong, not only restricted to those on board an aircraft.

**MR LEUNG KWOK-HUNG** (in Cantonese): *He has not answered my question.*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *He said that keeping a case record was necessary and that a mechanism was in place and he encouraged the reporting. Yet he did not answer the question. It is just like when you, President, evict me from the Chamber, I must leave, but if President, you want me to shut up, it is another matter .....*

**PRESIDENT** (in Cantonese): Very clear.

**MR LEUNG KWOK-HUNG** (in Cantonese): *..... you evict me, I must get out. What is he talking about?*

**PRESIDENT** (in Cantonese): Secretary, is it a must to make a report to the police?

**SECRETARY FOR SECURITY** (in Cantonese): President, I think our laws do not mandatorily require any person to report a case to the police.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Buddy, not to report to the police but to keep a case record. It has been made clear. Who is he? You had better evict me.*

**PRESIDENT** (in Cantonese): Mr LEUNG, the Secretary has already given his reply. Last oral question.

### **Rights and Benefits of Inmates**

6. **MR LEUNG KWOK-HUNG** (in Cantonese): *President, this is indeed a timely question, since I will have the opportunity to enjoy this kind of benefits.*

**PRESIDENT** (in Cantonese): Mr LEUNG, please raise your main question.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Yes, President. Hi, Secretary. Good morning.*

*Some inmates and discharged inmates have relayed to me that the Correctional Services Department (CSD) has exploited the rights and benefits of inmates and neglected their basic needs. In this connection, will the Government inform this Council:*

- (a) *given that at present the CSD provides each male inmate one roll of toilet paper (eight sheets per day on average) once every three weeks, whether the Government has assessed if eight sheets of toilet paper are sufficient to meet the daily hygiene needs of those male*



*detainees who do not have an additional supply of toilet paper from their relatives and friends; if the assessment outcome is in the negative, whether the Government will immediately increase the quantity of toilet paper provided for each male inmate to not less than 16 sheets per day; if it will, of the time to do so; if not, whether it will assess if the Government has neglected the hygiene needs of such persons;*

- (b) of the respective market values of the products and services provided by the CSD to various government departments, companies and organizations in the past five years; the monthly wage levels of convicted inmates working in prisons at present, as well as the respective wage amounts at different levels and numbers of convicted inmates remunerated at different wage levels; whether the CSD will immediately calculate the wages of inmates working in prisons in accordance with the Minimum Wage Ordinance in order to protect their statutory rights and benefits; if it will, of the time to do so; if not, whether it will assess if the CSD is exploiting the inmates; and*
- (c) given that the Government has already issued digital audio broadcasting (DAB) licences, whether the CSD will allow inmates the choice of using digital radio sets in prisons to listen to DAB programmes of different types or languages; if it will, of the time to do so; if not, whether it is because DAB programmes impede or have impact on correctional or security work, and whether it will assess if the CSD impedes the freedom of inmates (particularly those speaking non-local languages) to receive broadcast information in prisons?*

**SECRETARY FOR SECURITY** (in Cantonese): President,

- (a) The CSD always attends to the basic needs of inmates. Given the different physiological needs of males and females, male inmates are provided with one roll of toilet paper every three weeks and female inmates are provided with two rolls each month. Each inmate may also use his/her earnings from the work in the institution to purchase

tissues or other daily consumable items, snacks, and so on. Should inmates need additional toilet paper, they may make a request to the staff at the institutions. The CSD staff is ready to exercise discretion to accede to such requests based on the actual needs of the inmates concerned.

- (b) The CSD is responsible for the custody of inmates and the provision of comprehensive rehabilitative services. The daily necessities of the inmates, such as meals, clothing, hygiene items and medical service, and so on, are provided by the Hong Kong Government through the CSD. In accordance with Rule 38 of the Prison Rules, Chapter 234A of the Laws of Hong Kong, all convicted adult prisoners are required to engage in work as arranged by the CSD, unless they are certified by a Medical Officer of the Department as unfit for work on medical grounds.

The purpose of the work and earnings scheme for inmates is to provide earnings as an incentive for inmates to acquire good working habits and vocational skills through engagement in useful work. Inmates may purchase approved daily consumable items or snacks with their earnings, or withdraw their saved earnings upon discharge. As the CSD arranges inmates to work according to the Prison Rules, the Department does not have an employer/employee relationship with inmates. Therefore, the Minimum Wage Ordinance does not apply to inmates working in correctional institutions. Moreover, given all basic necessities of inmates are provided by the Government and prices of approved daily consumable items and snacks are set with reference to inmates' purchasing power, there is no question of the level of inmates' earnings being too low to meet their basic living needs.

The CSD determines the job grades according to various factors such as the types of work, the technical requirements of each position and the working environment, and so on. Earning of each job grade ranges from \$38.01 per week to \$163.7 per week. Inmates who are unable to work due to health reasons, or newly convicted inmates who are yet to be arranged to work as they are attending the one to

three-day induction courses, may receive a basic level of earnings of \$20.16 per week. The job grades, their respective amounts of earnings applicable to adult inmates and the number of inmates at different earning levels as at May 2012 are at Annex.

The estimated commercial values of the industrial products and services provided by the CSD to government departments and public organizations in the past five years are as follows:

2007	\$455 million
2008	\$441 million
2009	\$439 million
2010	\$395 million
2011	\$422 million

The CSD provides industrial products and services to government departments and public organizations on a cost recovery basis. As only direct production costs such as material and transportation costs are recovered, no actual and additional revenue will be generated for the CSD or the Government. The "commercial value" of products and services I just mentioned are only book values with reference to the costs of similar products and services available in the market. In practice, the CSD pays the material costs in advance and then proceeds with the production. Upon delivery of the products, the CSD recovers the pre-paid material and transportation costs from the receiving departments and public organizations.

- (c) Inmates have access to information on entertainment, social and current affairs through the public broadcasting on television and radio stations. In general, the CSD provides television sets in dining halls and day rooms of the institutions for inmates and allows inmates to have their own radio sets of a specified model for watching television programmes or listening to radio broadcasting. Some of the current AM and FM radio stations provide programmes for audience who come from the Mainland, Philippines and Indonesia, and so on. Inmates of different nationalities may listen to such programmes.

So far, the CSD has not received any application or request for digital radio sets from inmates. If the CSD receives applications from inmates to purchase digital radio sets, they will, subject to the circumstances, give due consideration in accordance with the established mechanism.

Annex

Earnings of various job grades for adult inmates  
and the number of adult inmates at different earning levels  
(as at May 2012)

<i>Grade*</i>	<i>Weekly earnings (\$)</i>		<i>Number of inmates</i>	
	<i>Apprentice</i>	<i>Skilled</i>	<i>Apprentice</i>	<i>Skilled</i>
Basic <sup>#</sup>	20.16		462	
A	38.01	54.55	50	665
B	45.02	68.15	266	600
C	51.21	81.74	115	887
D	65.18	108.72	168	1 354
E	79.00	136.34	83	1 933
F	92.36	163.70	2	613

Notes:

- \* The CSD sets the level of earnings according to factors such as skill requirement of each job position and working environment, and so on. For example, cleaning of workshops requires a lower level of skill and falls within "grade A", whereas pattern making of garment requires a higher level of skill and falls within "grade F".
- # Inmates who are unable to work due to health reasons, or newly convicted inmates who are attending induction courses and are yet to be assigned any work may receive the basic level of earnings.

**MR LEUNG KWOK-HUNG** (in Cantonese): *President, the Secretary has never been jailed before, but I have. President, as the Secretary has never been jailed, of course he does not know the real situation. He said there is multi-lingual service, this is simply nonsense. With only a few minutes' broadcast, it is already regarded as multi-lingual service. However, what I have just said is not my supplementary question.*

*The Secretary speaks with a highly bureaucratic tone. He said that owing to physiological needs, females are provided with one more roll of toilet paper every month. That is all. This is probably a measure in response to their menstrual needs, right? The Secretary could by all means say it out directly.*

*President, I remember that there was a senior government official in the United States called WEINBERG. Now the Secretary has really acted as though his name is WEINBERG<sup>(1)</sup>, holding back the reason for providing each inmate with eight sheets of toilet paper per day. He did not explain why eight sheets are provided. Holding back the reason for providing eight sheets, he is indeed acting as a senior government official.*

*President, to be fair, suppose an inmate gets up in the morning, goes to the lavatory and uses two to three sheets of toilet paper. After he finishes his meal, he uses one sheet to wipe his mouth. Then in the afternoon, suppose he has diarrhoea and uses two more sheets. What else can he use then?*

*President, I think they are irresponsible. Let me explain to you briefly. Prisoners are supposed to have a hard time, to which we do not have any objection. They should not be like people outside the jail, who can have so much freedom and enjoy anything. However, this is a hygiene need. If they need to spit ..... I often have phlegm in my throat. If I am working in jail, where should I spit?*

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

**MR LEUNG KWOK-HUNG** (in Cantonese): *Thus, the Secretary cannot hold back the reason for providing eight sheets of toilet paper in such a way. He should explain why the provision of eight sheets can meet the need. Moreover, females have menstruation. Why are eight additional sheets enough for their use? Has he drawn reference from the females' viewpoints? Now the Secretary has got to explain — as though his name is "WEINBERG", he is*

(1) The Chinese translation of the name "WEINBERG" is "韋恩伯格". The Member used this name to describe the Secretary because in Cantonese, "韋恩" has the same pronunciation as "諱因", which means avoid telling the reason, while "伯格" sounds like "八格", which means eight sheets.

*holding back the reason for providing eight sheets — he has got to explain why eight sheets are provided. It is that simple.*

**PRESIDENT** (in Cantonese): If you have already raised your supplementary question, please sit down.

**MR LEUNG KWOK-HUNG** (in Cantonese): *Or in Japanese, being "ばか" (pronounced like "八格" (eight sheets) in Cantonese) .....*

**PRESIDENT** (in Cantonese): Please let the Secretary respond to your question.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... "ばか", that means idiot, "ばかやろう"<sup>(2)</sup>.

**SECRETARY FOR SECURITY** (in Cantonese): President, just now when I replied to part (a) of Mr LEUNG's main question, I have already pointed out that at present, in the light of the inmates' basic and physiological needs, the CSD provides male inmates with one roll of toilet paper every three weeks. Such a practice has been adopted for years. Nevertheless, I have also pointed out in part (a) of my main reply that if individual inmates have special needs and wish to get more toilet paper, the staff will exercise discretion to accede to such requests based on their actual needs.

**MR TAM YIU-CHUNG** (in Cantonese): *President, some inmates have relayed to me their wish to increase the number of times which they can call their families, and some inmates who have young children especially have such a need. In this regard, can the Department give consideration on humanitarian grounds?*

(2) It is a Japanese expression which means idiot or jerk.

*Besides, usually inmates will take a break on Sunday morning and watch television together. However, all the television programmes broadcasted on Sunday morning are cartoons. Inmates find such programmes unsuitable for adults, yet they cannot but continue to watch cartoons. Can the Department make any adjustment in this regard so as to satisfy the need of adult inmates?*

**SECRETARY FOR SECURITY** (in Cantonese): President, there is no relevant rule in the existing legislation, but the CSD has established procedures which allow inmates to contact their relatives and friends by phone in the light of individual circumstances. Inmates can also keep in contact with their relatives and friends through the usual visits or correspondence. We consider the present measures appropriate.

Since some inmates, especially female inmates, have young children, now we have set up parent-child centres in all the institutions for women so that these female inmates and their young children can spend a period of time together.

As for the lack of television programmes suitable for adults on Sunday morning when very often the broadcasts are only cartoons, I will look into the matter first and discuss this issue with the CSD to see if television programmes which are more suitable for adults can be arranged.

**DR MARGARET NG** (in Cantonese): *President, I also wish to follow up the question on phone calls. As Mr TAM Yiu-chung has just mentioned, this request has been made by inmates repeatedly over the years. Nowadays, with such advancement in telecommunication, the CSD still sticks to the practice of making phone calls by appointment. Moreover, the telephone conversation can last only three minutes, and prior appointment has to be made so as to confirm who the other party is before they are allowed to talk with each other. President, as we have mentioned a number of times, this contradicts their rehabilitative services because if inmates can have more contact with their relatives and friends and receive their support, it will be easier for them to rehabilitate.*

*Hence, may I ask the Secretary, what problem has caused this issue to stall for so many years and made the Department adhere to such an old practice? If*

*it is for security reason, the problem will be solved so long as with whom the inmates will speak on the phone is known in advance. When will the Secretary allow inmates to call their families and friends more freely?*

**SECRETARY FOR SECURITY** (in Cantonese): President, as I said just now, inmates have lost part of their freedom, and we should have no objection to this point. For this reason, they cannot make phone calls whenever they want. Nevertheless, at present, the CSD has put in place an internal procedure which actually allows inmates to contact their relatives and friends by phone through certain formalities, but they cannot make phone calls whenever they want. They need to follow certain formalities.

As for whether our procedures are too rigid, I can tell Dr Margaret NG that we will conduct a review. Yet after all, inmates are inmates. They cannot make phone calls as they please. On whether making more phone calls can assist in their rehabilitation, I need to have more discussions with experts on this issue.

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

**DR MARGARET NG** (in Cantonese): *President, of course I know inmates will lose part of their freedom .....*

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

**DR MARGARET NG** (in Cantonese): *My supplementary question is, as the current practice has operated for a long time, what is the present progress? When will the Secretary relax the relevant rules?*



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

**SECRETARY FOR SECURITY** (in Cantonese): President, just now I promised that we will conduct a review. Should Members ask about the issue again in this Chamber later, I will inform you of the review results.

**MR CHIM PUI-CHUNG** (in Cantonese): *President, most of the inmates have requested the CSD to provide soy sauce and instant noodles, and such a request has been made many, many times. I would like to take this opportunity to ask the Secretary, as he is going to leave office soon, can he officially commission the CSD to study this issue? How come soy sauce and instant noodles cannot be provided?*

**SECRETARY FOR SECURITY** (in Cantonese): President, in our provision of meals to inmates, we follow one principle, which is to provide them with plain and wholesome food. The various types of meals which the CSD currently provides to inmates are designed by authorized dieticians and approved by doctors of the Department of Health to meet the nutritional needs of inmates. After a number of reviews and revisions, the CSD has adjusted the number of times of serving food such as eggs, melons, vegetables and fruits and the weight of such food in various categories of meals.

I do not quite understand the supplementary question raised by Mr CHIM Pui-chung. Does he mean the inmates want to use their savings to buy instant noodles? Or does he hope we will include instant noodles in the daily meals provided by the Government?

**MR CHIM PUI-CHUNG** (in Cantonese): *The CSD puts up items for sale twice a month, and the people concerned may use their earnings to buy non-staple food or other items for use. Hence, I request the Secretary to give an instruction to the CSD before his retirement to conduct a study on listing instant noodles and soy sauce as official commodities for sale in the future. How come they cannot be put up for sale? These are not prohibited goods. If the Secretary says it is*

*not practicable, what is the reason? For how much longer do inmates have to suffer such torture, particularly when they have already put up the request for decades? I wonder how many inmates who strived for the sale of instant noodles and soy sauce have already passed away for a long time .....*

**PRESIDENT** (in Cantonese): The Secretary is clear about your supplementary question.

**SECRETARY FOR SECURITY** (in Cantonese): I thank Mr CHIM for bringing up this request. As far as I understand it, inmates may use their savings, that is, the earnings they have obtained from work, to buy daily necessities and snacks. There are 70-odd items which the CSD allows them to buy.

It is the first time I have heard what Mr CHIM has mentioned, that these 70-odd items of food and daily necessities do not include instant noodles and soy sauce. President, I will try to understand the situation when I go back.

**MR CHIM PUI-CHUNG** (in Cantonese): *I hope the Secretary will do his best to fight for them.*

**MR LEUNG YIU-CHUNG** (in Cantonese): *Perhaps since the Secretary has never been jailed before, he does not quite understand the relationship between inmates and the CSD staff. Just now when the Secretary replied to Mr LEUNG Kwok-hung, he advised that if inmates have a special need for more toilet paper, they could ask his colleagues in the CSD for it. However, we know they will have to bear a lot of unfriendly gestures, and even so, they may not necessarily be able to get what they want. Therefore, it is worthwhile for the Secretary to go back and study this problem and consider whether the amount of toilet paper provided can be reviewed. In fact, not only male inmates but also female inmates have put forth such a request. I hope the Secretary can go back and conduct a review.*

*Nevertheless, President, this is not the focus of my supplementary question. What I want to ask in my follow-up question concerns the Secretary's reply on the*

*issue of earnings, because he has indicated that the CSD does not have an employer-employee relationship with the inmates. Actually, apart from the issue of earnings, there is the question of work injury. Since the CSD does not take out any labour insurance for inmates, should inmates get injured at work, they will not receive any compensation. Minor work injury will not pose any problem and can be handled easily. However, if the work injury is serious and there is no labour insurance, the inmate's future livelihood will be affected after he leaves prison. Thus, I would like to ask the Secretary again, will he reconsider taking out labour insurance for inmates?*

**SECRETARY FOR SECURITY** (in Cantonese): President, since the CSD does not have any employer-employee relationship with the inmates, the Department will not — let me reiterate that it will not — take out labour insurance for inmates. However, if inmates suffer work injury during their term of imprisonment, resulting in a certain degree of permanent disability, and the incident is not caused by their own fault, they may apply to the CSD for ex gratia payment. The CSD will give consideration based on the specific circumstances of each case.

In the past, there were some cases where inmates had industrial accidents for which we needed to issue ex gratia payment. Since 2000, there have been a total of three occasions on which the CSD issued ex gratia payment to inmates who got injured at work. Besides, the Department is currently processing two other applications for ex gratia payment. The factors of consideration in the calculation of ex gratia payment mainly include the average monthly salary of workers in general on the day of discharge of the inmates, the degree of their permanent disability, and their age when they are discharged.

**MR CHIM PUI-CHUNG** (in Cantonese): *President, did Mr LEUNG Kwok-hung declare interests just now? If he pleads guilty, he will have to go to prison.*

**PRESIDENT** (in Cantonese): Oral question time ends here.

**WRITTEN ANSWERS TO QUESTIONS****Good Manufacturing Practice in Respect of Proprietary Chinese Medicines**

7. **MR VINCENT FANG** (in Chinese): *President, some members of the proprietary Chinese medicine (pCm) manufacturing industry have reflected that Macao has confirmed the construction of the Guangdong-Macao Traditional Chinese Medicine Science and Technology Industrial Park in Hengqin, and to use preferential policies to attract members of the industry to establish business there, and although the pCm manufacturing industry has a long history of development in Hong Kong, with many famous brands produced, there is a lack of government support for the industry. They have pointed out that the Government has indicated that it will implement the Good Manufacturing Practice in respect of Proprietary Chinese Medicines (GMP-pCm) step by step, but at present no uniform standard has been established yet. Further, they have pointed out that as Hong Kong lacks plants which can meet the requirements under GMP-pCm and consultants with relevant experience, the demand can hardly be met, and pharmaceutical manufacturers also need to make big investments so as to comply with GMP-pCm, thus so far only six of the 300-odd pCm manufacturers across the territory have obtained the certificate for compliance with GMP-pCm, and some manufacturers need to find pharmaceutical manufacturers in other places which comply with GMP-pCm to produce products of their pCm brands on their behalf, thereby hindering the development of the industry in Hong Kong. In this connection, will the Government inform this Council:*

- (a) *whether it knows the number of pCm brands produced by pCm manufacturers in Hong Kong; the number of their factories in Hong Kong, their scale of operation and the number of employees; Hong Kong's pCm brands which had ceased production in the past 10 years; whether the Government has planned to support and help such brands which had ceased production to resume production and supplies to the market; if it has, of the plan; if not, the reasons for that;*
- (b) *whether it has drawn reference from GMP of other countries or regions in formulating the GMP-pCm for Hong Kong; the current number of consultancy firms and personnel possessing the relevant professional knowledge in Hong Kong; whether the Government has*

*any plan in place to provide professional training relating to GMP-pCm so as to satisfy the development needs of the industry;*

- (c) whether the Government will study how to help solve the aforesaid problem of the lack of suitable plants; whether it will set aside sites at existing industrial estates (IEs) for the development of the pCm manufacturing industry; whether it will consider constructing plants that meet the pCm GMP standards for use by the industry; whether it will convert existing factory buildings for use by small and medium-sized manufacturers;*
- (d) whether it has compiled statistics on the manpower resources needed for the implementation of GMP-pCm by the pCm manufacturing industry; whether it knows if there are vocational training courses on pCm production at present; if so, of the number of such courses in the past three years; the number of people who had completed such courses, and whether they have joined the industry upon graduation; if not, whether it will design and introduce relevant training courses to meet the development needs of the industry; and*
- (e) whether the Government will draw reference from the practice of the Macao Special Administrative Region Government and set up a traditional Chinese medicine (CM) science and technology industrial park exclusively for the development of the pCm manufacturing industry, and introduce preferential policies to assist in the development of the industry; if it will, of the details; if not, whether it has assessed if enterprises which produce local pCm brands will move to Hengqin for developing their business?*

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Chinese): President, the question touches on various areas such as regulation of CM, vocational and manpower training relating to the CM industry, and the work and infrastructure in support of the development of the pCm manufacturing industry. The Innovation and Technology Commission (ITC) under the Commerce and Economic Development Bureau promotes CM research and development (R&D). The Hong Kong Science and Technology Parks Corporation (HKSTPC), supported by the ITC, operates the Hong Kong Science Park (Science Park) and the IEs, which respectively provides research facilities to

promote CM R&D and infrastructure for the CM manufacturing industry. Regulation of CM in Hong Kong falls under the policy area of the Food and Health Bureau, whereas CM-related vocational and manpower training are under the purview of the Education Bureau. We have consulted the Food and Health Bureau and the Education Bureau and incorporated their inputs in preparing this reply.

Our reply to Mr Vincent FANG's question is as follows:

- (a) There are at present 295 pCm manufacturers in Hong Kong who, in accordance with the Chinese Medicine Ordinance (Cap. 549) (CMO), hold licences issued by the Chinese Medicines Board (CMB) under the Chinese Medicine Council (CMC) of Hong Kong. Most of them are small and medium enterprises (that is, with less than 100 employees). According to statistics on the CM sector in Hong Kong from the Census and Statistics Department, the number of persons engaged in the local CM manufacturing industry was about 1 900 in 2009. On the other hand, among the pCm registered under the CMO to be manufactured or sold in Hong Kong, more than 6 000 are manufactured by local pCm manufacturers. It is a business decision of pCm manufacturers whether the pCm are actually manufactured or sold in Hong Kong. The CMC currently does not maintain statistics on the number of pCm/brands of pCm available in the market.
- (b) At present, the GMP requirement in respect of pCm in Hong Kong is not mandatory. Manufacturers holding a pCm manufacturer licence may apply to CMB for a Certificate for Manufacturer, certifying that they follow the requirements of good practices in manufacture and quality control of pCm. CMB issued the "Hong Kong GMP Guidelines for Proprietary Chinese Medicines" in 2003 with reference to the relevant GMP guidelines published by the World Health Organization and the Pharmacy and Poisons Board of Hong Kong. There are now eight pCm manufacturers who have been awarded with GMP Certificates.

To ensure the quality and safety of pCm, the Chief Executive announced in his 2010-2011 Policy Address that a timetable for mandatory compliance with GMP for manufacture of pCm would be

worked out, to keep up with international trends of developing GMP for medicines. Having taken reference of the development of GMP in other countries and regions in the world, CMB recommended in May 2011 adoption of the Pharmaceutical Inspection Convention and Pharmaceutical Inspection Co-operation Scheme (PIC/S) GMP standard as a licensing requirement for local pCm manufacturers. Since May 2011, CMB has been in wide consultation with the CM trade to gather the views of the trade through various channels on the timetable and specific arrangements, including the conduct of a series of briefings through the Department of Health (DH) and attending meetings with CM associations and various pCm manufacturers. Local and Mainland experts have also been invited to brief the CM traders on the GMP requirements, training and consultancy services; as well as to share experiences in the implementation of GMP. The DH has provided information on the proposed GMP implementation plan to all licensed CM traders through the Chinese Medicines Traders Newsletter. All relevant information is available online for reference and comment by the trade.

To assist pCm manufacturers in the implementation of GMP, the DH will meet with manufacturers who are interested in the implementation of GMP and already have preliminary designs of their factory premises, to explain to them the requirements of the current GMP guidelines.

In addition to assistance provided by the Government, CM manufacturers may also engage suitable consultant companies or GMP professionals to assist in staff training, in accordance with their own needs and requirements. At present, GMP training is available in Hong Kong, the Mainland and overseas. The Government will continue liaise closely with the trade and offer assistance to enable them to secure the relevant information. The Government also welcomes views from the trade, facilitating compliance with GMP requirements for manufacture of pCm to be implemented in a gradual and progressive manner.

- (c) The three IEs in Tai Po, Yuen Long and Tseung Kwan O managed by HKSTPC provide land for industries which would upgrade our

manufacturing bases, but could not be operated in traditional multi-storey industrial buildings (including the CM manufacturing industry). About 95% of the IE greenfield sites have been granted so far. As at May 2012, there were over 160 organizations operating in the three IEs, over 10 of which were related to CM manufacturing, including one situated in the GMP Centre of Tai Po IE. To support the long-term development of the high technology industry, we have invited HKSTPC to explore the feasibility of expanding the Yuen Long IE by about 16 hectares. If the consultancy study confirms the feasibility of the plan, we will further explore ways to support the development of high technology industry in the site and create synergy with the existing companies in the Estate. CM manufacturing will be amongst the industries to be considered. On the other hand, HKSTPC will continue to encourage grantees that are not fully utilizing their IE sites to consider assigning the sites to new users who meet the prevailing admission criteria of IEs. We especially welcome projects involving advanced technology, high investment, high value-added and more technical personnel to move into IEs. There have been successful cases of assignment of sites originally granted for traditional manufacturing projects to CM manufacturing projects. HKSTPC will further enhance the revitalization of IEs to release precious land for high technology projects.

- (d) The manpower resources required for full implementation of mandatory GMP requirements for manufacture of pCm depend on various factors, such as the number of pCm manufacturers that will implement GMP, as well as manpower savings arising from the adoption of mechanized manufacturing technology due to the implementation of GMP. As regards training of personnel, a number of institutions in Hong Kong (including the Hong Kong Baptist University, HKU School of Professional and Continuing Education, School of Continuing and Professional Studies of The Chinese University of Hong Kong and the Vocational Training Council, and so on) have offered a total of eight diploma and degree programmes or on-the-job training courses relating to CM manufacturing, pCm and pharmacy in CM in the recent three academic years, and about 650 participants have already completed these programmes/courses. In addition, the DH has attended



meetings of the Employees Retraining Board to put forward suggestions on training targeted at the CM trade. Besides, some local R&D and technology consultancy organizations, such as the Hong Kong Institute of Biotechnology and Hong Kong Productivity Council, will organize GMP-related training courses and provide technical consulting services in response to market demand.

- (e) As different economies are unique in their development of CM, the Administration will draw on the experience of different places and devise an appropriate plan in promoting the future development of CM in Hong Kong in light of the characteristics, needs and views of stakeholders in Hong Kong. While the Government currently does not have any plan to set up a traditional CM science and technology industrial park exclusively for the development of the pCm manufacturing industry, we will examine in detail the local industry's need for such infrastructure, evaluate the sustainability and cost-effectiveness of different development plans, and review the existing operation of the Science Park and IEs to see how we should facilitate development and provide support in this regard.

The Government has been attaching great importance to CM development in Hong Kong and striving to promote the sustainable development of the local CM industry on various fronts:

- (i) On R&D, the Government provides funding support to the local CM industry to conduct applied research projects relating to CM R&D and testing through various funding support programmes under the Innovation and Technology Fund. Among these programmes, the Innovation and Technology Support Programme and the University-Industry Collaboration Programme aim to encourage companies to jointly carry out R&D projects with the universities by leveraging their expertise. The Small Entrepreneur Research Assistance Programme provides funding support for small and medium-sized enterprises to conduct CM R&D so as to facilitate their business development. The General Support Programme provides funding support for projects which can enhance and facilitate the CM industry development such as conferences/exhibitions, workshops, research and surveys.

- (ii) Regarding testing and certification of CM, the Government has been promoting the development of the testing and certification industry in Hong Kong, including enhancing the local CM testing capabilities in the aspects of technology and manpower training. At present, there are over 10 accredited laboratories in Hong Kong providing testing services for Chinese herbal medicines and pCm, which will help the CM trade in product quality assurance.
- (iii) As for infrastructure, in addition to the three IEs mentioned above, the Science Park under HKSTPC provides the industry with research infrastructure, including the two biotechnology buildings established in Science Park Phase Two as well as laboratory facilities for companies in the Park. The biotechnology industry (including CM and western pharmaceuticals) will be further promoted in the Phase Three development.
- (iv) To more effectively orchestrate efforts of Government, industry, the academic and R&D sectors in promoting the development of R&D and testing of CM to meet the future needs of Hong Kong, the Government set up the Committee on Research and Development of Chinese Medicines (the Committee) last December to explore the strategies of promoting R&D and testing of CM in Hong Kong and to join hands with all sectors to promote work in these areas. For instance, the Committee will organize a large-scale seminar in September this year and representatives from relevant organizations and experts in the fields of CM regulation, R&D, testing and certification, and clinical services will be invited to exchange ideas with the industry.

### **Conflicts Between Management Committees of Owners' Corporations and Owners of Private Properties**

8. **MR WONG YUK-MAN** (in Chinese): *President, recently, I have received quite a number of cases concerning disputes between management committees*

*(MCs) of owners' corporations (OCs) and minority owners of buildings. In this connection, will the Government inform this Council:*

- (a) given that in times of the change of MCs, elections are often co-ordinated or presided over by the incumbent MCs or the property management companies appointed by them, and some owners consider that there is a perceived conflict of interest, but since they are not familiar with matters of building management, they have nowhere to turn to for assistance, whether the authorities will review the existing legislation and the relevant rules, and arrange for the Home Affairs Department (HAD) to assist in co-ordinating matters of the change of MCs; if they will not, of the reasons for that; and*
- (b) given that some owners have reflected that some elderly owners had been misled into signing proxies to commission other people to represent them to attend and vote at owners' meetings, and since they are not familiar with matters of building management and the litigation process, it is difficult for them to seek restorative justice through legal proceedings, what measures the HAD has put in place to improve such a situation?*

**SECRETARY FOR HOME AFFAIRS** (in Chinese): President, building management is the responsibility of the owners. It is the Government's policy to play the role of a facilitator to, through multi-pronged measures, encourage and assist owners to form OCs and provide appropriate support to assist owners in discharging their building management responsibilities. The Building Management Ordinance (BMO) (Cap. 344) provides a legal framework for building management, formation and operation of OCs, and other related matters.

My reply to Mr WONG Yuk-man's question is as follows:

- (a) As an independent body corporate, individual OC is responsible for electing and appointing members of its own new MC. Schedules 2 and 3 to the BMO have clearly set out the composition and meeting procedures of an OC. In accordance with paragraph 5 of Schedule 2, all members of the MC shall retire from office at the second annual general meeting (AGM) and thereafter at every

alternate AGM. Members of a new MC shall also be elected and appointed at those AGMs.

According to paragraph 3(1) of Schedule 3, an OC's AGM shall be presided over by the MC chairman, who shall chair the meeting and elect members of the new MC in accordance with the relevant requirements as stipulated in the BMO. While the OC may commission a management company to assist in the execution of such work as the arrangement of meeting venue, the company shall not preside over the meeting in lieu of the MC chairman. Owners may at any time seek advice from designated liaison officers of the HAD of the procedures of an AGM or any relevant requirements of the BMO. The HAD staff will also attend an OC's AGM to observe the course of the meeting and may give advice on its procedures as and when necessary.

- (b) According to paragraph 4(1) of Schedule 3 to the BMO, an owner may cast a vote personally or by proxy at a meeting of the OC. The format and handling procedure of the instrument of proxy (the so-called "proxy form") have also been specified in the Schedule.

The HAD encourages owners to attend owners' meetings of the OC as far as possible to participate in building management directly and cast their votes in person. We have, by means of publicity and education such as publishing "Building Management Toolkit" in collaboration with the Independent Commission Against Corruption and other relevant organizations, reminded owners who are unable to attend the meeting personally to appoint persons they trust as their proxies to attend the meeting and vote on their behalves. They are also advised not to give any signed blank proxy instruments to others. Owners who have found themselves being misled into signing any proxy instruments may put forward a request to the MC chairman before the meeting for cancellation of the instruments submitted, or, alternatively, attend the meeting in person.

To keep in pace with the changing circumstances, the HAD is now reviewing the BMO and has set up the Review Committee on the Building Management Ordinance (Review Committee) to study in detail common problems in building management and solutions. The Review Committee will

submit an interim report to the Government in due course. We will carefully consider the way forward upon receipt of the report.

### **Service Costs of Hospital Authority**

9. **DR LEUNG KA-LAU** (in Chinese): *President, in a reply to my question on 9 May 2012, the Food and Health Bureau pointed out that the mechanism of Hospital Authority (HA) for costing "was developed with reference to the practices of global medical institutions and the cost accounting standards", and it set out the percentages of various key cost components, including "direct service costs", "expenses on clinical support services", "costs of various non-clinical support services and daily expenses of hospitals", "institutional items", and "charges for services provided by government departments", in the total unit costs of "costs per patient day for general in-patient services", "costs per accident and emergency attendance" and "costs per specialist out-patient attendance" in the past four years. In this connection, will the Government inform this Council:*

- (a) *given that the Government pointed out that the percentages of various cost components for 2011-2012 were being calculated by the HA, whether it knows the progress of the calculation and whether it can provide any information at present; and*
- (b) *whether it knows the percentages of the various aforesaid key cost components (including the expenditure on "doctors", "nurses" and "supporting staff" who are directly involved in the services of various specialties, the expenditure required for the "daily operation of various specialist services", "anaesthesia service", "pharmacy", "pathology", "diagnostic radiology", "allied health services", "meals for patients", "utility expenses", "repair and maintenance of medical equipment and machinery", "insurance costs", "information technology support for clinical computer systems", "building maintenance provided by the Architectural Services Department" and other expenditures, and so on) in the total unit costs of costs per patient day for general in-patient services, costs per accident and emergency attendance and costs per specialist out-patient attendance, and set out the information in the table below?*





	Costs per patient day for general in-patient services				Costs per accident and emergency attendance				Costs per specialist out-patient attendance						
	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Others (please specify)															
Services provided by government departments to the HA	2.6%	2.8%	3.2%	1.6%		2.7%	3.3%	3.4%	1.4%		2.7%	2.9%	3.3%	1.7%	
Building maintenance provided by the Architectural Services Department															
Others (please specify)															
Total unit costs (\$)	3,440 (100%)	3,650 (100%)	3,590 (100%)	3,600 (100%)	4,050* (100%)	750 (100%)	820 (100%)	800 (100%)	800 (100%)	890* (100%)	790 (100%)	840 (100%)	880 (100%)	910 (100%)	1,030* (100%)

Note:

\* Source: Estimates of Expenditure 2012-2013



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

- (a) The HA follows an established mechanism to calculate the average costs of various services every year. Relevant costs will be calculated with reference to the total costs for each service and the corresponding volume of activities after the closing and audit of the final accounts for the year, and will be published in the HA Annual Report. The financial statement of 2011-2012 is being audited and the cost information of various services is expected to be published in the HA Annual Report by the end of 2012.
- (b) As the complexity of patients' conditions and the diagnostic services, treatments and prescriptions required vary in different years, the average service costs of different services differ between years and cannot be compared directly. Various key cost components from 2007-2008 to 2010-2011 are set out in the table below:

	<i>Costs per patient day for general in-patient services</i>				<i>Costs per accident and emergency attendance</i>				<i>Costs per specialist Out-patient attendance</i>			
	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>
Direct costs	54.3%	55.1%	54.3%	52.5%	65.3%	64.7%	63.2%	61.6%	34.9%	35.2%	36.0%	34.6%
Doctors	13.9%	14.2%	14.1%	13.3%	33.8%	33.4%	33.0%	32.0%	21.7%	22.5%	21.8%	20.7%
Nurses	31.3%	31.3%	31.2%	30.3%	24.3%	23.9%	23.1%	22.5%	8.6%	8.3%	8.0%	7.7%
Supporting staff	6.5%	6.8%	5.9%	5.7%	5.5%	5.7%	5.5%	5.3%	3.9%	3.7%	5.4%	5.3%
Daily operation of various specialist services	2.6%	2.8%	3.1%	3.2%	1.7%	1.7%	1.6%	1.8%	0.7%	0.7%	0.8%	0.9%
Clinical support services	21.7%	21.5%	22.0%	22.2%	15.2%	15.7%	16.5%	16.2%	46.5%	46.5%	45.1%	45.4%
Pathology and diagnostic radiology	7.1%	6.9%	6.8%	6.8%	10.8%	11.2%	11.3%	10.7%	15.4%	15.2%	15.4%	15.1%
Surgery and anaesthesia	6.6%	6.8%	6.9%	7.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Pharmacy	4.8%	4.5%	5.1%	5.1%	4.4%	4.5%	5.1%	5.4%	23.4%	23.5%	22.5%	23.5%
Allied health services	3.2%	3.3%	3.2%	3.2%	0.0%	0.0%	0.1%	0.1%	7.7%	7.8%	7.2%	6.8%
Non-clinical support services and daily expenses of hospitals	16.8%	16.8%	16.6%	19.3%	12.5%	12.9%	13.5%	16.9%	12.1%	12.3%	12.5%	14.7%

	<i>Costs per patient day for general in-patient services</i>				<i>Costs per accident and emergency attendance</i>				<i>Costs per specialist Out-patient attendance</i>			
	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>
Non-clinical support services (for example, meals for patients and transfer services)	5.1%	5.0%	5.3%	5.2%	2.7%	2.9%	3.7%	3.7%	1.9%	2.2%	2.3%	2.2%
Repair, maintenance and depreciation of property, medical machinery and equipment	4.1%	3.9%	4.0%	6.3%	3.0%	2.9%	3.2%	6.0%	3.3%	3.1%	3.7%	5.4%
Other daily expenses of hospitals (including utility expenses)	7.6%	7.9%	7.3%	7.8%	6.8%	7.1%	6.6%	7.2%	7.0%	6.9%	6.5%	7.1%
Institutional items	4.6%	3.8%	3.9%	4.4%	4.3%	3.4%	3.4%	3.9%	3.8%	3.1%	3.1%	3.6%
Information technology support for clinical computer systems	1.9%	2.0%	2.1%	2.3%	1.8%	1.8%	1.9%	2.0%	1.6%	1.6%	1.7%	1.8%
Others	2.7%	1.8%	1.8%	2.1%	2.5%	1.6%	1.5%	1.9%	2.2%	1.5%	1.4%	1.8%
Services provided by government departments to the HA	2.6%	2.8%	3.2%	1.6%	2.7%	3.3%	3.4%	1.4%	2.7%	2.9%	3.3%	1.7%
Building maintenance provided by the Architectural Services Department and building depreciation	2.5%	2.6%	3.0%	1.4%	2.6%	3.2%	3.3%	1.2%	2.4%	2.6%	3.0%	1.4%
Others	0.1%	0.2%	0.2%	0.2%	0.1%	0.1%	0.1%	0.2%	0.3%	0.3%	0.3%	0.3%
Total unit costs (\$)	3,440 (100%)	3,650 (100%)	3,590 (100%)	3,600 (100%)	750 (100%)	820 (100%)	800 (100%)	800 (100%)	790 (100%)	840 (100%)	880 (100%)	910 (100%)

**Use of Vacant School Premises**

10. **MR ALBERT HO** (in Chinese): *President, in reply to a question of this Council on 15 February this year, the Government indicated that, among the premises of 86 primary schools and 15 secondary schools that had become vacant from 2004-2005 to 2011-2012 school years, 49 of them are considered not suitable for further educational uses, and therefore have already been or will be returned to the relevant government departments for disposal. In this connection, will the Government inform this Council:*

- (a) *among the premises of the aforesaid 49 schools, of those premises that have been and those that have not been returned to the relevant government departments for disposal at present; of the anticipated time by which all such premises can be returned to the departments for disposal;*
- (b) *of the names of the aforesaid 49 schools, and list them by the number of years they had become vacant (that is, five years or less, more than five years to 10 years, and more than 10 years); further, list the detailed addresses of such schools, site area and planned uses of such premises by the 18 District Council districts (districts); and*
- (c) *whether the authorities have reviewed if the sites released by the aforesaid 49 schools that had become vacant are suitable for housing development; if they have, of the outcome; if not, whether they will conduct such a review; if they will, of the anticipated time by which the outcome of the review will be released; the anticipated time by which housing development can be carried out on those suitable sites, and the respective numbers of public and private housing units that can be constructed, together with a breakdown of the locations of the sites and the numbers of units by district?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): *President, in accordance with the existing mechanism for reviewing vacant school premises, whenever the Education Bureau determines that a vacant school premise is no longer required for further educational use and intends to return or transfer it to other government department(s), the Planning Department (PlanD) will review the long-term use of that site. According to the Education Bureau, among the 86 primary schools*

closed under the policy on "Consolidation of Under-utilized Primary Schools" and another 15 secondary schools closed from 2004-2005 to 2011-2012 school years, 49 premises are considered not suitable for further educational uses because of their small sizes and remote locations. The Education Bureau has informed the PlanD that these 49 premises are not suitable for further educational use and would return them to the relevant government departments for consideration for other uses under the prevailing established arrangement.

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

- (a) Most of these 49 premises have already been returned to the relevant government departments in accordance with the corresponding lease conditions and established policy for other uses. For individual premises on Government land allocated to the Education Bureau, according to the prevailing terms and conditions for use of the sites, the Education Bureau will hand over the premises to the next user department upon approval by relevant government departments for the future use of the premises concerned.

(b) and (c)

A breakdown of the vacant school premises by district and by the year in which the schools ceased operation is at Annex I. The relevant breakdown by district, address and site area is set out at Annex II. The PlanD is reviewing the land uses of the vacant school premises in consultation with relevant departments. In so doing, it will take into account the situations and environments of the districts concerned, ancillary transport facilities as well as other relevant factors in assessing whether the vacant school premises are suitable for Government, Institution and Community (GIC) facilities or other uses (including residential development) so as to ensure optimal land use. As the vacant school sites are mainly located in remote areas of the New Territories or outlying islands, with small developable site sizes, lack supporting facilities (such as roadways) or involve historic buildings worthy of preservation, it is likely that they are more suitable to be retained for GIC uses (such as rural amenities). Nevertheless, we will also examine whether there are any vacant school sites that are suitable for residential or village-type development.

## Annex I

49 vacant school premises returned/to-be-returned  
to the Government for disposal  
by district and by the year in which the schools ceased operation

<i>District</i>	<i>Number of schools that ceased operation from the 2004-2005 to 2008-2009 school year</i>	<i>School Name</i>	<i>Number of schools that ceased operation from the 2009-2010 school year onwards</i>	<i>School Name</i>
Central and Western	0		0	
Eastern Islands	0		0	
Islands	3	- Lo So Shing School - Peng Chau Chi Yan Public School - New Territories Heung Yee Kuk Southern District Secondary School	1	- Cheung Chau Fisheries Joint Association Public School
Kowloon City	0		0	
Kwai Tsing	2	- The Hong Kong Sze Yap Commercial & Industrial Association Chan Lai So Chun Memorial School - Tsing Yi Public School (Cheung Hong)	0	
Kwun Tong	1	- Hoi Bun School	0	
North	10	- Lung Kai Public School - Lo Wu Public School - Sheung Shui Shek Wu Hui Fertilizers & Rice Dealers Association Public School	0	

<i>District</i>	<i>Number of schools that ceased operation from the 2004-2005 to 2008-2009 school year</i>	<i>School Name</i>	<i>Number of schools that ceased operation from the 2009-2010 school year onwards</i>	<i>School Name</i>
		<ul style="list-style-type: none"> <li>- Ku Tung Public Oi Wah School</li> <li>- Kwan Ah School</li> <li>- Ping Yeung Public School</li> <li>- Sam Wo Public School</li> <li>- Wah Shan Public School</li> <li>- Tsung Him School</li> <li>- King Sau School</li> </ul>		
Sai Kung	2	<ul style="list-style-type: none"> <li>- Leung Shuen Bay School</li> <li>- Sai Kung Central Primary School</li> </ul>	0	
Sham Shui Po	0		0	
Sha Tin	0		1	- Sir Ellis Kadoorie Secondary School (Shatin)
Southern	0		0	
Tai Po	5	<ul style="list-style-type: none"> <li>- Lam Tsuen Public School</li> <li>- Tai Hang Public School</li> <li>- Yuk Yin School (Tai Po)</li> <li>- Confucian Sam Lok Chow Mud Wai School</li> <li>- Sung Tak School</li> </ul>	1	- The Church of Christ in China Kei Ching Primary School
Tsuen Wan	1	- Kwai Chung Public School	0	

<i>District</i>	<i>Number of schools that ceased operation from the 2004-2005 to 2008-2009 school year</i>	<i>School Name</i>	<i>Number of schools that ceased operation from the 2009-2010 school year onwards</i>	<i>School Name</i>
Tuen Mun	4	- Tai Lam Chung Public School - Kiu Saw Public School - Lam Tei Gospel School - Tuen Mun School	0	
Wan Chai	0		0	
Wong Tai Sin	1	- Chi Tak Public School	1	- S.K.H. Kei Sum Primary School
Yau Tsim Mong	0		0	
Yuen Long	16	- Ng Wo Public Primary School - Ha Tsuen Heung Pak Nai Public School - Chi Ching School - Koon Ying School - Wang Chau Public Primary School - Wing On School - Shung Ching School - Shung Tak Catholic Primary School - Wa Fung School - Yau Tam Mei Primary School - Yuen Long Small Traders New Village Public School - Hoi Ming School - Wai Kwan Primary School	0	

<i>District</i>	<i>Number of schools that ceased operation from the 2004-2005 to 2008-2009 school year</i>	<i>School Name</i>	<i>Number of schools that ceased operation from the 2009-2010 school year onwards</i>	<i>School Name</i>
		- Ying Yin Catholic Primary School - Luen Kwong Public School - Yuen Kong Public School		
Total	45		4	

## Annex II

49 vacant school premises returned/to-be-returned  
to the Government for disposal  
by district, address and site area of the premises

<i>No</i>	<i>District</i>	<i>School Name</i>	<i>Address</i>	<i>Site Area (sq m)</i>
1	Islands	Lo So Shing School	Lo So Shing Village, Lamma Island, New Territories	706
2	Islands	Peng Chau Chi Yan Public School	9 Chi Yan Lane, Peng Chau, New Territories	1 752 (northern portion) 1 681 (southern portion)
3	Islands	New Territories Heung Yee Kuk Southern District Secondary School	18 Mui Wo Ferry Pier Road, Lantau Island, New Territories	6 950
4	Islands	Cheung Chau Fisheries Joint Association Public School	Tung Wan Road, Cheung Chau, New Territories	947
5	Kwai Tsing	The Hong Kong Sze Yap Commercial & Industrial Association Chan Lai So Chun Memorial School	Estate School No. 1, Cheung Ching Estate, Tsing Yi, New Territories	5 172



<i>No</i>	<i>District</i>	<i>School Name</i>	<i>Address</i>	<i>Site Area (sq m)</i>
6	Kwai Tsing	Tsing Yi Public School (Cheung Hong)	Estate Primary School No. 3, Cheung Hong Estate Area 4, Tsing Yi, New Territories	2 361
7	Kwun Tong	Hoi Bun School	45 Hoi Pong Road Central, Lei Yue Mun, Kowloon	390
8	North	Lung Kai Public School	Ma Cho Lung Village, Sheung Shui, New Territories	2 647
9	North	Lo Wu Public School	Lo Wu Village, Ta Ku Ling, New Territories	2 200
10	North	Sheung Shui Shek Wu Hui Fertilizers & Rice Dealers Association Public School	Ng Uk Village, Sheung Shui, New Territories	5 932
11	North	Ku Tung Public Oi Wah School	Ku Tung, Ho Sheung Heung Road, Sheung Shui, New Territories	4 146
12	North	Kwan Ah School	Tam Shui Hang Village, Sha Tau Kok, New Territories	878
13	North	Ping Yeung Public School	Ping Yeung Village, Ta Ku Ling, New Territories	16 138
14	North	Sam Wo Public School	Tsung Chai Ling, Muk Wu Tsuen, Ta Ku Ling, New Territories	2 471
15	North	Wah Shan Public School	Wah Shan Village, Sheung Shui, New Territories	13 585
16	North	Tsung Him School	Shung Him Tong Village, Fan Ling, New Territories	7 768
17	North	King Sau School	Lin Ma Hang, Ta Ku Ling, New Territories	878
18	Sai Kung	Leung Shuen Bay School	Leung Shuen Bay, Sai Kung, New Territories	1 913
19	Sai Kung	Sai Kung Central Primary School	Ho Chung, Sai Kung, New Territories	3 897
20	Sha Tin	Sir Ellis Kadoorie Secondary School (Shatin)	Area 92 Yiu On Estate, Ma On Shan, Sha Tin, New Territories	6 132

<i>No</i>	<i>District</i>	<i>School Name</i>	<i>Address</i>	<i>Site Area (sq m)</i>
21	Tai Po	Lam Tsuen Public School	Lam Tsuen, Tai Po, New Territories	1 315
22	Tai Po	Tai Hang Public School	Chung Sum Wai, Char Hang, Tai Po, New Territories	1 663
23	Tai Po	Yuk Yin School (Tai Po)	Kau Lung Hang Village, Tai Po, New Territories	1 411
24	Tai Po	Confucian Sam Lok Chow Mud Wai School	Tai Yuen Estate, Tai Po, New Territories	4 140
25	Tai Po	Sung Tak School	9-11 Shung Tak Street Tai Po, Tai Po Market, Tai Po, New Territories	386
26	Tai Po	The Church of Christ in China Kei Ching Primary School	Fu Shin Estate, Tai Po, New Territories	3 050
27	Tsuen Wan	Kwai Chung Public School	570 Castle Peak Road, Kwai Chung, New Territories	7 970
28	Tuen Mun	Tai Lam Chung Public School	16 Miles Castle Peak Road, New Territories	1 854
29	Tuen Mun	Kiu Saw Public School	Chung Uk Tsuen, Tuen Mun, New Territories	2 427
30	Tuen Mun	Lam Tei Gospel School	21.5 Milestone, Lam Tei, Tuen Mun, New Territories	3 173
31	Tuen Mun	Tuen Mun School	254 Tuen Tse Wai, Tuen Mun, New Territories	4 458
32	Wong Tai Sin	Chi Tak Public School	9 Tung Lung Road, Kowloon City, Kowloon	2 007
33	Wong Tai Sin	S.K.H. Kei Sum Primary School	Fu Shan Estate, Po Kong Village Road, Kowloon	3 600
34	Yuen Long	Ng Wo Public Primary School	Tai Wai Village, Shap Pat Heung, Yuen Long, New Territories	1 102
35	Yuen Long	Ha Tsuen Heung Pak Nai Public School	Ha Tsuen Heung, Pak Nai, New Territories	1 600
36	Yuen Long	Chi Ching School	Fraser Village, Tai Tong Road, New Territories	370

<i>No</i>	<i>District</i>	<i>School Name</i>	<i>Address</i>	<i>Site Area (sq m)</i>
37	Yuen Long	Koon Ying School	Mai Po Village, San Tin, Yuen Long, New Territories	969
38	Yuen Long	Wang Chau Public Primary School	Wang Chau Village, Yuen Long, New Territories	1 536
39	Yuen Long	Wing On School	Shung Ching San Tsuen, Tai Shu Ha West Road, Yuen Long, New Territories	3 566
40	Yuen Long	Shung Ching School	Shung Ching San Tsuen, Yuen Long, New Territories	6 297
41	Yuen Long	Shung Tak Catholic Primary School	Nam Pin Wai, Yuen Long, New Territories	410
42	Yuen Long	Wa Fung School	Lam Hau Ling, Yuen Long, New Territories	3 067
43	Yuen Long	Yau Tam Mei Primary School	Yau Tam Mei Village, Yuen Long, New Territories	2 720
44	Yuen Long	Yuen Long Small Traders New Village Public School	Small Traders New Village, DD 115, Yuen Long, New Territories	419
45	Yuen Long	Hoi Ming School	Fung Hing Li (San Wai), Yuen Long, New Territories	1 959
46	Yuen Long	Wai Kwan Primary School	Tong Yan San Tsuen, Ping Shan, Yuen Long, New Territories	3 766
47	Yuen Long	Ying Yin Catholic Primary School	Tan Kwai Tsuen, Hung Shui Kiu, Yuen Long, New Territories	3 091
48	Yuen Long	Luen Kwong Public School	Tai Tong Road, Yuen Long, New Territories	3 343
49	Yuen Long	Yuen Kong Public School	Yuen Kong Tsuen, Pat Heung, Yuen Long, New Territories	1 499

### **Retirement of Nursing Staff**

11. **DR JOSEPH LEE** (in Chinese): *President, it has been learnt that the Hospital Authority (HA) anticipates that healthcare staff born in the post-war*



		2012- 2013	2013- 2014	2014- 2015	2015- 2016	2016- 2017	2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022
<i>Anaesthesia</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Pathology</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Radiotherapy</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Accident and Emergency</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Neurosurgery</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Oncology</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Orthopaedics</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Intensive Care Unit</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Family Medicine</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Surgery</i>	<i>Number</i>										
	<i>Percentage</i>										
<i>Ophthalmology</i>	<i>Number</i>										
	<i>Percentage</i>										

- (c) *whether there will be enough experienced nurses by that time to fill those vacancies arising from retirement of the nurses concerned, as anticipated by the HA; if so, the details; if not, how the authorities will tackle the problem arising from retirement of experienced nurses; and*
- (d) *whether the HA will focus on the retirement of experienced nurses one after another and introduce new measures to retain experienced nurses to work for the HA; if it will, the details; if not, the reasons for that?*

**SECRETARY FOR FOOD AND HEALTH** (in Chinese): President, with an ageing population and advancement in medical technology, there is an increasing demand for healthcare services in the community, and the manpower requirement for healthcare personnel grows commensurately. We have set up the Steering Committee on Strategic Review on Healthcare Manpower Planning and

Professional Development, chaired by the Secretary for Food and Health, to conduct a strategic review on healthcare manpower planning and professional development in Hong Kong. The Steering Committee is tasked to formulate recommendations on how to cope with anticipated demand for healthcare manpower, strengthen professional training and facilitate professional development having regard to the findings of the strategic review, with a view to ensuring the healthy and sustainable development of our healthcare system. On the training for healthcare professions, the Government has obtained the funding approval by the Finance Committee of the Legislative Council and will, for the three years starting from 2012-2013, allocate an addition of \$200 million to increase the number of first-year first-degree places in medicine by 100 to 420 per year, nursing by 40 to 630 and allied health professional by 146. Extra places will also be offered by self-financing post-secondary institutions to train more nurses.

In the past few years, the HA has implemented a series of measures to address manpower issues. As for nursing manpower, the HA recruited some 1 730 additional nurses in 2011-2012 to meet the service demand.

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

- (a) Currently, there are a total of about 21 000 nurses in the HA. In general, the retirement age for nurses is 60. As anticipated by the HA, the number of nurses who will reach their retirement age in the coming 10 years is as follows:

<i>Cluster</i>	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
HK East	14	22	11	26	14	16	31	42	54	44
HK West	14	26	31	29	35	35	45	43	50	66
Kln East	12	16	19	16	17	17	24	20	36	45
Kln West <sup>Note</sup>	33	32	31	43	48	63	103	88	88	125
Kln Central	16	26	33	20	34	41	46	47	65	61
NT East	11	14	20	19	36	36	36	37	65	81
NT West	7	9	16	23	20	30	35	42	59	49
Total	107	145	161	176	204	238	320	319	417	471

Note:

The number of nurses in the Kln West Cluster is larger than that of the other Clusters (amounting to about 23% of the total number of nurses in the HA) and thus the anticipated number of retirees in this Cluster is also higher than that of the other Clusters.

- (b) As anticipated by the HA, the number of nurses in various specialties who will reach their retirement age in the coming 10 years is as follows:

<i>Specialty</i> \ <i>Year</i>	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
Medicine	28	38	35	37	64	58	74	77	105	119
Paediatrics	2	6	9	3	13	12	10	10	17	25
Obstetrics and Gynaecology	7	9	3	7	8	10	20	19	25	35
Orthopaedics	2	5	5	5	3	13	7	7	12	17
Psychiatry	8	15	16	34	16	31	48	62	82	84
Surgery (Including cardiac surgery and neurosurgery)	8	4	8	8	8	20	23	16	22	35
Accident and Emergency	5	3	2	2	11	9	14	13	11	14
Anaesthesiology	5	2	1	2	8	2	5	4	9	7
Ear, Nose and Throat	2	1	2	1	0	1	1	3	2	1
Family Medicine	6	8	8	10	5	9	15	6	15	12
Critical Care Medicine	0	4	3	2	2	9	6	3	5	12
Oncology	0	1	8	5	1	2	2	3	7	6
Ophthalmology	2	1	2	2	1	0	3	2	4	2
Others*	32	48	59	58	64	62	92	94	101	102
Total	107	145	161	176	204	238	320	319	417	471

Note:

- \* The nurses grouped under "Others" are mainly from the "Central Pool of Nursing Manpower Deployment" and other non-ward departments, for example, Pathology, Radiotherapy, Nursing Administration and Nursing schools, and so on. The HA will deploy the nurses in the "Central Pool of Nursing Manpower Deployment" as appropriate according to operational needs of various departments.

At present, the HA is unable to project the actual number of nurses from 2012-2013 onwards and is thus not able to provide the percentage of the total number of nurses who will retire the coming 10 years.

- (c) In recent years, the HA has recruited about 300 experienced nurses from the market each year. The HA also endeavoured to promote

the continuing professional development of nurses in order to effectively replenish the loss of professional skills arising from the turnover of nurses. A series of structured training courses are provided by the HA for all ranks of nurses. To meet the nursing needs of most of the specialties, the number of post-registration certificate courses on different specialties for Registered Nurses had increased by more than two-fold to 25 during the period from 2007-2008 to 2011-2012. Over the same period, the number of nurses trained had also increased significantly from some 400 to about 1 100.

Moreover, in the light of its overall priorities in service development, the HA has subsidized nurses to receive overseas training for attainment and enhancement of professional knowledge and skills. The HA has launched a corporate scholarship programme since 2009-2010 to sponsor Advance Practice Nurses and senior nurses to attend a four-week overseas training. In 2009-2010 and 2010-2011, over 100 nurses received sponsorships to attend overseas training. To support the career development of enrolled nurses, the HA has enhanced the training sponsorship and offered full pay salary for nurses undertaking conversion courses to attain Registered Nurse qualification starting from 2011-2012.

- (d) To retain experienced nurses, the HA has introduced a number of initiatives as set out below:
  - (i) *Enhancement of promotion opportunities of nurses*

To further enhance the promotion opportunities of nurses, the HA created a number of additional promotion posts including over 50 Nurse Consultants and 150 Advance Practice Nurse posts in 2011-2012 on top of those for normal replacements and planned new services. The number of posts of Senior Nursing Officer/Department Operations Manager for normal replacement and planned new services was 40 whereas the number of promotion posts of Nursing Officer/Ward Manager/Advance Practice Nurse was 438.



(ii) *Improvement of working arrangements*

The HA has taken measures to relieve nurses from non-clinical work, including enhancement of clerical support and topping up the delivery of medical consumables and supplies. The HA also endeavoured to modernize the frequently used equipment to alleviate nurses' workload. For instance, a replacement plan was formulated in 2007 with the target of replacing 9 000 standard hospital beds with electrically-operated beds in five years to reduce manual handling during patient ambulation. Besides, the HA has also increased the rate of allowance for the continuous night scheme to provide better incentives for nurses to undertake continuous night shift duties as well as reducing frequent night duties of nurses to not more than once in every seven days as far as practicable. The HA will review the impact of its various initiatives on nurses' workload, and suitably reprioritize and adjust the pace of initiatives having regard to the actual manpower availability.

(iii) *Strengthening of workforce to address workload demand*

To provide the necessary manpower for maintaining existing services and supporting service enhancement initiatives, the HA plans to recruit about 2 000 nurses in 2012-2013. The HA will also continue to train up nurses. The training places for Registered Nurse and Enrolled Nurse students will be about 300 and 100 respectively for this year.

## **Evening Adult Education Courses**

12. **MR IP WAI-MING** (in Chinese): *President, some students and teachers of evening secondary schools (ESSs) have reflected to me that quite a number of young people and adults with low educational attainment will complete their secondary education in ESSs while working at the same time, but apart from subsidies under the Financial Assistance Scheme for Designated Evening Adult Education Courses (FAEAEC), the authorities in fact offer them virtually no support. In particular, as far as the implementation of the New Senior Secondary (NSS) academic structure is concerned, the Education Bureau*

*provides very little assistance and training to ESS teachers and students, making it difficult for them to grasp detailed information on the NSS curriculum. In this connection, will the Government inform this Council:*

- (a) of the number of people applying for enrolment in the subsidized programmes at various levels in ESSs in each of the past five years; among them, the number of those who reached the age of 17 when they applied for enrolment in the programmes; of the respective numbers of ESS students applying to sit for public examinations in each year, including the Hong Kong Certificate of Education Examination (HKCEE), the Hong Kong Advanced Level Examination (HKALE) and the Hong Kong Diploma of Secondary Education (HKDSE) Examination;*
- (b) given that in implementing the NSS academic structure, the authorities have provided day schools with much funding and support, for example, the Liberal Studies Curriculum Support Grant, and so on, whether the authorities have offered the same or similar grant and support to ESSs running the same subsidized programmes; if so, of the respective specific details and expenditure incurred; if not, the reasons for that;*
- (c) given that most students of the subsidized ESS programmes work during the day and the number of teaching hours of ESSs is generally less than that of day schools, but the course content taught is the same as that in day schools, and the students have to compete directly with day school students in public examinations, whether the authorities have offered specific assistance to ESS students in the light of the learning difficulties faced by them; if so, of the details; if not, whether the authorities will conduct an assessment of the needs of ESS students and provide a learning support platform specifically for them;*
- (d) given that the teaching hours of ESSs are less than those of day schools, and quite a number of ESS teachers have indicated that they often cannot finish teaching the full curricula for public examinations, and some ESS students who are working adults have indicated that they encounter much difficulty in completing the assignments for school-based assessment, and in addition, the modules of some subjects cover personal growth and interpersonal*

*relationships of young people, making it difficult for adult students to feel engaged in the learning process, whether the authorities have reviewed the issue of articulation of the teaching mode of ESSs with the NSS curricula as well as HKDSE Examination, and made appropriate adjustments in the light of the situation of ESSs; if not, of the reasons for that;*

- (e) *given that some teachers of the subsidized ESS programmes have complained to me that they and day school teachers are both teaching NSS courses, but they are not granted the authority to log in to the Training Calendar System (TCS) of the Education Bureau in order to enrol in the courses set out in the system, nor can they participate in other training courses organized by the Education Bureau, making them unable to obtain the latest course materials and information provided by the authorities for serving teachers and hence affecting the quality of their teaching, of the reasons why the authorities do not let ESS teachers participate in training and use the relevant resources; whether the authorities will undertake to make improvements as soon as possible so that serving teachers in both day and evening schools receive equal treatment in respect of training and access to pedagogic information; and*
- (f) *whether the authorities had made specialized training and seminars available to serving ESS teachers in respect of the NSS academic structure and curriculum content in the past three years; if so, of the details; if not, the number of participants, who had participated in the capacity as ESS teachers, in training and seminars organized by the Education Bureau on the NSS academic structure and curriculum in the past three years?*

**SECRETARY FOR EDUCATION** (in Chinese): President, our reply to the question is as follows:

- (a) Financial assistance is offered under the FAEAEC to students aged 17 or above attending evening secondary courses run by approved course providers in designated centres. The numbers of students attending ESSs at various levels under the FAEAEC (all aged 17 or above at the time of enrolment) in the past five school years, that is, 2007-2008 to 2011-2012, are listed below:

<i>School Year</i> <i>Level</i>	2007- 2008 <sup>(1)</sup> and <sup>(2)</sup>	2008- 2009 <sup>(2)</sup>	2009- 2010 <sup>(2)</sup>	2010- 2011 <sup>(2)</sup>	2011- 2012 <sup>(2)</sup>
Secondary One	N.A.	35	58	38	38
Secondary Two	N.A.	31	54	33	54
Secondary Three	N.A.	155	82	120	102
Secondary Four	477	582	260	290	273
Secondary Five	484	536	734	476	294
Secondary Six	24	49	84	257	275
Secondary Seven	0	0	46	231	267
Total	985	1 388	1 318	1 445	1 303

Notes:

- (1) The FAEAEC was extended to cover junior secondary levels (Secondary One to Secondary Three) in the 2008-2009 school year.
- (2) The figures indicate the numbers of students as at 15 September of each school year.

The numbers of students receiving financial assistance under the FAEAEC sitting public examinations in the past five school years, that is, 2007-2008 to 2011-2012, are as follows:

<i>Public Examination</i> <i>Year</i>	2008	2009	2010	2011	2012
HKCEE <sup>(1)</sup>	420	486	651	59 <sup>(2)</sup>	N.A.
HKALE	24	0	42	210	250
HKDSE Examination	N.A.	N.A.	N.A.	N.A.	259 <sup>(3)</sup>
Total	444	486	693	269	509

Notes:

- (1) With the introduction of the HKDSE Examination, the HKCEE has been discontinued from 2012.
  - (2) Students in receipt of financial assistance under the FAEAEC sitting the HKCEE in 2011 were Secondary Five repeaters under the old academic structure.
  - (3) Students in receipt of financial assistance under the FAEAEC sitting the HKDSE Examination in 2012 are among the first cohort of Secondary Six students under the NSS Academic Structure.
- (b) Under the FAEAEC, financial assistance is provided for adult learners attending evening secondary courses (Secondary One to

Secondary Seven) run by approved course providers in designated centres. Since the financial assistance mode and the student numbers under the FAEAEC are different from those of day schools, no comparable funding, including the Liberal Studies Curriculum Support Grant, can be offered to the course providers participating in the above scheme.

(c) and (d)

As it is important to ensure public recognition of the HKDSE results, the same curriculum and assessment requirements (including School-based Assessment) should apply to all secondary schools, regardless of whether they are public, private or evening schools.

As regards learning support, the Education Bureau and the Hong Kong Examinations and Assessment Authority (HKEAA) have uploaded onto their websites information on the NSS curriculum and HKDSE Examination, including curricula and assessment guides for various subjects, learning/teaching and assessment materials, HKDSE Examination regulations, sample questions, practice papers and information on School-based Assessment for the reference of schools, teachers and students. The materials and handouts of professional development programmes and briefing sessions for teachers have also been made available online. ESS teachers may use them according to the needs of their students. The School-based Assessment District Co-ordinators appointed by the HKEAA will also offer support to the teachers of all HKDSE Examination participating schools, including ESSs, to assist them in implementing School-based Assessment.

Besides, the Students' Corner of the Hong Kong Education City (HKEdCity) website <<http://www.hkedcity.net/student>> serves as a one-stop platform for learning support, providing all kinds of learning resources, career information and features such as student community for use by all students in Hong Kong. Apart from subvented secondary and primary schools, some schools offering evening adult education courses have also registered as school users of the HKEdCity.

- (e) The Education Bureau has always encouraged teachers to pursue continuing professional development. Teachers of primary and secondary schools offering formal curriculum, including teachers of evening schools, may be nominated by their schools to apply for training courses organized by the Education Bureau. Schools may register an e-Services Portal account and then set up personal accounts for their teachers. Teachers can apply for the Education Bureau training courses using the online application function of the TCS.

For schools that have yet to create their e-Services Portal accounts, their teachers can still access training information on the TCS through the Education Bureau website, and may contact the course providers direct to enquire whether their applications will be accepted and application procedures.

- (f) As mentioned in part (c) to (e) above, teachers of evening schools may enrol on training courses organized by the Education Bureau, and the Education Bureau and the HKEAA have uploaded information on the NSS curriculum and HKDSE Examination, as well as materials used in professional development programmes and briefing sessions, onto their websites for the reference of schools, teachers and students. We understand that quite a number of serving ESS teachers are also full-time day school teachers, and have already opted for appropriate professional development programmes according to their needs and schedules. We do not have information about teachers attending training courses and seminars on the NSS curriculum in the capacity as ESS teachers.

### **Guidelines on Service Improvement and Reduction in Bus Route Development Programmes**

13. **MS AUDREY EU** (in Chinese): *President, will the Government inform this Council of the following in connection with the Guidelines on Service Improvement and Reduction in Bus Route Development Programmes (Guidelines) issued by the Transport Department (TD) as at 31 May 2012:*

- (a) *the route numbers of franchised bus routes which meet the criterion for frequency reduction (that is, an average occupancy rate below 85% during the busiest half-hour of the peak period, or below 30% during the off-peak period);*
- (b) *the route numbers of franchised bus routes which meet the criterion for frequency improvement (that is, an occupancy rate of 100% during the busiest half-hour of the peak period and 85% during that one hour, or 60% during the busiest one hour of the off-peak period);*
- (c) *the route numbers of franchised bus routes which meet the criterion for route cancellation or amalgamation with other routes (that is, an occupancy rate below 50% during the busiest hour although the headway has been maintained at an interval of 15 minutes during peak hours and 30 minutes during off-peak hours);*
- (d) *the route numbers of franchised bus routes which meet the criterion for route truncation (that is, an occupancy rate of not more than 20% to 30% at the proposed truncated section during the busiest hour); and*
- (e) *the reasons for not having implemented the frequency reduction, frequency improvement, route cancellation or amalgamation with other routes or route truncation, in accordance with the Guidelines for the franchised bus routes which meet the criteria mentioned in parts (a) to (d)?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, in view of factors such as district development and commissioning of new infrastructure, the public demand for franchised bus services changes over time. The TD reviews from time to time the changes in passenger demand for franchised bus services, and discusses with the franchised bus companies the corresponding service adjustments in order to meet passenger demand.

In formulating franchised bus route development programmes, the TD will consider proposals to enhance or reduce bus services according to the Guidelines

at Annex 1. Apart from specifying various occupancy rates as a factor for consideration for service enhancement or reduction, the Guidelines also set out other relevant factors to be taken into account. They include the nature of the bus routes proposed to be cancelled, amalgamated or reduced; the availability of reasonable alternative services; the level of fares of alternative services; operational issues for interchange by passengers; the impact on bus captains; and environmental benefits arising from the service change. The TD will take into consideration all the relevant factors to minimize the impact of service adjustments on passengers as far as possible so as to safeguard their interests.

Under the 2012-2013 bus route development programme, details of bus routes meeting the Guidelines are as follows<sup>(1)</sup>:

- (1) a total of 26 franchised bus routes for consideration of frequency reduction;
- (2) a total of 42 franchised bus routes for consideration of frequency improvement;
- (3) a total of 10 franchised bus routes for consideration of route cancellation or amalgamation; and
- (4) three franchised bus routes for consideration of route truncation.

Details of the franchised bus routes mentioned in parts (1) to (4) above are at Annex 2.

As the TD is currently consulting the District Councils concerned and relevant local communities regarding the above bus route development programme, there is no specific implementation date at this moment for the proposals regarding those routes which meet the Guidelines for consideration of frequency reduction, frequency improvement, route cancellation or amalgamation, and route truncation.

(1) Each main route and its supplementary route are regarded as one route. Routes with reduced services on Saturdays, Sundays and public holidays only are not included.



## Guidelines on Service Improvement and Reduction in Bus Route Development Programmes

### *Service Improvement*

#### *(I) Frequency Improvement*

If the occupancy rate of any bus route reaches 100% during any half-hour of the peak period and 85% during that one hour, or reaches 60% during the busiest one hour of the off-peak period, the TD will consider the deployment of more vehicles to enhance the service level. In increasing the vehicle allocation, priority will be given to redeploying vehicles saved from other rationalization items.

#### *(II) New Bus Service*

If the frequency improvement alone is not sufficient to meet demand and no practical alternatives are available, we will give consideration to the provision of new bus service, with priority to serve areas that are beyond the catchment area of existing railways or railway feeders. In approving any new bus service, we will also consider the impact of such new service on the traffic condition on major roads, and will as far as possible refrain from providing long haul bus routes or routes that operate via busy districts such as Mong Kok, Tsim Sha Tsui, Central, Wan Chai, Causeway Bay, and so on.

### *Service Reduction*

In pursuance of our policy objective of providing a safe, efficient and reliable transport system in a sustainable environment, franchised bus routes with low utilization would be rationalized from time to time to enhance bus operation efficiency while meeting passenger demand and matching local operating environment, reducing traffic congestion and roadside emission. These guidelines set out the situations whereby rationalization measures such as adjustment to service frequency and timetable, route cancellation/amalgamation, route truncation, and so on, would be pursued.

*(III) Reduction of Bus Trips along Busy Corridors*

In view of concentration of activities in the urban areas leading to serious environmental and traffic concerns, the TD is committed to reducing the number of bus trips along busy corridors and bus stoppings through various measures of service cancellation/reduction and route rationalization. If it is inevitable for new routes or enhanced bus services to operate via these busy corridors, the bus operators will have to reduce the same number of trips plying through the same corridor from other routes in order not to aggravate the traffic and environmental conditions in these busy corridors.

*(IV) Frequency Reduction*

If the average occupancy rate of an individual route is below 85% during the peakiest half-hour of the peak period, or below 30% during the off-peak period, the TD will consider reducing bus deployment for the route.

Railway feeder routes, socially essential routes (such as bus routes serving remote areas or where the majority of the passengers are elderly) with no alternatives available, and routes with peak headways at 15 minutes or more will be considered on individual merits.

*(V) Route Cancellation/Amalgamation*

If the utilization of a low-frequency route does not improve (that is, a bus route with average occupancy rate lower than 50%, despite its headways having already been reduced to 15 minutes and 30 minutes during peak hours and off-peak hours respectively), the TD will consider proposing cancellation of the route or amalgamation of the route with other route(s) in consultation with the bus operators.

*(VI) Route Truncation*

To optimize the use of resources, the TD will review with relevant bus operators the feasibility of truncating routes, in particular those where majority of the passengers will have alighted en route. In formulating truncation proposals, the TD will consider whether the number of affected passengers is excessive (that is, the occupancy rate of not more than 20% to 30% at the proposed truncated section during the peakiest hour); whether

enough roadside space is available to accommodate the affected passengers for interchange; and whether terminal space for the changed route is available.

*Factors to be Considered in Bus Service Rationalization*

In formulating rationalization proposals, in particular those where drastic measures are to be adopted, the TD would give due consideration to ensure that the interests of passengers would be taken care of and to minimize impact on them as far as possible. Factors that will be taken into account include:

- (a) nature of the services proposed to be cancelled: For services which utilization rates have been consistently low but are socially essential (that is, those serving remote areas or where majority of the passengers are elderly) and without reasonable alternatives, the TD would consider other means to improve the service performance, such as through the use of vehicles with smaller carrying capacities, provision of alternatives such as introduction of replacement green minibus services, and so on;
- (b) availability of reasonable alternatives: In proposing service cancellation, measures have to be taken to ensure that reasonable alternatives for the affected passengers are provided as far as possible. Factors such as the availability of spare capacity of alternative services in taking up the diverted passengers, the number and convenience of interchanges involved, the total journey time (including interchange and on-vehicle time) as compared with the existing services, and so on, would be assessed carefully to ensure the reasonableness of the alternative services;
- (c) fare of the best available alternative service: The total journey fare as compared with the fare of the existing service would be assessed. Positive consideration to route cancellation will be given if the total journey fare is not higher than that of the service being considered for cancellation. The relevant bus operators would also be requested to consider the provision of fare concessions, such as interchange discounts, section fares, special discounts to elderly, and other incentives wherever appropriate and feasible, to provide attraction to the affected passengers to facilitate the implementation of the rationalization proposals;

- (d) transport operational considerations: The proposed service rationalization should not cause undue hardship to passengers or operational problems. Factors such as the number of passengers requiring interchanges, the availability of space for interchange activities, and so on, would be carefully assessed. The deployment of the saved vehicles to improve services within the same district would also be spelt out where appropriate;
- (e) impact of the proposed service rationalization on bus captains: Factors to be considered include the number of bus captains that would be affected by the proposed service rationalization, and whether the excess bus captains could be absorbed through natural wastage or other means without causing any major staff issues; and
- (f) environmental benefits arising from the service rationalization: Environmental benefits such as the reduction in emission, reduction of bus trips in busy corridors, and so on, would be spelt out in the consultation documents for the public to take note of.

Annex 2

(1) Franchised bus routes meeting the Guidelines  
for consideration of frequency reduction

	<i>Bus company</i>	<i>Bus route</i>
1	The Kowloon Motor Bus Company (1933) Limited (KMB)	91
2		14C
3		76K
4		82K
5		N237
6	KMB/New World First Bus Services Limited (NWFB)	109
7		914
8	Citybus Limited (Citybus)	5
9		260
10		25C
11		70M
12		780/780P
13		95C
14		A10
15		A11
16		A12
17		A21
18		A22

	<i>Bus company</i>	<i>Bus route</i>
19	Citybus/Long Win Bus Company Limited (LWB)	R8
20	NWFB	2
21		4
22		66
23		694
24		971
25		3A
26		720A

(2) Franchised bus routes meeting the Guidelines  
for consideration of frequency improvement

	<i>Bus company</i>	<i>Bus route</i>
1	KMB	15
2		26
3		80
4		263
5		968
6		1A
7		235M
8		265M
9		269C
10		2A
11		373/373A
12		42C
13		46X
14		68X
15		6D
16	KMB/NWFB	101
17		104
18		111
19		115
20		106P
21		601P
22	948/948X	
23	KMB/Citybus	307/307A
24		619/619X
25		681P
26	Citybus	592
27		37A
28		5X
29		962B/962P
30		B3X

	<i>Bus company</i>	<i>Bus route</i>
31	NWFB	23
32		798
33		18P
34		682/682P
35		51
36	LWB	A41P
37		E31
38		E32
39		E33/E33P
40		E34
41		E41
42	New Lantao Bus Company (1973) Limited	38/38X

(3) Franchised bus routes meeting the Guidelines  
for consideration of route cancellation or amalgamation

	<i>Bus company</i>	<i>Bus route</i>
1	KMB	2C/203
2		234S
3		35S
4		81M/88M
5	KMB/NWFB	692
6	Citybus	698R
7		R11
8		R22
9	NWFB	19
10		23A

(4) Franchised bus routes meeting the Guidelines  
for consideration of route truncation

	<i>Bus company</i>	<i>Bus route</i>
1	KMB/NWFB	113
2		18
3	NWFB	796C

## Services for Youth at Risk

14. **MR CHEUNG KWOK-CHE** (in Chinese): *President, I have contacted a total of 25 youth service units which are located in 16 different districts a couple of weeks ago, including those providing integrated children and youth services, outreaching social work services for the youth and overnight youth outreaching services, and so on. Quite a number of social workers have relayed to me that the problem of truancy and dropping out from schools among youngsters aged 15 or below has become more and more serious, and due to poor relationship with their parents, they always wander around in the communities, giving rise to the problem of youth gangs, and very often, they refuse to go home at night, which also poses threats to their personal safety. In view of the aforesaid risks faced by youngsters who run away from home, fellow workers in the sector request the Government to improve and enhance the provision of ancillary services and facilities. In this connection, will the Government inform this Council:*

- (a) *whether the Government will allocate additional resources to set up "emergency hostels for the youth" and streamline the application procedures for admission by not involving allocation by the central referral system, to enable those youth at risk who are reluctant to go home because of poor relationship with their families to take shelter temporarily, and to enable social workers to assist them in tackling problems through intervention, thereby reducing their chances of being exposed to dangers; if it will not, of the reasons for that; how the Government will improve the ancillary services, so as to provide the needy youth with an appropriate shelter to cope with crises; if it will, whether emergency hostel for the youth can be set up one each on Hong Kong Island, in Kowloon and the New Territories; if not, of the reasons for that;*
- (b) *regarding the problems of inadequate places of residential homes for the youth and schools for social development, and so on, how the Government will make specific planning in the long run to expand such services, so as to shorten the waiting time for the needy youth and provide them with appropriate services and care expeditiously; and*
- (c) *focusing on the problem of those youth at risk with low educational attainment being very difficult to secure jobs after the*

*implementation of statutory minimum wage, how the Government will extend ancillary services which suit the learning and working needs of youth at risk, so as to offer them more job opportunities and assist them in achieving self-reliance and upgrading their qualifications?*

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

- (a) At present, the Social Welfare Department (SWD) provides subvention for a non-governmental organization (NGO) to operate a Crisis Residential Centre (CRC) with 30 short-term residential places on Hong Kong Island. The SWD also provides subvention for another NGO to provide a Young Night Drifters Service (YNDS) in Kowloon, including eight short-term residential places for boys. The above services provide youths in need with crisis intervention, counselling as well as temporary shelter and residential services. The emergency placement for residential service has all along been arranged through timely referrals by social workers/the police or through direct request by the young persons to the operating NGOs, instead of being arranged and allocated through a central co-ordinating referral mechanism. For those cases referred by social workers, the social workers will continue to follow up with the young persons on their long-term welfare needs upon their leaving CRC or YNDS centre. For those who apply for accommodation in CRC on their own, the social workers of CRC will assess their needs and refer them to receive necessary services accordingly. On the basis of existing service utilization, we consider that CRC and YNDS centre can provide sufficient residential places to meet service demand.

To strengthen support for youths at risk, 18 designated Integrated Children and Youth Services Centres subvented by the SWD have, since 2001, been providing overnight outreaching service for young night drifters from 10 pm to 6 am the next day. These 18 overnight outreaching teams go to popular spots in the street where young people usually gather at late night and provide on-the-spot crisis



intervention as necessary. For runaway youths who have poor relationships with their families, social workers will discuss their situations with them and/or their family members and make appropriate arrangements. As each of the overnight outreaching teams has been provided with a vehicle, social workers will, according to actual circumstances, escort and refer the youths in need to CRC or YNDS centre for admission to temporary accommodation. To better tackle the growing problem of young night drifters and juvenile gangs, the SWD will allocate additional resources and commission NGOs to employ 30 extra outreaching social workers and set up three additional youth outreaching teams, one each in Tseung Kwan O, Ma On Shan and Tung Chung in the latter half of 2012-2013. The new teams will actively reach out to more youths at risk, counsel them and refer them to mainstream services.

- (b) The Education Bureau and the SWD have all along been working together to keep the supply and demand for Schools for Social Development (SSDs) and their residential service under regular review. During the past 10 years, the school places and residential places of SSDs have increased from 945 and 589 in the 2001-2002 school year to 1 200 and 657 in the 2011-2012 school year respectively. The Education Bureau and the SWD are also planning to build a new SSD with residential service for girls as well as re-provisioning and expanding an SSD with residential service for boys. The Education Bureau and the SWD will take forward these projects to further meet the service demand.

To improve the waiting time for admission to SSDs and their residential service, the Education Bureau and the SWD review the referral procedures from time to time. In September 2010, the Education Bureau and the SWD requested SSDs to strictly comply with the requirement of admitting students within the prescribed period so as to enhance the efficiency of the referral procedures and shorten the waiting time of the students. Subsequent to the implementation of this measure, the waiting list situation improved significantly. Statistics show that the number of students waiting for school-cum-residential placement on 31 March 2012 dropped by

70% and 40% when compared with the figures in 2010 and 2011 respectively.

In parallel with the residential services provided by SSDs, the SWD also subvents six NGOs to provide a total of 305 residential places in boys' and girls' homes/hostels, with a view to offering residential placement for young persons with emotional, behavioural and family problems. In 2012-2013, the SWD has acquired additional resources for the provision of 30 additional residential places in boys' and girls' homes/hostels so as to shorten the waiting time of needy youths and enable them to receive suitable services and care as soon as possible.

- (c) The Government provides young people with a wide range of training opportunities so that they may choose to enrol in suitable courses based on their interests, abilities and career aspirations, while meeting the requirements of individual industries. Among others, the Employees Retraining Board (ERB) offers the Youth Training Programme (YTP) specifically to the non-engaged youth aged between 15 and 20 who lack formal qualifications. YTP aims to prepare the young people to join the job market. Related organizations also refer learners in need to ERB's training bodies for YTP. In 2012-2013, ERB plans to continue to provide 1 500 training places under YTP. Besides YTP, the young people who meet the entry requirements may also choose to enrol in the wide array of training courses on vocational skills offered by ERB. ERB endeavours to develop courses that lead to professional qualifications or recognition under the Qualifications Framework, and provides follow-up placement support services for the graduates of its placement-tied training courses. The learners of YTP can benefit from these services.

Besides, the Labour Department administers the Youth Pre-employment Training Programme and Youth Work Experience and Training Scheme (YPTP&YWETS), a "through-train" programme providing a full range of pre-employment and on-the-job training to young school leavers aged 15 to 24 with educational attainment at sub-degree or below level. To cater for the special needs of youths at risk, a special training project is organized under

YPTP&YWETS in collaboration with NGOs operating youth outreaching services. Under the project, trainees are provided with a package of tailor-made pre-employment training courses that are flexible in course duration, class size and course schedule. Moreover, social workers of the NGOs provide personalized career counselling and support services, and assist trainees in applying for suitable vacancies for receiving on-the-job training for a period of six to 12 months, with a view to enhancing their employability. On the other hand, to encourage employers to employ youths with limited work experience, a monthly training subsidy of \$2,000 is provided under YPTP&YWETS to those who engage trainees for on-the-job training.

### **Convention on the Rights of Persons with Disabilities**

15. **MS EMILY LAU** (in Chinese): *President, in September this year, the Committee on the Rights of Persons with Disabilities of the United Nations will consider the initial report submitted by Hong Kong under the United Nations Convention on the Rights of Persons with Disabilities (the Convention). In this connection, will the executive authorities inform this Council:*

- (a) *whether the authorities will introduce "mainstreaming of the rights of persons with disabilities" for examining if the Government complies with the provisions relating to the rights of persons with disabilities under the Convention in legislation and implementation of administrative and other measures; if they will, of the details; if not, the reasons for that;*
- (b) *whether the authorities will standardize the definition of disabilities adopted by various government departments and Policy Bureaux in accordance with the concept of disabilities as described in the Preamble of the Convention, and collect statistical and research data on persons with disabilities in accordance with Article 31 of the Convention, so as to facilitate the formulation and implementation of policies to give effect to the Convention; if they will, of the details; if not, how the authorities collect data to give effect to the Convention in the absence of a standardized definition of disabilities; and*

- (c) *given that Article 33 of the Convention stipulates the establishment of independent mechanisms by states parties to promote, protect and monitor implementation of the Convention, whether the authorities have assessed if the Commissioner for Rehabilitation (C for R) under the Deputy Secretary for Labour and Welfare has sufficient independence and power to promote the implementation of the Convention in various government departments; if they have, of the results; whether the authorities will consider establishing a high level mechanism to promote, protect and monitor the implementation of the Convention; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR LABOUR AND WELFARE** (in Chinese): President, it has all along been the policy objective of the Government and the development directions set out in the Hong Kong Rehabilitation Programme Plan (RPP) to help persons with disabilities develop their potential as well as to build a barrier-free living environment with a view to enabling persons with disabilities to participate in full and enjoy equal opportunities both in terms of their social life and personal growth. These are also the spirit and core values enshrined in the Convention. Promotion and implementation of the Convention is an ongoing initiative. It is also the direction of continued development of rehabilitation services in Hong Kong. The Government will continue to collaborate with the Rehabilitation Advisory Committee (RAC), the Equal Opportunities Commission (EOC), groups of persons with disabilities, parents groups, the rehabilitation sector and other sectors in the community to promote the spirit and core values enshrined in the Convention and step up our efforts in fulfillment of the requirements under the Convention. My reply to Ms Emily LAU's question is as follows:

- (a) All government bureaux and departments are fully aware that in formulating policies and implementing service programmes, due consideration needs to be given to the requirements under the Convention, including a statement under its preamble which emphasizes the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development. In this regard, government bureaux and departments would take into account the needs of persons with disabilities in formulating policies and implementing service programmes. For policies and measures

which may bring about significant impact on persons with disabilities, bureaux and departments are required to suitably consult persons with disabilities and stakeholders and draw up guidelines to ensure that these policies and measures can adequately cater for the needs of persons with disabilities, thereby facilitating their full integration into society. For example, to build a barrier-free environment, the Labour and Welfare Bureau has issued a circular, requesting all government bureaux and departments to comply with the design manual on barrier-free access in carrying out construction or alteration works and, wherever practicable, adopt higher standards beyond the design manual to ensure the provision of barrier-free access for persons with disabilities. The Buildings Department has also published the "Design Manual: Barrier Free Access 2008", providing guidelines on barrier-free facilities.

- (b) Government bureaux and departments make reference to the definition of disabilities under RPP<sup>(1)</sup> in formulating policies and services relating to persons with disabilities. In defining disability, the RPP Review Working Group has carefully considered such factors as the applicability to Hong Kong situation, the service needs of persons with disabilities and feasibility, and so on, while taking into account the overseas practices and experience. The definition of disabilities in RPP is also in line with the concept of disabilities under the Convention. Indeed, RPP has all along been the blueprint for the development of rehabilitation services and widely accepted by various sectors in the community, including the rehabilitation sector.

That notwithstanding, given that service needs vary among persons with different category and severity of disabilities, it is necessary for various bureaux and departments to adopt different demarcation of target service users in formulating policies and service programmes in order to provide tailor-made and suitable support for persons in need. For example, the Disability Discrimination Ordinance (Cap. 487) (DDO) aims at providing the widest protection for

(1) The definition covers 10 types of disabilities, including Attention Deficit/Hyperactivity Disorder; Autism; hearing impairment; intellectual disability; mental illness; physical disability; Specific Learning Difficulties; speech impairment; visceral disability; and visual impairment.

persons with disabilities against discrimination, and thus a broad definition of disabilities is adopted which may cover persons suffering from myopia, Hepatitis B virus carriers, and so on, or persons recovered from disability. For Residential Care Homes (Persons with Disabilities) Ordinance (Cap. 613), its legislative intent is to regulate residential care homes for persons with disabilities (RCHD), thereby protecting persons with disabilities who are living in RCHDs owing to their residential care needs. In this light, persons with disabilities who do not have special residential care needs (for example, persons suffering from specific learning difficulties) are not covered. In fact, according to the reports submitted by other countries to the United Nations Committee on the Rights of Persons with Disabilities under the Convention, a number of these countries also adopt varying definitions for different policies and measures.

Regarding the statistics and data on persons with disabilities, the Census and Statistics Department (C&SD) conducts surveys on persons with disabilities and chronic diseases regularly. The latest round of survey was conducted in 2006-2007. To ensure that the survey met the intended objectives, the C&SD had carried out a series of consultations with stakeholders (including relevant government bureaux and departments, public bodies, non-governmental organizations and academia) before conducting the survey. These consultations served to collect expert views and advice on the scope of disabilities and chronic diseases, as well as the definitions of individual types of disability. The C&SD had also made reference to the definition of disability adopted in similar surveys conducted by some overseas statistical offices to facilitate comparison with other countries or regions. Having regard to the above information and other relevant factors, such as the resources implications; the degree of difficulties encountered by respondents in giving responses; and the possible technical difficulties in defining each type of disability, the survey has adopted a definition of disability which is generally in line with the 2007 RPP.

- (c) The C for R of the Labour and Welfare Bureau is responsible to the Secretary for Labour and Welfare for the formulation of the overall

policy in rehabilitation and welfare matters for persons with disabilities, and for co-ordinating and facilitating all government departments, public organizations and non-governmental organizations in the development and provision of rehabilitation services. Following the application of the Convention to Hong Kong, C for R serves as the focal point within the Hong Kong Special Administrative Region Government for matters relating to the implementation of the Convention, while relevant bureaux and departments have the responsibilities to ensure that the policies and measures under their purview provide equal opportunities and rights for persons with disabilities in compliance with the spirit and provisions of the Convention. For example, with the support and steer of the Chief Secretary and the Secretary for Labour and Welfare, C for R is responsible for co-ordination with relevant departments to take forward a comprehensive retrofitting programme on upgrading the barrier-free facilities for government venues. With the full co-operation of all relevant departments, the retrofitting programme has made satisfactory progress and achieved the desired results.

In tandem, following the application of the Convention to Hong Kong, the RAC has taken on the new role in advising the Government on the promotion and monitoring of the implementation of the Convention in Hong Kong. Furthermore, as the statutory enforcement agency of DDO, the EOC has all along been serving as a safeguard in protecting the equal opportunities of persons with disabilities and their rights under the DDO.

### **Fuel Consumption of Air-conditioned Buses**

16. **MR FREDERICK FUNG** (in Chinese): *President, following the retirement of the last batch of non air-conditioned (AC) buses (commonly known as "hot-dog buses") of Kowloon Motor Bus Company (1933) Limited on 9 May this year, the franchised bus service in Hong Kong has now entered a fully AC era. In other words, the air-conditioning system in franchised buses will be turned on at all times, irrespective of whether the weather is cold or warm. In this connection, will the Government inform this Council:*

- (a) *whether the authorities had, in the past, conducted any study to ascertain the percentage of fuel consumption in operating the air-conditioning system of buses in the overall fuel consumption of buses, and the savings on fuel expenditure by turning off the air-conditioning system during winter time; if they had, whether they can provide the relevant information;*
- (b) *whether the authorities had, in the past, made reference to overseas experiences (for example, the United Kingdom and Ireland which use the same model of buses as that of Hong Kong, but with openable windows) and conducted studies to introduce AC buses with openable windows, so as to save energy by turning off the air-conditioning system during low temperature seasons; if they had, of the results, in particular the feasibility of using such buses in Hong Kong, and the benefits in energy saving and environmental protection to be brought by such buses; and*
- (c) *whether the authorities will consider requiring all franchised bus companies to select buses with openable windows when they procure new buses, and discussing with all franchised bus companies the conversion of AC buses running on the road at present to buses with openable windows; whether the authorities will conduct a study on prohibiting AC buses from turning on the air-conditioning system under certain weather conditions (for example, below a certain temperature); whether the authorities can assess the effectiveness of the aforesaid practice in reducing the fuel cost of bus companies and alleviating the burden of travelling expenses on the public?*

**SECRETARY FOR TRANSPORT AND HOUSING** (in Chinese): President, to enhance the quality of bus service and cater for passenger needs, the standard features of franchised buses already comprise an air-conditioning system. To save energy without compromising the comfort level of passengers, AC buses are fitted with sensors and thermostats. The temperature and humidity inside the bus compartment can be suitably adjusted according to the difference in the temperature and humidity inside and outside the bus compartment.

Although the Government has not conducted any study on fuel consumption of the air-conditioning system, we understand that the franchised



bus companies have made reference to AC buses with windows which can be opened used abroad to ascertain whether they are suitable for use in Hong Kong. However, the weather and operating environment in Hong Kong are different from those overseas. To protect passengers from inclement weather and road environment, remove moisture and moisture-induced odour inside the bus compartment more effectively, and minimize the discomfort feeling which may arise from passengers crowding together, and so on, the franchised bus companies currently do not have any plan to convert windows of AC buses to those which can be opened.

In fact, the perception of temperature varies among passengers. If windows of AC buses are converted to those which can be opened, some passengers may open or close the windows to suit their individual needs. This will lead to frequent activation of the thermostat of the air-conditioning system on board because of constant changes to the environment inside the bus compartment, thereby increasing energy consumption. To further enhance the quality of bus service, the air-conditioning system installed in buses newly purchased by the franchised bus companies are fitted with more advanced sensors and thermostats. They can gradually adjust the temperature and humidity inside the bus compartment according to the changes in weather. This would effectively maintain a moderate temperature and humidity inside the bus compartment under all weather conditions so that passengers can enjoy a comfortable travelling environment. The more advanced sensors and thermostats would also achieve better results in terms of energy conservation.

In view of the above reasons, the Government has no plan to require the franchised bus companies to adopt designs which would allow the windows to be opened in procuring new buses.

### **Retirement Age of Judges and Judicial Officers**

17. **MR ABRAHAM SHEK:** *President, it has been reported that half of the 38 judges working in the Court of Final Appeal (CFA), Court of Appeal and Court of First Instance (CFI) of the High Court will reach the statutory retirement age of 65 in the next five years. Although an extra discretionary term of three years may be allowed under "exceptional circumstances" relating to operation needs (after which judges of CFA must retire), it is not known how the exceptional circumstances are defined when it has been reported that a*

*permanent judge of CFA will be replaced by a judge nine months older than him when he retires on turning 65 in October 2012. In addition, it has been reported that about a quarter of the judge and judicial officer (JJO) posts have been lying vacant for at least nine months, which has aroused concerns that the quality of judiciary work may be affected. In this connection, will the Government inform this Council if it knows:*

- (a) whether the Judiciary has considered any new measures (including increasing the salaries for JJOs) to expedite the recruitment process; if yes, the details; if not, the reasons for that;*
- (b) the criteria for extending the term of office for JJOs who approach the retirement age of 65; whether the decision to replace the aforesaid permanent judge of CFA by a judge nine months older than him complies with such criteria; if yes, the details; if not, the details of other affirmative reasons for the decision; whether there were any similar precedent examples in the past three years; if yes, of the details;*
- (c) whether the waiting time of the hearing of the cases in the Civil Fixture List of CFI of the High Court had failed to meet the target of 180 days in the past three years; if yes, the details and the justifications for keeping the current target at 180 days in 2012-2013; and*
- (d) given that it has been reported that the retirement age of the judges of the British Supreme Court and the Federal Courts in Canada and Australia is set at 70, whether the Judiciary will review and set the retirement age of JJOs on par with that of such common law jurisdictions; if yes, the details; if not, the reasons for that?*

**CHIEF SECRETARY FOR ADMINISTRATION:** President, the Administration has consulted the Judiciary on the question and has received the following information:

- (a) The Judiciary has been taking prompt actions in filling judicial vacancies at different levels of court. In accordance with Article 92 of the Basic Law, Judges are chosen on the basis of their judicial and

professional qualities. In the past 18 months, nine judicial vacancies have been substantively filled (namely, the offices of the Chief Judge of the High Court, three Justices of Appeal of the Court of Appeal of the High Court and five Special Magistrates). In addition, when the current constitutional process for the appointment of a permanent judge of the CFA is completed, the anticipated permanent judge vacancy will be filled when it arises in October 2012.

Furthermore, the recruitment exercises for Judges of the Court of First Instance of the High Court (CFI Judges), District Judges and Permanent Magistrates are in good progress and are expected to be completed in 2012. The Chief Justice is cautiously optimistic about the outcomes of these ongoing recruitment exercises and hopes that, upon their completion, most of the fillable vacancies would be substantively filled by suitable candidates.

Under the existing mechanism for the determination of judicial remuneration, judicial remuneration is determined by the executive after considering recommendations by the Judicial Committee. This institutional framework and mechanism was approved by the Chief Executive-in-Council in May 2008. Judicial remuneration is subject to annual reviews. It was last increased on 1 April 2011. The review of judicial remuneration for 2012-2013 is now in progress.

In the Judiciary, the Chief Justice has appointed a committee, chaired by a permanent judge of the CFA and comprising judges and judicial officers from different levels of court, to advise him on matters relating to judicial remuneration. These matters are kept under constant review.

- (b) The policy of the Judicial Officers Recommendation Commission (JORC) is that extension of the term of judicial office beyond the statutory normal retirement age should not be automatic. It should be regarded as exceptional and would not normally be approved unless:

- (i) the Judiciary has operational needs, including the need for continuity; and
- (ii) the extension would not hinder the advancement of junior officers who are suitable for elevation<sup>(1)</sup>.

The above policy was made in September 1998 and has been applied consistently in all cases since then. The Chief Justice applies the JORC policy above in considering whether the term of office of a permanent judge of the CFA should be extended or not.

On the specific case of the retiring permanent judge as referred to in the question, the permanent judge concerned will reach the statutory normal retiring age of 65 years in October 2012. By then, he would have served for over 15 years as a permanent judge. The Chief Justice is of the view that no exceptional reasons exist to justify the extension of the term of office of the permanent judge concerned when applying the factors referred to in sub-paragraphs (i) and (ii) above and that there are judges in the High Court suitable for elevation to the CFA.

The candidate proposed to fill the anticipated permanent judge vacancy is currently a serving Justice of Appeal of the Court of Appeal of the High Court. His term of office as a Justice of Appeal has been extended beyond the normal retiring age of 65 years for three years until 6 January 2015. Section 11A(3) of the High Court Ordinance (Cap. 4) provides that in such a case (that is, where the term of office of a judge of the High Court is extended), the judge shall accordingly be regarded as having attained the retiring age at the expiration of the period of extension. Therefore, the judge concerned is regarded as no different from any other serving judge of the High Court who has not yet reached the (normal) retiring age for the purpose of his eligibility for the permanent judge vacancy. His advancement to the CFA would be fully justified and deserved.

(1) After a review in September 2001, the JORC resolved to add that the extension would not hinder the appointment of members of the legal profession who are well suited and available for appointment.

JORC noted that all High Court judges (including the judge proposed to fill the anticipated permanent judge vacancy) are eligible candidates for consideration. JORC then agreed that three judges of the High Court should be placed on the shortlist. Having regard to Article 92 of the Basic Law that judges shall be chosen on the basis of their judicial and professional qualities, the JORC then gave detailed consideration to the suitability of the three Judges, having regard to the qualities required of a permanent judge and all relevant factors including operational requirements. The judge proposed to fill the permanent judge vacancy was considered to be the most suitable candidate.

Section 14(2)(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) provides for a person who has attained the age of 65 years to be appointed as a permanent judge for a term of three years. The JORC resolved to recommend to the Chief Executive the appointment of the proposed candidate for a term of three years from 25 October 2012 to 24 October 2015.

As regards precedent cases for extension of term of office, at the CFA level, since its establishment in 1997, there has only been one case of extension of the term of office of a CFA Judge in October 1998. At that time, the CFA was a young court. The Chief Justice made the recommendation because he considered that in the interest of the Judiciary and, in particular, for the continuity and development of the young CFA, the term of office of the CFA Judge concerned should be extended.

- (c) The average waiting time for the Civil Fixture List of the CFI of the High Court was within the target of 180 days in 2009 (179 days) but exceeded the target in 2010 (215 days) and in 2011 (231 days). This was due to more complex, lengthy and refixed cases. It was also due to the temporary constraints in the deployment of judicial manpower in the High Court caused by the temporary shortfall of substantive judicial manpower as a result of the retirement of Judges and elevation of Judges to higher positions. As mentioned in part (a) above, the recruitment exercise for CFI Judges is well underway. To address the situation in the interim, the Judiciary has

been making every effort to engage deputy judges who are considered suitable for appointment as Deputy High Court Judges from both within and outside the Judiciary to help reduce the waiting times.

- (d) Notwithstanding the more senior retirement age for judges in some overseas jurisdictions, the Chief Justice is of the view that the existing arrangement of the age of 65 as the normal retirement age for judges in Hong Kong has worked well and remains appropriate for the time being, having regard to the circumstances in Hong Kong.

### **Mandatory Building and Window Inspection Schemes**

18. **DR PRISCILLA LEUNG** (in Chinese): *President, an organization has earlier on conducted a survey on the Mandatory Building and Window Inspection Schemes (the Schemes) which will be implemented in the second quarter of this year, and found that as many as 70% of the respondents have not heard of the Schemes, and reflected that the details of the Schemes' complementary and support measures have not been announced after a long time, making the owners of the so-called "three nos" buildings (that is, no management, no owners' corporations (OCs) and no maintenance) feel very much worried. In this connection, will the Government inform this Council:*

- (a) *of the current channels through which the Schemes are publicized; given that the aforesaid survey has revealed that 70% of the respondents have not heard of the Schemes, whether the authorities have assessed if publicity on the Schemes is adequate, and whether they will consider stepping up publicity;*
- (b) *of the earliest time by which the authorities will inform the OCs or owners of the first batch of target buildings under the Schemes in writing that the Government will make it mandatory for them to inspect their buildings and windows; upon receipt of the notification, the time by which they will be required to start inspecting their buildings and windows; whether the authorities have assessed if under the procedure of the Schemes, OCs or owners have been offered adequate time for preparation;*

- (c) *of the total number of professionals in the architectural or engineering sector who have registered under the Schemes as registered inspectors (RIs) so far; whether the authorities have assessed if the target number of at least 300 or more RIs across the territory can be met before the implementation of the Schemes in the second quarter of this year; if not, of the measures to be put in place to attract more professionals to register as RIs;*
- (d) *of the new subsidy schemes or support and complementary measures the authorities will introduce in respect of the Schemes; among such subsidy schemes and measures, application and implementation details of which have already been announced; regarding those which have not yet announced the details, of the latest time by which such details will be announced;*
- (e) *of the special measures the authorities have put in place to assist the owners of "three nos" old buildings in complying with the statutory notices and inspect their buildings and windows; and*
- (f) *of the means adopted by the Government to specifically penalize those owners who refuse to share and pay for the costs of building and window inspection, and ensure that the owners who are willing to share the costs will not be affected and penalized?*

**SECRETARY FOR DEVELOPMENT** (in Chinese): President, the Buildings (Amendment) Ordinance 2011 (B(A)O), enacted by the Legislative Council on 29 June 2011, provides for the legislative framework of the Mandatory Building Inspection Scheme (MBIS) and the Mandatory Window Inspection Scheme (MWIS). The Legislative Council also completed the scrutiny of the relevant subsidiary legislation on 21 December 2011.

The MBIS and the MWIS cover all private buildings aged 30 years or above and 10 years or above respectively, except domestic buildings not exceeding three storeys in height. Under the MBIS, building owners are required, within a specified timeframe, to appoint a RI to carry out a prescribed inspection and to appoint a registered contractor to carry out a prescribed repair found necessary of the common parts, external walls, projections and signboards of the building once every 10 years. Under the MWIS, building owners are

required, within a specified timeframe, to appoint a qualified person (QP) to carry out a prescribed inspection and to appoint a registered contractor to carry out a prescribed repair found necessary of the windows in the building once every five years.

Those sections in the B(A)O and subsidiary legislation concerning registration of RIs and other miscellaneous amendments to the Buildings Ordinance were brought into operation on 30 December 2011. On 9 May 2012, we tabled at the Legislative Council three commencement notices, which seek to commence the remaining provisions of the B(A)O and the Regulations on 30 June 2012 to fully implement the MBIS and the MWIS.

To dovetail with the implementation of the two schemes, the Buildings Department (BD) has launched a publicity programme in phases to arouse the awareness of the public, owners and the industry of the two schemes. The Hong Kong Housing Society (HKHS) and the Urban Renewal Authority (URA) will launch a subsidy scheme to subsidize owners of eligible buildings the cost of the first building inspection under the MBIS, and to provide technical support to owners.

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

- (a) To arouse public awareness of the MBIS and the MWIS, the BD has launched a publicity programme in two phases. In the first phase, an Announcement of Public Interest (API) was launched in mid-February 2012, which mainly served to publicize the registration of RIs. The API was broadcast on all television and radio stations, as well as public transport vehicles including buses and railways. Over the past few months, the BD has participated in a number of seminars organized by various professional organizations and District Councils to promote the MBIS and the MWIS in the community. In the second phase, which began in early May 2012, the BD launched a dedicated webpage on its website containing detailed information on the inspection schemes for public reference. A series of newspaper supplements is also being published starting from mid-May 2012. Other publicity materials including another set of API targeting at the requirements of the inspection schemes, leaflets, posters and outdoor



advertisements will be launched in end June 2012 to publicize the full implementation of the schemes.

- (b) Each year, the BD will arrange to select a total of 2 000 buildings aged 30 years or above and 5 800 buildings aged 10 years or above for the MBIS and the MWIS respectively. To spread over the workload of building professionals and contractors, the selection of target buildings will be conducted at quarterly intervals, with 500 buildings for the MBIS and 1 450 buildings for the MWIS to be selected in each quarter. The target buildings selected each year will represent a mix of buildings in different conditions and age profiles in different districts. Besides, to minimize disturbance to building owners, the BD will synchronize the implementation of the MBIS and the MWIS, whereby buildings selected for the MBIS (that is, the 2 000 buildings each year) will also be selected for the MWIS under the same cycle so that owners can carry out inspection and repair works under both schemes concurrently. The remaining 3 800 target buildings will carry out the MWIS only.

After the commencement of the relevant legislative provisions, starting from July 2012, the BD will issue pre-notification letters to the owners/OC of the first quarterly batch of target buildings selected for the MBIS and the MWIS concurrently to alert them that their buildings have been so selected so as to give them ample time to get prepared for the inspection that they will be required to arrange. The statutory notice requiring the owners/OC to carry out the inspection will be issued, at the earliest, six months (that is, in early 2013) after the issuance of pre-notification letter. The owners/OC should appoint a RI within three months, and complete the prescribed inspection within six months, from the date of the statutory notice. If repairs works are found necessary according to the inspection, they should be completed within 12 months from the date of the statutory notice. An extra three months will be allowed for owners of buildings without an OC to organize and arrange for the required inspection and repair works.

In respect of buildings selected for the MWIS only, starting from July 2012, the BD will issue a pre-notification letter to the OC or post the letter at a conspicuous part of the target building to alert the

owners/OC to get prepared and organized. One to two months after the issuance or posting of the pre-notification letter, the BD will issue statutory notices to the owners/OC of the target buildings. The owners/OC should appoint a QP within three months, and complete the prescribed inspection and repair (if necessary) within six months, from the date of the statutory notice. Same as for buildings selected for the MBIS and the MWIS concurrently, an extra three months will be allowed for owners of buildings without an OC to organize and arrange the required inspection and repair works under the MWIS.

- (c) Registration of RIs for the MBIS has commenced since 30 December 2011, and an Inspectors Registration Committee has been established for considering applications for registration. Over the past few months, the BD has been taking active measures to encourage qualified building professionals to register as RIs, including launching an API publicizing registration in mid-February 2012, writing to the relevant professional institutes to invite them to disseminate the message to their members and to provide on their websites a hyperlink to the BD's website for access to application forms for registration, arranging briefing sessions for members of the professional institutes, and writing to all authorized persons and registered structural engineers inviting them to apply for registration. Registration is progressing well. As at 6 June 2012, a total of 311 applications for registration as RI had been received, of which 195 applications had been approved and 27 applications deferred or refused. The rest of the applications are being processed. The inspectors' register has been uploaded on the BD's website for public inspection.

As we have mentioned previously, to ensure fair competition, we consider that the market should have a supply of at least 300 RIs initially when the first prescribed inspection under the MBIS is to commence. Considering the present progress of registration, we are confident that we would be able to achieve this level of supply in the second half of 2012, before the statutory notices for the first batch of target buildings under the MBIS are issued in early 2013.

(d) and (e)

HKHS and URA will provide the necessary financial and technical assistance to owners taking part in the MBIS and the MWIS, including "three nil" buildings, that is, those without OCs, residents' organizations and property management companies. In terms of financial assistance, the two organizations will implement the "Mandatory Building Inspection Subsidy Scheme" (MBISS) to subsidize owners of eligible buildings the full cost of the first building inspection under the MBIS, subject to a cap. The MBISS will mainly subsidize the cost of first inspection of the common parts of buildings under the MBIS. The cost of first inspection of windows in the common parts under the MWIS will also be covered under the MBISS provided that the actual cost of inspection of the common parts of the building under MBIS does not exceed the subsidy cap. The cost of any detailed investigation and subsequent repair works will not be covered by the subsidy scheme. Under the MBISS, buildings will be categorized into various groups according to the number of units, and each group will have its respective cap limit. To assist in working out the level of the subsidy cap, HKHS and URA have conducted a market survey early this year. The two organizations have completed an analysis of the data collected in the survey and are in the process of finalizing the proposed level of the cap under the MBISS. It is estimated that the level of the subsidy cap and application procedures would be announced in the third quarter this year.

For the sake of convenience and clarity to owners, HKHS and URA will adopt the same eligibility criteria on rateable value of the Integrated Building Maintenance Assistance Scheme (IBMAS) in the MBISS. In view of the rising trend of rateable values in recent years, HKHS and URA have since 1 April 2012 raised the rateable value limits under the IBMAS to benefit more property owners. The average rateable value limit of residential units in urban areas (including Tsuen Wan, Kwai Tsing and Sha Tin) has been lifted from \$100,000 to \$120,000, and that in the New Territories from \$76,000 to \$92,000. About 80% of buildings aged 30 years or above are covered by these revised rateable value limits. "Three

nil" buildings may also apply for the above MBISS if they meet the eligibility criteria on rateable value.

As for the repair works found necessary according to the inspection, the Government, together with HKHS and URA, will continue to provide financial assistance under the various existing schemes, including the IBMAS jointly administered by HKHS and URA, the Building Safety Loan Scheme administered by the BD, and the Building Maintenance Grant Scheme for Elderly Owners administered by HKHS. In line with the spirit of provision of "one-stop" service, owners can make multiple applications covering various types of grants/loans in the above schemes by simply completing one set of application forms under IBMAS.

HKHS and URA will provide technical assistance to owners in need during the various stages of the inspection schemes, including assisting them to organize themselves and offering support on tendering and appointment of RIs and contractors. The BD will, in collaboration with HKHS and URA, provide owners with necessary reference materials and, upon the issuance of pre-notification letters, organize district briefing sessions for owners who have received notification to explain the details of the inspection schemes and assistance packages available. HKHS and URA will make use of the existing hotline of IBMAS to provide one-stop service to owners. The various forms of technical assistance mentioned above will be applicable to "three nil" buildings. In particular, having regard to the needs of this type of buildings, an "OC Formation Subsidy" is established under the IBMAS, whereby each successfully established OC can receive a maximum subsidy of \$3,000. In fact, during the implementation of the Operation Building Bright over the past few years, HKHS and URA have assisted buildings that have difficulties in co-ordinating repair works. The two supporting organizations will make use of the experience gained in providing assistance to buildings without management organizations under the MBIS and the MWIS.

- (f) Under the MBIS and the MWIS, it is an offence if a person, without reasonable excuse, refuses to pay the relevant share of the cost of

inspection, investigation, works or other action for the common parts of the building that are required to be carried out by the OC for compliance with the statutory notice issued by the Building Authority. Offenders are liable on conviction to a fine at Level 4 (that is, a maximum fine of \$25,000). This arrangement seeks to deter any person from refusing to contribute financially to the inspection and repair works for the common parts of the building thus resulting in non-compliance with the notices issued under the MBIS and MWIS. Owners who are willing to share the cost will not be affected.

### **Buildings Energy Efficiency Funding Scheme and Energy Conservation Projects**

19. **MR KAM NAI-WAI** (in Chinese): *President, regarding the Buildings Energy Efficiency Funding Schemes (BEEFS) and the Energy Conservation Projects for non-governmental organizations (NGOs) funded by the Environment and Conservation Fund (the Fund), will the Government inform this Council:*

- (a) *of the details of such schemes and projects and set out the relevant information in the tables below:*
- (i) *information on subsidizing owners of residential, industrial and commercial buildings to conduct energy-cum-carbon audits (ECAs) in communal areas of the buildings;*

<i>Year</i>	<i>Number of applications received</i>	<i>Number of applications approved</i>	<i>Amount of subsidies approved</i>	<i>Contents and details</i>	<i>Territory-wide participation rate</i>	<i>Effectiveness</i>
<i>2009</i>						
<i>2010</i>						
<i>2011</i>						
<i>Total</i>						

- (ii) *information on subsidizing owners of residential, industrial and commercial buildings to conduct energy improvement works (improvement works);*

Year	Number of applications received	Number of applications approved	Amount of subsidies approved	Contents and details	Territory-wide participation rate	Effectiveness
2009						
2010						
2011						
Total						

- (iii) *information on subsidizing NGOs to conduct ECAs in premises owned or occupied by them; and*

Year	Number of applications received	Number of applications approved	Amount of subsidies approved	Contents and details	Territory-wide participation rate	Effectiveness
2009						
2010						
2011						
Total						

- (iv) *information on subsidizing NGOs to conduct improvement works in premises owned or occupied by them; and*

Year	Number of applications received	Number of applications approved	Amount of subsidies approved	Contents and details	Territory-wide participation rate	Effectiveness
2009						
2010						
2011						
Total						

- (b) *given that according to the information provided by the authorities, there were 779 improvement works and 127 ECAs approved by BEEFS with funding amount over \$362 million as at January 2012 and, in addition, 187 improvement works and 18 ECAs for NGOs were approved by the Fund:*

- (i) *whether the Fund has set any target or criterion for the numbers of and proportion between the two types of subsidized items of improvement works and ECAs; if it has, of the details;*

- (ii) *whether the authorities have taken the initiatives to find out the reasons for the numbers of approved improvement works, either those involving buildings (565) or those of NGOs (187), were higher than the numbers of ECAs (121 and 18 respectively);*
- (iii) *whether the authorities have conducted any review in respect of the difference between the numbers of approved projects under the aforesaid two types of subsidized items; if they have, of the details; if not, the reasons for that;*
- (iv) *as the aforementioned schemes ended on 7 April this year, why the authorities neither continue the schemes nor launch a new round of schemes; whether the authorities will consider afresh launching the schemes again; if they will, of the details and the timetable; if not, the reasons for that; and*
- (v) *whether the authorities plan to provide free energy audits or carbon audits for those buildings in which the aforesaid 779 and 187 improvement works were conducted after completion of such works; if so, of the details; if not, the reasons for that?*

**SECRETARY FOR THE ENVIRONMENT** (in Chinese): President, our reply to the various parts of the question is as follows:

- (a) With \$450 million allocated by the Fund, the BEEFS were launched on 8 April 2009 to subsidize building owners to conduct ECAs and carry out energy efficiency improvement works. In Hong Kong, buildings account for 90% of electricity consumption and 60% of our total carbon dioxide emissions. As private buildings account for a substantial percentage of the total building stock in Hong Kong (with over 40 000 buildings), promoting energy efficiency and carbon reduction in residential buildings is a priority area of work of the Government. Hence, we have launched the BEEFS to encourage private property owners to take concrete actions early and to mobilize relevant sectors to participate in relevant work to collectively reduce carbon emissions from buildings.

The BEEFS were intended to last for three years or until the allocation of \$450 million was fully utilized. Applications for the BEEFS closed after 7 April 2012. For a period of three years, since October 2009, the Fund has also been subsidizing NGOs to conduct ECAs and carry out improvement works.

- (i) Information on subsidies provided to owners of residential, industrial and commercial buildings to conduct ECAs in communal areas of their buildings is set out below:

	<i>Number of applications received</i>	<i>Number of applications approved</i>	<i>Subsidies approved (HK\$ million)</i>	<i>Content and details</i>	<i>Number of buildings provided with subsidies</i>	<i>Effectiveness</i>
2009	199	72	3.84	To subsidize the buildings concerned to carry out ECAs.	So far over 700 buildings have been granted subsidies.	ECAs provided the subsidized buildings with the relevant carbon emission and energy consumption data, as well as detailed recommendations on energy conservation and emission reduction.
2010	13	42*	2.39			
2011	8	5*	0.28			
2012 (before close of applications)	13	8*	0.27			
Total	233	127	6.78			

- (ii) Information on subsidies provided to owners of residential, industrial and commercial buildings to carry out improvement works is as follows:

	<i>Number of applications received</i>	<i>Number of applications approved</i>	<i>Subsidies approved (HK\$ million)</i>	<i>Content and details</i>	<i>Number of buildings provided with subsidies</i>	<i>Effectiveness</i>
2009	798	124	36.91	To subsidize works in the buildings concerned to improve energy efficiency of their building services installations, including lighting, electrical, air-conditioning and lift and escalator installations.	So far over 5 600 buildings have been granted subsidies.	It is estimated that all the projects approved so far can save 150 million units of electricity and reduce carbon dioxide emissions by about 105 000 tonnes annually.
2010	277	351*	160.69			
2011	254	197*	107.21			
2012 (before close of applications)	442	107*	50.71			
Total	1 771	779	355.52			



- (iii) Information on subsidies provided to NGOs to conduct ECAs in premises owned or occupied by them is as follows:

	<i>Number of applications received</i>	<i>Number of applications approved</i>	<i>Subsidies approved (HK\$ million)</i>	<i>Content and details</i>	<i>Number of organizations and premises provided with subsidies</i>	<i>Effectiveness</i>
2009	1	0	0	To subsidize the buildings concerned to carry out ECAs.	So far, a total of 18 applications from NGOs have been approved involving 99 premises.	ECAs provided the subsidized buildings with the relevant carbon emission and energy consumption data, as well as detailed recommendations on energy conservation and emission reduction.
2010	11	5*	0.14			
2011	8	9*	0.49			
2012 (as at end of May)	4	4*	1.25			
Total	24	18	1.88			

- (iv) Information on subsidies provided to NGOs to carry out improvement works in premises owned or occupied by them is as follows:

	<i>Number of applications received</i>	<i>Number of applications approved</i>	<i>Subsidies approved (HK\$ million)</i>	<i>Content and details</i>	<i>Number of organizations and premises provided with subsidies</i>	<i>Effectiveness</i>
2009	26	12	1.42	To subsidize works in the buildings concerned to improve the energy efficiency of their building services installations, including lighting, electrical, air-conditioning and lift and escalator installations.	So far a total of 197 applications from NGOs have been approved, involving 278 buildings.	It is estimated that all the projects approved so far can save 7.4 million units of electricity and reduce carbon dioxide emissions by about 5 200 tonnes annually.
2010	94	58*	14.73			
2011	146	73*	16.54			
2012 (as at end of May)	83	54*	8.19			
Total	349	197	40.88			

Note:

\* Approved applications include applications received prior to the respective year.

- (b) (i) The BEEFS aim at promoting building owners' awareness of the benefits of building energy efficiency and encouraging them to take concrete action to seek improvements. The

schemes do not set a specified number or ratio in respect of the subsidies granted under the two categories of ECA projects and energy efficiency projects (EEPs).

- (ii) The number of approved EEPs is more than the approved ECA projects mainly because EEPs can achieve energy saving directly within a short period of time, for example, by switching to more energy-efficient lighting.
- (iii) To encourage building owners to carry out ECAs, we have stepped up the promotion efforts with different organizations and bodies in various districts, including District Councils and NGOs, and briefed them on the benefits of ECAs. For instance, it enables relevant organization to have a better grasp of the position of and data on energy consumption and carbon emission for the setting of energy saving targets and planning of energy improvement measures. The Fund also subsidizes NGOs to carry out education and publicity activities, including those on the promotion of carbon audits.
- (iv) Applications for the BEEFS closed on 7 April this year as scheduled. We consider that the BEEFS have achieved their intended purposes, namely, promoting the building owners' awareness of the benefits of building energy efficiency and encouraging them to take concrete action to seek improvements. The BEEFS have also been successful in motivating relevant sectors to grasp the business opportunities brought about by improving building energy efficiency. Since the launch of the BEEFS, over 20 training courses on energy and carbon audits have been offered for about 1 200 people by various training institutes and organizations. With services provided by the engineering sector and facilitation by the property management sector, building owners are well supported to pursue energy efficiency initiatives for their buildings.

We will continue to promote the enhancement of building energy efficiency. Among other things, the Buildings

Energy Efficiency Ordinance (Cap. 610) will come into full operation in September 2012. The Government has also tightened the Building Energy Code. We will carry out carbon audits for major government buildings and public facilities and through funding schemes, encourage the business sector, major chambers of commerce and supporting organizations to join us in promoting carbon audits.

- (v) Upon completion of the EEPs, subsidy recipients are required to submit reports setting out the information on energy consumption of the installations, and professional evaluation of the results of energy conservation. We believe that the information is sufficient to reflect the effectiveness of the projects.

Based on the approval statistics in the past few years, the BEEFS have helped enhance the community's awareness of the importance of buildings energy efficiency. The schemes have mobilized property owners to take concrete actions to reduce carbon emissions and improve energy efficiency. Of the total building stock in Hong Kong of over 40 000 buildings, more than one eighth of them have received subsidies under the schemes; there is also a change in the types of installations involved in the projects, from replacement of lighting installations, which is relatively easy to implement, at the beginning of the schemes to large-scale projects involving replacement of central air-conditioning, lifts and escalators at the later stage of implementation of the schemes. The BEEFS have also encouraged cross-sectoral co-operation between the engineering and property management sectors to grasp the opportunities brought by low-carbon economy. Furthermore, although ECAs have not been pursued for too long in Hong Kong, they have been carried out in more and more buildings, which help identify room for energy saving and carbon reduction. There were also some buildings which had successfully applied for subsidies to implement energy improvement proposals as recommended upon completion of ECAs. The success of the BEEFS has helped lay a solid foundation for the full implementation of the Buildings Energy Efficiency Ordinance.

**Moral and National Education Subject for Primary and Secondary Schools**

20. **DR LAM TAI-FAI** (in Chinese): *President, the Education Bureau has issued a circular memorandum to schools, informing them that the Moral and National Education (MNE) subject should be implemented in primary and secondary schools starting from the 2012-2013 and 2013-2014 school years respectively. In order to allow sufficient time for schools to make preparation and planning, the Education Bureau will provide a three-year "initiation period" for schools to make appropriate arrangements: the "initiation period" for primary schools is from the 2012-2013 school year to the 2014-2015 school year and that for secondary schools is from the 2013-2014 school year to the 2015-2016 school year. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have assessed the number of schools which will not be able to implement the MNE subject within the "initiation period"; if they have, of the details; if not, the reasons for that;*
- (b) *of the actions the authorities will take in respect of schools which are unable to implement the MNE subject after the "initiation period" for various reasons, such as insufficient manpower, failure to develop the relevant curriculum or objection by parents;*
- (c) *whether the authorities have any criterion to assess the effectiveness of implementing the MNE subject in schools; if they have, of the details; if not, the reasons for that;*
- (d) *whether the authorities have assessed if there are sufficient qualified teachers in the education sector to implement the MNE subject; if they have, of the details; if not, the reasons for that;*
- (e) *whether the authorities have any specific measure to assist schools in resolving difficulties in recruiting MNE teachers; if they have, of the details; if not, the reasons for that;*
- (f) *whether the authorities have any specific measure to assist schools in resolving difficulties in planning and developing the MNE curriculum; if they have, of the details; if not, the reasons for that;*

- (g) *whether the authorities have assessed if there will be significant variations among schools in terms of curriculum content and quality; if they have, of the details; if not, the reasons for that;*
- (h) *whether the authorities have any measure to ensure that teachers will teach the MNE subject in a politically neutral manner; if they have, of the details; if not, the reasons for that;*
- (i) *given that a one-off cash grant of \$530,000 will be disbursed to each school in August this year for its use in the coming four years, covering staff recruitment, procurement of teaching materials and provision of support for teachers' participation in exchange programmes, and so on, of the criteria based on which the authorities have arrived at the said amount; whether they will consult schools within the "initiation period" to review if that amount is adequate; if they will, of the details; if not, the reasons for that;*
- (j) *given that according to quite a number of public comments, the MNE subject is tantamount to "brainwashing education", whether the authorities have assessed if a negative perception of the MNE subject has been formed among teachers, parents and students, thereby affecting the implementation of the MNE subject; if they have, of the details; if not, the reasons for that; and*
- (k) *whether the authorities will examine if the subject of Chinese History should be made a compulsory subject in secondary schools before making the MNE subject a compulsory one, so as to enable students to gain more in-depth knowledge about the development of our country; if they will, of the details; if not, the reasons for that?*

**SECRETARY FOR EDUCATION** (in Chinese): President, for the questions raised by Member, the replies are as follow:

- (a) and (d)

A three-year "initiation period" is provided in order to allow schools, on the basis of their own foundation and experience in promoting

MNE as well as their students' needs, to incorporate progressive implementation of the MNE subject into the School Development Plan, the Annual School Plan and the whole-school curriculum plan according to the MNE Curriculum Guide. This is to ensure that schools have made a systematic and sustainable arrangement for the implementation of the subject by the end of the three-year "initiation period".

All along, the promotion of MNE has been one of the aims of the Hong Kong school curriculum. The content of the MNE subject can, in fact, be seen as early as in those subjects launched since the 1990s, for example, General Studies at the primary level, Integrated Humanities and Life and Society at the junior secondary level. In addition, learning elements of MNE are incorporated into related learning experiences such as voluntary services, Mainland exchange programmes and project learning. Hence, primary and secondary schools in Hong Kong have already built up considerable school-based experience in promoting MNE and the teachers have also accumulated relevant knowledge and teaching skills to be effective teachers of the MNE subject.

- (b) In addition to the curriculum planning and staff arrangement of the MNE subject, which are detailed in the MNE Curriculum Guide alongside specific suggestions on the implementation modes, the Education Bureau puts much emphasis on providing a great variety of curriculum resource support, including learning and teaching resources, professional development programmes, school visits, support grants, and so on, to enhance teachers' mastery of the strategies and techniques in planning and implementing the MNE subject.

The Education Bureau is also concerned about the challenges faced by schools in relation to the planning for and implementation of the MNE subject during and after the "initiation period". Timely and appropriate support in the form of school visits, learning circles, and so on, will be organized to enable schools to implement the subject more effectively.

Furthermore, the Education Bureau will adopt various modes, for example, organizing parent seminars, setting up learning and teaching resources websites and publishing pamphlets, to explain to the parents the principles, aims and directions of the MNE subject so as to enhance their understanding of the subject.

- (c) To evaluate the effectiveness of the implementation of the MNE subject, the Education Bureau will review whether appropriate arrangements have been made by schools after the "initiation period", including having: (i) incorporated the MNE subject into the School Development Plan and the Annual School Plan; (ii) set up a professional MNE subject team; (iii) developed the annual MNE curriculum plan, learning and teaching plans as well as the required learning and teaching resources at each year level; and (iv) indicated clearly the lesson time for the MNE subject at each year and level and for each class in the school timetable. Furthermore, the Education Bureau will review the implementation of the MNE subject and the effectiveness of student learning through the various existing mechanisms, including regular school visits, school self-evaluation, external school review, questionnaires, and so on.
- (e) The Education Bureau will organize a series of teacher professional development programmes for the smooth implementation of the MNE subject, on topics covering curriculum leadership and management, understanding and interpreting the curriculum, knowledge enrichment series, and so on, to enhance teachers' knowledge of and pedagogy for the MNE subject. Learning and teaching resources, resources websites, as well as Mainland professional exchange programmes for teachers will also be provided to support the implementation of the MNE subject.
- (f) To address the needs of various stakeholders of the schools such as school heads/principals, curriculum leaders and teachers, the Education Bureau will organize a series of focused professional development programmes, on topics including curriculum leadership and management, understanding and interpreting the curriculum, learning and teaching strategies, assessing student learning, and so on, to help schools to resolve the difficulties encountered when planning for the curriculum and designing learning and teaching

materials. To facilitate more effective planning for the MNE curriculum, a "curriculum review tool" is provided in the MNE Curriculum Guide for use by schools. With this tool, schools can review the learning objectives of the MNE subject as well as the content and learning and teaching process of related subjects, and bring better co-ordination between them for more effective curriculum planning for the MNE subject.

- (g) The MNE subject has clear curriculum aims and learning objectives, and a well-defined curriculum framework. Schools should make reference to the learning objectives and content of the MNE curriculum and make adaptation based on their school context and students' needs, taking into consideration the mission and vision of their respective School Sponsoring Body (SSB) and realigning with relevant subjects.

The Education Bureau also respects the mission, tradition and history of SSBs. The development of SSB-based learning content, grounded on the MNE Curriculum Guide, is encouraged so that the mission and vision of the respective SSB and the learning objectives of the MNE could be well taken care of when the MNE subject is implemented.

- (h) The learning and teaching of the MNE subject emphasizes objective analysis from multiple perspectives. Teachers may select appropriate life events and current issues, including controversial ones, for discussion with students. It is unnecessary to avoid any events or issues, but a fair and unbiased analysis of the events or issues should be ensured. The MNE Curriculum Guide also includes, for schools' reference, relevant suggestions and examples on the strategies for the learning and teaching of controversial issues (including the principles of rationality, fairness, emphasis on facts and reasoning, and so on).
- (i) Schools have already accumulated valuable experience in promoting MNE since the start of the curriculum reform. The Moral and National Education Subject Support Grant disbursed by the Education Bureau is intended as an additional resource for schools' flexible use during the three-year "initiation period" to facilitate



schools' transition from their MNE implementation experience into subject-based work.

During the three-year "initiation period", the Education Bureau will interview the teachers, through school visits and professional development programmes, to collect feedback on the support measures, including the support grant to schools.

- (j) The MNE subject aims at cultivating students' positive values and attitudes through a continuous and systematic learning experience. It enables students to acquire desirable moral and national qualities, thus enriching their life and facilitating their identity-building in the domains of family, society, the country and the world.

Apart from fostering in students aspirations and commitment to making contributions in the domains of family, society, the country and the world, the subject emphasizes the development of students' independent thinking and autonomy so that they are able to distinguish right from wrong and make informed decisions in a caring and reasonable manner.

The Education Bureau will continue to explain to the different stakeholders the characteristics of the MNE subject and the curriculum aims through various channels to address the concerns of the public over this subject.

- (k) At present, all junior secondary students have to study Chinese History. The Education Bureau stipulates that all secondary schools must provide Chinese history education at the junior secondary level, regardless of the mode of curriculum organization adopted, devote not less than one quarter of the total curriculum time spent on Personal, Social & Humanities Education Key Learning Area (an annual average of about two lessons per week) to it, and use Chinese as the medium of instruction.

Chinese History has always been an elective subject at the senior secondary level, and this has not been changed in the New Senior

Secondary academic structure. According to the 2012 Hong Kong Diploma of Secondary Education Examination data, more than 90% of the schools offer Chinese History at the senior secondary level.

## **BILLS**

**(Bill scheduled to be dealt with at this Council meeting)**

### **First Reading of Bills**

**PRESIDENT** (in Cantonese): Bill: First Reading.

**MR LEUNG KWOK-HUNG** (in Cantonese): I request a headcount, a headcount.

**CLERK** (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): Bill: First Reading.

## **SUPPLEMENTARY APPROPRIATION (2011-2012) BILL**

**CLERK** (in Cantonese): Supplementary Appropriation (2011-2012) Bill.

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

**Second Reading of Bills**

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

**SUPPLEMENTARY APPROPRIATION (2011-2012) BILL**

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): President, I move the Second Reading of the Supplementary Appropriation (2011-2012) Bill.

Section 9 of the Public Finance Ordinance provides, "If at the close of account for any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates."

The annual accounts for the 2011-2012 financial year have been finalized. The expenditure charged to 38 of the 83 heads is in excess of the sum appropriated for the respective heads under the Appropriation Ordinance 2011. The relevant increase in expenditure was mainly caused by the 2011 Civil Service pay adjustment, implementing Scheme \$6,000 and injecting funds into the Community Care Fund, the Elite Athletes Development Fund and the Self-financing Post-secondary Education Fund. The amount of supplementary provision for all the expenditure in excess has been approved by the Finance Committee or under powers delegated by it.

I hereby introduced the Supplementary Appropriation (2011-2012) Bill into the Legislative Council to seek final legislative authority for the supplementary provision in respect of the 38 heads totalling about \$54.1 billion.

Thank you, President.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Supplementary Appropriation (2011-2012) Bill 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.

**(Bill originally scheduled to be dealt with at the last Council meeting)**

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Council is now in Committee. Members may now continue with the debate on the original clauses 1 and 35 of the Competition Bill and the amendments thereto.

### **COMPETITION BILL**

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

**MR ALBERT CHAN** (in Cantonese): Chairman, though there are many Members in the Chamber, I believe not all of them remember or know what we are discussing now. Although the Competition Bill is a very important bill, not many Members have spoken on it. I raised many questions last week, but the groups or political parties to which I had directed questions were not even in the mood to respond. Chairman, when this subject was discussed, I noticed that no groups or individuals had declared interest, and it has been reported that ..... Some Members are very likely to be picked for certain posts and certain political parties have even made public that its core members applied for certain government posts. May I seek a ruling from you on whether these people need to declare interest? Will they violate the rules for not declaring interest?

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

**DEPUTY CHAIRMAN** (in Cantonese): Mr CHAN, generally speaking, it is up to Members to decide whether or not to declare interest. If they do not do so, they will have to bear the consequence should they have any conflict of interests.

**MR ALBERT CHAN** (in Cantonese): Thank you, Deputy Chairman. I only wish to remind these political parties and individuals concerned. Given that a substantial pecuniary interest is involved ..... the minimum monthly salary of a Deputy Director of Bureau is about a hundred to two hundred thousand dollars or as much as two hundred to three hundred thousand dollars ..... Given that their application to government posts have been brought to light, they should declare interest irrespective of their political party's stance. Besides, if these Members have already been approached by the incoming Government .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr CHAN, please focus on the Competition Bill.

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, I am only giving them a friendly reminder, to save them from being complained against in the future, we do not need to establish a committee to inquire into the matter or censure their actions, which will be a waste of public coffers.

Deputy Chairman, I wish to revert to the question why Mrs IP's amendment on clause 35 is important. Actually, as pointed out by me last week, even if the guidelines are not in the form of subsidiary legislation, transparency can still be enhanced as long as the Legislative Council has the right to scrutinize them. If the guidelines are required to be discussed and endorsed by the Legislative Council, I absolutely believe that the Competition Commission (the Commission) will formulate the guidelines with much greater prudence and will better accommodate public views and interests. As Members are aware, once a statutory body is allowed to engage in a "black-box operation", its core board or committee members, who are selected by a coterie election, will make decisions behind closed doors. Past examples have shown that in the end, the rights of the people or those with a weaker connection with the committee will be jeopardized.

Many policies are required to be examined in an open, fair and just way by a body with public acceptance. However, this Council has a weak public

acceptance because half of its seats are taken by functional constituency Members. With the convoy of the royalists, the Government often gets what it wants when it comes to matters related to public interests, depriving people of their rights in the process. Whenever I speak, "Big Elephant" starts to fall into a coma. Deputy Chairman, thank you for staying awake to listen to me.

Deputy Chairman, regarding the amendments proposed by Mrs Regina IP, I have repeatedly expressed my basic view and now I just wish to let Members understand my view. First of all, we cannot waver, we cannot go back on what we said in the past. Such behaviours are common in this Chamber. Even Mr Joseph YAM has recently changed his stand abruptly on the Linked Exchanged Rate System which he had upheld for years. In the political arena, people going back on what they said in the past has become so common that such behaviours will no longer raise any eyebrows.

Our prime consideration is, whether public interests are safeguarded. Mrs IP's amendments basically can enhance the interests of the public. If the guidelines are to be endorsed by the Legislative Council, not only the transparency of the guidelines will be enhanced, public interests will also be better safeguarded. Hence, opposing the amendments are basically the same as acting in opposition to protecting public interests.

Deputy Chairman, I only wish to raise a technical issue about a clause. There is some problem with the Chinese wordings of her proposed subclause (6) to be added to clause 35. I hope Mrs IP will look into it. The Chinese subclause (6) reads, "任何人並不僅因違反根據本條發出的指引或對該指引的修訂，而招致民事或刑事法律責任。" ("A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them.") I think there is some problem with the wordings of the subclause. Deputy Chairman, as Mr WONG Yuk-man has repeatedly made a similar criticism in the past few weeks on the law-drafting problems in Hong Kong, the problem of "mechanical translation" is quite common in the Chinese version. We have already discussed in detail the problems of translation in the previous few meetings. When the clauses are rendered into Chinese, the wordings are often not as coherent and comprehensible as the English version. This amendment has the same problem. Perhaps, the reason is that the clauses are drafted in English which makes the English version more coherent and comprehensible.

When I read the English clause, I understand it right away. The English subclause (6) reads, "A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them." The English version is more coherent and grammatical, and though I have repeatedly read the Chinese version, I still do not quite understand what the subclause means. In particular, I do not understand the logical relationship behind the part on "並不僅因違反根據本條發出的指引" ("..... not ..... only because the person has contravened any guidelines issued under this section"). The phrase "並不僅因" (not ..... only because) which Mrs IP uses makes people wonder what it refers to and makes the sentence connecting to it difficult to comprehend. Yet, when I refer to the English version, I realize that the phrase "並不僅因" (not ..... only because) is related to the incurring of civil or criminal liability. The discrepancies arisen from different Chinese and English drafting approaches may give rise to future disputes because people illiterate of English will rely on the Chinese version to understand the provisions of the ordinance. This is rather unfair and unjust to them.

People may misinterpret the meaning of the subclause because of this phrase. This is the problem of the amendment. If the phrase "並不僅因" is changed to "不會只因" (not ..... by reason only that .....), I believe it will be easier to understand. In other ordinances, ..... My assistant has done some research and analysis and found that the phrase "並不僅因" has been used 23 times in the laws of Hong Kong, while the phrase "不會只因" has been used 18 times.

Certainly, ordinances were drafted at different times. I do not know if the phrase "不會只因" has been adopted at more recent times. I think "不會只因" is more modern and will be easier to comprehend by the general public. Yet, the amendment has adopted the phrase "並不僅因". I believe the amended clause will be more comprehensible if the phrase "不會只因" is used instead. The time for revising the amendment has expired and I do not wish to linger on this issue. I just wish to use this opportunity to express my view.

Moreover, I wish to talk about subclause (7). Deputy Chairman, the first sentence of the Chinese subclause (7) reads, "如在任何法律程序中，審裁處或任何其他法院信納某指引攸關裁定受爭議的事宜，則....." ("If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline

is relevant to determining a matter that is in issue .....") The Chinese version has same problem. The wordings are verbose, and the phrases are linked in such a way that it reads like archaic language. One needs to study it very closely to understand what the sentence means.

The problem lies in the term "攸關" ("relevant to") in the sentence "審裁處或任何其他法院信納某指引攸關裁定受爭議的事宜" ("the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue ....."). The Chinese version is very incoherent. The English subclause, that is, "If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue .....", is much more fluent, the choice of words and the syntax are fluent and easy to comprehend.

When we come to the part "信納某指引攸關裁定受爭議的事宜", we really have to rack our brain to understand what the words "攸關裁定" means. If that part can be drafted in laymen terms with less legal logics and be rewritten as "已裁定受爭議的事宜有關的指引" (has ruled that a guideline is relevant to the matter that is in issue), it will be much more coherent and the syntax will be more in line with the way we think and our practice in the choice of words. The present wordings, however, have prevented us from understanding the subclause.

I hope that when laws are drafted in future, the Government, particularly the Law Draftsman, would pay special attention to the choice of words used in the Chinese version, such that phrases and sentences are more comprehensible and can measure up to the standard of bilingualism where English and Chinese are of equal importance. As Hong Kong people have less chance to speak English now, more emphasis should be placed on the Chinese version. It is thus of paramount importance that the Chinese sentences and phrases are coherent and comprehensible.

Deputy Chairman, one last point I wish to make is about Mrs Regina IP's amendment on requiring guidelines be submitted to the Legislative Council for approval. I think the amendment lacks a specific time limit. If such a time limit can be added, the amendment will be perfect and is of the right force. Why is it so important to lay down a time limit? It is because Mrs Regina IP has proposed an amendment to clause 35 to add a subclause (4A)(a), that is "before any guidelines are first issued under this section, the guidelines must be submitted



to the Legislative Council for approval". She has not stated how long "before". Is it one day, two days, three days or X-days "before"?

I think it is justified to set the time limit at three months because reasonable time should be allowed for the people concerned to conduct research, consultation and discussion. If not, it will be like the re-organization of the Government Secretariat proposed by the new Government, which has been scrutinized in such haste that Legislative Council Members have become LEUNG Chun-ying's house servants and slaves. We were informed today that the Administration has asked members of the Finance Committee whether additional meetings could be held. Such practice is absolutely not mature nor reasonable.

LEUNG Chun-ying would submit to the Legislative Council any whimsical ideas ..... any deranged new moves that comes to his mind as if the world evolves around him. The earth does not revolve around him. The earth is abided by the law of nature and of the universe; it is in God's hand. LEUNG Chun-ying has become God Himself. Any order he has laid down has to be followed by the servants around him. We have been having meetings day and night just because of him. Is this justified?

The Legislative Council is a solemn institution, but now it has been masterminded by other people to do this and that. We have put aside all other work just to follow his will. This is absolutely ridiculous. In addition to condemning LEUNG Chun-ying, coming back to this amendment, we must also (*The buzzer sounded*) .....

**DEPUTY CHAIRMAN** (in Cantonese): The speaking time is up.

**MR ALBERT CHAN** (in Cantonese): ..... set a time limit.

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy Chairman, sorry, just now Mr Albert CHAN's said that Mrs Regina IP has not set a time limit regarding the submission of guidelines to the Legislative Council for approval. I think this is a very solemn issue. It can be said that the Legislative Council is the only constitutional body that monitors the Government. By exercising various powers, we can monitor by, say, blocking the passage of government motions or

voting down funding proposals, so that the Government cannot get some work done. If Mrs Regina IP requires us to exercise power without specifying the time limit, the relevant power would be seriously undermined. Why is that so? In the absence of a time limit, it is possible that the guidelines to be submitted today will have to be implemented the following day, or the guidelines will not be passed after a prolonged period of time. Both scenarios should be avoided by the legislature.

The original text of the amendment reads, "before any guidelines are first issued under this section, the guidelines must be submitted to the Legislative Council for approval." In the absence of a time limit, it is possible that the authorities will submit the guidelines at a very advanced stage. Meanwhile, they will also send a message to the local community, warning that not approving the guidelines will bring fatal or serious consequences, with a view to exerting pressure on Members. It is also possible that the guidelines, upon submission to the Legislative Council, will be shelved with the help of Members or the concerted efforts of people in the Legislative Council. Therefore, regarding this issue, I think that Mrs Regina IP should include a time limit when the new subclause (4A)(a) is added to clause 35, so as to make the sentence "the guidelines must be submitted to the Legislative Council for approval" more substantial. Otherwise, even the most fundamental meaning will be gone.

Another issue is: Why would I support clause 35, requiring the submission of guidelines to the Legislative Council for approval before issuance? This boils down to the same old problem. After the enactment of legislation, an organization will be entrusted with certain power — this cannot be regarded as empowerment as not much power has been granted — but then the organization can make use of the given power to do something which we cannot check and balance. I hold that this is undesirable.

Let me cite another painful experience. I hope Members will understand the problems brought about by the so-called securities law, which has left Hong Kong people with a very deep impression. The global financial crisis in 2000 had dealt a serious blow to banks, which recorded a significant drop in their traditional businesses. As a result, the banking sector was eager to develop new businesses and shifted the focus away from their proper endeavours. They had given up or abandoned much of their established businesses and switched to the selling of financial products or financial derivative products. This may remind Hong Kong people of Mr Joseph YAM, who was the then Chief Executive of the

Hong Kong Monetary Authority (HKMA). While he was tasked to supervise all local banks, products sold by banks are nonetheless monitored by the Securities and Futures Commission (SFC). Secretary, the only thing that he said in this Council was — perhaps you have yet to become a lawyer back then — "Please give me a blank cheque". He asked for the power to approve a framework which would enable banks to sell financial products.

This has actually changed the nature of banking business, as the main business should be to protect the interests of depositors. Take my mother as an example. Bringing her tiny little stamp to the bank, she intended to deposit all her hard-earned money and become a depositor. But if the bank is allowed to sell financial products to her, she may become an investor. This is very confusing. What problem does this give rise to? The authorities had undertaken, in front of this Council, to submit something for Members' information within one year. We now find out that it is the so-called memorandum.

Under the securities law, a bank may switch from its proper endeavours to the selling of financial products. However, some people are kept in the dark. They still think that their money has either been saved as deposits or used to buy bonds though they do not have the slightest intention of engaging in high-risk investments or any investments. They know nothing at all. After Members granted the relevant power to the authorities, I remember that Dr Margaret NG had expressed her fear about such arbitrary delegation of power. Even though Members were aware that power should not be delegated this way, they hoped that the authorities would appear more justifiable one year later. This was, however, not the case. The authorities had just made an announcement in the Legislative Council as a mere formality, and no formal approval had been made. Therefore, I would not describe the royalist party a rubber stamp as it does not even have the power to use the stamp, right? The authorities have simply submitted the guidelines to the Legislative Council and ask if we have any views.

Today, we have to face another problem concerning the enactment of legislation and the establishment of the so-called Competition Commission (the Commission) and the Competition Tribunal (the Tribunal). What will they do and how are they going to operate after the framework is put in place? According to the initial proposal, guidelines will be provided. But how will the guidelines be implemented and who will act as the gatekeeper? There are views that the Legislative Council should not be gatekeeper for this is meaningless and

inappropriate. And, if the legislation can only be implemented after the guidelines are approved, it will exist only in name. This is because the guidelines may have implications on the effect of the legislation, and if they must be approved by the Legislative Council, the time needed will be very long.

Secondly, we are nothing but a rubber stamp, not only for the first time, but also the second time. This is why Members felt so worried and want to deal with the Bill in one go. While this is a valid point, I cannot agree with it. First of all, as legislators, if we exercise our constitutional right to pass a law and empower certain people to formulate guidelines which can expand or restrain their power, why the Legislative Council cannot have the final say? This is the question. If scrutiny by this Council will delay the process, then a time limit should be set. I am saying this to Mrs Regina IP. There should be express provisions stating when the guidelines should be submitted, and no delay or unexpected submission is allowed. This should be clearly provided for in the law. As for the time of review, it would be better if it is clearly stated.

However, we are "trimming the toes to fit the shoes", knowing that the business sector does not welcome the Competition Bill. They are afraid that when the guidelines are submitted to this Council, there will be another round of political or social struggle which may delay the implementation of the legislation. Or, we can resign to the second best. But the entire legislative exercise may still end up futile. Although the legislation is passed today, future discussions on the guidelines may evolve into a battle between the "pig" and the "wolf". Supposedly, the "pig" should win, but the winner is actually the "wolf". There are many uncertainties.

I think Members should not regard this issue the major factor for consideration as this is, after all, an expedient approach. Judging from the power of various parties in this Council, or the fact that pro-business Members with vested interests have secured the majority votes in this Council, as expected under the small-circle election, they will end up the same regardless of the tricks used. A simple example is the discussion about the granting of exemptions to statutory bodies. It is very ridiculous. "The Seven Sisters" — not Tsat Tze Mui<sup>1</sup> Road — I am referring to the oil companies, they have all along been

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<sup>1</sup> "Tsat Tze Mui" in Cantonese means seven sisters.

autocratic, claiming that they have no private dealing. But do you believe? No matter which oil company you patronize, the price is the same. Why is there such a coincidence? This is even worse than turning the European Football Championship into a match-fixing game for the Euro countries to make a fortune, right? In the end, contrary to all expectations, the Euro countries will win.

The point is, if we insist on adopting an expedient approach when the political power within the Legislative Council is so unevenly distributed, simply to bow to suit the current irrational and twisted situation, it is tantamount to locking ourselves up. The passage of the securities law has brought sufferings to Hong Kong for a decade, and has become something which people fear of even after a decade. After the enactment of the securities law, Joseph YAM and Andrew SHENG (who was recruited by YAM) took charge of the HKMA and the SFC respectively and had underhand transactions behind closed door. According to Joseph YAM, he was only responsible for monitoring the banks and thus he would not investigate how the banks sell their products. He had invoked the Banking Ordinance but not the Securities and Futures Ordinance for the investigation. What is the purpose of the investigation then? It is, after all, a formality. The key was the protection of the interests of depositors but not investors who had invested blindly. This is the first point.

The second point is, knowing that the scope of the Securities and Futures Ordinance does not cover derivatives, the SFC (including Martin WHEATLEY) had turned a blind eye to these products. Knowing that the said Ordinance only authorizes investigations of hard facts like the amount of assets, the SFC had used a large amount of hedge .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr LEUNG, does what you said have any relevance to the amendments of the Competition Bill?

**MR LEUNG KWOK-HUNG** (in Cantonese): I am citing an example. What I said has relevance to the amendments because if .....

**DEPUTY CHAIRMAN** (in Cantonese): Please state the relevance and focus on the Competition Bill.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... if the guidelines are not submitted to the Legislative Council, it is tantamount to giving the authorities a blank cheque, which we did in 2001, and is going to do so again in 2012.

Learning from past experience and thanks to my colleagues, the issue was drawn to my attention during the deliberation of the Subcommittee to Study Issues Arising from Lehman Brothers-related Minibonds and Structured Financial Products. Experience taught me that I am obliged to warn other Members: if this Council grants certain power to an organization by issuing a blank cheque, and subsequently cannot exercise check and balance, this is tantamount to a delegation of power. In what position can we delegate power to the authorities? No, we cannot. We are doing something that we are not empowered to.

Therefore, with regard to this issue, I hope that all Members will think twice. We should not let the Bill get through in one go merely out of the fear that the guidelines will be twisted in this Council in the future. In fact, there is no way we can exercise check and balance. If the Legislative Council cannot perform its monitoring role, the Commission and the Tribunal, of which the composition is unknown to Members, will be free to do whatever they want.

Therefore, Deputy Chairman, I cannot support the proposal which saves the authorities from the need to submit the guidelines to the Legislative Council for scrutiny.

Thank you, Deputy Chairman.

**MS CYD HO** (in Cantonese): Deputy Chairman, I speak in opposition to Mrs Regina IP's amendment because the amendment has an objective effect of deferring the implementation and commencement date of two important provisions in the principal ordinance, such that even the negligible regulatory effects of the legislation cannot be immediately enforced.

Mrs Regina IP has said that her amendment is not a subsidiary legislation, and it is stated in the amendment that any person who does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them. However, it is specified in her amendment that clauses 6 and 21, the two most important clauses governing

the first conduct rule and second conduct rule, may only come into operation after the guidelines have been approved by the Legislative Council. Hence, though this amendment is not a subsidiary legislation in name, it is a subsidiary legislation in reality.

Deputy Chairman, why do I say so? Last year, in view of the constitutional crisis triggered by the Tseung Kwan O landfill, the Legislative Council set up the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation. The Subcommittee had conducted thorough and in-depth studies on the nature and scope of subsidiary legislation and the power to amend subsidiary legislation. Based on the information provided by the Government, the descriptions and definitions of the scope and nature of subsidiary legislation are set out in the Subcommittee's report. The nature of subsidiary legislation includes delegating powers, regulating the effective or commencement date of the ordinance, as well as updating certain details in the ordinance that are changing from time to time, such as the names and lists of drugs. Thus, it is more appropriate to regulate these under subsidiary legislation than the principal ordinance.

As it is specified in Mrs Regina IP's amendment that clauses 6 and 21 concerning first conduct rule and second conduct rule may only come into operation after the guidelines have been approved by the Legislative Council, this amendment actually serves as a subsidiary legislation when the effective or commencement date is concerned. Nevertheless, I think this amendment is contradictory in nature and the name does not reflect the reality. If Members think that the provisions will not only take effect after the guidelines have been examined and passed by voting in the Legislative Council, it might as well be clearly stated that this is a subsidiary legislation.

The purpose of a guideline is to help the community understand the legislation better, so that they can more effectively comply with it. I agree that it is inappropriate for the guidelines to have legal effects because they contain practical examples. The accumulation of experience is essential in formulating the guidelines, and as indicated by many Honourable colleagues, the guidelines in Europe could only be compiled 10 years after the implementation of the law as accumulation of experience was needed. There will be a chicken and egg problem if we support this amendment because clauses 6 and 21 cannot be implemented if the guidelines have not taken effect. But, experience can only

be accumulated under the unique circumstances in Hong Kong after the relevant provisions have come into effect. If we accept this amendment, the situation will be similar to that of a cat chasing its own tail; it will not be able to catch it no matter how hard it chases.

Deputy Chairman, take the recently Revised Code of Practice on Employment under the Disability Discrimination Ordinance issued by the Equal Opportunities Commission as an example, many substantive cases and reference materials have been included in the Code, so that various sectors can draw reference from it on how to effectively comply with the Ordinance. Thus, a code of practice can only be prepared after experience has been accumulated, and after the major legal provisions have come into force for quite some time.

Lastly, Deputy Chairman, I would like to discuss the power of approval of the Legislative Council. Mrs Regina IP has cited the example of the last provision in section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Anti-Terrorism Ordinance) and questioned why Members strongly requested the Government to formulate a code of practice under the Anti-Terrorism Ordinance to be laid before the Legislative Council while they dealt with the Competition Ordinance in another way. Deputy Chairman, as we all remember, the legislative procedure for the passage of the Anti-Terrorism Bill in 2002 was very sloppy. At that time, the Security Bureau led by Mrs Regina IP even failed to provide the Bills Committee with hard copies of the amendments. Consequently, the officials just read out the amendments at the meetings of the Bills Committee, while Members, like primary students, had to dictate them on their own copy, and tried hard to understand these amendments. That was unprecedented and fortunately, such incidents did not happen again. Hence, Legislative Council Members had to try their best to play the gate-keeping role.

At that time, apart from hasty enactment, there is another reason why we queried and opposed section 12A. Why should we monitor the code of practice and why was it appropriate for the code to be laid before the Legislative Council in the form of subsidiary legislation? In fact, section 12A of the Anti-Terrorism Ordinance requires that, before an order is made, the law-enforcement agencies and the Judiciary should conduct investigations, take statements, obtain information and serve documents and notices according to the rules. The scope of work has been clearly specified. Within such a narrow scope and according to explicit procedures, the code should clearly set out the power of the



law-enforcement agencies and the service of the orders and notices on schedule, so that people under investigation or assisting the police in investigation will be given sufficient time to understand their powers and responsibilities. This can protect the public and prevent the abuse of power by law-enforcement agencies. More importantly, the code sets out more explicit procedures within a clearly specified scope for compliance by law-enforcement agencies, instead of re-defining concepts on which experience has not been accumulated. Therefore, an analogy cannot be drawn between section 12A of the Anti-Terrorism Ordinance and the guidelines under the Competition Bill as they are of different nature.

Deputy Chairman, I do not share Honourable colleagues' queries about why the Legislative Council is wavering and fails to act according to the same standard because these are two different things, and we are talking about two kinds of powers and responsibilities. Thank you, Deputy Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Please do a headcount.

**DEPUTY CHAIRMAN** (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 CHAIRMAN** (in Cantonese): A quorum is present, the meeting continues. Does any other Member wish to speak?

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, many Members in this Chamber have rich experience in the scrutiny of legislation and the implementation of ordinances, especially new ordinances. The guidelines or the regulatory requirements under the ordinances are very important.

I have just searched the Internet regarding how other countries amend the laws on competition or fairness, and I found that most of these countries (including Jamaica, a small country) have prescribed guidelines, specifying in detail that acts of price-fixing should be prosecuted, and listing out the requirements to be met.

The Competition Commission (the Commission) will be established in Hong Kong and I know the Secretary may later say that the Commission should consult the Legislative Council when it draws up the guidelines in future. This is better than not having any consultation, but it is extremely important to specify the contents. We have seen too many cases in the past where the contents were distorted beyond recognition after consultation.

I still remember that many years ago, when Mr Nicholas NG was the Secretary for Transport, the authorities planned to widen the Castle Peak Road. There was a cycling track on the gazetted plan showing the proposed widening of Castle Peak Road, but upon consultation, the cycling track had been silently removed, because the Governor in Council had adopted a new plan. How can such a change be made possible, deleting something from the original plan.

As far as I remember, when Mr Dominic WONG was the Secretary, a blue bill was published concerning the sale of uncompleted flats, but upon consultation, the whole bill simply vanished, as the Hong Kong Real Estate Developers Association had "taken actions". As TUNG Chee-hwa had once said, things no longer existed if nobody talked about them. We have seen too many similar examples. We have always wanted to enact a competition law and we have strived hard for more than 20 years. This Bill is finally introduced into the Legislative Council. My hair was black then, but now I am almost bald.

Some Members have said that the process will be slowed down if the guidelines should be approved by the Legislative Council. It is the Government that has slowed down the process, it is the Government that filibusters, it is the business sector that filibusters, and 20 years have been lost. No competition law has been enacted in Hong Kong in these 20 years. Even small countries, including countries under dictatorship and undemocratic countries, have enacted competition laws, and Hong Kong only enacts the legislation now. Even there is a further delay of six months or a year, the most important factor for

consideration is whether the implementation of the legislation meets with the original intent and the basic requirements of fair competition, and whether consumers have reasonable protection. That is the original intent of the legislation. Our focus should not be the coming election in September, we should not work to serve those Members who can claim that they have successfully strived for the enactment of the competition law. Some Members and political parties frequently do so, they proclaimed that they had successfully strived for the listing of the Link, yet they conversely opposed the Link's rental increases. These attitudes are utterly absurd.

This Bill will certainly be passed this week or the next. After the Bill has been passed and implemented, will it be a "toothless tiger" or will we "set free a tiger back to the mountains"? Will there be empty words? Will people's interests be sufficiently protected? This is the crux of the problem. Certainly, for some provisions in the Bill, such as the establishment of the Commission, while it can be "lofty and empty", some say that this is a starting point, which is better than nothing. Many Members, especially those Members and political parties in support of the competition law, would repeatedly say on different occasions and in this Chamber that the passage of this Bill is better than doing nothing. Can we have something slightly better? Now, you ask me to blindly trust the Commission; when has the democratic camp ever trusted in executive hegemony? I am not sure if arrangements have been made to appoint someone as Deputy Director of Bureau. They have become members of the pro-establishment camp, striving to defend the governing authority of the Government. A member of the Central Standing Committee of the Democratic Party has written a newspaper article to defend LEUNG Chun-ying, saying that LEUNG Chun-ying does not need to express his views on LI Wangyang's death, (*a Member raised a question*) ..... yes, this will become political monopoly in the future.

Deputy Chairman, I just want to say, when there are powers to be shared and when interests are involved, people will change their stances. Anthony CHEUNG was the Vice-Chairman of the Democratic Party some years ago, but he has also betrayed democracy and drawn close to "Wolf Chun-ying", not "LEUNG Chun-ying". The same case applies to the Competition Bill. Can we blindly trust the Commission? Evidently, it is a commission to be appointed by LEUNG Chun-ying, which will draw up the guidelines and conduct a nominal

consultation — the Secretary may talk about this point later — he will draw up the provisions after the consultation.

Hong Kong people should keep their eyes open and clearly examine the situation. The guidelines drawn up by any committees have two sides, just like the two sides of a knife. On the one hand, one can use this Ordinance to wipe out the outlaws, implement the spirit of the Ordinance, defend the interests of consumers, enforce fair competition laws, draw up guidelines and wipe out law-breaking agencies. On the other hand, the guidelines will "set free a tiger back to the mountains" as we have seen so many examples. When we lodge complaints with the Ombudsman against certain departments' maladministration, we are often given the reply that there is no maladministration because these departments simply do not have guidelines indicating their practice. Since I have been a Legislative Council Member for a long time, I understand very well the importance of guidelines. When guidelines are drawn up, especially when guidelines are drawn up by the Commission, there will be sloppy guidelines on the implementation of certain provisions of the fair competition law, especially those about price-fixing or anti-competitive conducts.

There are two reasons contributing to the formulation of sloppy guidelines. It is probably because the Ordinance has just been implemented and there are many outstanding issues to be handled. The authorities may consider that they should not be so bold or the expectation should not be that high, thinking that a good reputation can be built in one stroke, drawing up better provisions and ensuring that fair competition can be attained.

Deputy Chairman, please do a headcount.

**DEPUTY CHAIRMAN** (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 CHAIRMAN** (in Cantonese): A quorum is present. Mr Albert CHAN, please continue.

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, can my remaining speaking time be displayed?

**DEPUTY CHAIRMAN** (in Cantonese): Please display Mr Albert CHAN's remaining speaking time.

**MR ALBERT CHAN** (in Cantonese): The display indicates that zero minute is set.

**DEPUTY CHAIRMAN** (in Cantonese): The display indicates that Mr Albert CHAN has, up till now, used up his speaking time.

**MR ALBERT CHAN** (in Cantonese): Start afresh. Thank you, Deputy Chairman. I have just compared the guidelines to the two sides of a knife. Certainly, it is important to draw up the implementation details, how to implement laws and regulations, how to handle the related matters and the circumstances under which investigations should be conducted. However, if we want to set free a tiger back to the mountains, we may intentionally draw up the guidelines in a sloppy way and make some very lenient provisions, which will affect the implementation of the competition law. As the competition law is a "toothless tiger", it exists in name only and cannot beat "the predators". I think that drawing up the guidelines and enacting the legislation are equally important.

In the past, we had seen how undesirable the internal guidelines of some departments were, and the problems just keep aggravating. I hope the Secretary would later discuss or respond if the affected persons would be notified in advance about the implementation of the competition law, and whether the parties concerned would be consulted, because these are very important issues.

As we all know, the public are highly concerned about some trades. For example, they are concerned whether there is price-fixing in respect of electricity tariffs. In fact, price-fixing most probably exists because there are two power companies only. Other examples include gasoline, supermarkets and some kind of food being manipulated by a small number of companies; and these trades also affect the public. When the Commission has to draw up the implementation guidelines, the related agencies or companies, including those companies and agencies which will be suspected or directly targeted under the fair competition law should have the right to know. They should have the right to express their views if the provisions of the guidelines will affect them.

There are many examples in foreign countries where some companies have expressed their views on the impacts of the fair competition laws or the drawing up of guidelines. They engage professional consultants who submitted detailed proposals. Even though we are sometimes dissatisfied with these companies, as these companies, being wealthy and powerful, are insatiable, they should be given the opportunity express their views after the enactment of the Ordinance and before the official implementation of the guidelines drawn up by the Commission. In this way, no people will be unreasonably prosecuted or penalized because of unawareness or misunderstanding due the wrong interpretation of the Commission and unclear information in the course of implementation.

(THE CHAIRMAN resumed the Chair)

To facilitate the implementation of the fair competition law after the guidelines have been draw up, we must draw up fair, impartial and reasonable guidelines, so as to ascertain the fair, impartial and reasonable implementation of the law. The Legislative Council must be consulted and the guidelines must be approved by this Council. I believe this is as important as the passage of the Bill by the Legislative Council.

**CHAIRMAN** (in Cantonese): Mrs Regina IP, this is the seventh time you speak.

**MRS REGINA IP** (in Cantonese): Chairman, earlier, Ms Cyd HO talked about the passage of the United Nations (Anti-Terrorism Measures) Bill (Anti-Terrorism Bill) in 2002. I would like to respond to her remarks in brief.

It is stipulated in section 12A(14) of the United Nations (Anti-Terrorism Measures) Ordinance that the code of practice prepared by the Secretary for Security shall not be promulgated until the code has been approved by the Legislative Council. In her speech, she mentioned the difference between this provision and the proposed amendment I put forth on the Competition Bill.

Moreover, Ms Cyd HO is of the view that the Anti-Terrorism Bill was passed hastily in 2002. Without doubt, the Anti-Terrorism Bill was passed in a speedier manner than the Competition Bill, yet we should bear in mind that the backgrounds of the two Bills are different. In respect of the Anti-Terrorism Bill, the SAR Government was obliged to implement Resolution 1373 passed by the United Nations Security Council following the 911 incident. Besides, due to the tardiness of the SAR Government in implementing the Resolution, the Ministry of Foreign Affairs of the Central Government had reminded us that Hong Kong, being a member of the international community, should implement the resolution as soon as possible. Regarding this point, I believe Members in the Chamber would accept the need to do so, for Hong Kong has all along taken pride in the implementation of "one country, two systems" and being a core member in the international community.

I do not remember whether Members had to dictate the amendments on a paper as described by Ms Cyd HO when they passed the Anti-Terrorism Bill back then. Had the Government been so "capable" at the time that it could secure the passage of the Anti-Terrorism Bill by merely proposing verbal amendments? The Directors of Bureaux now present in the Chamber would probably be green with envy upon hearing this. Am I right? The Secretary, by just reading out the amendments, the Government could manage to secure the passage of the Bill; that is really amazing. In any case, I believe Ms Cyd HO is stating the truth.

However, a bill passed is a bill passed. Chairman, you know the spirit of democracy is to leave the decision to the majority. This is the case in overseas president election, the candidate with just one more vote wins, and 1% more is 1% more. If a bill is passed, it is in compliance with the procedure and has the consensus of the Legislative Council. Therefore, the passage of the

aforementioned request is completely alright, no matter how the request was passed back then. Members have to be more imaginative in order to picture the scene depicted by Ms Cyd HO. Yet, the request that the code of practice had to be promulgated only with the prior approval of the Legislative Council had been passed after all.

Today, my amendment upholds the same spirit. First, I completely agree with the earlier remarks of Mr Albert CHAN that swiftness may not be desirable and we should try our best to improve the provisions. Members of the Legislative Council must take up the gate-keeping role. Ms Cyd HO said earlier that the competition law has been delayed for a long time and the Government, after years of consideration, has finally submitted the Competition Bill. It is definitely correct. Since the 1980s, Hong Kong society has been following the practice of various European countries and the United States in formulating the competition law, and establishing the Competition Policy Advisory Group and antitrust. There was a tendency of following the prevailing trend and making replica indiscriminately. The major advocator is the Consumer Council, which has been the key advocating organization over the years.

Nonetheless, the time had not been spent in vain. Chairman, you should remember that the former Commerce and Industry Bureau started examining the competition law when Mr CHAU Tak-hay took over the helm. We had not wasted the time. During the time, we had commissioned the Consumer Council to conduct a number of sector-specific studies to examine the situation of individual sectors, and we had obtained the results. Back then, when the Consumer Council examined the interest rate agreement adopted in the banking sector, it considered that the agreement contained elements of cartel, that is, the "interest rate cartel", which would jeopardize the interest of consumers. This was how the incident was handled. No investigation from the Competition Commission (the Commission) was required, all parties concerned had, based on the report of the Consumer Council alone, recognized that the interest-rate agreement among banks would jeopardize the interest of consumers, and the Hong Kong Association of Banks had responded immediately by abolishing the interest rate cartel. If the cartel was not abolished, how would we have keen competition in interest rate today? How would interest rates be lowered to such a low level, where banks can no longer rely solely on profit from the interest charged? All the arrangements started at that time.



Is the setting up of the Commission necessary? Is the Competition Ordinance necessary? If a good reason is put forth, various sectors in society will respond accordingly. Another example is the case of the telecommunications sector, which some Members have mentioned in their earlier speech. The liberalization of the telecommunications sector started before the reunification, that is .....

**CHAIRMAN** (in Cantonese): Mrs Regina IP, since this is the seventh time you speak, I have to remind you, is your present speech related to the details of the provision?

**MRS REGINA IP** (in Cantonese): Yes, Chairman. I just want to cite some examples to illustrate that we should not merely look for speedy accomplishment, to the neglect of allowing Members to perform their gate-keeping role. I quote these examples to prove that the market will respond accordingly if there are ample justifications, even in the absence of the Commission and the Competition Ordinance.

Today, I put forth the amendment for the new legislation has serious impacts, not only on large and medium scale enterprises, but also on small and medium enterprises and micro-enterprises, thus the guidelines concerned must be submitted to Members for perusal.

Also, I would like to respond to the question from Mr WONG Yuk-man. Why is my Chinese lobbying letter sent to Members to solicit support not consistent with the English version? Was it because I had added one more sentence in the English version unintentionally? Was it because I drafted in English and had amended a sentence in vetting the draft? I have to admit that the above reasons were true. Like many other Members, I first asked my assistant to draft the letter and then I made the amendment. When I amended the English version, the sacred responsibilities of Members in responding to public opinions and gate-keeping just crossed my mind, and I could not help adding that sentence.

In fact, we will soon face the election in September. The election held once every four years is comparable to the license renewal test. In consideration

of our responsibilities and the election system, it is really necessary for Members to respond to public opinions and represent their respective sectors — be it the electors of geographical constituencies or those of the functional constituencies — and play the gatekeeper's role to ensure that the Bill is proper, that it will not be abused and that it will achieve the intended objectives. Hence, I implore colleagues to support my amendment. Thank you, Chairman.

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

**MS MIRIAM LAU** (in Cantonese): Chairman, this is the first time I speak. I speak in support of the amendment proposed by Mrs Regina IP to clause 1 and clause 35. As I pointed out in the Second Reading debate, the Competition Bill (the Bill) .....

(Mr LEUNG Kwok-hung stood up)

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, what is your question?

**MR LEUNG KWOK-HUNG** (in Cantonese): I am just going to the loo.

**MS MIRIAM LAU** (in Cantonese): Thank you, Chairman. As I pointed out at the Second Reading debate, despite the strenuous effort made by the Legislative Council and the Government in modifying the provisions of the Bill, these provisions remained extremely equivocal and general, and many people find it difficult to understand these provisions. Given that the Bill is targeted at commercial behaviour and that an overwhelming majority, 98%, of enterprises in Hong Kong are small and medium enterprises (SMEs), which do not have much power and financial resources to employ legal advisors, some 300 000 enterprises have repeatedly expressed their deep worries about the implementation of the Bill. They do not know what kind of regulation they will be subject to in future and how they can avoid falling into those traps.

During the scrutiny of the Bill, we have repeatedly expressed the concerns and worries of various sectors, particularly SMEs, to the Government, and we have requested the Government to provide the guidelines which the Competition Commission (the Commission) might issue in future. After reading the three sets of guidelines provided by the Government, SMEs considered that certain issues had been cleared, yet there are still some issues that are worrying. Since the conducts mentioned in the guidelines were basically general in nature, SMEs were not clear about the consequences brought by different conducts upon the implementation of the Competition Ordinance.

Members all know that the business sector has been operating in an environment without competition law for 100-odd to 200 years. In recent times, the economy has remained buoyant for at least several decades. During the period, the business sector, more often than not, has been able to carry out activities freely without any restraints, and they have been operating in the mode they consider most favourable to them. In the past, their business practices had never aroused criticisms of being anti-competitive or distorting the competition environment in Hong Kong. However, upon the enactment of the Bill, will such business practices or commercial conducts still be acceptable and allowed under the Competition Ordinance? They do not know.

As such, they always look forward to a set of clear guidelines which will give due regard to the actual operational needs. They consider that if the conduct is not anti-competitive, it should not be included in the guideline simply due to the possibility that such conduct may be anti-competitive. Some of the guidelines are extremely ambiguous. Take the exchange of information as an example. Since this conduct may be construed as an anti-competitive activity, businessmen may dare not call their counterparts in future. Does it mean that enterprises in Hong Kong, including large enterprises, SMEs and micro-enterprises, should deal with their own business without any communications and exchange of information? Take collective order as an example. Will business operators fall into the trap inadvertently and violate the rules? We all want to have a clear understanding of these issues.

I hope that in formulating these guidelines ..... The Government will naturally say that the guidelines are not formulated by the Government but by the Commission. I hope the Commission will adopt an open attitude to listen to the views of the sector and understand the reasons why they adopt certain practices.

In the course of discussion, the Commission may inform the sector which practices are suspected to be anti-competitive and ask whether alternative practices are available. I hope both sides will listen to the views of the other, so that a set of pragmatic and practicable guidelines acceptable to both sides will be formulated for compliance by the sector.

In the absence of a set of pragmatic and practicable guidelines to let us know how to act and what practices are acceptable, I worry that when the Competition Ordinance is enforced in future, SMEs but not large enterprises will be subject to prosecution, investigation and warning. This seems to be the experience of Singapore. SMEs in Hong Kong know that the competition law in Singapore has seemingly failed to deal with large enterprises but has "executed" many SMEs instead. I do not have such information in hand, yet I know a few legal proceedings relating to competitive conducts are targeted at SMEs. These experiences have caused great anxieties among SMEs in Hong Kong. As such, this set of guidelines is of utmost importance.

At present, the business sector can hardly embrace the competition law. Even though they accept that there should be an element of competition in the business environment in Hong Kong and agree that competition brings improvement, the slogan-chanting style of support will not create a competitive business environment in Hong Kong. We hope that the business environment in Hong Kong will include competition on the one hand and save some room for SMEs to operate normally on the other, so that they can feel at ease to invest, do business and offer job opportunities in Hong Kong. I hope that various sectors will hold an open attitude instead of pointing fingers at people, saying that those who do not support the competition law at present are anti-competitive.

I hope that a set of comprehensive competitive laws will be put in place. At the Second Reading debate last time, I said that what we wanted was an anti-monopoly law. The present Bill is not an anti-monopoly law but a so-called competition law. We definitely support some of the principles therein, such as combating bid-rigging. We certainly oppose the conduct of bid-rigging and disagree with price-fixing. However, what is the definition of "price-fixing"? The present Bill has not provided a clear definition. The fact that the Bill focuses on price fixing has caused great anxiety. I am not referring to cases where companies reach an agreement in setting a certain selling price by entering into a contract. This is definitely price-fixing. However, the conducts of

certain large enterprises have aroused the suspicion that they are engaging in price-fixing, such as fixing prices tacitly. On the other hand, though SMEs are not making tacit agreement in fixing prices, they may be alleged for price-fixing for acts of exchanging information. How will the authorities address these cases? Through and through, we have been explaining the importance of the guidelines.

Finally, I would like to explain why I support the proposal of Mrs Regina IP, that is, the guidelines should be submitted to the Legislative Council before the implementation of the legislation. I support this amendment out of the concern that the guidelines formulated in future will fail to relieve SMEs of their worries, such that they cannot carry on with their business activities in accordance with the legislation and the major anti-competitive principles. I worry that this situation may arise. Why would I have such worries? At the Second Reading debate, I had stated unequivocally that I would not support this Bill. Why? One of the reasons is that a set of guidelines is not available at present. For the time being, we are only discussing some general principles. It seems to be most welcoming if all of us can give full support to anti-competitive proposals, yet we cannot just chant empty slogans.

Last time when we examined the Minimum Wage Bill, we had been trapped. During the scrutiny, we had been extremely cautious in putting forth various scenarios and had requested the Government to include such scenarios in the guidelines. We thought the issue had been properly settled and no problems would arise, we thus supported the Minimum Wage Bill at the time. However, when the guidelines were issued, we found that the actual contents were completely different from our original plan. SMEs were shocked how things turned out. Then, the Government did something beyond the coverage of the guideline. It is a separate issue whether or not the practice of the Government is appropriate, yet the focus is that the actual contents of the guidelines are completely different from our expectation.

Today, if we give our full support to the Bill, and it turns out that the guidelines issued in future are completely different from our expectation, how can we be accountable to SMEs? If we tell SMEs to rest assured this time, yet it turns out that the guidelines are perplexing, imposing substantial cost of compliance and threatening, and SMEs are anxious at all time about receiving warnings and notifications, what position should we, Members of the Legislative

Council take then? In view of this, I consider the proposal of Mrs Regina IP very good. We must first examine the guidelines to understand how the legislation can be implemented smoothly.

Moreover, Mrs Regina IP has proposed providing clear definition for terms like "market". We should all have a clear understanding of the definition of these terms. The second conduct rule is about the abuse of market power, but if the definition of the term "market" is unknown, how can we embrace the competition law?

Hence, I think the amendments put forth by Mrs Regina IP are justified and the Liberal Party will support her. We will also urge the Government to put in more effort in formulating the guidelines and providing the definition for terms such as "market" as soon as possible, and then inform the public and SMEs in a clear manner. Though I did say previously that the Bill was a "toothless tiger" which left us in the middle of nowhere, the Bill has its merits in certain areas. If the Government can put in extra efforts, we may at least support implementing the good part of the Bill first. However, since the definitions and guidelines are not available at the present stage, I can hardly support the Bill.

Thank you, Chairman.

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

**MR ANDREW LEUNG** (in Cantonese): Chairman, in the course of scrutinizing the Bill, we have in fact never discussed the amendments proposed by Mrs Regina IP as she had not completed the drafting of her amendments when the Bills Committee examined the Committee stage amendments (CSAs) to the Bill. In the course of the Second Reading, I have said that each person might have different expectations of views on the Competition Bill. As we understand, small and medium enterprises (SMEs) are afraid that they would become victims if the requirements of the Bill are not clear. On the contrary, Mr Ronny TONG cited many examples to illustrate that the Bill was intended to protect SMEs, and queried why SMEs were so afraid of the Bill. Furthermore, it is the hope of consumers that upon enactment, the Bill would help bring down commodity

prices. Hence, I think there is indeed a big difference in our views and perception of the Bill.

As a matter of fact, we have adopted a very systematic approach to tackle this voluminous Bill by scrutinizing each part in sequence. Moreover, we have listened to many different views of Honourable colleagues. Government officials have clearly understood and answered the questions raised by Members. If certain suggestions proposed by Members are considered acceptable, the Administration would have already drafted and proposed the relevant CSAs to effect the same. Therefore, many CSAs have been proposed to this Bill.

In the course of scrutiny, Government officials have already clearly explained that the Bill will not come into operation immediately after enactment, but will be implemented in two phases. In the first stage, the Competition Commission (the Commission) and the Competition Tribunal (the Tribunal) will be established, and the Commission will also prepare the relevant guidelines and conduct consultation accordingly. As such, the Deputy Secretary for Commerce and Economic Development has already stated that the Ordinance might come into effect about one year after enactment. Before conducting the entire legislative exercise, views had been received by the Government against the concentration of too much power in the Commission, as in the case of relevant organizations in the past, with the concentration of powers of investigation, sanction, prosecution and even adjudication all in one body. After the enactment of legislation, the powers will be vested with two separate bodies, namely the Commission and the Tribunal.

The major function of the Commission is to undertake all relevant works in the implementation and enforcement of the Competition Ordinance. I am well aware that Members have already requested that clear guidelines should be formulated to ensure thorough understanding of all parties concerned. Furthermore, regarding the commencement of the Ordinance in the second stage, the Government will present the relevant proposal to the Legislative Council by way of negative vetting, and Members will have the opportunity for scrutiny. In the meantime, the Government, the Commission, the public as well as the business sector all have the responsibility to ensure the conduct of proper consultation, so as to formulate the appropriate guidelines, educate the general public, in particular SMEs, about the new legal provisions during the transition period. The Government should also consult the Legislative Council and make

adjustments. In fact, Honourable colleagues have raised no objection to this arrangement in the course of discussion.

Regarding Mrs Regina IP's proposal that amendments to be made by the Commission to the guidelines in future would have to be approved by the Legislative Council, I think it is questionable. Chairman, I trust that you are also aware that the guidelines are not legislation, even though they can be used as evidence in court, and it is the Commission's function to formulate the guidelines. Moreover, it has been clearly stipulated in law that the guidelines should be formulated by the Commission, not by the Legislative Council. While we consider that it is necessary for the Commission to fully consult the Legislative Council, the industrial and business sectors, SMEs and the general public on the draft guidelines, and make the necessary amendments in the light of the views collected, it is not the same as the present proposal of having the Legislative Council handle all the work. Otherwise, should there be another filibuster, the progress of such work could be stalled for several weeks. I consider that we should not interfere with the work of the Commission or other statutory bodies in respect of the formulation of guidelines.

In the course of discussion by the Bills Committee, we have put forth many views on the composition of the Commission. The Government has also undertaken to balance the voices of different parties in the Commission's composition. According to the original Bill presented by the Government, the Commission is to consist of not less than five members. But the Government has now amended the provision to impose an upper limit in addition to not less than five members. I think the Government has already heard the voices of us and SMEs. Moreover, in the course of scrutiny, the Administration has provided as per members' request three sets of sample guidelines drafted with reference to the relevant guidelines of competition legislation of various places. Although there are express provisions covering many matters, we still discussed the texts word by word; we have put forth many suggestions and have invited views from deputations. The relevant discussions have already been put on record. Although the relevant texts will not be the final version of the guidelines to be formulated by the Commission, I am convinced that the Commission will definitely make reference to these samples when formulating the guidelines in future.

In addition, Mrs Regina IP also proposed to include the definitions of expressions "market", "market power" and "substantial degree of market power"



under clause 35(1) of the Bill. As the representative of SMEs, I also consider that these three expressions or concepts are unclear, but is it necessary to specify their meanings in the legislation? In fact, the expressions "market", "market power" and "substantial degree of market power" will have different meanings with changing market and local conditions. If a mandatory requirement is made, it may be necessary to introduce legislative amendments to the Legislative Council frequently. We consider that it would suffice so long as clear explanations have been made in the guidelines issued by the Commission as well as in the precedent cases, because the meanings of these expressions are relatively vague after all and should be defined according to the economic condition. Hence, they should not be rigidly limited by legal terms. In this regard, I consider that room should be allowed for the Commission to handle the relevant matters in future.

With so many Honourable colleagues speaking on the present subject, I feel that every Honourable colleague has suddenly become an expert on the matter. While meetings of the Bills Committee were often only attended by a pathetic few, including myself, Mr Ronny TONG and a number of other members, it seems that suddenly, every Member has attended all the meetings and knows exactly what he is doing now. I hope Honourable colleagues would understand that the Bill had gone through a stringent scrutiny process, and all matters had been discussed. Now, many issues have suddenly come up when the Bill resumes Second Reading debate, which had not been raised at all in the course of scrutiny of the Bills Committee.

I so submit.

**CHAIRMAN** (in Cantonese): Mr WONG Yuk-man, this is the third time you speak.

**MR WONG YUK-MAN** (in Cantonese): Chairman, as the Chinese saying goes, "people who know small tricks always go to your place, real talents will not show up", LEUNG Chun-ying is really perilous.

Chairman, a quorum is not present.

**CHAIRMAN** (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)

**CHAIRMAN** (in Cantonese): Mr WONG Yuk-man, please continue.

**MR WONG YUK-MAN** (in Cantonese): Chairman, having just heard the views of Mr Andrew LEUNG, I recall the speech made by Dr Margaret NG last week. I am somewhat inspired and would like to make a response here. As the Chairman might say that I have digressed from the subject, I must of course make my response in relation to the speeches made by Members. Honestly, I think no Member is more familiar with the Bill than Dr Margaret NG in this Council. I think no Member can compare with her in terms of the scrutiny of bills and the knowledge about the Rules of Procedure (RoP). Nonetheless, I must respond to her views. She has expressed some views with regard to the speeches we made in relation to the amendments in the Committee stage of the Bill. In her view, regarding the amendments proposed by the Government or Members such as Mrs Regina IP, it is not appropriate for us to discuss them at this stage in great detail if the amendments had been discussed and concluded upon at the Bills Committee. She is welcome to respond if I have misquoted her views. However, I can think of three scenarios to respond to Dr Margaret NG's views.

Under the first scenario, say, Mr LEUNG Kwok-hung and I were both members of the Bills Committee. I have attended more meetings when compared with Mr LEUNG Kwok-hung. Given our busy schedule, we could not attend all meetings of the Bills Committee. We might or might not have taken part in the discussion of the Bills Committee on this amendment. However, Chairman, the membership of bills committees is different from that of and Committee of the Whole Council. Committee of the Whole Council is made up of all Members of the Legislative Council, while bills committees consist of individual Members. For instance, meetings of the Bills Committee on the Competition Bill were initially attended by many members, but as more meetings were held, the number of attending members became fewer and fewer. The Chairman also said once that I seldom attended meetings. I must have

attended fewer meetings if compared with you because you must preside over meetings of the Council. But your fellow party members do not attend many meetings as well.

Some Members consider that as many amendments have already been discussed time and again in the Bills Committee, it is inappropriate to discuss them again now. But I think members of the Bills Committee, including Mr LEUNG Kwok-hung and I, should not be disallowed to speak on the amendments at the Committee stage. We may not agree with some amendments, but I support this amendment proposed by Mrs Regina IP and hence, I would say a bit more. It is no big deal really; this is just substituting a fallacy with the truth, as I have often said. That is how the Legislative Council works: to analyse and debate on public issues so as to allow a judgment by the people. This is the first scenario. Even if Mr LEUNG Kwok-hung and I were members of the Bills Committee, we should also speak at the Committee stage. Hence, I will also speak in detail on the amendments proposed by Mr Ronny TONG.

Under the second scenario, say, Mr Albert CHAN was not a member of the Bills Committee. Hence, he did not have the opportunity to take part in the discussion of the Bills Committee. He may have little knowledge about the Bill. But for sake of properly performing his duty as a Member at the Committee stage, he must also speak on the Bill. I have given him this pile of information. Therefore, there is stronger reason that he should not be disallowed to speak on the amendments.

Under the third scenario, Chairman, say, Mrs Regina IP was a member of the Bills Committee, but her views were obviously not accepted by other members or the Government. She, as the mover of amendments, must of course speak repeatedly to lobby for the support of other Members. Hence, she should not be subject to any restriction or limitation in relation to speaking on her amendments in the Committee stage. Moreover, when other Members speak on her amendments, she is also obliged to respond.

Dr Margaret NG also said that if Members hold in-depth and thorough discussion on the amendments, the efforts made by the Bills Committee would be wasted as if the scrutiny of the Bill was to start all over again. Although I respect Dr NG, I do not agree with her views. The nature of work of the Bills Committee and the current Committee stage is entirely different; or else, there is

no need to have the Committee of the Whole Council. The ways records of meetings are kept are also different; likewise, they differ as to whether their decisions are taken by votes. The Competition Bill will have important and far-reaching impacts on society, in particular there is still much dispute with regard to its enactment even though the Bill has the greatest support from the general public.

Two days ago, I read an article in a magazine written by an extremely rightist author who even considered that those who voted for the Competition Bill were undeserving of voters' support in the September election. The view of some people can actually be so extreme, Chairman. Hence, if serious disputes occur when we reach the stage of enacting the Competition Bill ..... Of course, we have now come to the final stage where there is no turning back, but it is still necessary for Members to discuss the Bill carefully, and various views, no matter how tedious or frivolous they are, should be given the opportunity to be heard. That is the way leading to the truth. For instance, given my support for Mrs Regina IP's amendments, I should of course present my reasons clearly. As there are many controversial provisions in the Bill, there is a need for Members to speak on various amendments in the Committee stage, so as to give the public a clear picture of the reasons held by individual Members who support or oppose a particular amendment. Moreover, there is no rule in the RoP restricting the right of Members to speak in this stage.

We are aware that the Bills Committee has discussed the issue of which matters should be stipulated in the principal legislation, which matters should be stipulated in subsidiary legislation, or prescribed in guidelines which are not legally binding. That issue is related to the amendment under discussion now. Notwithstanding the conclusion drawn by the Bills Committee, Members who disagree should also give their views on the effect of the guidelines as well as the formulation process. Dr Margaret NG considers that certain matters should be dealt with by guidelines having no legal effect, whereas Dr LAM Tai-fai opines that the principal provisions are unclear and the statutory definition of some key expressions is lacking. I have also read the draft guidelines, and find that there are many references therein related to those expressions and how they should be defined.

In her amendment, Mrs Regina IP proposes to add paragraph (aa) to clause 35(1), requiring that the guidelines should indicate clearly how the

Competition Commission (the Commission) interprets the expressions "market power" and "substantial degree of market power". In fact, I had also questioned the requirement for providing the interpretations of such expressions at meetings of the Bills Committee. As this is the general approach adopted in section 2 of ordinances in relation to "Interpretation", what is wrong about it? Why does Mr Ronny TONG accept, on the one hand that the interpretation of expressions in other ordinances should be set out in the principal legislation, but support or insist on the other that it is appropriate for the interpretation of these three expressions to be set out only in guidelines with no legal effect? Mr Ronny TONG, I hope you can find time to respond to this view of mine later. In this way, the truth can become clearer with more debate, right?

Members of the Civic Party are all senior counsels or legal professionals. Honestly, our discussion on these issues in front of these Members is like teaching fish how to swim or selling prose in front of the doors of Confucius. Even though our views may be far from refined, I think we need to voice them out and I hope the two barristers can respond to these views later.

Against the views or professional knowledge of Members of the Civic Party on laws and subsidiary legislation, the People Power's stance on this matter is solely based on whether the general public can clearly understand the requirements of the law. We consider that this is also a question relating to the principle of the rule of law. If members of the general public do not understand the requirements of the law, what good does it serve? Hence, that is why we are often very stringent about the concise and precise use of words and expressions in legislation. In fact, one of the principles under a democratic political system is that people regulated by laws shall have the right to enact laws, and that is the origin of elected representatives of the people, right? But if people regulated by laws do not understand the laws, would that be a big problem? Hence, our difference with the Civic Party on this matter is that they are mainly considering from a legal point of view on the basis of their professional knowledge on laws and subsidiary legislation, while our concern is that members of the general public must understand the laws.

Some Members who do not support the amendments proposed by Mrs Regina IP have cited overseas examples to illustrate how the guidelines should be handled. I must point out that overseas practices and situation are not exactly the same as those in Hong Kong. Of course, I am not parroting the remarks

made by Mainland leaders that "as China's condition is different, we cannot copy the Western systems (*in Putonghua*)". When I say overseas practices and situation are not exactly the same as those in Hong Kong, the reason is not that it is the thinking of Mainland leaders, but because our backgrounds are actually not the same and there are other reasons. Honestly speaking, the English standard of most of the people in Hong Kong has deteriorated when compared with the past. Unlike their counterparts in other jurisdictions, they may not have the opportunity to learn about precedent cases of Hong Kong or of other common law countries. Hence, as Members of the Legislative Council, when we scrutinize statute laws which involve a substantial amount of common law principles, we should handle them even more cautiously.

Hence, regarding Mrs Regina IP's amendment, I have used more or less three speaking time slots to explain the reasons why I support it, but because some Members ..... Even though we estimate that her present amendment will also be negated ultimately, I have already explained clearly the reasons why we still support this amendment. The numerous responses given have further strengthened our determination to support Mrs Regina IP's amendment.

Hence, Chairman, as the Counsel to the legislature has already approved all the amendments, what is the big deal for Members to discuss them here? The President had once allowed us to move over 1 000 amendments. Regrettably, you eventually curtailed the filibuster and I could only speak on 10-odd amendments. But as you have given your approval, that is, I am allowed to speak, I must speak in great detail. Sometimes, I notice that Members in this Chamber do not speak, and if I do not speak, is this a right move? But when I speak a lot, you say that I filibuster, right, Chairman?

**CHAIRMAN** (in Cantonese): Mr WONG, you have digressed.

**MR WONG YUK-MAN** (in Cantonese): That is not filibuster, Secretary. As you can see, other Members do not speak. I speak on the Competition Bill so readily because I was a member of the Bills Committee, and the other reason is that — Chairman, please let me finish this sentence; my speaking time will be up soon — another reason is that other Members do not speak. Buddy, we will become a laughing stock if all Members of the Legislative Council remain silent

when such an important legislation is passed by the legislature. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mr WONG, you have already repeated your viewpoints time and again. Dr LAM Tai-fai, this is the third time you speak.

**DR LAM TAI-FAI** (in Cantonese): Chairman, I am speaking on Mrs Regina IP's amendments for the third time. Before I speak, I beg for your help. In case what I am going to say is repetitious or has digressed from the subject, please try to stop me, correct me and guide me. This is because after I spoke for the first and second time, some colleagues from the pro-establishment camp asked me, "'Tai-fai', have you colluded with 'Yuk-man' to start another round of filibuster?"

I have actually been wrongly accused. All 60 Members of the Legislative Council enjoy equal right and status. While colleagues may dine together, we care about our own business and express our views. I may not agree with the filibustering launched by "Yuk-man", but I have my own right to speak. I am speaking to perform my duty as a Member, that is, to serve as a gatekeeper for small and medium enterprises (SMEs) and to fight for their best interests. Therefore .....

**CHAIRMAN** (in Cantonese): Dr LAM, please focus on the amendments.

**DR LAM TAI-FAI** (in Cantonese): ..... I hope that the Chairman will correct me in my following speech.

Chairman, why do I speak for the third time to reinstate my request for the relevant guidelines to be approved by the Legislative Council? This is because we have had a painful experience. If you have been bitten by a snake or if you have been burnt by fire, your feeling and understanding will be different from those who are indifferent and do not care much about the concern and actual business operation of the business and industrial sectors. Theory and practical experience are two different things. I would like to quote some real examples to

explain why I worry so much that unclear guidelines will bring losses and adverse effects to the business and industrial sectors.

In this connection, I have to talk about my favourite topic on section 39E of the Inland Revenue Ordinance (IRO) again. The IRO was enacted in 1986 and the Departmental Interpretation and Practice Notes (the Notes) were issued by the Inland Revenue Department (IRD) back then. Paul is very familiar with the Notes No. 15 as he always cited the relevant provisions. At that time, the Notes only applied to the "sale and leaseback" or "leverage leasing" arrangements of machinery and even moulds, and no restriction had been imposed on the depreciation allowances for machineries offered to local or overseas processing trade.

The legislation was enacted in 1986. Members should note that it was 1986 but not 1997. It was the situation before the reunification. After the reunification, capitalizing on the edge of the Hong Kong-Mainland connection, local industrial operations have relocated to the Mainland. Even the machineries were moved to the Mainland for production and Hong Kong businessmen have lent their moulds to the Mainland manufacturers. Not only is this an indisputable fact, but is also the right path for development. This is why serious problems have arisen when the IRD revise the Notes in 2006. The IRD had amended the Notes on its own without consulting the industry. Nor had it gained a good understanding of the development of the business and industrial sectors or the relocation of local industrial operations to the Mainland.

What revision has been made to the Notes? Let me brief Members on this. According to section 2 of the IRO concerning the definition of "lease", assume Hong Kong companies provide their machineries or plants for use by the Mainland enterprises, even if they are provided at no cost — meaning lease without payment — it still falls under the definition of "lease" in section 2. According to section 39E of the principal ordinance, these companies cannot enjoy the depreciation allowances for machineries.

Take moulds as an example. For the purpose of upgrading and restructuring as well as quality control, enterprises often lend their moulds to Mainland factories, and I remember that Miss Tanya CHAN of the Civic Party has also mentioned this point time and again. After receiving an overseas order, an enterprise may subsequently pass the order to five or six Mainland factories



for production. It may also lend the relevant moulds to them to ensure standardization of quality and facilitate production. Otherwise, factories undertaking the processing job may use different moulds. It may turn out that a couple of moulds have been used, thus leading to varying quality of production.

However, the moulds are lent at no cost and will be returned upon completion of the production. Ownership has remained in the hands of the Hong Kong companies. According to the revised Notes, such lease without payment will no longer enjoy the depreciation allowances for machineries. This is precisely the meaning of the English idiom "the devil is in the details". I just casually cited an example to illustrate the point. Why have I not gone into such great detail when I talked about section 39E in the past? Because Members did not listen attentively. I believe Paul will understand me.

Let me explain again why I feel so worried. If the guidelines are ambiguous, or if the amendments of these guidelines are not well monitored or examined, what can we do after they are introduced? What can SMEs do? We can only tolerate the adversities in silence. While those smarter enterprises may lodge complaints to Legislative Council Members, the rest will simply pay the fines upon receipt of the tax returns. The relevant provision has already driven the local business and industrial sectors, especially the industrial sector, into a great panic.

This is why I feel so worried about the guidelines and request that they must be approved by the Legislative Council. Once the guidelines are approved by this Council, Members can act as gatekeepers and monitor the Government on behalf of SMEs. Last week, I spent much time sitting in the Chamber and listening to the speeches delivered by Members, and among them are Mr Albert HO and Mr Ronny TONG. Both of them come from the legal sector. So, please correct or advise me if I have misunderstood them. They pointed out that as the guidelines do not have any legal effect, they can be overthrown by the Court in case they are inconsistent with the principal ordinance.

I got frightened by such a remark. If SMEs have to bring the case to the Court to challenge the guidelines, it implies that the problem can only be resolved by taking legal action, and costs will be incurred. In other words, SMEs have to put in money, manpower and resources to challenge the guidelines or seek interpretation. This is the problem. How many SMEs can afford to challenge

the law? Do SMEs have sufficient capital and effective personnel network to meet the legal challenge? I do not think I need to say any more about this.

Chairman, you should understand our worries and concerns. Apart from me, I also hope that other representatives from the business and industrial sectors will also carefully consider the amendment. Otherwise, this may lead to serious consequences. Being a Member, it is best for us to act as a gatekeeper and monitor the Government for SMEs, so that they can rest assured.

Chairman, another issue is the definition of "market". While the definition of "market" appears simple, it actually contains different meanings. Let me use an example for illustration. In case my speaking time is up, I can speak on the next time slot. What types of market do we have? Market can be classified by their geographical locations. As Mrs Regina IP has always asked, is geographical locality a factor for deciding the size of markets? Should the market only covers a district, such as Tin Shui Wai; or should it cover the whole territory of Hong Kong? Besides, markets can also be classified by the time limit. For example, I grew up in Yuen Long and Members must know that there is a renowned bakery in Yuen Long, selling "Wife Cake", "Blind Man Cake" and other products. Although the business of this bakery may concentrate in one quarter of a year, probably the selling of moon cakes for the Mid-Autumn Festival, it may be accused of monopolization. In fact, the bakery's business mainly comes from the selling of moon cakes but not other cakes, and business is particularly good around the Mid-Autumn Festival, but not at other time of the year.

In fact, this problem cannot be resolved or explained in just a few words. Therefore, I am very concerned that among the members of the Competition Commission (the Commission), how many of them will come from the business and industrial sectors; and how many of them will possess practical experience of business operation? Perhaps none of them or not many of them have such background, while the majority comes from the academic and legal fields, and these members do not have much practical experience or are not well-versed with business operation. Noting that the majority always wins, so if the Commission has six members from other sectors, and only two members from the business and industrial sectors, who can the business and industrial sector turn to for lodging complaints once the guidelines are passed in the future? Who can they turn to for help? Only if the guidelines are submitted to the Legislative Council for

approval can Members from the business and industrial sectors — be they representatives from the industrial, business, textiles and garment or import and export sectors — act as gatekeepers and exercise supervision.

Only by so doing can the enterprises be protected. Such protection can even give play to the function of monitoring the Government. Therefore, I hope that representatives from the business and industrial sectors will join hands to safeguard the interests of SMEs and the business and industrial sectors, and ensure that all the guidelines and their amendments will be approved by the Legislative Council. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mrs Regina IP, this is the eighth time you speak.

**MRS REGINA IP** (in Cantonese): I just want to briefly respond to Mr Andrew LEUNG. Although he is not present at the meeting now, I hope he is listening somewhere. While he said that not many members had attended the Bills Committee meetings, he is not in the Chamber when I am speaking.

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I request a headcount to summon Mr Andrew LEUNG back.

**CHAIRMAN** (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)

**CHAIRMAN** (in Cantonese): Mrs Regina IP, please continue with your speech.

**MRS REGINA IP** (in Cantonese): Chairman, from this bell-ringing story, I am so glad to see Mr Andrew LEUNG returning to the Chamber when the bell has

rung for nine minutes. We learnt from this story that Members do not only have equal opportunity to speak, they also stand an equal chance to attend the meeting and be absent from the meeting. I have listened very attentively to the speech made by Mr LEUNG earlier. As usual, he has highlighted categorically that my amendments were proposed after the deliberation of the Bills Committee had completed, and that the Bills Committee had already conducted a thorough discussion. He went on to say that very often, the meetings were attended by a pathetic few.

Chairman, sometimes we were unable to attend the meetings, but did we want to be absent from the meetings? Similarly, the meetings to scrutinize the Residential Properties (First-hand Sales) Bill were also attended by a pathetic few on many occasions. Mr Abraham SHEK and Ms Audrey EU, however, often attended the meetings. Was that what we want? Our absence is due to the clash of meetings. For example, the Public Works Subcommittee scheduled a meeting this morning. Sometimes, I also have to attend the meetings of the Subcommittee to Study the Proposed Legislative Amendments Relating to the Re-organization of the Government Secretariat as well as the Establishment Subcommittee. Do you think we do not want to attend all these meetings? Sometimes, we have no choice.

A far greater issue of principle is: Are proposals which have not been put forth to the Bills Committee not allowed to be raised? Should the true facts of an ordinance or of an issue be held in the hands of a couple of Members and public officers? No, certainly not. Since all Members have their own electorate bases, so regardless of whether they are returned by functional constituencies or geographical constituencies through direct elections, they should not only listen to the views of public officers, they should also listen to views of the community and the industry.

Although I have not put forth my proposals to the Bills Committee, it makes no difference to the Government if my proposals were made within or outside the Bills Committee. After I have put forth my proposals, it is so embarrassing to tell you that no one in the Commerce and Economic Development Bureau, neither the Secretary at the top nor — it does not have a Deputy Secretary for the time being — the Permanent Secretary or Deputy Secretary, has called to discuss the matter with me. I am not sure if I should be

shameful or proud of this. It is obvious that the Commerce and Economic Development Bureau has abandoned me, am I right?

By applying double standards in dealing with Members, the authorities have attached great importance to Mr Andrew LEUNG. I do not envy him as I became aware of such an insincere attitude long ago. How could I get the mood to put forth my proposal at the meetings? Regardless of whether the Secretary or political appointee respects a particular Member or share his view, there is no reason why no one from the entire Bureau, led by a high-paid political appointee, had ever given me a call. Does this mean that my proposals are crap? I had written to many trade members and some of them even responded to indicate their support. I will read out a letter later. Am I not allowed to put forth my proposals simply because I have not secured the support of either Mr Andrew LEUNG, the Chairman of the Bills Committee and a couple of members, or public officers at the meeting? This is a very important question of principle.

Turning to some more substantial points, as Mr LEUNG has pointed out earlier, thanks to the close ties between the Economic Synergy and the Commerce and Economic Development Bureau, he has successfully secured the approval of the authorities to consult the Legislative Council on the guidelines one-odd year after the establishment of the Competition Commission. Members should listen carefully. The consultation will be conducted one-odd year later but not 10 years later, or after the Court has dealt with a number of such cases and set some precedent cases. Instead, consultation will be conducted one-odd year later. If this is the case, why do the authorities not allow us to approve the guideline? After all, the process takes times. Are the authorities afraid of a filibuster? They should not have so little self-confidence. As many Members have highlighted, all Members have equal opportunities in this Council. We are not only allowed to speak, but can speak time and again. And yet, sometimes we have to pay a price for speaking time and again. For example, the Chairman has reminded me that I am speaking for the eighth or ninth time. But am I doing this purposely? If I find it necessary to respond to Members' speech, I will not hesitate to do so. In fact, I have paid a price for speaking time and again. Although Mr Tommy CHEUNG has indicated his support to me, I have no idea where he has gone now.

We have to assume our responsibility, though this is not intended to filibuster. I must point out that my proposal will not defer the commencement

of the relevant ordinance, and the authorities will have to consult the Legislative Council in the end. Then, why are we not allowed to approve the guidelines? Is it because Members do not have the confidence, or are not willing to act as the gatekeeper for the industry to which they belong?

Chairman, I just want to raise another point. Mr LEUNG opined that there is no reason to provide for the definitions of "market", "market power" and "substantial degree of market power" in the legislation. And yet, my proposals do not seek to include such definitions in the guideline. Rather, they seek to specify in the guideline how "market", "market power" and "substantial degree of market power" should be interpreted before it is submitted to the Legislative Council for approval. I therefore consider my amendments pretty reasonable, and they have secured the support of a number of Members present at the meeting. We have counted the votes earlier and found that the number is not small. But since we have spoken so many times, some Members have already left the Chamber.

I so submit. Thank you, Chairman.

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

**MR ANDREW LEUNG** (in Cantonese): I just want to make a few clarifications. Firstly, my speech was based on facts and I have not stopped any Member from speaking, nor had I indicated at the Bills Committee meetings that amendments which had not been discussed or endorsed could not be proposed by Members. I merely pointed out that the amendments proposed by Mrs Regina IP had not been discussed at any Bills Committee meeting. What is more, at the last few meetings, we had informed Bills Committee members the deadline for proposing amendments. If members intended to propose amendments for discussion by the Bills Committee, they should do so before the deadline. Just now I did not say that amendments which have not been discussed cannot be proposed. Therefore, I wish to clarify this point.

For the miserable turnout, this is a common scenario. I am always been reminded by the Clerk not to discuss important issues in view of the low turnout.

I also wish to clarify once again, I did not say that the Economic Synergy has successfully requested the Government to consult us or do anything. I have just stated the fact but I did not say this is what we have fought for and secured. In fact, this is the result achieved by all members of the Bills Committee and the Government after discussion. I did not say that the success is attained due to our efforts, so I need to put this on record.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak? Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): I do not request a headcount, I just wish to speak.

**CHAIRMAN** (in Cantonese): Alright, but I would like to remind Members who wish to speak, they should raise their hands in indication or press the "request to speak" button and wait until I have called their names before standing up to speak. Mr LEUNG Kwok-hung, please speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): Thank you, Chairman. What is the main point of this issue? The competition law has come too late. We had regulated competition in the past; for example, there was regulation through the Consumer Council or the telecommunications regulatory body. We now need to extend the regulation to cover the whole community. Why is there such a big controversy? The reason is we do not have a process of evolution or an evolutionary process; thus controversies will surely arise.

For instance, in the United Kingdom .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, I have to remind you again that we are now examining the original provisions and the amendments at this stage. Please speak on the details of the original provisions and the amendments.

**MR LEUNG KWOK-HUNG** (in Cantonese): Let us take the first conduct rule and the second conduct rule as examples, who knows what market power is? A soya milk store in Tin Shui Wai is a monopoly within that segment, right? We have been arguing over this problem for a long time.

I would like to give an example. I live in a public housing flat and I had worked as a fitting-out worker. I was once intimidated by a sub-contractor who had engaged in bid rigging. He threatened that he would beat me up and break my legs if I went to a certain housing estate to carry out fitting-out works for others. He did not allow me to get my materials and equipment, placed somewhere, to carry out the fitting-out works for other people. From this example, they gained market power in the housing estate concerned through bid rigging and they carried out fitting-out works in the housing estate ..... certainly this might involve criminal acts. How should the market power be defined? Should the definition be based on the absolute amount; say, a project cost of \$3 million, or should it be based on the market share taken up by a party? Is price fixing by two parties regarded as bid rigging? The community generally accepts what is wrong as right because people have got accustomed to it. They just consider bid rigging as the co-operation between a few persons for the sake of saving cost.

Concerning this issue, Chairman, I know you do not understand what I am saying. We are now giving the Competition Commission (the Commission) the same authority to issue guidelines and make provisions on market power and code of practice, and to act according to these provisions. In other words, the Commission can do all sorts of things; it can specify regulations and implement in-house rule, just like your application of Rule 92 of the Rules of Procedure. Chairman, you are given the authority to enforce Rule 92 and you really have strong market power. Since you are not a market, I will not sue you and you need not be afraid. I sued you once but I lost the lawsuit.

Why do I make such remarks? I just state the fact. Just think, the British had ruled Hong Kong for more than 100 years, and they established the Trade Commission and the Monopolies and Restrictive Trade Practices Commission in 1948 — the name is a tongue twister. The British had no idea how they should define monopoly and trust at that time. Just like us, they just put all things together and cooked a pot of herbs, which turned out to be a mess.



For instance, we now have the Commission while in the United Kingdom, there is the Monopolies and Restrictive Trade Practices Commission, comprising four to 10 members. This Commission does not have the modern concept of being independent of the Government .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, you have moved amendments to the composition and functions of the Commission, and I suggest that you should wait until a joint debate on the amendments concerning the Commission later on to express your views.

**MR LEUNG KWOK-HUNG** (in Cantonese): I understand, but I am not saying that the composition of the Commission is unreasonable.

**CHAIRMAN** (in Cantonese): Please focus your speech on this debate session.

**MR LEUNG KWOK-HUNG** (in Cantonese): I understand that we are discussing the changes in the composition of the Commission.

**CHAIRMAN** (in Cantonese): We are discussing the original provisions of clauses 1 and 35 and the amendments.

**MR LEUNG KWOK-HUNG** (in Cantonese): I understand that I should speak on the provision concerning the guidelines. This is a hot topic on which Mr Andrew LEUNG, Mrs Regina IP, Dr LAM Tai-fai and Ms Cyd HO have a heated debate.

What are they arguing about? They are arguing whether the guidelines should be laid before the Legislative Council. People listening to the radio or watching television may not know about these guidelines, and I would explain later. These guidelines are about first conduct rule, second conduct rule and market power, they provide definitions to these expressions, as well as how they are related in Hong Kong.

In fact, the public may not know what we are discussing. Why is this amendment inappropriate? The answer is that we have not drawn up specific guidelines in light of our market situation, the different sectors in Hong Kong and the situation of monopoly in Hong Kong, monopoly does exist in Hong Kong. The problem is that, if the guidelines are not properly drawn up, all our efforts will be in vain.

Some said during the June 4 incident that those who should die should be dead, but those who should not die have died. They were referring to DENG Xiaoping and HU Yaobang. That is the problem. If the Legislative Council passes a blank cheque and allows anyone to write on that cheque; and if that person fills in the wrong amount or a wrong date, the cheque cannot be honoured — we all know that this is a swindler's trick.

We are now discussing whether the guidelines should be laid before the Legislative Council, whether the date and amount are correct; whether various details are correctly written, and whether the cheque can be honoured. I have to make this point clear, but Chairman, you said that I had digressed from the subject. I have not digressed from the subject, I just wish to explain why we have heated arguments. The relevant changes in the United Kingdom spanned 50 years between 1948 and 1998. With the transformation of the British society, the monopolized situation and how the monopolized situation can be restricted will become different.

We should not forget that the United Kingdom is different from the European Community, and we all know that the two have so far been different. So, the United Kingdom is constantly exploring in the course of development of the relevant law; first, there must be care and protection of its own market. It means that .....

**CHAIRMAN** (in Cantonese): You have digressed from the subject.

**MR LEUNG KWOK-HUNG** (in Cantonese): How have I digressed from the subject?

**CHAIRMAN** (in Cantonese): Please focus your remarks on the details of the provisions being discussed.

**MR LEUNG KWOK-HUNG** (in Cantonese): How can I have digressed from the subject? I am saying that the Hong Kong market should be protected and we .....

**CHAIRMAN** (in Cantonese): We are not discussing the protection of the market but the original provisions of clauses 1 and 35 and the amendments.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... the problem is, there is no specific standard for first conduct rule and second conduct rule; hence they have heated arguments. I am just explaining this point.

We cannot shelve first conduct rule, second conduct rule and market power after defining these concepts. We cannot say that it is 2012 UEFA European Championship anyway, which is nothing about European debts; it is about Europe after all. Chairman, I would like to say that you should not stop me and you would understand what I am saying if you go on listening. I think that I am more .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, I heard you very well and you have digressed from the subject. Please focus your remarks on the original provisions of clauses 1 and 35 and the amendments.

**MR LEUNG KWOK-HUNG** (in Cantonese): Why do I agree that the guidelines should be laid before the Legislative Council? Let us examine the changes in a country which has enacted a competition law. It took the United Kingdom 30 years to set up a competition commission. What are the functions of the competition commission?

I will give a very simple example. A competition law was enacted in the United Kingdom in 1998, and the competition commission similar to the one in

Hong Kong was established. The commission has two panels; one of them is the Reporting Panel responsible for reporting services, which inherited the functions of the former Monopolies and Mergers Commission. Chairman, I cannot give my explanation if you do not allow me to continue. The Panel inherited the functions of the former Monopolies and Mergers Commission, meaning that the Monopolies and Mergers Commission .....

**CHAIRMAN** (in Cantonese): Which provision is your remark related to?

**MR LEUNG KWOK-HUNG** (in Cantonese): As the Competition Commission has the power to draw up guidelines and it will refer cases to the Competition Tribunal for handling after defining such acts, if these codes are unclear, some people may act against the law for no reason, thinking that the passage of this legislation has nothing to do with them, and that small and medium enterprises or large enterprises will not have problems. What will happen if they have not been clearly defined?

Chairman, you must have reasons for saying that I have digressed from the subject. Will it be acceptable if you can interpret digression from the subject any way you like? One cannot do wrong without being seen .....

**CHAIRMAN** (in Cantonese): You think the guidelines should be laid before the Legislative Council, right? You have repeated this argument a few times.

**MR LEUNG KWOK-HUNG** (in Cantonese): ..... no, the focal point is ..... no, you are wrong, absolutely wrong. I think both parties have reasons. Can I not say that I think that both parties have their reasons? Must I take side with one party? Why have you advocated a grand reconciliation in Hong Kong? Can the moderate faction not speak?

**CHAIRMAN** (in Cantonese): You are not giving any reasons.

**MR LEUNG KWOK-HUNG** (in Cantonese): Well, Dr Margaret NG is half right and Mrs Regina IP is half right; and I am not .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, you have digressed from the subject.

**MR LEUNG KWOK-HUNG** (in Cantonese): In what way have I digressed from the subject? I have a book here but you have said that I have digressed from the subject. Other Members have just engaged in empty talks but you have not said that they have digressed from the subject. Buddy, I can read the whole book aloud. Chairman .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, if you still do not focus your remarks on the subject being discussed, I will stop you from speaking.

**MR LEUNG KWOK-HUNG** (in Cantonese): I understand that. I have just mentioned that the original functions no longer exist but there are additional appeal functions, which cannot be found in Hong Kong. After the enactment of a competition law in the United Kingdom upon which our competition ordinance is modelled in 1998, .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, we are not discussing the issue of appeal. We are discussing the original provisions of clauses 1 and 35 and the amendments, please focus your remarks on this subject.

**MR LEUNG KWOK-HUNG** (in Cantonese): I understand. Their appeal functions are the same as the functions of the Tribunal. If a party is against any order ..... we need to notify the party by registered mail or electronic mail so that he knows that he will be .....

**CHAIRMAN** (in Cantonese): Mr LEUNG, if you do not focus your remarks on the original provisions of clauses 1 and 35 and the amendments that are now being discussed, I will stop you from speaking. This is my last warning to you.

**MR LEUNG KWOK-HUNG** (in Cantonese): It does not matter even if I have to stop speaking. You may stop me from speaking if you like and I think it does not matter. After all, Honourable colleagues can see for themselves. Buddy, Mrs Regina IP was also bragging just now. Why is other Members' bragging acceptable? I am not convinced. I have read the whole book aloud but you have said that I have digressed from the subject. I will simply stop speaking.

**CHAIRMAN** (in Cantonese): Mr LEUNG, please stop speaking. Does any other Member wish to speak?

(No Members indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Commerce and Economic Development, do you wish to speak again?

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, the Government is against Mrs Regina IP's amendments to clauses 1 and 35 of the Competition Bill (the Bill).

Mrs Regina IP's amendment to clause 1 mainly requires that the first conduct rule and the second conduct rule shall take effect after the Legislative Council has approved the guidelines on exclusions and block exemption orders that are first formulated under clause 35.

(Mr LEUNG Kwok-hung was talking while sitting on his seat)

**MR LEUNG KWOK-HUNG** (in Cantonese): I will request a headcount at one-minute interval.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, you have contravened the Rules of Procedure. Secretary, please continue to speak.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Mrs Regina IP's amendment to clause 35 mainly specifies that the guidelines on the above matters formulated by the Competition Commission (the Commission) and the amendments to them must only be formulated after they have been approved by the Legislative Council. The amendment also requires that the Commission's guidelines should indicate the interpretation of the expressions "market" and "market power". We think Mrs Regina IP's amendments to these two clauses are unnecessary and inappropriate; therefore, the Government is against the amendments.

As I have remarked during the resumption of Second Reading debate, the Commission's guidelines on the conduct rules and related matters formulated under clause 35 aimed at helping the public and the business sector understand and comply with the Competition Ordinance. The Commission should eventually base upon the Competition Ordinance when determining if an undertaking has contravened the conduct rules. We understand Members' concerns about the contents of the guidelines and the Government has accepted the views of the Bills Committee and proposed amendments to the provisions of the guidelines. For instance, specifying that the guidelines are not subsidiary legislation, clarifying the legal status of the guidelines and specifying that any person contravening the guidelines will not be subject to civil or criminal liability.

One part of Mrs Regina IP's amendment to clause 35 adopts the Government's amendment to the clause. Moreover, the Government has accepted the proposal of the Bills Committee, requiring that the Commission must consult the Legislative Council before issuing and amending guidelines. Our study shows that the guidelines formulated by the competition authorities in other jurisdictions do not need the approval of the legislature. I wish to stress that it is very important to provide the Commission with flexibility in issuing and amending guidelines. The guidelines serve to provide practical, detailed and up-to-date guiding information on the generalized prohibition in the principal ordinance, assisting various sectors (especially the business sector) in complying with the Ordinance in the changing market environment. We believe the

Government's amendment has retained sufficient flexibility so that the Commission can appropriately formulate and amend the guidelines under different market conditions at different times.

Mrs Regina IP's amendments have set too many hurdles, which made it difficult for the Commission to respond quickly to the changing market environment and disallow the trades to receive timely assistance in complying with the Ordinance. We consider that the present provisions with the Government's amendments have struck an appropriate balance between giving law-enforcement agencies sufficient flexibility and ensuring effective monitoring by the Legislative Council.

Another part of Mrs Regina IP's amendment to clause 35 requires the Commission to issue guidelines concerning its interpretation of the expressions "market" and "market power" under the Competition Ordinance. It is specified in the original clause 35(1)(a) that the Commission must issue guidelines indicating the manner in which it expects to interpret and give effect to the first conduct rule and the second conduct rule. Since the expressions "market" and "market power" are important parts of these conduct rules, we consider that the guidelines issued under clause 1 and clause 35(1)(a) must comprise these expressions. We think that Mrs Regina IP's amendments are unnecessary for they have failed to clarify the difference from the requirements in the original clauses and have repeated the provisions of the original clauses.

We disagree with Mrs Regina IP's amendment to clause 1 which specifies that the first conduct rule and the second conduct rule shall only take effect after the Legislative Council's approval of the guidelines. Clause 1(2) of the Bill specifies that the Competition Ordinance comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette. The relevant provisions allow different parts of the Ordinance to come into operation at different times, as Mr Andrew LEUNG has just mentioned. It is also our policy intention that the Ordinance should be implemented in stages; the establishment of the Commission and the Tribunal will be followed by the preparation of a Memorandum of Understanding by the competition authorities, and the drafting of the guidelines by the Commission. If we consider that the executive authorities and the community are ready for the full implementation of the Ordinance, we will implement the competition rules and the related enforcement provisions under the Ordinance. This arrangement



gives the community (especially the business sector) sufficient time to understand the new Ordinance and make necessary adjustments; it also allows the Commission and the Tribunal to become fully prepared before the formal implementation of the Ordinance. As a commencement notice is an item of subsidiary legislation that should be laid before the Legislative Council, we think the existing arrangement can already ensure that the Legislative Council can play its gate-keeping roles in respect of the commencement of the Ordinance. The addition of more conditions and barriers to the commencement of the Ordinance will only delay the implementation of the Competition Ordinance, which does not meet the expectations of the public.

Basing on the above reasons, we implore and call upon Members to vote for the Government's amendments and oppose Mrs Regina IP's amendments to clauses 1 and 35.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mrs Regina IP, do you wish to speak again?

**MRS REGINA IP** (in Cantonese): Chairman, I have not requested to speak again.

**CHAIRMAN** (in Cantonese): Before I put the question to you that Mrs Regina IP's amendments be passed, I wish to remind Members, if Mrs Regina IP's amendments are passed, the Secretary for Commerce and Economic Development cannot move an amendment to clause 35(5).

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mrs Regina IP to clause 1 and clause 35(4A), (4B) and (5) be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Regina IP rose to claim a division.

**CHAIRMAN** (in Cantonese): Mrs Regina IP has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Philip WONG, Ms Miriam LAU, Ms LI Fung-ying, Dr LAM Tai-fai and Mr Paul TSE voted for the amendments.

Dr Raymond HO, Dr Margaret NG, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Wong-fat, Dr Joseph LEE, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che and Mr IP Kwok-him voted against the amendments.

Mr CHIM Pui-chung and Mr IP Wai-ming abstained.

Geographical Constituencies:

Dr Priscilla LEUNG, Mrs Regina IP, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr WONG Sing-chi, Mr Alan LEONG and Miss Tanya CHAN voted against the amendments.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 20 were present, five were in favour of the amendments, 13 against them and two abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, five were in favour of the amendments, 19 against them and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendments were negatived.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 1 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mrs Regina IP and Mr Albert CHAN voted against the motion.

Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Dr LAM Tai-fai, Dr Priscilla LEUNG and Mr Paul TSE abstained.

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

THE CHAIRMAN announced that there were 47 Members present, 38 were in favour of the motion, two against it and six abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CHAIRMAN** (in Cantonese): Mrs Regina IP, you may now move your amendment.

**MRS REGINA IP** (in Cantonese): Chairman, I move the amendment to clause 35(1).

*Proposed amendment*

**Clause 35(1) (See Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendment moved by Mrs Regina IP be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mrs Regina IP rose to claim a division.

**CHAIRMAN** (in Cantonese): Mrs Regina IP has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Margaret NG, Mr CHEUNG Man-kwong, Dr Philip WONG, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Dr LAM Tai-fai, Mr Paul CHAN, Mr CHEUNG Kwok-che and Mr Paul TSE voted for the amendment.

Dr Raymond HO, Mr WONG Yung-kan, Dr Joseph LEE, Mr WONG Ting-kwong, Prof Patrick LAU, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendment.

Mrs Sophie LEUNG, Mr LAU Wong-fat, Mr Andrew LEUNG, Mr CHIM Pui-chung and Mr IP Wai-ming abstained.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Ms Emily LAU, Ms Audrey EU, Mr LEE Wing-tat, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN and Mr Albert CHAN voted for the amendment.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr Frederick FUNG, Mr CHEUNG Hok-ming and Ms Starry LEE voted against the amendment.

Mr WONG Kwok-hing and Mr WONG Kwok-kin abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, 10 were in favour of the amendment, seven against it and five abstained; while among the Members returned by geographical constituencies through direct elections, 26 were present, 17 were in favour of the amendment, six against it and two abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

**CHAIRMAN** (in Cantonese): Secretary for Commerce and Economic Development, you may now move your amendment.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, I move the amendment to clause 35.

*Proposed amendment*

**Clause 35 (See Annex I)**

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr Samson TAM, Mr Alan LEONG, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the amendment.

Mr Abraham SHEK, Mr CHIM Pui-chung, Dr LAM Tai-fai, Dr Priscilla LEUNG, Mrs Regina IP and Mr Paul TSE abstained.

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

THE CHAIRMAN announced that there were 46 Members present, 39 were in favour of the amendment and six abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendment was passed.

**CLERK** (in Cantonese): Clause 35 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 35 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)



Mr LEUNG Kwok-hung rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIRMAN** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr Samson TAM, Mr LEUNG Kwok-hung and Miss Tanya CHAN voted for the motion.

Mr Abraham SHEK, Dr LAM Tai-fai, Dr Priscilla LEUNG, Mrs Regina IP and Mr Paul TSE abstained.

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

THE CHAIRMAN announced that there were 43 Members present, 37 were in favour of the motion and five abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CLERK** (in Cantonese): Clauses 3, 4, 5, 9 and 24

New clause 5A

Expiry of sections 3 to 5

Schedule 7.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG has given notice to move the deletion of clauses 3, 4 and 5, and the definition of "statutory body" in clause 2, as well as amendments to clauses 9 and 24, and Schedule 7.

Mrs Regina IP has also given notice to move amendments to clauses 3 and 5.

Moreover, Mr Albert HO has given notice to move the addition of new clause 5A to the Bill.

In addition, the Secretary for Commerce and Economic Development has given notice to move amendment to Schedule 7.

If Mr Ronny TONG's amendments to clauses 2, 3, 4, 5, 9 and 24, and Schedule 7 are passed, Mrs Regina IP may not move the amendments to clauses 3 and 5, and Mr Albert HO may not move the addition of new clause 5A; but the Secretary may still move the amendment to Schedule 7 irrespective of whether or not Mr Ronny TONG's amendments are passed.

Furthermore, irrespective of whether or not Mrs Regina IP's amendments to clauses 3 and 5 are passed, Mr Albert HO may move the addition of new clause 5A.

**CHAIRMAN** (in Cantonese): This Council will now proceed to a joint debate on the original provisions of clauses 3, 4, 5, 9 and 24, and Schedule 7, as well as the amendments to these provisions. I will call upon Mr Ronny TONG to speak and move his amendments first, and I will then call upon Mrs Regina IP, Mr Albert CHAN and the Secretary for Commerce and Economic Development to speak; but no amendments are to be moved at this stage.

**MR ALBERT HO** (in Cantonese): Before the commencement of the debate, I would like to take this opportunity to declare interest. I am a member of the Board of the Airport Authority, which is a statutory body.

**MR JAMES TO** (in Cantonese): Chairman, I also want to declare interest. I am a non-executive director of the Urban Renewal Authority.

**CHAIRMAN** (in Cantonese): I now call upon Mr Ronny TONG to speak and move his amendments.

**MR RONNY TONG** (in Cantonese): Chairman, I move to delete clauses 3, 4 and 5, amend clause 2 to delete the definition of "statutory body", as well as amend clauses 9 and 24, and Schedule 7.

Chairman, although my amendments involve many provisions, I only have one objective, and that is, to delete the exemption provision for statutory bodies. As "statutory body" has appeared in many provisions, I have to delete other provisions which have references to "statutory body".

Chairman, the worst thing about the entire Bill is the granting of blanket exemption for all statutory bodies. Chairman, I remember that when the Singaporean Government first enacted the Competition Act a few years ago, many Hong Kong people (including incumbent public officers) teased Singapore for enacting such a "half baked" law, which has not been fully implemented. We failed to realize that today, a few years later, when we enact the competition law, we face a similar situation. This is just like a pot calling the kettle black.

Chairman, I oppose the exemption of statutory bodies for a number of major reasons. The most important of all is the relevant arrangement has completely contravened the rule of law which Hong Kong is proud of. As Members may understand, one basic element of the rule of law is placing the Government under statutory control. It is impossible to have the Government endorsing the legislation on the one hand, but excluding itself from the law on the other. It gives an impression that the Government is above the law, which is totally unacceptable.

Regardless of how justified the Government is, we opine that if the legislation to be enacted involves the acts of the Government, the latter must be brought under statutory control. Under the framework of the competition law, I fail to see why the Government has to put its statutory bodies above the law.

Chairman, all I can see is the unprofessional consultation and co-ordination carried out by the Government. Why did I say so? Chairman, I am not merely criticizing the Secretary as I believe he should have exhausted his greatest efforts. It would definitely be too difficult for Secretary Gregory SO to co-ordinate all the statutory bodies under the entire government structure. In view of the extensive co-ordination required, the work should better be taken up by a Secretary of Department or even the Chief Executive himself.

Among the three Secretaries of Departments, the Financial Secretary should definitely be blamed. Not only is he supposed to exercise control in this regard, he is also the Chairman of the Competition Policy Advisory Group (COMPAG) set up many years ago. Over the past years, he has been tasked to promote the competition policy. Although the Financial Secretary has not made much effort in this regard or contribute to Hong Kong's competitive environment, given that he is the Chairman of the COMPAG and the highest-ranking official overseeing our competition policies, I fail to see why he can save his efforts by not doing the co-ordination work and persuade the statutory bodies of various government departments to accept the statutory control when the Government has decided to introduce the relevant law. Therefore, Chairman, this is a serious regret.

Chairman, in the absence of such groundless blanket exemption which contravenes the rule of law, will government operation be adversely affected or will the statutory bodies be unfairly treated? Chairman, the answer is definitely in the negative. Why? Because the Bill has provided two different exemption mechanisms, under which the statutory bodies' conduct can be exempted for the sake of public interest.

Chairman, the first mechanism is certainly concerned with clause 31. Clause 31 provides that the Chief Executive in Council may exempt certain agreements from the application of the first conduct rule; or certain conduct from the application of the second conduct rule, if he or she is satisfied that there are exceptional and compelling reasons of public policy for doing so. Furthermore, clause 32 also provides that if certain conduct involves a conflict with an

international obligation that relates to Hong Kong, the Chief Executive in Council may also grant exemption to such conduct.

Furthermore, according to clause 15, the Competition Commission (the Commission) is also empowered to exempt certain conduct which is not considered necessary for supervision. In other words, under the Bill, there is one — sorry, there are two pretty comprehensive exemption mechanisms which have actually provided inspirational guidance on the criteria used for determining the conduct to be exempted. When compared with clause 3, which has provided for a blanket exemption for statutory bodies, the major difference of these two mechanisms is that we can at least figure out why certain conduct of a statutory body is exempted according to the principles laid down in the relevant provisions. Contrarily, there is no way we can find out the criteria used for granting exemption if it is a blanket exemption without any yardstick. Nor can we manifest the spirit of competition.

Chairman, during the deliberation, the Secretary has said publicly that the majority of those 400-odd statutory bodies do not engage in economic activity, so it does not matter if they are exempted or not. Chairman, I think that this is totally unacceptable. Why? Chairman, very simply, if those statutory bodies do not engage in economic activity, their operation will not be affected whether or not exemption is granted. If this is the case, what is the point of abandoning the rule of law? What harm would it do even if they are brought under statutory control? The simplest approach is to include them into the law so that, at least, we do not need to pay a high price for prejudicing the rule of law.

However, Chairman, is it correct to say so? Does it tie in with real life? Chairman, the answer is definitely in the negative. Although many statutory bodies do not operate any business, they do engage in economic activity. Chairman, the operation of business and the engagement in economic activity are two different things. Let me illustrate with a very good example. Take the University of Hong Kong or any university as an example. While they do not operate any business, their daily operations do involve economic activities of various perspectives. They may, for example, invite tenders from contractors to provide certain services or products, or even provide textbooks, and such conduct may have implications on the operation of and competition in various markets. If this is the case, they should also be brought under statutory control. Thus, it

would be too ignorant to say that certain organizations do not engage in economic activity simply because they are not operating business for profit.

Chairman, in view of this, we do not have any special reason to exempt statutory bodies from the Bill purely because they are statutory bodies. On the contrary, noting that the Bill has clearly provided two exemption mechanisms and the criteria for exemption, I consider that like other undertakings, all statutory bodies must be brought under statutory control.

Chairman, of course, it is impossible for me not to mention the Trade Development Council (TDC). Chairman, during the deliberation, we have organized two consultation sessions and invited people from all walks of life to give views. Surprisingly, it turned out that these two sessions have become gatherings rallying support for the TDC. Among the 200-odd guests who had attended the sessions, more than 100 expressed their support for the TDC.

Chairman, is the TDC more popular than Donald TSANG? I think this is nothing but a matter of interests. There is no doubt that the TDC has organized many activities that are favourable to the commercial sector, such that many commercial organizations or undertakings have received good attention. Chairman, I am not saying that this is not good. And yet, if overseas commercial activities organized by the TDC, for example, to promote Hong Kong or invite investors to invest in Hong Kong, are actually conducted for the benefit of Hong Kong's public interest, they should be exempted according to the abovementioned clause 31. However, if the TDC competes with the private sector for profits, such as organizing or participating in exhibitions, then its conduct should be subject to statutory control. Bringing the TDC under statutory control does not mean that it cannot operate business. We only hope that it can be fair and avoid exploiting or suppressing minor stakeholders in the market. In my opinion, the Government should absolutely comply with this. Even in the absence of law, the Government should also comply with this. Not to mention that a law has been put in place. I fail to see why the Government needs not comply with the law.

Chairman, if the Secretary told us during the deliberation that except for certain conducts of the TDC, the majority of statutory bodies are not exempted, we would still find it barely acceptable. However, it turned out that the Secretary has not granted exemption to six such bodies. While it appears that six statutory bodies are not exempted, there are actually five as two of them

belong to the same group. I find this pretty bizarre. It also shows that the authorities are not sincere at all to accept statutory control, or to promote the spirit of competition.

Chairman, in order to truly implement the spirit and principles of the competition law, we consider that the authorities should apply the same yardstick for all organizations subject to statutory control when determining whether their conduct is acceptable in society, and whether they will unfairly threaten or suppress other competitors in the market. I think the Government should be more equitable than people in the commercial sector and be more determined to safeguard the fairness of the commercial world. Therefore, Chairman, I hope that colleagues will support my amendments and remove the blanket exemption for statutory bodies, which is considered absolutely unacceptable to me.

Thank you, Chairman.

*Proposed amendments*

**Clause 2 (see Annex I)**

**Clause 3 (see Annex I)**

**Clause 4 (see Annex I)**

**Clause 5 (see Annex I)**

**Clause 9 (see Annex I)**

**Clause 24 (see Annex I)**

**Schedule 7 (see Annex I)**

**MRS REGINA IP** (in Cantonese): Chairman, my amendments seek to amend clauses 3 and 5 of the Competition Bill (the Bill) for reasons similar to those given by Mr Ronny TONG. In principle, I completely fail to see why the Government has to adopt a broad-brush approach and grant a blanket exemption for all 570 statutory bodies.

We consider that the drafting of clauses 3 and 5 has serious problems. While the Government has granted exemptions to all statutory bodies, it allows the Chief Executive in Council to apply the Bill to certain statutory bodies by way of regulation, so long as they comply with the conditions specified in subclauses (a), (b), (c) and (d).

In my opinion, the Bill should state fairly that the present drafting covers all organizations, including statutory bodies, whereas the Chief Executive in Council can exempt certain statutory bodies provided that they comply with certain conditions, which include: (a) the statutory body is not engaging in an economic activity in direct competition with another undertaking; (b) the economic activity of the statutory body is not affecting the economic efficiency of a specific market, and (c) the economic activity of the statutory body is directly related to the provision of an essential public service or the implementation of public policy.

Statutory bodies which fully comply with these conditions will be exempted. In other words, a statutory body will not be exempted if it is engaging in an economic activity in direct competition with another undertaking, and the activity is affecting market efficiency and is not directly related to the provision of an essential public service or the implementation of public policy. This is fair enough. If the Government seeks to regulate the market and requires all undertakings in the commercial sector to comply with a new set of rules, there is no reason that its own "children" can be exempted.

I also agree with Mr Ronny TONG that if the "children" of the Government are engaging in an economic activity that is not in competition with another undertaking and will not affect market efficiency, nor is it essential, there is nothing to be afraid of. What actually are the statutory bodies afraid of? If they engage in an economic activity which may possibly compete with other commercial undertakings and affect market efficiency, how come they refuse to face the reality?

Chairman, I certainly understand the difficulties encountered by the Commerce and Economic Development Bureau as many statutory bodies, which are playing a very significant role in the market — such as the Trade Development Council (TDC) and even the Airport Authority (AA) — have shops for rental and are engaging in commercial activities. These statutory bodies are



actually the "children" of the Commerce and Economic Development Bureau, and many of them have long been the subjects of criticisms and complaints. The Hong Kong Productivity Council (HKPC), for example, has long been a subject of complaint.

When I was the Deputy Secretary for Trade and Commerce, I had also received similar complaints. Apart from the TDC, the HKPC has also been complained that its counselling services were firstly, subsidized; and secondly, competing directly with the market, affecting for example the counselling services in respect of environmental protection. In fact, the advisor who lodged the complaint to me has later become the Secretary. I definitely did not make up such complaints.

I certainly understand that the Commerce and Economic Development Bureau has to take good care of many "children", and would not want to put too many tightening grips around their necks. This is why the Commerce and Economic Development Bureau has a conflicting role. It introduces new regulations to govern the market on the one hand, but condones its "children" on the other. This does not make sense. I agree with Mr Ronny TONG that the decision should not lie with the Commerce and Economic Development Bureau, but its supervisor at a higher rank. Or, there should be an independent organization or a committee to decide why these "children" can be let off.

In fact, such a double standard has been widely criticized by, for example, the Savantas Policy Institute, professional organizations, industrial and commercial organizations or companies. This is why I was also invited to participate in an activity held outside the Legislative Council Building last week, which cast doubt on the decision of the Commerce and Economic Development Bureau to "let off" 570 statutory bodies. Of course, as some colleagues have said, I understand that this owes to the fact that some statutory bodies have made great achievements. Furthermore, we just learnt from Mr Ronny TONG that the public hearings have become gatherings rallying support for the TDC. Having established for so many years, I believe the TDC has certainly made many friends, who will come for support. They may even think that if the Competition Ordinance (the Ordinance) applies to the TDC, it can no longer survive and offer help to small and medium enterprises (SMEs).

But is this true? I doubt. Firstly, an organization, be it a commercial undertaking or statutory body, must cope with changes in the competitive environment, and face the new government regulation if it engages in competitive activities. Our Chief Executive-elect also advocates "seeking changes while preserving stability". He has proposed a reorganization to build up a capable government, and many new policies will be introduced. I believe that after 1 July, we will see a lot of new policies. As the saying goes, "As the ever revolving heaven, the gentleman should persistently renew his strengths". The world is ever-changing. In case the external environment affects our local market, our competitive environment will also change.

In fact, Secretary, by using public power to protect your "children" — there is no doubt that you can say whatever you find expedient and you have much greater power than us — or statutory bodies from competition, you are actually doing more harm than good to them. Likewise, for a child, if his parents give him too much pampering and protection, or give him whatever he likes when he cajoles, they are actually hurting him by bringing him up in a greenhouse.

Take the TDC as an example and let us look at the provisions of the Hong Kong Trade Development Council Ordinance (the TDCO). It clearly states that the Secretary, who is the parent of the TDC, has a legal obligation. As for the duties of the TDC, its statutory function is to assist and develop Hong Kong's trade, while the Government is obliged to provide assistance. I am not going to read out the entire TDCO.

In the light of the TDCO, if the Competition Commission (the Commission) is established and the Ordinance applies to the TDC, its mode of operation has to be changed in the face of certain challenges, then the Secretary will be obliged to provide assistance to it. In case the TDC earns less due to a drop of business, the Government is obliged to subsidize it. The Government has all along provided subsidies to the TDC. Where do the resources of the TDC come from? The Government used to allocate the *ad valorem* duty to the TDC in the past. However, as its business expands, the Government then re-allocates the *ad valorem* duty for industrial development. The Government subsidizes it when it earns less, but cut back on its subsidies when business expands. This is fair enough.

If the Competition Ordinance also applies to the TDC in the future, thereby rendering it unable to do certain businesses or have to make adjustments, the Government must provide assistance. Being its parent, the Government is obliged to do so. How will this affect SMEs? Sitting on a reserve of \$600 billion, and with the help of our competent Secretary and Permanent Secretary, the Government can certainly get the job done. Therefore, I trust that SMEs were instigated to submit to the Legislative Council that the Ordinance should not apply to the TDC, or else they will have no one to turn to. And yet, such a remark is really an insult to our intelligence. I hope that Members who have a brain should think if this is justified.

Apart from the TDC, I also want to talk about some other statutory bodies. Many statutory bodies are actually playing a significant role in the market, and one example is the MTRCL. What kind of organization is the MTRCL? The MTRCL is a mass transit operator and also a major developer. I subsequently figured out why Chief Executive Donald TSANG has combined housing and transport and set up the Transport and Housing Bureau. The reason is that the MTRCL is also a major developer.

In fact, the MTRCL is a developer which has secured the most favourable position. Whenever new railways are built, the best development projects above railway stations will be handed to the MTRCL. If the Government holds up the sale of land or receives no application for land sale, thereby causing a shortage of land supply in the market, the building of new railways will provide the MTRCL with land for development. Furthermore, whenever the Government requests the MTRCL to build new railways, the latter will make use of its bargaining power to get either money or land from the Government. We can therefore see that the MTRCL actually plays a very significant role.

Another statutory body is the Urban Renewal Authority (URA). The URA certainly plays a very important role in the property market, and is envied by many people. Where are the sites put up for auction by the Government situated? They are situated in Wu Kai Sha and Ma On Shan. How about the sites allocated for the URA? They are in the best location of some old districts. Chairman, over the years, many statutory bodies have benefited from the Government's preferential policies and received either public funds or land subsidy from taxpayers, and also play a significant role in different shopping malls or markets, so why should the competition law not apply to them?

Chairman, I consider this double-standard approach extremely intolerable and I hope that rectification will be made by the Secretary. It does not matter if he treats Members with a double standard, but if the same approach is adopted in statutory bodies engaging in economic activities, the commercial sector will find this unacceptable. Of course, the Government should have secured enough supporting votes today — it is very likely that it has obtained sufficient votes. It is impossible for disadvantaged Members like us to secure enough votes to win the Government.

Let me read out the most recent letter received on 4 June from organizations supporting my amendments. These organizations oppose the Government's adoption of a double-standard approach to "let off" the statutory bodies. Organizations which support me include professional bodies such as The Law Society of Hong Kong, the Hong Kong Bar Association, the British Chamber of Commerce in Hong Kong and the Hong Kong General Chamber of Commerce. Although many prestigious trade associations have certain connections with the authorities, they also raised opposition.

Recently, I have received a letter from the Hong Kong Association of Banks (HKAB). What is it about? It wrote that, "in line with the above principle — meaning the principle to promote competition in a balanced manner and not to undermine market forces — "in line with the above principle, by five separate letters to the Bills Committee, Hong Kong Association of Banks has made written representations on the concerns of its members, including the proposal to apply the Bill's exemption for statutory bodies which compete directly with the private sector, as well as provided various recommendations to improve the clarity of the key provisions of the Bill, and the guidelines which should be issued by the Competition Commission for the banking sector as a priority. Our most recent letter to the Bills Committee dated 13th of March 2012 summarizes the position of HKAB on the Competition Bill."

Event the HKAB felt impatient and thus sent five letters to the Government to oppose its double-standard approach which "let off" the statutory bodies. They opposed the Government's moves to "let off" its children and condone the statutory bodies. And yet, the Secretary has turned a deaf ear to their views. I therefore consider it necessary to propose today's amendments.

My amendments are indeed the most reasonable and have taken a "middle-of-the-road" approach. Not all statutory bodies have been included as some of them do not engage in economic activity. My amendments have merely changed the present drafting to include statutory bodies. If a statutory body do not have any economic activity or constitute or affect competition, the Chief Executive in Council can let it off. This is a "middle-of-the-road" approach. I hope that when the amendments are proposed later on, Members will support the genuine principle of competition and support my amendments. Thank you, Chairman.

**MR ALBERT HO** (in Cantonese): Chairman, I propose to add a new clause 5A to the effect that clauses 3 and 5 of the Competition Bill (the Bill) will cease to have effect when the three-year period expires. As we may be aware and two colleagues have pointed out in their speeches, clauses 3 and 5 are concerned with the provision of a blanket exemption for all statutory bodies so that they will be free from the control and regulation of the Competition Ordinance. First of all, I must point out that I support, in principle, the amendments proposed by Mr Ronny TONG. In other words, I think that clauses 3 to 5 should actually be deleted.

In a society upholding the rule of law, the principle of law making is that the right of every person, entity and organization must be equally protected, whereas the freedom of every person, entity and organization must also be equally restricted. This is the starting point. In case any proposal deviates from the principle of equal protection and equal restriction, the law-maker will be obliged to provide reasonable justifications to support the differential treatment. The differences in treatment, on the other hand, must be proportional and comply with the proportionality principle. The law-maker cannot give totally different treatment simply because special treatment has to be given. The proportionate principle must also be taken into consideration.

The Bill has stressed the importance of fair competition, and proposed two set of conduct rules to highlight the importance of restricting unfair competition. And yet, as the Government has lightly informed us, a blanket exemption has been granted to all statutory bodies for two simple reasons. First, these statutory bodies do not engage in any (or only engage in limited) economic activities. Second, their business seeks to promote public interests.

Regarding the first reason, if they do not engage in any economic activities, why would they fear that their business would violate the competition rules? The Ordinance naturally does not apply, am I right? However, competition will arise if those statutory bodies engage in economic activities. Members should note that we seek to regulate conduct in economic activities which may constitute unfair competition. Therefore, in the absence of economic activities, there is nothing to worry about.

When there are economic activities, then regardless of how little or limited the activities are, the Government cannot handle the case unfairly on the ground that the statutory body concerned seeks to promote public interest. As Mr Ronny TONG has said earlier, even the Government has to act fairly, not to mention the statutory bodies. Therefore, the Government should not grant blanket exemption so rashly. It should also be noted that under the present proposal, exemption is also granted to "hardcore" or anti-competitive conduct. In other words, the statutory bodies can make use of bid-rigging and many other unfair ways to manipulate the market. How can the Government grant exemption so rashly and tolerate such conduct? Worse still, the Government has reiterated that the first conduct rule involves conduct that should not be tolerated. Therefore, I do not think that these statutory bodies should be allowed to adopt socially unacceptable means because of their business nature. I hope that I have not misunderstood the provisions. Clause 3 has clearly provided for a blanket exemption for all statutory bodies, which cover all conduct rules (the conduct rules contained in Part 2) as well. This is not only difficult to understand, but also unacceptable.

Even if there are special reasons or policy considerations for the Government to consider granting exemptions, I maintain that the proposer is still obliged to provide justifications for the exemption on a case-by-case basis. I strongly agree with such an approach. When Mrs Regina IP initially put forth this proposal, I had indicated my support, but eventually she has not included it in her amendments. All these statutory bodies should, in principle, not be exempted. Notwithstanding this, a schedule can be set to include cases where exemptions have been granted. This is my initial proposal. Each statutory body with exemption granted can be added to the schedule. Statutory bodies which fail to get the exemption can apply again next time. This should be the correct approach.

While hundreds of statutory bodies are involved this time, not many of them are controversial. At least, the number is not too large according to our understanding. Controversial cases include the Urban Redevelopment Authority, the Trade Development Council (TDC) and possibly the Airport Authority (AA). The MTRCL, however, is not included in the list as it is a listed company. The Bill has clearly stated that listed companies are not subject to its control. Therefore, regardless of how dissatisfied we may feel with the CLP Group or the MTRCL, the enactment of similar laws has not enhanced our supervision on them. Yet, the abovementioned statutory bodies should actually be brought under supervision, and justifications must be provided for the exemption of any of them, especially the TDC. If the TDC claims to possess significant social functions and its work can make great contributions to society as a whole without prejudicing Hong Kong's reputation as a fair competitive environment, then just tell me how it can do so.

Therefore, in my opinion, this must be supported by clear and sufficient data and justifications. Similarly, for the AA, many people suspect that AA's certain commercial conduct has monopolized the market. Why is it allowed to do so? While we are willing and prepared to rationally consider the case, equity is the key principle. Any deviation from this principle must be justified, stating why a particular statutory body is allowed to deviate from the principle and whether such an arrangement complies with the proportionality principle. If the Government fails to do so, I do not think that any blanket exemption should be allowed, as this will undermine the basic value of a society which upholds the rule of law and equity.

Having said that, I understand that the Bill is pretty complicated and a large number of provisions have to be discussed during the deliberation. If there is a need to examine the statutory bodies one-by-one at this stage, the existing time frame is probably too tight. I therefore put forth another proposal, suggesting that clauses 3, 4 and 5 will cease to have effect after the Bill has been enacted for a certain period of time. By so doing, the Government can work on the exemption provisions when exemptions are still effective, with a view to providing the Legislative Council a list of statutory bodies which warrant special exemption. In case there is a need to amend the Ordinance in the future, those statutory bodies can be included into the relevant schedule. This should be the right approach.

I suggest that the time limit should be three years, which is believed to be appropriate. The reason is, upon the passage of the Bill, the Government will have to establish the Competition Commission, formulate guidelines and carry out consultation exercises, which may take almost two to three years before the entire framework can come into full operation. By that time, it is believed that the abovementioned review will also be completed in tandem with the framework. I hope that the Government will make good use of the time. I do not want to see too many statutory bodies being exempted without sufficient discussions and justifications, and continue to compete in a way which contravenes the principle of equity, while other bodies are subject to control and criticisms, or even prosecution by the Competition Tribunal. This is the last thing I would wish to see. What is more, this is extremely unfair to the sanctioned parties.

As for the amendments proposed by Mrs Regina IP, I do appreciate them in principle and will not raise opposition. I nonetheless think that the present drafting of the amendments has made it too difficult for people to understand how they can be implemented. According to my understanding, the provisions only provide exemption to certain conduct. And yet, when enforcement actions have to be taken, it would be pretty difficult to distinguish which kind of conduct will be exempted. Therefore, after examining the wordings of the amendments and listening to Mrs IP's explanation, though I appreciate and agree with her viewpoints, I consider that the amendments have failed to unequivocally define the statutory bodies which fall within the exemption as mentioned by her. I therefore prefer to assess the statutory bodies one by one. This is better than enacting laws of principle that is not only arbitrary, but may even cause chaos when being implemented. Thus, the Democratic Party will abstain from voting with regard to Mrs IP's amendments.

**SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT** (in Cantonese): Chairman, later, I will propose amendments to Schedule 7 concerning mergers. Regarding the amendments to Schedule 7, apart from some textual amendments, the rest are mainly amendments proposed along the line of those made to the provisions on decisions and the issuance of guidelines specified in the conduct rules in Part 2. These include amendments to clauses 12(1), 15(2) and 17(5), which provide that the Competition Commission (the Commission) should make use of the latest technology and any other manner which the



Commission considers appropriate to publish the notice and guideline on merger decisions. The amendment to clause 17(4) requires that the Commission must consult the Legislative Council before issuing any guidelines or amendments relating to the merger decisions. The addition of clauses 17(6) to 17(8) seeks to provide that the guidelines and amendments made to them are not subsidiary legislation, and a person does not incur any civil or criminal liability only because the person has contravened any guidelines. They have clarified the legal status of the guidelines.

The Bills Committee has discussed and agreed to support the abovementioned amendments. I sincerely implore Members to endorse these amendments. Chairman, Mr Ronny TONG, Mrs Regina IP and Mr Albert HO have proposed amendments to the exemption arrangements, but the Government oppose all of them. I will make a detailed response when I speak for the second time later on.

Thank you, Chairman.

**DR MARGARET NG** (in Cantonese): Chairman, since Mr Ronny TONG has proposed amendments to clauses 2, 3, 4, 5, 9 and 24 and a schedule, and the debate of which is very important, we cannot leave the Chamber to attend the candlelight vigil held in memory of Mr LI Wangyang, a courageous martyr of democratic movement. We can only use the flower on the table to wish the early vindication of Mr LI Wangyang.

Chairman, unfortunately, I am going to point my finger at the Judiciary again. As both Mr Ronny TONG and Mr Albert HO have said earlier, our opposition to exempting the statutory bodies is based on the concept that "everyone is equal before the law" and no one should be exempted.

Chairman, I would like to focus my speech on this point, and that is, the definition of "statutory body" is too broad. The definition is so broad that all bodies, be they incorporations or ..... sorry, Chairman, the definition of "statutory body" is so broad that and even body corporate is included. In this connection, the authorities have provided us a list as early as February 2012, setting out the 575 statutory bodies which have been exempted. We were also informed that of these 575 statutory bodies, 415 do not engage in economic

activities or have insignificant amount of economic activities, whereas the other 160 statutory bodies engage in economic activities that are directly related to core public policies.

Chairman, when we go through the list, we find that courts at all levels, namely the District Court, the Magistrates Court, the High Court, Hong Kong Court of Final Appeal and the Lands Tribunal, have been included as statutory bodies and are therefore exempted. Chairman, to me, the list is downright a great disgrace. How come courts at all levels have turned into statutory bodies under an ordinance which safeguard fair competition, and therefore exempted from statutory control because of their status?

Unfortunately, when I asked why it would be so weird to turn courts into statutory bodies, the authorities simply responded that the Judiciary has no objection to this arrangement. In other words, they had asked if the Judiciary has any objection to this arrangement and the answer was in the negative. The authorities had also relayed Members' views to the Judiciary, and the reply was: "there could be no constitutional objection or difficulty in fitting courts and tribunals under the Judiciary within the definition of 'statutory body' in the Bill, for the purposes of the Bill"; "and their structure, powers and functions shall be prescribed by law (Article 83 of the Basic Law). The Judiciary considers that the Basic Law envisages the establishment of courts at all levels by enactments, and the classification of courts as statutory bodies under the Bill is not in conflict with this constitutional requirement".

Chairman, we believe courts at all levels refer to various courts under the Judiciary, which derive their power from the Basic Law. Although the provisions may have prescribed the authority of courts, they were not established because of these provisions. Therefore, I consider that this approach is not only a great disgrace, but also absolutely unnecessary. As Members have elaborated on this earlier, there is no need for me to go into great detail.

For the statutory bodies, the Bill only targets at statutory bodies with economic activities. Clause 5 clearly states that statutory bodies will be brought under control only if their economic activities are affecting the economic efficiency of a specific market. Therefore, if the same logic applies to courts and statutory bodies, those 415 statutory bodies on the list which do not engage in economic activities will not inherently fall within the coverage of the Bill. Courts, on the other hand, will also not be affected by the Bill. And yet,

exemption is granted not because courts enjoy special status, but because their nature has nothing to do with the regulatory ambit of the Bill. In case there is a need to exempt any statutory body in the future, we agree that the Chief Executive should grant exemptions in accordance with the regulation provided for in clause 5.

In other words, the term "statutory body" which has an extremely broad coverage should be removed from the Bill in the first place. Then, the Chief Executive should be empowered to bring certain statutory bodies into the regulatory ambit. Nonetheless, clause 5 provides that the statutory bodies concerned must comply with certain conditions before they can be brought into the regulatory ambit, which is awfully complicated. Why does the Government not specify that the Bill seeks to govern certain activities, and that statutory bodies which do not engage in such activities will not be governed by the Bill?

If certain statutory bodies do engage in economic activities which may fall within the regulatory ambit of the Bill, but should otherwise be granted exemption because of certain public policies, the Chief Executive can grant exemption for this complies with the principle of "everyone is equal before the law" on the one hand, and achieves the purpose of the Government on the other. Under this approach, the Government can grant exemption to even the most controversial Trade Development Council (TDC). This is because if the TDC has to be excluded, the authorities can rightly justify the exemption and then pass the ball to the Legislative Council, a representative of public views, to see if it agrees with the relevant policy. If the Legislative Council agrees with the policy, the TDC will therefore be exempted.

Chairman, at this stage, I do not have any special views on whether a statutory body or the TDC should be exempted in the end; however, I do have strong views about the exemption criteria provided in the Bill. As two Members have mentioned earlier, both The Law Society and the Bar Association have expressed strong views about the exemption provisions of the Bill. This is a matter of principle.

Chairman, I wish to add one more point. As I have highlighted during the deliberation of the Bill and as stated in the report of the Bills Committee, in order to exclude courts at all levels from the Bill, we can specify in the definition that courts do not fall within the regulatory ambit of the Bill due to abovementioned reasons.

However, the authorities replied that it was difficult to define "court" back then. Actually, it is not difficult at all. Article 35 of the Basic Law provides that everyone shall have the right for representation in courts during a trial. There had been a number of cases concerning whether Article 35 of the Basic Law applies to the discipline committees of professional bodies, and we had examined if the defendants also have the right to be represented by lawyers. At that time, both the Court of First Instance and the Court of Appeal ruled that those discipline committees are parts of courts. The Court of Final Appeal, however, subsequently overruled their decisions and provided a clear definition of "courts" referred in Article 35 of the Basic Law.

Therefore, regarding the definition of "courts", sufficient evidences have actually been provided in the judgments of courts and even the definition itself. And yet, after serious consideration, I do not consider it necessary to include the definition because, as I have said right at the beginning, courts do not engage in any economic activities and are thus naturally not affected by the Bill.

In my opinion, the inclusion of courts as statutory bodies is not only superfluous, the Government's earlier explanation on why courts were dragged into the legislative process has also given us an impression that courts supported the breaching of the principle "everyone is equal before the law". I feel deeply regretful about this. Hence, I support the amendments proposed by Mr Ronny TONG. Thank you, Chairman.

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

**MR ANDREW LEUNG** (in Cantonese): Chairman, first of all, I would like to declare that I am a member of a number of statutory bodies: I am a member of the Legislative Council Commission; a non-executive Director of the Mandatory Provident Fund Schemes Authority; Chairman of the Advisory Board of the International Cuisine College and Design Institute under the Vocational Training Council, Trade Development Council .....

(Mr LEUNG Kwok-hung stood up)

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): I request a headcount.

**CHAIRMAN** (in Cantonese): Did you request a headcount?

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes, I did.

**CHAIRMAN** (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)

**CHAIRMAN** (in Cantonese): Mr Andrew LEUNG, please continue with your speech.

**MR ANDREW LEUNG** (in Cantonese): I have to declare that I am a Council Member of the Trade Development Council (TDC), a non-executive Director of the Hong Kong Mortgage Corporation Limited, the Honorary President and a General Committee Member of the Federation of Hong Kong Industries (FHKI).

With regard to the amendments proposed by several Members that statutory bodies should not be exempted, I cannot give my support. All existing statutory bodies do have specific goals and the Government's purpose for establishing such bodies is for the benefit of Hong Kong as a whole. Each statutory body performs specific statutory functions which include facilitating industrial and commercial developments and promoting economic growth in Hong Kong. Statutory bodies, with non profit-making objectives, are actually performing the roles of extending and enforcing government policies. From the outset, I am of the opinion that statutory bodies which are mainly engaged in facilitating community developments, improving people's livelihood, providing

better economic benefits and enhancing economic efficiencies in the whole community, and assisting the promotion of government policies should be granted exemptions by the Government, so that the current support received by enterprises would not be undermined by the implementation of the new legislation.

At the Bills Committee meeting on 28 February this year, representatives from various sectors were invited to voice their views on the issue of exemption arrangement for statutory bodies. Most deputations supported the exemption for statutory bodies, including the TDC. Mr Ronny TONG said earlier that he found the situation surprising and also pointed out that the organizations supported the TDC out of self interest. As Chairman of the Bills Committee, I must make a fair statement. All organizations attended the meeting voluntarily and according to them, they got many orders at exhibitions organized by the TDC each year. Everyone voiced his views out of his personal experience and feeling. As Members of the Legislative Council, we should listen to them carefully. If any Member found the situation surprising, perhaps it is because he has very little contact with small and medium enterprises (SMEs) in the past and failed to understand their situation.

Chairman, I would like to stress one point, public bodies do not have any anti-competitive motives. On the contrary, at times when the economy was poor and Hong Kong was in predicament, public bodies put in their own resources and made great efforts to help SMEs seek business opportunities and act as their guarantors for insurance financing. In order to fulfil their public duties, many public bodies, such as the TDC, the Hong Kong Productivity Council and the Hong Kong Export Credit Insurance Corporation, have played a vanguard role in their respective fields, striving for the benefit of local enterprises and people. Some people have accused the TDC of monopolizing the organization of various major international exhibitions, but in fact, such exhibitions were initiated by the TDC. Initially, such exhibitions were very small in scale, and the TDC had to put in a lot of thoughts, as well as money and manpower to attract overseas buyers to attend exhibitions in Hong Kong. Very often, the exhibitions suffered losses in the end. However, the TDC has been persistent in organizing exhibitions for it understands that many SMEs can only secure orders through exhibitions, and if SMEs intend to join exhibitions held by other private organizations, they virtually stand no chance to get a better location in the exhibition venue, or they may even not have the opportunity to join.

Furthermore, very often the TDC offers local SMEs concessionary rates to join various activities, including exhibitions. Frankly speaking, I am convinced that this is something which private organizations will not be able to achieve.

Chairman, the authorities have provided us with some figures on exhibitions organized by the TDC. In the year 2010 to 2011, 20 out of the 35 exhibitions organized by the TDC suffered losses and only 15 claimed a profit; over 40 000 enterprises participated in exhibitions under the sponsorship of the TDC, among which, 14 000 enterprises participated in exhibitions which were held in Hong Kong. The authorities also pointed out that the TDC only had a market share of less than 30%. In 2011, 35 out of a total of 161 exhibitions held at the Hong Kong Convention and Exhibition Centre and the AsiaWorld-Expo (AWE) were organized by the TDC, constituting 22%, and six out of the 35 exhibitions were organized jointly with other private organizations.

Over the past years, the TDC has remained firmly committed to promoting Hong Kong's external trade and has endeavoured to create more opportunities for our SMEs, especially in times of economic downturn, by supporting them, in terms of money and effort, to promote business overseas so as to extend their scope of business. Multinational exhibition companies, which are profit-making, will charge SMEs full fares for participation, while the TDC offers local exhibitors concessionary rates. In particular, for exhibitions with a long history, where local exhibitors, many of which are SMEs, are charged as much as 31% less than foreign exhibitors. The entry fee of the Hong Kong International Jewellery Show organized by the TDC was also 37% less than that of the "September Hong Kong Jewellery and Gem Fair 2012" organized by private exhibitors, thus providing local SMEs with better and more economical exhibition opportunities.

The outbreak of the SARS crisis in 2003 discouraged overseas buyers from coming to Hong Kong and participating in our trade fairs, and some exhibitions could not be held. However the TDC had still made every effort to assist SMEs through different channels, and even held an extra exhibition in July to put SMEs in touch with buyers and secure orders.

During the financial turmoil in 2009, the TDC spent HK\$120 million out of its own surplus on supporting Hong Kong SMEs and trade developments, among which \$80 million were spent on inviting overseas buyers to come and participate

in Hong Kong trade fairs. Within the two-year period, more than 40 000 overseas buyers were invited to participate in the trade fairs of Hong Kong, including those held at the AWE; while the remaining \$40 million were spent on alleviating the burden of local SMEs on promotional efforts, and thus spending real money on helping to enhance their competitiveness.

The above are all examples on how the TDC, as a statutory body, has helped SMEs to ride out the storms. I am not saying that the TDC should be granted exemption because it has "behaved" well and has been very helpful. On the contrary, all these examples proved how the TDC has utilized its own resources and networks on assisting and supporting the development of SMEs, while supporting the development of the local exhibition industry, private exhibition companies and the alternate exhibition venue — AWE — at the same time.

Furthermore, I would also like to talk about what we learned at a TDC meeting last week. The Secretary had just returned from a large-scale promotional activity in Japan. As a matter of fact, the purpose of holding the large-scale promotional activity in Japan was to allow Japan to see for itself the interests of the traditional and ASEAN markets, so that overseas enterprises will view Hong Kong as a platform and best partner for opening up the emerging Asian market. The TDC also hosted the "Think Asia, Think Hong Kong" function in the United Kingdom last year, so as to encourage local businesses to open up the Asian market, in particular that of China, by taking advantage of the business and trade platform of Hong Kong and making use of its services. The TDC also worked with local organizations to hold a series of promotional activities, and more than 2 600 or so members of the British political and business communities were attracted to the function, which evoked strong local response; and I was fortunate to take part in this activity. Participating companies received business enquires from 560 companies; and within the six month-period after the function, the TDC also received enquiries from an average of about 10 000 British companies per month, twice of the number received the year before. The TDC's function in Japan attracted 3 700 people from the political and business communities. During the event, the TDC also arranged 500 business matching meetings for Hong Kong companies, and over 100 companies expressed an interest in setting up offices in Hong Kong.

Chairman, you may be aware that Infiniti, a well-known brand of Nissan, has already set up its international headquarters in Hong Kong. These were all



the work which has been done by the TDC at a loss. The TDC is expected to engage more in such activities, yet, it is prohibited from engaging in profit-making activities. I think if the TDC are not granted exemption, it will not be able to organize timely activities for helping local enterprises or even the exhibition industry at economic downturns. Instead, it would be forced to charge expensive exhibition fees like its competitors.

In fact, many SMEs have told me that they are worried that the TDC may have no alternative but to abolish all preferential measures which are beneficial to SMEs if its activities were regulated under the competition law and this will undoubtedly cause them great losses. The same will also be applied to other public organizations, and the competition law will then become a legislation which "visible disadvantages come before any invisible advantage".

I would also like to respond to what Mr Albert HO has said. I understand that he does not regularly attend our meetings. As regards to the issue of exemption, it has actually been clearly stated that if organizations were found to have violated the principles of competition, then they would be asked to make improvements by government Policy Bureaux, and if the situation continues, then they will be placed under the regulation of the Competition Ordinance.

I would also like to talk about what Mrs Regina IP said earlier about the Mass Transit Railway Corporation Limited (MTRCL). I think that it may be due to the fact that a person of her eminence is apt to have a poor memory and no time for our meetings, but colleagues did actually ask the Government at our meetings whether the MTRCL is a statutory body or not. It is very simple in that the MTRCL is a listed company, not a statutory body, and will thus not be granted any exemption. Though Mrs IP does not have time to listen to what have been said at our meetings, her assistants should research carefully before writing her script, otherwise, it would not look good for her to get it wrong.

Both Mr Ronny TONG and Mrs Regina IP said statutory bodies should be exempted on a case-by-case basis and there is no need to offer all statutory bodies collective exemptions. My views are similar to that of Mr Albert HO, in that we both do not agree that each organization should be considered individually, for since they all meet with the requirements, then the simple approach of granting collective exemptions should be adopted. As such, I support that statutory bodies should be granted exemptions.

Furthermore, I would also like to say a few words on behalf of the FHKI, which are two of the six non-exempted organizations. The FHKI finds it hard to understand that the Government would place the FHKI and its General Committee on the list of non-exempted organizations. Over the past 50 years or so, the FHKI has actively assisted the Government in promoting the development, operations and services of Hong Kong industries, and has practically helped the Government in enhancing the competitiveness of the Hong Kong manufacturing industry; it has contributed and played an important part towards the development of our economy.

Though the FHKI has become self-financed and was not allocated any operation funds by the Government since 1980, it has still maintained direct contacts with the Government, with three of its General Committee Members still being appointed by the Chief Executive. One of the Member is a senior officer of the Trade and Industry Department who monitors the operations of the FHKI on behalf of the Government. This special arrangement is entirely different from that of the composition of the general committees of other chambers of commerce. Furthermore, the FHKI also provides services, which include signing Certificates of Origins, on behalf of the Government, and such services will not affect market competitions. However, the Government has decided that like other chambers of commerce, the FHKI will not be granted any exemption for there are other organizations and chambers of commerce in the market whose operations are similar to that of the FHKI, and the FHKI has only been awarded the status of a statutory body on historical grounds.

Frankly speaking, though the leading officials of the FHKI have strong views about this, we have eventually understood and reluctantly accepted the arrangement. However, with regard to the proposal of Mr Albert HO on adding a sunset clause, I think that the authorities have already repeatedly stressed during our deliberations that although the exempted statutory bodies are not subject to the regulation of the competition rules of the Bill, they must comply with the competition principle of the rules; and the authorities have also promised that they would make every effort to ensure that the exempted bodies will not be engaged in any anti-competition activities without reasonable grounds.

Chairman, I so submit.

**MR FREDERICK FUNG** (in Cantonese): Chairman, I think the most controversial aspect of the Bill is the exemption arrangement. The provisions of the Bill on competition rules and enforcement powers do not apply to certain statutory bodies and the authorities proposed that 575 statutory bodies should be granted exemptions. The majority of such bodies have not been engaged in any economic activities, while the economic activities of 160 statutory bodies are related to public services or government policies, covering education, medical, social welfare and public housing issues, and only six statutory bodies have not been granted exemptions. While we agree to the arrangement for exempting statutory bodies in principle, we must ask whether it should be taken for granted that the major principles of "fair competition and everyone is equal before the law" will apply to such statutory bodies? We think we must consider the relevant operations and necessary social roles and functions of the Government before making a choice.

Chairman, I do not agree that such statutory bodies should be included under Schedule 7. First of all, I would like to say, under our existing social circumstances, especially when there may be a need for economic restructuring, there are basically two different views. Economic restructuring may not be possible without government intervention. For example, I mentioned in my political platform for the Chief Executive Election campaign that the two major pillars of finance and real estate which Hong Kong now currently relied on were not sufficient to support the long-term development of Hong Kong, and there was a need for the emergence of other new trades and industries. The emergence of such trade and industry might call for the practice of "Government participation first and withdrawal later" or even the long-term participation of the Government.

This practice has been adopted by countries with free economies. For example, there is a bank in Canada which supports the development of SMEs by offering them assistance through low-interest loans and longer repayment periods. Will this cause any conflict between the Government-supported bank and other private banks? We have mentioned some examples in the past, such as Taipei's efforts in promoting the separation of dry and wet waste in 2002. What the then mayor, MA Ying-jeou did back then was that the government provided land and funds for building plants, while machineries and technologies were provided by the business sector. The land premiums and rents for the first three-year period were waived, while one third of the premium and rents were charged for the

second three-year period, two thirds for third three-year period and thereafter at market rates. This is also an approach of "participation first and withdrawal later". Taipei is now a city with the best practice for the separation of kitchen waste in Asia today after 10 years. I quote these examples to tell everyone that some things can only be done with government participation.

The second example which I would like to quote is the establishment of social enterprises, an approach currently adopted by many western countries, in support of disadvantaged labour groups through various modes. The so-called disadvantaged labour groups are people who are between 40 to 50 years of age; they are not welcomed in the labour market due to old age, poor strength, and with physical or mental disabilities. Various forms of support have also been offered by other places, such as one-off grants, or upon the establishment of the social enterprises, by setting a deficit ceiling or providing supportive policies, such as specifying that certain government jobs are only opened for tenders among social enterprises. I quote the examples of other places to show that I am very worried that with the enactment of the Competition Ordinance, all these measures cannot be implemented.

As such, it may be true that certain government policies on social enterprises may compete with the public for profits. In the past, when the issue of social enterprises was discussed at the Subcommittee on Poverty Alleviation of the Legislative Council, the business sector did mention that the emergence of social enterprises would deal a severe blow to SMEs. However, during our visits to other places, including the United Kingdom, the Netherlands, Korea and Taiwan, we found that the governments in these countries have all implemented policies to promote social enterprises. Thus, under such circumstances, we agree in principle that the Government should grant exemptions to these organizations.

Another example is hospital. Medical treatments are provided by both public hospitals and clinics, and the public hospitals of Hong Kong have even accounted for a major share of the market. From the perspective of competition, will this deal a blow to the market of private hospitals? As such, should the fees of public hospitals be charged at market rates as well? If the fees for medical consultations, out-patient services, drug prescriptions, hospital admissions or surgeries are charged at market rates, Hong Kong people can hardly afford the medical expenses. The United States has dealt with this problem by means of

insurances, thus the charges of its public and private hospitals are quite similar. As such, medical insurances have become an alternative solution for addressing the medical problem. However, can the problem really be solved by means of insurance, will the system be abused, or will low-income people cannot afford to take out different medical insurances? As such, we accept the views of the Government, but I will speak again later on the inadequacies of the Government, and that is, six statutory bodies are not granted exemptions under Schedule 7. Under such circumstances, I cannot support Mr Ronny TONG's amendments.

Furthermore, Mr Albert HO has moved an amendment to include a sunset clause which provides that the relevant clauses have to be submitted to the Legislative Council for review after three years. As the motion has already been discussed for many years, is there any need to further amend the legislation by temporarily ceasing its implementation? I think the legislation can be improved after being amended, and the "toothless tiger" can be turned into a piece of effective legislation which truly combats the monopolistic or intended monopolistic conducts of enterprises.

Furthermore, Chairman, I would like to talk about Schedule 7, under which the Government stated that six statutory bodies are not granted exemptions. I believe that my colleagues from the business sector must have spoken on the relevant reasons. Chairman, I would like to talk about two statutory bodies, one of which is the Ocean Park, and the other is the Kadoorie Farm and Botanic Garden. I believe that the Government must understand the functions of the Ocean Park, as listed under the Ocean Park Corporation Ordinance (Cap. 388) better than I. Chairman, I would try to read out its functions: "(a) to manage and control Ocean Park as a public recreational and educational park; (b) to provide at Ocean Park recreational and educational facilities and other related facilities as it thinks fit; (c) to develop Ocean Park for the purposes of recreation or education generally in such manner as it thinks fit; and (d) to apply its profits howsoever derived towards the promotion of its functions specified in paragraphs (a), (b) and (c)." Chairman, I realize that even if the Ocean Park has gained any profits, those profits still have to be plough back to promoting the functions specified in paragraphs (a), (b) and (c), as mentioned earlier. It cannot pocket the money, and the Government cannot put the money into the Treasury.

The vision and mission of the Ocean Park Corporation — Chairman, I would only read out several points, instead of all, otherwise I may be accused of filibustering, for I do not agree that a filibustering approach should be adopted in dealing with the competition law — the core values of the Ocean Park are "fun, service, safety, education and conservation and respect for people." After looking at its vision and mission, how can one possibly think that it will be monopolistic? No matter how hard I try, I cannot think of any organization that would compete with the Ocean Park, though there may be someone in future. Is the Government trying to help the Disneyland? Is the Ocean Park competing with the Disneyland? However, the Disneyland is very much different in that its profits will only find their way into the coffers of certain companies, of which the Government will definitely take a share. However, the function of the Disneyland is pure entertainment, unlike that of the Ocean Park which incorporates educational work and facilities. Chairman, as regards this example, I fail to see why the Government cannot grant the Ocean Park exemption.

The second example is section 4 of the Kadoorie Farm and Botanic Garden Corporation Ordinance (Cap. 1156). Chairman, once again, I would like to read out the relevant clauses on the functions of the Corporation: "(a) to manage and control the Kadoorie Farm and Botanic Garden for the public benefit as a centre for conservation and education with the aim of increasing the awareness of the environment;" — I do not know how many profit-seeking private corporations would put this down as their goal — "(b) to provide a sanctuary for animals and birds; (c) to collaborate with organizations or institutions with similar aims or of a similar nature whether in Hong Kong or elsewhere; (d) to support accepted principles and standards for the protection of biological diversity; and (e) for the purposes set out in this section, to provide related facilities and develop the Kadoorie Farm and Botanic Garden in the manner it thinks fit."

Chairman, the mission and vision of the Corporation are also written down in black and white, and I believe that the Government would have a better understanding than I and there is no reason why it would fail to know. The mission of the Corporation is "to harmonise our relationship with the environment", and its vision is "a world in which people live sustainably with respect for each other and nature." The values of the Corporation include "sustainable living: appreciating the impact of our actions with regard to current

and future generations, having awareness of our connection with the environment and valuing simple and responsible lifestyles; justice: being fair and accountable, valuing socially equitable systems that protect the health of the planet, the people and their way of life and protect future generations; love: having self-awareness and understanding of the inter-relationship of all things, having compassion and respect for all life, recognizing that outer discord is a reflection of inner discord, striving for inner silence; participation: engaging mentally, physically, emotionally and spiritually, fostering respect for different viewpoints, openness, dialogue and teamwork; happiness: appreciating that our happiness lies in creating and sharing happiness with others."

Chairman, I would like to ask the Government how many private organizations which are similar to the Kadoorie Farm and Botanic Garden it can find. Furthermore, with such mission, vision and values (including love, ideals and happiness), why is Kadoorie still be excluded and not granted exemption? I absolutely fail to see why the two organizations (the Ocean Park and Kadoorie Farm) which I mentioned earlier should be included under Schedule 7. Chairman, I believe that there is a chance that the amendment can be passed today, but I do solemnly and seriously request the Government to remove these two organizations from the non-exempted list, so that these two public organizations, which are recognized and much supported by Hong Kong people, can be exempted from provisions of the Competition Ordinance.

Chairman, finally I would like to draw a conclusion on several issues. The Competition Ordinance should actually target at the monopolistic activities of profit-making private companies in the market and should not interfere with and restrict the activities of the Government in dealing with issues concerning the welfare, rights and needs of Hong Kong people, solving the problems of Hong Kong, or promoting the accepted eternal values. I hope that the Government can consider the issue from this perspective and I also most definitely hope that colleagues can also consider the issue from the same perspective. Thank you, Chairman.

**MR JEFFREY LAM** (in Cantonese): Chairman, I declare that I am a Council Member of the Hong Kong Trade Development Council (TDC), a Board Member of the Airport Authority (AA), a Board Member of the West Kowloon Cultural

District Authority and a General Committee Member of the Federation of Hong Kong Industries.

Chairman, many members of the community are of the opinion that it is necessary to incorporate a provision for the exemption of statutory bodies in the Competition Bill. Members of the business sector, in particular, small and medium enterprises (SMEs) are all very supportive of this provision.

Chairman, we heard Members say today — many people have also expressed their views outside the Council before the debate — that if such organizations were granted exemptions, the authorities may not be able to monitor the anti-competitive acts of such organizations in future. I do not believe that this will be the case for everyone knows that among the exempted organizations, 100 or so are engaged in economic activities which are related to the implementation of government policies or the provision of public services, and these organizations include the Hong Kong Housing Society (HS), the Hospital Authority (HA) and the TDC. As we can see, such organizations have provided reasonable quality services for the public and SMEs over the years. So, how will they possibly compete with the public or harm consumer interests?

Mr Ronny TONG often said that he has, after consulting and listening to many SMEs and members of the industry, reflected such views at this Council. He said that he has listed the views of the Hong Kong General Chamber of Commerce (HKGCC) in a report, but after reading through the report, I find that none of the views listed are the views of HKGCC. Though he may have talked to one or two of our members, he should not have written our names in the report which did not state any of our views, and I really do not think that those were the views of the HKGCC.

Chairman, the purpose of the competition law is to prevent monopoly induced anti-competitive conducts which harm consumer interests. So, will it actually be to the benefit of consumers if the whole exemption provision is deleted? If the provision is deleted and the authority of granting exemptions is left to the discretion of the future Competition Commission, will statutory bodies be subject to the regulation of the competition law when they engage in certain economic activities that directly compete with another undertaking? For



example, the Hong Kong Housing Authority and the HS provide housing at prices lower than market rates, and thus they compete unfairly with private developers, and consequently the construction of public rental housing and Home Ownership Scheme housing may turn illegal. As medical services provided by public hospitals will compete for profit with private hospitals, will low-cost medical services enjoyed by the public disappear completely from Hong Kong as a result of the Ordinance?

Furthermore, such exempted organizations and non-government organizations have repeatedly assisted the enterprises of Hong Kong, in particular SMEs, at times of economic downturns. For example, during the financial tsunami, we witnessed the withdrawal of private organizations one after another in times of need; yet, the TDC and the Hong Kong Export Credit Insurance Corporation had continued to support SMEs, and had hold trade fairs and organize promotional activities.

Mr Andrew LEUNG has also said just now that the TDC allocated \$120 million from its reserves to help SMEs and it had even waived certain fees. During those difficult times, these organizations actively assisted the business and industrial sectors of Hong Kong to ride out the storm together. Many SMEs have managed to survive, thanks to their assistances. If it were not for certain measures for SMEs and the Government ..... sorry, I mean to say if it were not for certain relief measures of TDC and the Government which supported SMEs, I believe that many SMEs would have to be closed down back then.

Chairman, an SME operator told me that the TDC has been willing to hold exhibitions for innovative trades and industries. As not many people know about the operations of such emerging trades and industries, the risks of doing so are high and may not always be profitable. In spite of this, the TDC is still willing to organize such activities. But, today, the TDC has already achieved a resounding success in organizing exhibitions for the so-called innovative trades and industries in the past. Private exhibition companies will certainly wish to have a share or seize the entire market once they realize that this is a profitable business and when examples of successes can be found. If they succeed in doing so, who can guarantee that private companies will ride out the storms together with the people and SMEs in times of need? As such, the organizations

which implement government policies are very crucial to SMEs and the business sector of Hong Kong and should not be regulated under the competition law.

Chairman, the original intent of enacting the competition law is to promote fair competition. It would be putting the cart before the horse if the enactment of the legislation will lead to the closures of more SMEs and harm public interests.

By being fair, it means that everyone should be treated fairly, and no trade or person should be offer special assistances. Our colleague Mr Ronny TONG said he had invited many overseas experts to analyse the situation and the experts were of the opinion that the competition law was favourable to Hong Kong and no exemption should be granted. However, we had also invited many leading experts to Hong Kong and their views were completely different. They said that the enactment of the competition law was only a business practice which would allow barristers to earn a lot of money, buy big houses and drive luxury cars. So, do we just want to benefit a certain trade?

Chairman, the purpose of exempting public and non-government organizations from the regulation of the competition law is to support SMEs and safeguard the interests of the people. It is certainly true that public and non-governmental organizations should not forget their own missions and compete with the people for profits. I trust that all organizations exempted from the competition law will have a clear understanding of the missions and purposes of their establishment and will continue to serve the community of Hong Kong. Since the existing competition law is yet to be perfect, and some Members have often requested that it should be reviewed after several years; it is actually necessary to include the exemption clause. In order to avoid victimizing those who are innocent, there is really a need to grant exemptions. Furthermore, if an organization which offers quality service for the people and SMEs, and has ridden out the storms with the people is not granted any exemption, then I really do not know whether the Government has already been trapped in a "lame duck" situation? I hope that the exemption clause can be retained.

Chairman, I so submit.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG, this is the second time you speak.

**MR RONNY TONG** (in Cantonese): Chairman, it is now almost seven o'clock and many Members are not present in the Chamber. I believe most of them have gone over to the old Legislative Council Building to participate in the activities in memory of late Mr LI Wangyang. However, I feel obliged to stay in the Chamber and continue with the debate on the Competition Bill (the Bill).

Chairman, I have spoken earlier on the grounds for moving my amendments to the Bill, and now I would like to state my views and stance to the amendments of Mrs Regina IP and Mr Albert HO. Chairman, the amendments moved by Mrs Regina IP is similar to ours in principle, in that the basic direction is to defer the system of granting automatic exemptions to statutory bodies, so that it can be dealt by the Chief Executive in Council. Though this direction is similar to our line of thinking, we find some aspects of her approach hard to accept. Chairman, first of all, I would like to talk about her approach of moving certain conditions which were originally in clause 5 to clause 3, as the basic exemption conditions for subclause (4), and those are precisely the conditions which we cannot accept.

Chairman, the first condition is: "the statutory body is not engaging in an activity in direct competition with another undertaking". Chairman, I have pointed out earlier that an undertaking is not apparently engaged in any economic activity does not mean that it does not have any effect on market competitions. If this is listed as a condition for exemption, I think that it reflects a lack of understanding on the basic principles of competition and market operations, and I, therefore, can hardly accept this condition.

Chairman, the second condition of the clause is: "the economic activity of the statutory body is not affecting the economic efficiency of a specific market". Chairman, I fail to understand why the Government has laid down this criterion in the original clause 5(2), for the economic efficiency of a market does not have any direct relation with competitions. On the contrary, many economists have reminded us that intense competitions in the market will sometimes lower its efficiency. Similarly, the fact that economic efficiency in the market is listed as

a condition for granting exemptions shows that the person who drafted this condition does not have a profound understanding of the basic elements of market operations and competitions, and this also does not conform to our requirements of basic competition principles.

The third condition is: "the economic activity of the statutory body is directly related to the provision of an essential public service or the implementation of public policy." Chairman, there are also serious problems with this definition or criterion. Why? Chairman, should the consideration of whether exemptions should be granted be based on public interests, rather than whether the activity is related to public service or public policy? While public service or public policy itself may not always bring about public interests, businesses which are not related to public policy or public service may sometimes bring public interests to the community. The fundamental ground for the regulation of exemption from the competition law should be based on public interests, and not only on whether the business is related to public service or public policy.

Chairman, Mrs Regina IP has moved these three conditions from clause 5(2) to clause 3(4), to support her proposal on allowing statutory bodies to be exempted at the discretion of the Chief Executive in Council, but we cannot accept such exemption conditions.

Chairman, the other point which I must raise is Mrs Regina IP proposed that clause 5(2) should be deleted. I understand the reasons behind her proposal and as I have said earlier, she has actually moved the first three conditions of clause 5(2) to clause 3 to be used as the criteria for exempting statutory bodies. However, she has also deleted paragraph (d) of clause 5(2). Chairman, paragraph (d) states: "there are no other exceptional and compelling reasons of public policy against making such a regulation." This is actually the most important criterion.

What I said earlier is that the central idea of whether exemptions should be granted should be based on public interests. If this provision is deleted, then the Chief Executive would be able to grant exemptions entirely at his own discretion. I must stress that he may be able to exempt certain statutory bodies against the basic principles and spirit of the competition law. Under such circumstances,

we can hardly support the amendments of Mrs Regina IP and will abstain from voting.

Chairman, as regards the amendment moved by Mr Albert HO, there is definitely no need for Mr Albert HO to move his amendment if my amendments were passed. However, if my amendments are unfortunately negated under the separate voting system, I would say that Mr Albert HO's proposal would seem more acceptable among the other unacceptable solutions.

The amendment of Mr Albert HO seeks to include a sunset clause within the mechanism. We hope that the Competition Commission would, during the three years of its operation, draw a conclusion based on the experience gained from enforcing the Ordinance, and in the light of the views of different sectors collected through public consultation, as well as the observation of the operation of various statutory bodies, so as to enable us to make an accurate judgment of which statutory bodies should be granted exemptions. Chairman, since I think this is a barely acceptable approach, we will support the amendment of Mr Albert HO.

Thank you, Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, according to my usual practice, I would request a headcount, but since I have promised the pan-democratic Members, because at 7 pm ..... today is the seventh day of the tragic death of LI Wangyang ..... the pan-democratic Members will lay flowers in memory of him and ascertain the responsibility for his killing. People Power respects that the pan-democratic friends have to attend such an important event, therefore, Mr WONG Yuk-man and I will not request a headcount within this one hour, even though only three Members are now in this Chamber. Of course, we have no objection if Chairman requests a headcount, but People Power will not take the initiative to do so. Notwithstanding this, viewers in front of the television now see the disappointing scene of this Chamber. Only three Members are present in the Chamber when we have to examine such an important legislation, and

consider Mr Ronny TONG's well-intended amendments, which are very important and worthy of our support. It is really saddening to see the development of the legislature in Hong Kong.

Chairman, the issues in question and the amendments under discussion today are the major subjects raised during our campaigning for the enactment of an anti-monopoly law or a fair competition law in the past 20-odd years. Regarding the spirit of this Bill and various provisions, the request for granting exemption to certain statutory organizations and bodies precisely indicates that the legislation fails to reflect the principle of fair competition or anti-monopoly.

Chairman, over the past year, I have seen a lot of things. High-ranking officials' corruption is tolerated but low-ranking civil servants' slackness is condemned. The Chief Executive and some former government officials had exploited their powers, positions and network to reap huge profits as well as personal benefits. Their acts are shocking indeed. However, civil servants who have committed minor faults will be warned and denied of promotion, or even lose their pensions .....

**CHAIRMAN** (in Cantonese): Mr CHAN, how is your speech directly related to the provisions and amendments concerned?

**MR ALBERT CHAN** (in Cantonese): Chairman, it is relevant. It is related to the issue of monopoly. What I want to say is that the relevant provisions of the Bill as a whole fully reflect the Government's biased and autocratic practices. High-ranking officials' corruption is tolerated but low-ranking civil servants' slackness is condemned. By the same token, Chairman, it is pretty apparent that the provisions of the Bill prohibit the general public from making profits while permitting the Government to snatch money. Consider the water supply service or postal service which I often quote as an example. Both are public services and should be exempted. The Water Supplies Department has not increased water charges for over 10-odd years though there have been deficits in the past few years. It is absolutely appropriate and understandable to grant exemption to the Water Supplies Department although it does impose water charges on users.

In fact, it will be fine if no exemption is granted to the Water Supplies Department. Will there be any other organizations that can provide water supply at a lower price if no exemption is granted? Hence, the exemption granted can be a conditional exemption and it may not be full exemption.

The current issue is ridiculous and extremely absurd. Basically, the conduct rules, the enforcement power of the Competition Commission, the mandatory exercise of powers by the Competition Tribunal as well as Schedule 7 are all meant to grant exemptions on various fronts to statutory bodies of the Government.

Chairman, I have examined some important statutory bodies of the Government and I wish to take this opportunity to mention two statutory bodies. It is specified in the relevant provisions that these two statutory bodies can and must exercise their statutory powers in accordance with prudent commercial principles. These two statutory bodies are the Mass Transit Railway Corporation Limited (MTRCL) and the Airport Authority (AA).

Section 13(5) of the Mass Transit Railway Ordinance provides: "Reference in subsection (4) to loss or damage includes reference to loss or damage arising from or attributable to the Corporation's compliance with a direction under this section that is contrary to prudent commercial principles." Such a provision mainly points out that the Executive Council may, if it considers the public interest so requires, give directions, and the MTRCL must exercise its statutory powers in accordance with prudent commercial principles.

The Airport Authority Ordinance also provides that the AA should run its business in accordance with prudent commercial principles. As far as I remember, similar provision is also present in the Urban Renewal Authority Ordinance. Besides, it is specified in the Hong Kong Science and Technology Park Ordinance that the Hong Kong Science and Technology Park has to operate in accordance with prudent commercial principles.

Chairman, legally speaking, prudent commercial principles are primarily translated as making profits rather than incurring losses. Such legislation blatantly allows those bodies and companies to snatch money from the general public who are not able to strike back. Take the MTRCL as an example, its

profits in the last years were astonishing. It recorded a profit of 14.7 billion dollars this year; 12 billion in 2011; 9.5 billion in 2010; 8.2 billion in 2009; 15.1 billion in 2008 which was equally amazing; 7.7 billion in 2007 and 8.4 billion in 2006. Looking back, we find that the MTRCL makes billions of profit every year which keep increasing year on year. Where do the MTRCL's profits come from? Can money be planted? Its profit is actually from the public's hard-earned money. Of the fare paid by the public for each ride on the MTR, only one cent will be spent on building platform screen doors while the rest will be the profits for the MTRCL. In addition, the rent of commercial premises owned by the MTRCL are high, hence the MTRCL will make money even if people just buy drinks at shops inside the MTR stations. Therefore, the money people paid for buying medicines, tissue paper, food, drinks and even tickets at the MTR stations will eventually become the profits of the MTRCL.

However, under the current Competition Bill (the Bill), such bodies are exempted, blanket exemption is granted. So the present situation is that the MTRCL is empowered by the legislation to snatch money. In the past, when there was no Competition Bill, the MTRCL has been regulated by the Mass Transit Railway Ordinance, and we cannot say anything. However, with the introduction of the Bill, we expect that the MTRCL should be subject to regulation.

If the MTRCL is, like other bodies, covered under the Bill, the benefits and rights of the general public as well as their hard-earned money can be safeguarded if the MTRCL acts in contravention of the Bill. Hence, even with the statutory powers conferred, the MTRCL may not be able to act wilfully and exploit the general public to reap profits. If regulatory mechanisms and provisions are still in place and the conduct rules can be implemented, at least the regulation on the MTRCL's management of shopping malls can be enhanced even though not much can be done to regulate matters concerning the traffic. As a result, the MTRCL cannot act wilfully on profit-based principles. It should be noted that there is a clause stating that the MTR management, in particular the senior management, are entitled to bonus if the company records tremendous annual return. In other words, there must be certain reasons or incentives that drive the MTRCL's senior management to boost the company's profits for the sake of increasing their own benefits.



People expect this long-awaited Bill to provide better regulation to ensure that such "super elephants" will not suck up the blood and sweat of the public while they are sucking water. How can the MTRCL be exempted from being regulated by the Bill given that its profit of 14 billion or so comes from the hard-earned money of 7 million people of Hong Kong and that 60% or 70% of the profit is credited to the Government's account?

Moreover, the scope of the MTRCL's future development will be even broader. After "devouring" the former Kowloon-Canton Railway Corporation, the MTRCL has now launched a series of projects, such as the high-speed rail, Aberdeen line and Shatin-Central line, which will expand the scope of the MTRCL significantly, meaning that there will be continuous increase in terms of asset value and profit, as well as its ability to suck the general public's hard-earned money. More regulation introduced by legislation may also have positive implication as there will surely be a regulatory body to deal with anti-competition acts. It is similar to the Ombudsman Office of the Hong Kong Government to monitor maladministration cases within the Government. At least, it serves as a channel for the aggrieved to file their claims. Nevertheless, this kind of channel is currently not available. The situation has become so infuriating that the only dream, the only hope has been shattered.

I would also like to talk about the AA. It is understandable that no regulation can be exercised on flight operation because of the monopoly it enjoys. But why is it that the AA's shopping malls and land are exempted from regulation? The land owned by the AA can be used for a wide variety of purposes, like construction of hotels or provision of logistical services. The AA also owns many shopping malls. Why are services not related to flight service offered by the AA not subject to regulation? At present, almost full exemption from legal monitoring and regulation is granted to the AA under the Bill, and this precisely reflects what I have said just now that the Government is allowed to snatch money but the general public are not permitted to make profit. Try to imagine how many assets are controlled by the MTRCL, the AA, the Urban Renewal Authority and the Hong Kong Science and Technology Park and how startling the amounts of profits involved? The Bill and the Government's attitude reflect that the principle of fairness has been ignored. Hence, we support the various amendments proposed.

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

**MR WONG YUK-MAN** (in Cantonese): Chairman, two Members have introduced amendments to the exemption arrangement under the Bill. Please refer to the relevant papers for specific contents of the amendments. Here, I will state in greater detail our preliminary views.

Basically, there is not much difference between the amendments proposed by Mr Albert HO and Mr Ronny TONG. They aim at removing all provisions on exemptions from the Bill, including the exemptions granted to statutory bodies or private undertakings. We have reservations about the amendments introduced by Mr HO and Mr TONG though we are not quite satisfied with the provisions on exemption in the Bill, nor do we agree to those exemption arrangements, in particular the across-the-board exemption for most of the statutory bodies that engage in economic activities. The situation can be described, in lenient terms, as overkill; a harsher term is that it follows the Government's footsteps and removes all exemptions across the board so as to save trouble.

As both Mr HO and Mr TONG happen to be legal practitioners, abolition of all exemptions may lead others to think that they intend to bring more business for the legal profession. I of course do not hold that view, but this should be taken into consideration since the situation is likely to arouse suspicion. While Mrs Regina IP's remarks seemed a bit too extreme, people may actually think that way and have doubts. Unlike Mrs IP, of course I will not allege that deliberation of the Bill by solicitors and barristers will lead to conflict of interests because this saying goes too far. However, we notice clearly from their amendments or speeches that Mr HO and Mr TONG have not considered the roles of the Government and the public sectors in the provision of public services, as well as the needs of the public.

Chairman, the second argument I wish to make is that both the across-the-board exemptions for statutory bodies and the across-the-board abolition of all exemptions are unacceptable. Once the amendments introduced by Mr HO and Mr TONG are passed, private undertakings cannot apply for exemption under clauses 4 and 5, and many public bodies, in the provision of

public services that are not economic activities, will also have to compete fairly and equitably with private enterprises. This is absolutely ridiculous. That is why I describe the situation overkill. Chairman, I believe you would understand that.

The third argument is about the medical services provided by the Hospital Authority (HA). The HA is responsible for the management of all the public hospitals. If the HA is not exempted as a statutory body due to the amendments introduced by Mr HO and Mr TONG, then the 41 public hospitals, 48 specialist out-patient clinics (SOPCs), and 74 general out-patient clinics (GOPCs) under its supervision will take up a huge market share. Regarding the term "market", I have to frankly admit that, Chairman, up till now, I do not fully understand its meaning and I wonder if the Secretary knows the definition of the term "market" within the context of the Bill. Do SOPCs and GOPCs of public hospitals belong to the same market? Do private clinics and Chinese medicine clinics have their shares in the market of healthcare services? If Members of the Legislative Council ..... well, I am not pretending to be humble, I just tell the truth. Chairman, please take care. If even Members of the Legislative Council are not so clear about the basic principles governing the provisions on exemption arrangement or the definition of "market", I believe the general public will be even more perplexed than us. Although I am a member of the Bills Committee, I do not really understand the definition of "market".

It is likely that the HA will be considered to be possessing "substantial degree of market power" as what the specific term suggests. It was during the deliberation of the provisions by the Bills Committee that I became aware that such an expression was not so Chinese, and I had no idea what it meant. Chairman, since you have more profound knowledge in Chinese studies than I do, can you explain to me what is meant by "相當程度的市場權勢" (substantial degree of market power), or even "一定程度" (certain degree) or "某程度" (some degree)? Why not say "一定程度的市場權勢" (certain degree of market power) or "某程度的市場權勢" (some degree of market power), why should "相當程度的市場權勢" (substantial degree of market power) be used? What level of degree does "substantial" refer to? I am really at a loss, and yet, this is an essential concept in the legal context. But of course, it is just a red herring.

Public hospitals or public clinics, including SOPCs and GOPCs, may be alleged to have abused market power as they provide medical services to the public at prices lower than market levels, yes, "market", which is really in breach of fair competition. I am much worried that the HA may have to face lawsuits at any time due to the provision of public medical services at prices lower than market levels. Is this ridiculous?

There may be another problem involving another statutory body, namely the Housing Authority. Once the "across-the-board" amendments proposed by Mr TONG or Mr HO are passed, around 2 million people of Hong Kong, or one third of the tenants living in the Housing Authority's 650 000 rental flats will be affected. The Housing Authority is responsible for executing the Government's housing policy in providing public housing to members of the public at rentals lower than market rates. If no exemption is granted to the Housing Authority, it may be prosecuted by the Competition Commission for abusing its market power or dominating the market, which violates the second conduct rule. If so, this may turn into a big issue.

I also noticed the amendments introduced by Mr TONG to clauses 9 and 24 in response to the deletion of clauses 3 to 5. We consider Mr TONG's amendments to clauses 9 and 24 more appropriate if his proposal of deleting clauses 3 to 5 is passed. I will revert to this issue if I still have time to speak later on, so I am not filibustering, Secretary. You want me to finish my speech in respect of the two amendments within 15 minutes? Well, it is still "early (*in Putonghua*)".

In this regard, we have drawn a detailed comparison between the amendments proposed respectively by Mr TONG and Mr HO, and the difference between a solicitor and a senior counsel is evident. The amendment introduced by Mr HO is basically a sunset clause which proposes that clauses 3 to 5 of the Bill cease to apply three years after the implementation of the law. However, if his amendment is passed without making corresponding amendments to clauses 9 and 24 as proposed by Mr TONG, the following will result: Three years later when the sunset clause ceases to apply, no, it should be "comes into operation", it is a clause to provide that certain provisions will cease to apply three years after their implementation; that is to say, when the sunset clause is in effect, sections 9 and 24 of the Competition Ordinance granting exemption to statutory bodies, specified persons and persons engaged in specified activities will still exist.

What will be the effects? People who read the law may not understand. Similarly, some people may not understand what I am now saying. Actually, no one is listening and as I do the counting, only one, two, three, four persons are in the Chamber. As some Members have proceeded to the old Legislative Council Building, doing a headcount now will lead to the cancellation of this meeting. Sorry for playing such a trick, but indeed no one is listening. Chairman, perhaps you are also perplexed by my speech as you do not look so fine today, but you are really smart to realize that I have not digressed from the subject.

Obviously, Mr TONG had given a more comprehensive consideration as he proposed amendments to clauses 9 and 24. In my view, this is the difference between a solicitor and a senior counsel. Perhaps someone will be offended by my words, but I have got used to that. As a senior counsel, he will have the opportunities to handle lawsuits related to such kind of issues. Mr TONG has the kind intention of getting the Bill passed within his term of office as a Legislative Council Member. I fully understand his thinking. Thus, he is rather anxious and has engaged in detailed studies.

In this regard, the difference between Mr TONG and Mr Albert HO is obvious. It is already very clear which of the two Members is more professional in proposing amendments to the Bill and people cannot be fooled. As laymen, and as we have joined the Bills Committee, we are compelled to learn about the implementation of competition laws and relevant provisions in other countries, and for such purpose, we had wasted some time. Of course, we cannot say it is a waste of time, as we have gained some knowledge during the process.

Regrettably, however, I cannot give them my support as I have reservations and thus I find it hard to support the amendments proposed by Mr TONG. Why? Mr TONG and Mr HO had handled the issue of exemption a bit too rashly. They simply considered the issue from the perspective of exemption without giving due regard to the problems that I have mentioned earlier. Have they considered such problems? They should have, but maybe their judgment on the importance and priority of these problems are different from mine. As I have mentioned in my previous speech, we view the issue from the perspective of the public's understanding of the legislation. It is of utmost importance that the general public have to safeguard themselves. If a person cannot understand or misunderstands the laws by which he is bound, it can be dangerous as he may inadvertently contravene the laws. In the common law regime, we should not let

anyone to be impacted due to his different interpretation of the laws or his difficulties in understanding the laws. In theory, the law should do justice to every person even though he does not have a clear understanding of it.

Chairman, I will certainly speak again on the exemption mechanism. Just now, I only talked about the principles and I will talk about specific details later. For example, I will present my views in detail on my objection to the exemption granted to some bodies concerned.

Nevertheless, I want to declare interest, this is a supplementary declaration. Albert CHAN, a member of People Power, has set up a Commune Populaire recently. This Commune Populaire is definitely not the same as the People's Commune under the Three Red Banners which could be dated back to early 1960s. Chairman, I think you know this better than I do. At that time, many people died under the Three Red Banners, one of which being the "communal pot" of the People's Commune. However, this commune is different from that commune which aims at (*The buzzer sounded*) .....

**CHAIRMAN** (in Cantonese): Mr WONG, your speaking time is up.

**MR WONG YUK-MAN** (in Cantonese): ..... I have to wait for my next turn to explain, Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, when I last spoke, I mentioned, in the last part of my speech, the amendments proposed by several Members which we support in principle. Just now, I also mentioned some statutory bodies and basically, these bodies can make profits, as expressly stated and provided for in the legislation. Hence, if those profit-making bodies are granted exemption under the Competition Ordinance, the situation will fit in the conclusion which I drew just now that the general public are not allowed to make profit while the Government is given permission to snatch money.

Next, I am going to talk about the complexity of the Competition Ordinance and public conduct, in particular the conduct related to public management. Usually this refers to the provision of essential services, such as water supply and power supply which I have mentioned earlier but the case in Hong Kong is unique and absurd. In many places, water and electricity are supplied by statutory bodies of the government but in Hong Kong, water is supplied by the Water Supplies Department (WSD). The WSD has been suffering from deficits over the past decade: \$0.7 billion dollars in 2002 and 2003 respectively; \$0.8 billion in 2004 and 2005 respectively; \$0.3 billion in 2006, 2007, 2008 and 2009 respectively; and \$0.6 billion in 2010. Yet, water charges have not been increased since 1995. If this is the performance of a private body or a statutory body formed by the Government in the past, the body would have gone bankrupt long ago. If a water supplies bureau is set up for the provision of water, as in the case of the Mass Transit Railway Ordinance, it will absolutely violate the prudent commercial principles stipulated in that Ordinance.

Hence, for certain acts undertaken by the Government, they are 100% monopolizing and controlling the market in the sense of market power. If such acts constitute a contravention of the competition laws, and the persons concerned are fined and sanctioned ..... the provisions and arrangements under the competition law should not be so interpreted, because such acts are not economic activities but genuine public services. However, can the supply of water be turned into an economic activity? It is the same as the case of electricity supply which is an economic activity. The two services are of the same nature but they are provided through different modes, with different development plans as well as calculation methods of tariffs. A public service can then become a commercial activity. I absolutely agree to and support the exemption of all government-related public utilities from regulation because, as Mr WONG Yuk-man has mentioned earlier, if no exemption is granted to the services provided by the Hospital Authority (HA), private hospitals may initiate proceedings against the HA while some medical practitioners may allege that the accident and emergency services of the HA has constituted some kind of monopoly, affecting the operation of free market.

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

Nevertheless, the Urban Renewal Authority, the MTRCL, the Airport Authority and the Hong Kong Science and Technology Park are different. As the HA is not required by legislation to operate in accordance with prudent commercial principles, the services it provided are basic public services, which are different from the activities of commercial enterprises. Hence, the scope of activities of various types of business should be clearly defined in the Bill. Unfortunately, there are no such definitions in the current Bill, making it impossible to differentiate various types of activities by referring to the legal provisions. As a result, there are grey areas in the provisions on the regulation of anti-competitive acts or there are cases of hitting the wrong targets.

Therefore, as I have mentioned in my previous speech, requiring the guidelines on conduct rules to be passed by the Legislative Council before they come into effect is conducive to the implementation of the entire ordinance. It is because when relevant guidelines are being discussed at the Legislative Council meeting, we can have a clearer picture of the regulatory framework through deliberations, discussions or proposing amendments. This helps to ensure that public services provided by the Government will be regulated by the regulatory framework, conduct rules and guidelines and such services will not become the wrong targets for prosecution. As for commercial activities, including the economic activities of statutory bodies of the Government, I must emphasize that they need to be regulated.

A ridiculous part of the Bill is that the Government's commercial activities will not be regulated because of the exemption provisions. If any Member proposes amendment to put certain commercial activities of the statutory bodies of the Government under regulation, I will certainly give my support. However, the current amendments do not provide clear definitions of public services and commercial activities; consequently, people who are now receiving public services may be affected by the exemption or the abolition of the exemption. Dr Margaret NG, please explain later, in respect of the amendment proposed by Mr TONG, is there any mechanism to prove that my worries are not justified, or that my worries will never actually arise?

Deputy Chairman, regarding my comments and analyses made earlier as well as the amendments proposed by fellow Members, it is obvious that the



drafting of the entire Bill is too sloppy and it is riddled with flaws and loopholes. If the amendments are passed, public utilities will be affected; but if the amendments are negated, the Government will continue to act arbitrarily, and with its statutory powers, it will continue to suck blood from the public, especially the general public.

There are innocent home owners who are forced out of their homes, poor tenants forced to pay high rentals, and people forced to pay high fares due to the MTRCL's monopoly. According to many surveys, the percentage of income spent on traffic by people in Hong Kong are on an upward trend over the past two decades, meaning travelling expenses have been taking up a larger proportion of their income, may be 3% or 5%. But recently, many people, in particular grass-roots workers, have complained to me that even after the implementation of statutory minimum wage, travelling expenses took up 10% of their income, and low-income workers suffer most. Payment for such expensive fees has imposed immense pressure on them.

Regarding the everyday needs of the general public, if no amendments are proposed to amend the inappropriate provisions, and the unreasonable monopolizing acts are allowed to continue to exploit the rights of the general public in a harsh, ruthless and unscrupulous manner, it is really shameful and inhumane. Nevertheless, the relevant options currently proposed by the Government in this Bill not only allow but also connive the practice of executive hegemony. As a result, the Government will continue to reap huge profits at the expense of people's livelihood and daily living.

Hence, Deputy Chairman, I reiterate that the Bill, riddled with flaws and loopholes, is absolutely unacceptable. Passage of the Bill may slightly help improve or enhance the regulatory mechanism to some extent, but on the other hand, the big tiger will be connived as before to exploit members of the ordinary public. This must be duly censured.

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

**MR LEUNG KWOK-HUNG** (in Cantonese): Deputy Chairman, "competing with the public for profits" is a familiar term, but is it applicable to the situation now? The Government can authorize power to a third entity by means of legislation and it sometimes grants money to a certain entity to monopolize a certain area of business, turning the entity into a giant monster. The Competition Ordinance that we are now seeking to establish is precisely to regulate these giant monsters. Common sense tells us that they are monopoly organizations, no matter from what angles we look at them. The railway company is one such example. Should it be exempted? Or should it, after being granted exemption, be assessed by the Chief Executive for revocation of its exemption status? It is no use crying over spilt milk. What is done cannot be undone.

In order to help members of the public watching the debate to understand what is going on, let me use the Urban Renewal Authority (URA) as an example for illustration. The former body of URA was the Land Development Corporation (LDC), which was replaced by the URA. The URA, just like the LDC, is empowered by the Government which also grants lands for it to develop. The work of LDC was more specific, which was to develop lands for public use, while the URA is charged with urban redevelopment.

What is wrong then? The URA has pocketed the money from the Government, I remember it is about \$10 billion, and it was established under a specific ordinance, but what is the URA's mission? I remember at a certain period of time, the URA was almost invincible. Its Chairman, CHEUNG Chun-yuen, is always by the side of LEUNG Chun-ying, like his right-hand man. CHEUNG said that if the URA does not partner with business corporations, it can do nothing. In other words, if the URA does not have capital or does not operate on a commercial basis and only uses the \$10 billion it has to operate, it will not have sufficient capital to conduct large-scale and comprehensive urban redevelopment projects to improve the living environment of Hong Kong people or facilitate overall community development.

We cannot help but ask, since the URA has been bestowed with so much power and money and it has to partner with business organizations in a money-oriented relationship, it is in fact making money, no matter it operates on prudent and moderate finance principles or commercial principles. So, for what

purpose does the URA serve? Can it prove that it does not receive any benefit in the process?

I do not think it can. Who pay for the salaries of the URA employees and its beautiful office located next to the Central Plaza? If it does not partner with business organizations or consortia, can it remain viable or can it still make profits by expanding its returns or assets? Hence, my point is simple. If exemption is to be granted to a certain statutory body, it should be duly prescribed in the law that the exempted statutory body cannot be profit-making and it must plough back all returns to achieve its founding objective.

As far as this point is concerned, I truly cannot see how the URA has achieved this effect. Why? The URA never needs to report its work to the public. That is, as a statutory body, it has never announced the projects it will carry out, what projects it has completed and what targets and pledges it has achieved. Does it have a performance pledge? No. Who will be held accountable? No one knows.

The most disturbing problem with statutory bodies is that they are not government institutions and thus cannot be monitored. As Members of this Council may be aware, it is extremely difficult to find the responsible person of statutory bodies. It is not difficult to ask Secretary Gregory SO to attend our meetings, but it is very difficult to ask the helmsman of the MTR Corporation Limited (MTRCL) to attend our meetings as he can choose to come or not at will. Members may even be denied entrance by its security guards if they stage a protest at its office. Hence, I can frankly say it here that even the general public are well aware that these statutory bodies, to a certain extent, are "relying on daddy for food, mammy for clothes, brothers for pocket money and robbing people off the street like a street bully".

In this regard, we can refer to the MTRCL again for illustration. In the past, the Government provided rail-based transport services for the public through the Mass Transit Railway Corporation (MTRC) and Kowloon-Canton Railway Corporation (KCRC). Everyone knows that the \$5-billion loan which the MTRC secured from the Asian Development Bank had now been paid back. With the ongoing assistance of the Government in the form of land resumption and land grant, the MTRCL's businesses thrived. It is also due to the land resumption exercises of the Government that the railway lines are able to expand

and the prices of properties along the railway line and on top of railway stations surge. The sites along the railway are like gold mines. The properties on top of railway stations and adjacent to the railway are all developed by the consortia of the four big families.

In other words, we have built a giant oligopoly with public coffers, helping them become a natural monopoly. Railway is definitely a natural monopoly. Even if we allow Mr Albert CHAN to build a railway next to the existing one tomorrow, he is unwilling to do so because there will not be sufficient throughput. One railway is already enough and that railway has already been built, to say nothing of the fact that in the early days when the railway was commissioned, other modes of transport were forbidden to develop along the railway lines. In retrospect of the whole railway development history, the MTRCL, that is, the MTRC and KCRC which I have just mentioned have been nurtured by the Government which formulated their policies and allocated funds for them to resume land. The two big players are thus able to develop properties with consortia as they extend their railway lines.

What came next was the public offering of the MTRCL, another move that the Government has shown us. The problem with public offering is that the MTRCL can no longer simply operate on the prudent and moderate commercial principles and it has to look after the interests of small shareholders. This creates a dichotomy, that is, the Government which is the major shareholder holding 70% to almost 80% of the shares has to look after the interests of the remaining 20%-odd shareholders, thereby enabling the MTRCL to .....

**DEPUTY CHAIRMAN** (in Cantonese): Mr LEUNG, we are now discussing statutory bodies.

**MR LEUNG KWOK-HUNG** (in Cantonese): I know. I am only citing an example.

**DEPUTY CHAIRMAN** (in Cantonese): This is not an appropriate example. Please cite another one.

**MR LEUNG KWOK-HUNG** (in Cantonese): Fine. If Members think that the MTRCL is not a statutory body, let me put it this way, that is, it is similar to the Airport Authority Hong Kong (AA) or the Trade Development Council (TDC). The AA and the TDC actually operate by the same mechanism. Their statutory status is established by the Government through legislation and they develop with lands granted by the Government. They enjoy a monopoly status with the help of government policies and they operate on the principle of financial prudence like that of a commercial enterprise. In the final analysis, how do these ever-expanding statutory bodies relate to the well-being of the people of Hong Kong?

For instance, if the AA is to build a railway connecting Shenzhen or a third runway, is there any way we can stop it? Or, in view of the fact that the TDC has largely monopolized the exhibition market, is there any transfer of interests or conflicts of interests involved in the business opportunities or between its business partners when it develops the trades in Hong Kong? We simply do not have any control over such matters. Simply put, statutory bodies are independent from the Government and the Legislative Council.

As statutory bodies can operate on commercial principles, they will naturally take part in market competition. This competition can be genuine competition, or in the form of merging with corporations which enjoy a monopoly or joining force with them to create market power. In this process, we must ask who will regulate the market power after such power has taken shape, and what we should do if the monopoly leads to price hikes, inflation or shrinking industries.

Hence, in this regard, I believe there is not just one example. For instance, there is little doubt that the Water Supplies Department or the Hospital Authority can be exempted from regulation because of their statutory status. However, I remember during the TUNG Chee-hwa era, there were requests to privatize the water supply service or post service. This is clearly on the record. In my opinion, any service which is related to people's daily life and is a public utility should be operated by the Government rather than statutory bodies. Even if such services are to be operated by statutory bodies, they should be stringently monitored.

The problem now is that the Government is doing things in a perverse way. Some organizations are not statutory bodies. As the Deputy Chairman has pointed out, they have stopped operating as a statutory body and are now operated by the market. The change has turned them into a monopoly. Some organizations have colluded with commercial enterprises or consortia to create market power after they secured their statutory status. Hence, in my opinion, we have to make a political rather economic judgment in the process. Any services which belong to public utilities should be directly operated by the Government. By so doing, statutory bodies will not become a monopoly and it will not be necessary to grant exemption to those bodies which have already turned into a large corporation with the support of public coffers to fuel their further development. Hence, when we scrutinize the Bill, if we do not begin with a political assessment on the list of statutory bodies, it will be like putting all goldfishes into the pond and allowing them to swim freely, but later asking the Chief Executive to scooping them out of the water again. It is an unrealistic rosy view and simply does not work.

Hence, Deputy Chairman, I think the most ridiculous part of the Bill is that it has not addressed the problem that statutory bodies have become a cash cow and this is a major concern of the Hong Kong people. Given that this problem has not been addressed in the legislative process, I may not support the requirement of giving blanket exemption as prescribed in the Bill.

**DR MARGARET NG** (in Cantonese): Deputy Chairman, originally I do not plan to speak because the competition law, market, economic activities and so on are neither my expertise nor my interest. However, after listening to Mr WONG Yuk-man and particularly Mr Albert CHAN's speech just now, I have to speak as I do not understand why they would describe the Bill as a "toothless tiger". The two honourable Members have so much respect for the rule of law, always saying that they support the rule of law and that everyone is equal before the law, but they, to my surprise, oppose our amendments to abolish and delete clauses concerning a blanket exemption of statutory bodies.

Deputy Chairman, I truly know nothing about the economy or market, but I still manage to understand the Bill. Why is it so difficult to understand? I truly do not understand why businessmen would find this Bill so difficult to handle.

Deputy Chairman, let me try to interpret Mr Ronny TONG's amendments from another angle, that is, from the angle of law drafting.

Deputy Chairman, we have truly scrutinized many ordinances and the structure of an ordinance is all the same: first, it sets out the aim, that is, what the purpose of the ordinance is; what problems, fallacies, mischief, that is, inadequacies, it seeks to deal with or rectify; second, it sets out what persons or bodies the legislation will be applicable to. These issues have to be dealt with at the outset of an ordinance, such that when people read an ordinance which states in the beginning that it is applicable to minors, they need not read any further if they are not minors; or if the ordinance is only applicable to a certain bodies and you do not belong to those bodies, you need not read any further. This is the reason why an ordinance will state in the beginning what persons or bodies it is applicable to.

Next is what acts the ordinance seeks to regulate and how this will be done. With the regulation, there come the penalties and the body which is responsible for the enforcement. What follows is the exemption, pointing out certain persons and bodies need not be exempted.

This is the logical sequence that exists in legislation and ordinances. Of course, not all ordinances follow this sequence, but this is the general rule and it is easy to understand. However, if you apply this logical sequence on the Bill, you will notice that clauses 3, 4, 5, 9 and 24 are against this logic. Clauses 2, 9 and 24 are included because certain definitions or references made in those clauses are incomprehensible and contorted. The clauses do not say what persons this ordinance is applicable to, but tell you well in advance what bodies will be exempted and then how their exemption status can be revoked. This is completely unnecessary.

Hence, Deputy Chairman, if we follow our traditional practice of law drafting, an ordinance should begin by providing for the persons to which the ordinance is applicable. If you refer to the conduct rules, you will note that in the beginning ..... Perhaps, let us refer to clause 6. Clause 6(1) seeks to provide for the types of persons to be monitored or regulated. The clause begins by stipulating that an undertaking will be subject to regulation if it has committed certain acts.

Hence, if you wish to know whether you are under the regulation of this ordinance, look at the definitions first. What is the meaning of an undertaking? It means any entity engaged in economic activities. So, if you have not engaged in any economic activity, for example, lazybones ..... Perhaps lazybones will still engage in some economic activities ..... Deputy Chairman, I will be serious. If you do not engage in any economic activities, this ordinance does not concern you. Why does the Bill have to be drafted in such a way that it covers so many statutory bodies but then the majority of the 500-odd statutory bodies, 415 of them, will not be affected because they have not engaged in any economic activities and are not an undertaking? Why these statutory bodies have to be covered under the Bill in the first place? As a result, the majority of the statutory bodies do not need to be exempted under clause 3. Given that they are already outside the scope of the Bill, why does the Bill have to be drafted in such a confusing way?

Besides, I need to point out that this Ordinance will only be meaningful to an organization if the latter is an undertaking, and if so, the organization may apply for an exemption. Deputy Chairman, we hate ordinances with exemptions. We hold that an ordinance should be made applicable to all persons with definitions of different acts which people normally will not commit, but in the event that you have committed a certain act, no matter who you are, you will be penalized. It is as simple as that.

Hence, specific reasons should be laid down for the exemption of a certain acts or an exemption clause. However, is it that difficult to lay down the reasons for the exemption clauses? It is not difficult at all. Deputy Chairman, I have already briefly explained earlier with clause 5. Why do I hate this part of the Bill so much? It is because clause 5 has been drafted in a structure which is most difficult to understand. Not only has it used double negative, it has, I think, even used quadruple negative with a pair of negative words following another pair of negative words. In other words, blanket exemption can be granted and revoked, which can be revoked again, together with a series of criteria. In other words, if you have not done certain things, you do not meet the stipulated criteria.

I am now looking at the Chinese version of the Bill because we are now debating in Cantonese, but even if we refer to the English version, frankly, it is not much better ..... The Chinese is certainly lame ..... However, Deputy



Chairman, we can only grin and bear it. With such Chinese, what is more to say?

However, let us look at the Bill, let us stay calm and look at the criteria listed under clauses 5(2)(a) to 5(2)(d). The provisions state what consideration the Chief Executive in Council has to make in order to make a regulation applicable to a statutory body. The provisions state that the Chief Executive in Council has to consider whether a statutory body satisfies certain criteria which are drafted in negative sentences. Let me try to rephrase them into positive sentences. They roughly mean that all undertakings are subject to regulation of the Ordinance; if they wish to be exempted, they will have to meet the criteria set out under subclause (2). I have changed them into positive criteria, that is, ..... The font size is so small that I can hardly read them ..... First, the statutory body is engaging in an economic activity. This makes sense because it is an undertaking and is not in direct competition with another undertaking. This is the first criterion. Second, the economic activity is not affecting the economic efficiency of a specific market and is directly related to the provision of an essential public service or the implementation of public policy; at the same time, there are important, exceptional and compelling reasons of public policy supporting that it should be granted exemption. Mr WONG Yuk-man, all we need to do is to present the criteria the other way round and we will be able to see that these are very good reasons. In particular, for paragraphs (c) and (d), if the economic activity is directly related to the provision of an essential public service, it will have been endorsed by legislation and be provided by a specific body. Of course, if it involves the provision of a public service, there must be a piece of dedicated legislation providing for the provision of the service, such as the Mass Transit Railway Ordinance or the Consumer Council Ordinance, so as to put different situations under regulation and save the need to draft a separate ordinance to regulate these services. The approach is correct.

Paragraph (d) uses an all-inclusive reason, that is, there has to be "compelling reasons of public policy" proving that the statutory body concerned has already been sufficiently regulated. If the Chief Executive in Council grants an exemption in accordance with these criteria, the exemption granted will be convincing. Or, if the exemption is to be granted by the Competition Commission, as a commission sufficiently qualified to make such professional decisions, it will be convincing that the statutory body concerned should be

exempted. Hence, it is not difficult at all, as long as we convince others with reasons. An exemption granted with reasons of public policy is convincing.

It is not impossible to grant exemptions under the rule of law as long as such rulings or decisions are supported by reasons of public policy or fairness. That is it. Hence, from the angle of law drafting, this Ordinance is imperfect. Mr WONG Yuk-man has been polite just now in saying that our Senior Counsel Mr Ronny TONG has studied the Bill in greater detail than he did. I am not a Senior Counsel, but I have been forced to study many ordinances due to my profession. I have studied the Bill from the angles of law drafting, the structure of the Bill and whether it is user-friendly and comprehensible. Deputy Chairman, in my opinion, the first principle of the rule of law is that the law itself has to be comprehensible to the people, whether or not they agree with it is another matter. They must at least understand what the law is about. Hence, from the angle of law drafting, I think that the amendments proposed by Mr Ronny TONG ..... This is the reason why I support other Members' amendments but have little interest in making a response.

Deputy Chairman, the Consumer Council submitted its view after we urged it to do so. May I draw Members' attention that its submission was dated 28 February 2012, by which time the Bill had been scrutinized for quite some time and the Government had proposed the list of statutory bodies to be exempted. Hence, the Consumer Council stated that ..... Actually we can sense its helplessness tone ..... The Consumer Council is of the view that the Government has the intention to exempt statutory bodies qualified as undertakings from the regulation of the Bill, but many such statutory bodies compete with others in the marketplace, not necessarily in respect of their core business but other activities. Hence, it is of the view that "the approach of granting a blanket exemption may be over protective towards the statutory bodies and might not be desirable under certain circumstances." In other words, it points out rather bluntly that the peripheral activities of such statutory bodies should not be exempted, showing its disapproval to the Government's intention to grant a blanket exemption. However, why did the Consumer Council sound so helpless? It is because ever since the scrutiny started, the Consumer Council only knows too well that it cannot dissuade the Government. Thus, it holds that if no outright exemption is granted to exclude all statutory bodies from the Bill first and deal with them later, the competition authority to be established may have a very demanding task in the future.

Nevertheless, the Consumer Council cannot pledge its heartfelt support to the Government. Thus, it stated in Point 5, "CC (Consumer Council) however urges the Government to review the exemption status of the statutory bodies in light of actual experience in implementing the competition law." This obviously reveals the true mind of the Consumer Council. Deputy Chairman, if we rewrite clause 5(2) into a positive clause in a way as what I have just said, it will be much easier to mete out a reasonable decision on whether the statutory bodies should be exempted. In this way, we can almost be sure that the Consumer Council can be exempted, so are bodies such as the Securities and Futures Commission. The public hospitals, which Mr WONG Yuk-man and Mr Albert CHAN were very concerned about just now for their provision of cheap services, will certainly be qualified for the exemption. That is, they can be exempted because they can meet the four criteria. Hence, the actual result is that the interests of the public will be met.

Deputy Chairman, I really cannot help not talking about this. Why did the Government have to do so? The law draftsmen in the Law Drafting Division are really smart. Why do they have to draft the Bill in such way? The truth is that the Government dares not make a decision because too many powerful people dislike the competition law. Hence, when it comes to the most sensitive decision, the Bill is drafted in such a way that the decision is to be made at a later stage. This is precisely why the Hong Kong SAR Government is so lame, incapable and weak. In face of a difficult problem, the Government is unable to make an appropriate decision that can win public support. This is the reason for our falling competitiveness. The Government makes mistakes right in the beginning. The exemption of statutory bodies is one such example. The most ridiculous is that the Government said the Competition Ordinance to be established (*The buzzer sounded*) .....

**DEPUTY CHAIRMAN** (in Cantonese): The speaking time is up.

**DR MARGARET NG** (in Cantonese): ..... can enhance our competitiveness. What more that I can say? Thank you.

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

(Mr Albert CHAN stood up)

**DEPUTY CHAIRMAN** (in Cantonese): Mr Albert CHAN, this is the third time you speak.

**MR ALBERT CHAN** (in Cantonese): Deputy Chairman, I believe I need to clarify the stance of People Power. If Dr Margaret NG has listened to my first speech, she should know that I have clearly and specifically expressed my severe condemnation of the Government's proposal to exempt statutory bodies. I also criticized the MTR Corporation Limited (MTRCL) which has made some \$14 billion profits in the past decade (especially in recent years). It has actually swallowed up the hard-earned money of Hong Kong people, especially people of the lower echelon. Hence, if such corporations will continue to enjoy exemption under the Bill, we have to clearly express our objection and speak out my stance.

We also pointed out that four such corporations (including the Airport Authority, the MTRCL, the Science and Technology Parks, and so on) are specifically required by the ordinances under which they are established to conduct their business according to prudent commercial principles. These corporations are required under the law to operate on prudent commercial principles, which means that these corporations are required by the provisions to make profits; in other words, the Financial Secretary, in reviewing their annual results, will only give his endorsement if they have made profits in their annual returns. Hence, if these corporations are required under the ordinances to operate on prudent commercial principles, it actually means that these corporations have to make profits. If they are exempted from regulation of the Competition Commission and the Bill, we will voice our objection. Hence, to a certain extent, if the essence of Mr Ronny TONG's amendments is to delete the exemption enjoyed by the large group of statutory bodies, we will pledge full support to his amendments without hesitation.

As I have previously pointed out, the entire Bill is immature and ridiculous in that it has provided for a blanket exemption. Another area of ridicule is the deletion of the blanket exemption. The Bill contains some grey areas which

leave us uncertain of how things will become. Many parts of the Bill are unrefined and unclear, and we know nothing about the guidelines. The example I previously used is the water supply service. If the water supply service is not provided by a statutory body, it will not be an issue. Another example is the post service. Since an operating fund has been established to handle post service, if the service is not negatively affected, it may not be an issue either. However, the services of the Hospital Authority (HA) and the Housing Authority, which "Yuk-man" just mentioned, are indispensable to the people. We do have grave concern over Mr Ronny TONG's amendments as they seek to delete all exemption across the board.

Just now, Mr Ronny TONG has explained some of his amendments, which has cleared some of our concerns. However, as many parts of the Bill are unclear, we still have grave concern over completely deleting all statutory bodies from the exemption. I am afraid this may mistakenly hit the wrong target, thus negatively affecting people's everyday services such as post service, housing, water supply, healthcare services, and so on.

Take healthcare services as an example, if the exemption on the HA is deleted, its daily services ..... its indispensable services may not be affected. However, if the HA suddenly provides services for "singly non-permanent resident pregnant women" — forget about "doubly non-permanent resident pregnant women" for the moment — and charges them at some \$40,000, and on top of that, the punitive fees charged on pregnant mother for gate-crushing the border, the HA is making a profit. If a certain service is not a public utility, nor is regarded as a non-economic service, will the public has an impression that such an indispensable service will be negatively affected due to the unclear guidelines or the grey areas in the Bill? Up till this moment, we still have grave concerns about that, despite we have studied every clause of the Bill, including Mr Ronny TONG's amendments and the explanation they have made. If our concern can be cleared, we are very willing to support their amendments.

As I have just said, if some government statutory bodies are required under the law to yield profits in their businesses but they are not regulated by the Competition Ordinance, I think this is unreasonable and absolutely ridiculous. If the Government is fair and is not afraid of competition in providing certain services, ..... For instance, the Urban Renewal Authority (URA) is required under the law that its services have to yield profits. If it is proved that a certain

development project of the URA has not been carried out to serve public interest ..... because the Government has formulated many ordinances in the name of public rights, and has set up various government bodies with an ultimate aim to serve public interest ..... Some of such cases have even been taken to the Privy Council.

The most ridiculous case of Hoi Pa Resite Village in Tsuen Wan has a lasting impression on me. Hoi Pa Resite Village is situated in the city centre of Tsuen Wan. According to the Government's development plan, part of the village fell under an area designated for a road and thus the entire site on which the village situated was resumed. The villagers held that the Government's action was unjustified, as only a small section of the road passed through the periphery of the village, there was no point to resume the entire village site. I do not know if Members still remember the example of Shiu Wing Steel Mill. The site where Shiu Wing Steel Mill occupied was zoned "Commercial/Residential", but instead of resuming the site of the mill, the Government amended the land use of the site, such that the site could be used for property development and considerable profits were made.

However, at that time, that is, in the 1980s, the development plan did not affect Hoi Pa Resite Village, except a small section, accounting for less than 10%, of the site at the village periphery which fell within the zone for road construction. The case was ultimately appealed to the Privy Council. The Government said that the site was resumed for construction of a road so as to serve public interests. In the end, the Government resumed the site by means of land exchange because Henderson Land Development Company Limited (Henderson Land Development) had more than enough sites for land exchange and was thus given this site for construction of commercial buildings and shopping malls. Although Henderson Land Development was not to be blamed, as the site is zoned for "Commercial/Residential" use, why did residents of Hoi Pa Resite Villager could not develop their own land just like the case of Shiu Wing Steel Mill? It was only because a road, which was to be built to serve public interests, occupied a tiny fraction of the village site.

In the past, the Government had done whatever it wished with the overriding reason of serving public interests. However, certain acts of the Government, such as the projects of the URA, MTRCL and Airport Authority, while they may not serve public interests, they may be monopolistic in nature.

If these bodies are regulated under the Bill, they will not be able to do as they please. Hence, I totally agree with the spirit of Mr Ronny TONG's amendments which seeks to abolish the exemption for some statutory bodies, which as Member can see, are particularly ridiculous.

Regarding the rights of the general public, I had assisted shop owners in the "Sport Shoes Street" to defend their rights and I strong condemned the URA for barbarously taking over the "Sport Shoes Street". It is unjustified that the URA was given full power to redevelop the "Sport Shoes Street". The property owners in "Sport Shoes Street" could seek help from Prof Patrick LAU and entrust a consultancy firm to prepare a plan to redevelop the "Sport Shoes Street" by themselves, and they could reorganize their shop titles on their own initiative to ensure that the redevelopment of "Sport Shoes Street" would meet the urban redevelopment strategy. It was not necessary for the Government to intervene, nor was it necessary to spend over \$100 million to resume a 1 000 sq feet flat. It is ridiculous. Because of public rights and with the power given by the Urban Renewal Authority Ordinance, the URA could act this way and we could not challenge it.

Nevertheless, if the Competition Bill is to be passed without giving exemption to these corporations, we will then be able to challenge the URA for violating the principle of fair competition. Hence, I will pledge my 110% support for not exempting certain acts of the URA or MTRCL from regulation of the Bill. Over the years, I have strived to monitor such administrative hegemony, especially the power entrusted under certain evil ordinances which has fomented administrative hegemony.

Mr Abraham SHEK and I have followed matters relating to urban redevelopment since the era of the Land Development Corporation for over two decades. We agree with some such projects, but some of them are simply out of scale and have abused small property owners in the name of public rights. Another example is Tsim Sha Tsui ..... The redevelopment carried out in five streets in the district was another glaring example of abuse of public rights and collusion between business and Government. If fair competition law is in place, these corporations cannot do whatever they like, because they will be monitored by such law and they will be open to legal challenge.

What about the HA or the Housing Authority? If the explanation given by Dr Margaret NG just now is justified, that is, these statutory bodies are regulated because of the businesses they engage in, will some plutocrats make use of a certain loophole to launch legal challenges over the public services they provide, thus forcing them to abort providing such services altogether? We have this concern and I hope Dr Margaret NG can explain further on this.

Mr Ronny TONG's amendments seek to completely abolish the exemption. Instead of a complete abolition, if he only seeks to abolish the exemption on statutory bodies which engage in economic activities and practice prudent commercial principles, I will absolutely welcome his amendments. I will be much more rest assured if he preserves the exemption on statutory bodies which provide public services that are in line with public interests; if so, I will pledge my full support to the relevant amendments proposed by Mr Ronny TONG. I will pledge my 110% support if only some statutory bodies are deleted from the exemption list. However, given that there are so many problems and the time is too short ..... Members also know that during the scrutiny of bills, decisions are often made at the very last stage and the explanation given by the Government is unclear. As for the Secretary, he is always partial and biased, exaggerating the problems and covering up the loopholes; and he will not clearly lay before us the things that are untrue.

I believe Dr Margaret NG has spent much more time on following up this Bill than us. I hope that she can clarify the concerns that I mentioned just now. We will definitely not allow the Government to make use of the exemption ..... Using a statement which I have also repeatedly used just now, that is, we will definitely not allow the Government to make use of the Bill to forbid people from making money while conniving at government bodies to rake in money. We will never allow such things to happen. Thank you, Deputy Chairman.

**DEPUTY CHAIRMAN** (in Cantonese): Dr Margaret NG, this is your third time you speak.

**DR MARGARET NG** (in Cantonese): Deputy Chairman, I am truly not the right person to make the explanation because I know nothing about economic activities, and let me reiterate that they are really not my cup of tea. However, when Mr Albert CHAN said just now that he would oppose Mr Ronny TONG's



amendments because he did not want an indiscriminate exemption and he would opt for a selective exemption, he has precisely spelt out my heart. That is, we should not exempt all statutory bodies and then revoke some of their exemption status; we should specify which statutory bodies will be exempted and then grant the exemption according to the reasons stated.

Perhaps Mr Ronny TONG should be the person to offer an explanation. In fact, the Competition Bill (the Bill) has provided for some exemption mechanisms. We simply have to follow what is set out under clause 5. All statutory bodies are exempted from regulation of the Bill, but if the Government wishes to revoke their exemption status, the Chief Executive in Council, by regulation, may do so. Am I correct, Mr Ronny TONG?

I find this very ridiculous. It should be the other way round. Everyone should abide by the law; however, if you have a valid reason, such as those set out under clause 5(2), the Government will have to formulate certain regulations in order to grant you an exemption. By so doing, we will be able to address the concern that large consortia may employ overseas counsels to Hong Kong to initiate legal challenges, which will cost a lot of money.

Talking about regulations, it means that regulations, which the authorities urge the Legislative Council to endorse, are to be established by means of subsidiary legislation. Actually, instead of issuing guidelines, the authorities should focus their energy on formulating regulations or subsidiary legislation on exemption and submit them to the Legislative Council for endorsement. However, Deputy Chairman, all these have been discussed in our previous meeting and I will not repeat myself.

This is the most pragmatic approach. That is, after the Ordinance is enacted, if there are valid reasons of public interests and public policy, rather than on grounds of the market or market power, subsidiary legislation should be formulated. This is what the Legislative Council is good at because the Legislative Council is the best place to discuss public policies. In granting exemption to these bodies, the Government should do it by means of regulations or subsidiary legislation, provided that certain principles are satisfied. Mr Albert CHAN said just now that he had grave concern on the indiscriminate exemption, but the situations which he worried about will not happen at all if the Government follows our logics and adopts our proposed practice.

Deputy Chairman, why did I say just now that the Consumer Council was rather helpless in accepting this Bill? I understand its stance, but I do not agree with it. It is because since the Government introduced the Bill (that is, its publication in the Gazette) into this Council, it only has been ..... Actually, it has been two or three years. I should not use the word "only". At the commencement of its Second Reading debate, many Members pointed out that the Government had been mulling over formulating a competition law for 10-odd years. If the Government is serious about this, it should already have in mind the principles for granting exemption and should have examined which statutory bodies will be exempted and which will not; it may even have formulated the regulations for us to debate in the Legislative Council.

(THE CHAIRMAN resumed the Chair)

Moreover, Chairman, if you look at the data, you will find 570-odd statutory bodies on the list, but 417 of them do not engage in any economic activity and are not qualified as an undertaking. What is the issue to be discussed then? It is whether the remaining 160 statutory bodies should be exempted. The Government has mulled over this for so many years. The Government should have completed the assessment on the 160 statutory bodies and have an idea about whether they should be exempted even if it only assessed one statutory body each month. Right at the beginning, the authorities should be able to establish the principles or policy, saying that the exemption provision of the Competition Ordinance will be enforced less stringently in the early stage of implementation. The Government can adopt such an approach, and the Legislative Council will find such an approach acceptable because it is within the realm of public policy. Hence, his reason for opposing Mr Ronny TONG's amendment to delete the indiscriminate exemption is untenable.

I have many grievances about the Government because the authorities have not done their part. As a result, Members find the Bill unacceptable and, when we wish to delete certain clauses of the Bill, they are worried. Chairman, I believe after considering what is important and what is not, Members would accept our amendments. Chairman, I have really said too much. Thank you.

**CHAIRMAN** (in Cantonese): Does any other Member wish to speak? Mr Abraham SHEK.

(Mr Albert CHAN stood up)

**CHAIRMAN** (in Cantonese): Mr Albert CHAN, please indicate your wish to speak if you wish to do so. Mr Abraham SHEK.

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

**CHAIRMAN** (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)

**CHAIRMAN** (in Cantonese): Mr Abraham SHEK.

**MR ABRAHAM SHEK** (in Cantonese): Chairman, first of all, I wish to declare that I am a member of the Board of the MTR Corporation Limited, a member of the Court of the University of Hong Kong, a member of the Council of The Hong Kong University of Science and Technology and a director of several companies. I am not sure if these roles constitute a conflict of interests, but I have already declared interest in the declaration form.

Chairman, in the past hour, I have listened very patiently to Dr Margaret NG and Mr Albert CHAN. Their speeches are of substance, which enable me to understand why they have to participate in the debate at this point of time despite the fact that they both belong to the opposition camp. They both talked about their principle on the exemption. Mr Ronny TONG proposed that all statutory bodies be exempted, while Mr Albert CHAN preferred a selective exemption, such that some statutory bodies will be exempted and some will not. Hence, Chairman, I have stopped reading my book and started listening to their debate.

However, I do not have a clue after listening to them. I myself do not support the Bill not because I do not welcome competition. In the industry that I represent, competition is fierce, although whether members of my industry welcome competition is another issue. I do not support the Bill because it has an exemption clause. This is the principle that I will not compromise. Chairman, the Government has exempted 578 statutory bodies from regulation of the Bill without explaining why so many of them are exempted.

The current purpose of the Bill has already deviated from the original intent when it was introduced into the Legislative Council. Hence, sometimes, I do not understand why Members of the opposition camp support the Bill so overwhelmingly, but at the same time they have to propose so many amendments. I asked myself, if the Government does not agree with their amendments, will they continue to support the Bill? Similarly, if you promise a child to eat shark's fins at a Chinese restaurant, but give him vermicelli when he is in the restaurant, will he accept it? Chairman, this is the dichotomy, that is, to accept something which should not be accepted. Quoting Margaret's apt remark just now, an ordinance has to be easy to understand, but so many changes have been made that the Bill is no longer so comprehensible.

The original intent of the Bill is to prevent monopoly and enhance competition. However, the current Bill has retained all the bad clauses, but all its good clauses are gone. Hence, this is the major reason why I do not support the Bill. In particular, when it comes to the part on exemption, the Government has gone overboard; it has not made any formal explanation except listing out some scenarios in a form. I know Mr Ronny TONG strongly supports the Bill because when this Council lacked a quorum, he would go out to call Members back to the Chamber. This is desirable. If an ordinance is not good, I would rather delay its enactment until it has been refined. It does not matter even if I have to wait for 20 years. Does enacting a defective ordinance mean that it will be effective? In this regard, we have to understand that putting a law in place does not mean that the problem will be solved. This Ordinance, if enacted, will not solve the problem as it cannot fully achieve its original intent.

At this stage, the Bill is slightly improved by the amendments. Nevertheless, the Government refuses to accept the amendments. I can share Mr Ronny TONG's feeling because I support the legislation of first-hand sales of residential properties, but many of my amendments were not accepted by the

Government. Thus, I know how Mr TONG feels. I know that it is hard to be in opposition to the Government because it will not listen to your views no matter how good they are. Mr TONG should not support the Government. Why does he have to force himself to do so? Mr TONG seems to get increasingly schizophrenic, just like Margaret who kept on criticizing the Government just now, but in the end she will vote for the Bill. Hence, I hope that later I can listen to the Government's explanation on why it does not support Mr Ronny TONG's amendments.

Thank you, Chairman.

**CHAIRMAN** (in Cantonese): Mr Ronny TONG, this is your third time you speak.

**MR RONNY TONG** (in Cantonese): All Honourable colleagues have delivered quality speeches just now, but some may not always grasp the focus of our debate. Chairman, when I spoke just now, there were only three Members in the Chamber including myself. Hence, I perfectly understand that some Honourable colleagues may not be entirely clear about my rationale for proposing this amendment.

First of all, Chairman, I must point out that I am not the one who proposes to include all statutory bodies in this Bill. My amendment intends to delete three provisions in the present Bill. What is the subject matter of the three deleted provisions? They are related to the blanket exemption of all statutory bodies provided under the Bill.

Hence, while the reasoning just expounded by Mr Albert CHAN is correct, his understanding of the matter is just the other way round. If he does not support my amendment, all statutory bodies — big or small, right or wrong — would be exempted under the Bill. However, if he supports my amendment, these statutory bodies would be subject to regulation under the legislation, but they may be exempted for various grounds provided under clauses 15, 31 and 32. If exemption should apply to individual statutory bodies — that is, they should be exempted under the Bill for public policy grounds or competition grounds — a mechanism has already been provided in the present Bill to exempt these

statutory bodies. However, if he does not support this amendment I propose, these bodies will be exempted in their entirety. In other words, for the benefit of one statutory body, all statutory bodies will not be subject to regulation. That is the first reason.

Chairman, the second reason is also quite simple. This legislation is not intended to prohibit or hamper the normal operation of any business entities or statutory bodies. That is not what it intends to do. The objective of this provision is merely that business entities or statutory bodies should not engage in unfair conduct which oppresses other competitors. Chairman, the matter is simple. This is the rule of the traffic light. If you do not jump the red light, you will not be fined. It is as simple as that. Hence, what would you say if statutory bodies are subject to regulation? If the statutory bodies are under government departments, they should not engage in unfair conduct which oppresses other competitors. They should not do so even without any legislation. Even if there is regulation in law, it will have nothing to do with you if you do not engage in such conduct. As neither your operation nor public services will be affected, there is really nothing to worry about.

But if you should say: I am sorry, I am driving an ambulance, so I have the right to jump the red light; even if I accept your reason, it does not mean that all government vehicles can jump the red light, Chairman, right? Only a person who is driving an ambulance can jump the red light — Chairman, there are in fact provisions under the Bill to allow the jumping of red light by ambulances, but if you veto this amendment I propose, all government vehicles will jump the red light. Is this reasonable? Is this in accordance with social justice? Is this in line with the spirit of competition? Chairman, the answer is definitely not.

Hence, I hope Mr Albert CHAN can truly understand the genuine meaning of this amendment I propose. I am not saying that all statutory bodies should be exempted across the board — that is the Government's proposal. I am neither saying that all statutory bodies should be regulated across the board. If this amendment is passed, a mechanism is already in place under the Bill to grant exemption to these statutory bodies if it is beneficial to Hong Kong. That is a win-win solution and it will not give rise to the situation Mr Albert CHAN is concerned about.

Chairman, regarding the remarks just made by Mr Abraham SHEK, I will forgive him absolutely. I just want to tell him that sometimes certain legislation ..... Chairman, I should not say sometimes for I believe that most of the legislation passed in this Council cannot satisfy all Members and political parties. While I find many things in the legislation unacceptable, a balance must be made ultimately. Is my desire for having this legislation enacted bigger than my dislike for those things I find unacceptable in the legislation? Of course, if the legislation can be amended, I will definitely propose the relevant amendments. But under the separate voting system, Members' amendments are unlikely to be passed most of the times. I think there is only a slim chance that Members' amendments can be passed, almost less than 1%, but we would still do so sometimes because we need to state our views and hope to put them on record. Ultimately, if our fight for electing all Members of the Legislative Council and the Chief Executive by universal suffrage is successful in future, some people may look back to this record and consider that the views we expressed today are reasonable and the legislation should be amended. Hopefully, the legislation can then be amended in future.

Thank you, Chairman.

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

(Mr Abraham SHEK stood up)

**CHAIRMAN** (in Cantonese): Mr Abraham SHEK, this is the second time you speak.

**MR ABRAHAM SHEK** (in Cantonese): Thanks very much to Mr TONG for forgiving my remarks. I also forgive him. You are now welcomed to join us in the "royalist camp". Thank you, Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, I will also forgive Mr Abraham SHEK because he often speaks against his heart, and in particular, he would also vote against his conscience. Hence, I absolutely forgive him for his agony, Chairman.

Chairman, I want to clarify a few points because on the two occasions I spoke just now, I have mentioned time and again whether the MTR Corporation Limited (MTRCL) is a statutory body. Chairman, the Kowloon-Canton Railway Corporation (KCRC) is a statutory body, while the MTRCL is a listed company. While the MTRCL is now a listed company, the Mass Transit Railway Ordinance has clearly provided that the Government had formally granted the franchise of the railways concerned to the MTRCL through the Chief Executive in Council. Concerning the regulatory provisions in the Competition Bill, how many of them are applicable to the existing operation of the MTRCL in relation to the agreements entered into between the Government and the MTRCL to grant part of the assets of the KCRC to the MTRCL by way of a lease or an agreement? This is a major problem. Perhaps the Secretary can clarify later as to whether all services of the MTRCL are subject to regulation after the enactment of the Competition Bill. I hope we will have a clear reply. However, other bodies which I just mentioned including the Airport Authority Hong Kong, the Urban Renewal Authority, the Science Park, and so on, are still statutory bodies. This information is not incorrect.

Chairman, regarding the explanation just given by Mr Ronny TONG, I have read again clauses 15 and 30 of the Bill. In fact, his explanation still fails to address the concerns of Mr WONG Yuk-man and I because it is provided under clause 15 which relates to block exemption orders that, "If the Commission is satisfied that a particular category of agreement is an excluded agreement, it may issue a block exemption order in respect of that category of agreement." At present, the Competition Commission (the Commission) has yet to be established. How will the concerns we just raised be dealt with after the establishment of the Commission? Moreover, we have even less confidence if we should rely on the Commission to make the decision. We have pointed out time and again that after the establishment of any of these statutory bodies, if certain acts of them are not regulated by statutory provisions, or through a process such as that debated previously where the relevant guidelines are subject to discussion and passage by the Legislative Council, so that their acts would be regulated by the Council through its powers of monitoring and approval, and we simply enact the Bill



together with the delegation of powers to the Commission on the basis of trust, or even blind trust, or naive trust that the Commission will implement the enacted legislation, and that the Commission with members appointed by the future "Wolf Chun-ying" government will take care of public interest righteously, rationally and diligently, so that exemption will be granted to certain acts of public services, and not commercial acts, under its delegated powers conferred under clause 15 as we have just debated — this is something I really have no confidence in.

Quite simply, let us consider the example of The Link. The Government has also made many undertakings at the time of the public listing of The Link previously, such as tenants of public rental housing would not be affected, but those were all lies. Members may recall that many meetings had been held at that time, during which many Members of different political parties had tried to compel the Government to make good its undertakings; notwithstanding the attendance of Victor SO and the explanation of the then Secretary, the undertakings all failed to materialize eventually. That is also the same case with the merger of the two railway corporations. In the course of the railway merger then, all parties concerned including the Government, the Environment, Transport and Works Bureau and others had undertaken to maintain the relevant services at a certain level after the merger. However, we only see that its profits keep on spiralling to a record high of \$14.7 billion, and fares also keep on increasing.

Hence, Mr Ronny TONG hopes that we can accept his amendment to abolish the exemption across the board, so that exemptions would be granted by the Commission under clause 15, that is, subdivision 3 of the Bill about block exemptions. But I am not as confident as Mr TONG. If subdivision 2 is to be relied upon — clause 31 under the exemptions from conduct rules, Chairman, I will read out clause 31 in relation to exemptions on public policy grounds as follows, "(1) The Chief Executive in Council may ..... exempt (a) a specified agreement or a specified class of agreement from the application of the first conduct rule, ..... if he or she is satisfied that there are exceptional and compelling reasons of public policy for doing so." That would depend on two factors, firstly, the provisions in respect of application under the first conduct rule to be formulated, and secondly, the Chief Executive in Council's specification that certain agreement would be exempted from the application. My immediate reaction is that the agreements I just mentioned in relation to the Mass Transit Railway Ordinance may easily be exempted such that the MTRCL can continue to enjoy its advantages and profiteering. When I look at clause 31 again, I really

feel very frightened. Hence, both the proposals for the granting of exemption by the Commission without the scrutiny and approval of the Legislative Council, and the granting of exemption by the Executive in Council can give rise to collusion under the executive hegemony, which serves to undermine public interest and perpetuate the existing calamity.

In relation to clause 31(1)(b) about the second conduct rule, the Chief Executive in Council may exempt "specified conduct or a specified class of conduct from the application of the second conduct rule" by order published in the Gazette. Mr Ronny TONG, I feel even more frightened as I read this provision, which is not only related to statutory bodies, but also agreements. The provision to be deleted should be clause 31. If such a great power is given to the Chief Executive, it would be disastrous really. I become more and more frightened as I read on. In future, the Competition Ordinance will be the legislation to legalize collusion between the Government and businesses. If the Executive Council has such power, the Legislative Council will become even more powerless. Hence, if Members of the democratic and pan-democratic camps do not support Mrs Regina IP's proposal that the guidelines must be approved by the Legislative Council, it will only give rise to endless calamity. It will be even worse when all matters are to be drawn up by the Executive Authorities, together with the powers conferred to the Government under clause 31. This requirement does not need the approval of the Legislative Council. It would be better if the relevant requirement is to be made by subsidiary legislation so that Members have the right to scrutinize or veto the same. But we do not have this power.

Clause 31 is really terrible. Hence, the Government can enter into agreements with any public service organizations in future. Earlier, the Government has also provided a subsidy of over \$100 million to the ferry companies. Is there anything the Government cannot do? Therefore, no matter what agreements are to be made in future, such as the Cyberport or XYZ Port, on the pretext of subsidizing certain services ..... LEUNG Chun-ying has already stated publicly that the \$600 billion will be used on various not-known services in three areas in future, one of which is stimulating economic development. In future, certain monopolistic or unfair practices for the purpose of economic development may fall within the scope of regulation under the competition law. If monopolistic conduct committed by the Government in providing subsidies to big tycoons on the pretext of economic development can be exempted under

clause 31, it will be like sending sheep to a pack of wolves. I am uncertain as to whether such an eventuality may happen or not.

Of course, regarding the good intention of Mr Ronny TONG, I think he is a kind person who tends to believe in the Government. But from my experience over the past 20-odd years in attending the more-or-less weekly sessions for the Meet-the-Public Scheme in the district, we always receive complaints from tear-stricken kaifongs. Initially, we hoped that through this legislation — Chairman, I am coming to the end of my speech — people would be given slightly fairer treatment with regulation by the Commission, so that members of the public would suffer less, commodity prices would not be so high, and we would be free from monopolies in various areas. But with more discussion and consideration on these provisions, I find the whole thing more and more chilling. The feeling is really terrible.

While we may not necessarily oppose Mr Ronny TONG's amendment, we have many worries if we were to support it. Of course, we are even more dissatisfied with the Government's proposal on exemption. Notwithstanding the many worries we have about Mr Ronny TONG's amendment, we have yet to reach the level of strong dissatisfaction; yet our dissatisfaction with the Government has come to the point where we must condemn it strongly. The blanket exemption proposed by the Government is basically an act of financial dominance, executive hegemony, conceit, contempt for institutions as well as disregard of the monitoring powers of the Legislative Council. As such, the Competition Bill has truly become a "toothless tiger"; moreover, a green light has been given so that government organizations can continue to rob the people's property, as well as bully the ordinary citizens and small property owners.

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

**MR WONG YUK-MAN** (in Cantonese): Chairman, I spoke for the entire 15 minutes the last time, but I have not finished yet. For one thing, I must make a declaration of interest because we have a shop called "Commune Populaire", mainly operated by "Hulk". Of course, this "Commune Populaire" is not the People's Commune which appeared during the Three Red Banners movement in Mainland China, but many people have already forgotten what the People's

Commune was about. We use this name because it is a non-profit-making organization. As "Commune Populaire" is engaged in economic activities, we support that this organization should also be regulated by the Competition Ordinance (the Ordinance). Hence, our logic is slightly different from others in this regard. Actually, this organization of ours is engaged in economic activities, and many exempted bodies under the present Bill are also engaged in economic activities involving large sums of money. Therefore, I am really puzzled.

We operate this small organization merely to serve the grassroots in the community so that they can buy goods which are relatively cheaper. But even so, we consider that it should come under regulation. We will not support Mr Ronny TONG's proposal to delete ..... If you ask me about my views, I still consider that many problems remain with the definition of "statutory body" under clause 2 of the Bill.

Let us go back to clauses 3 to 5 of the Competition Bill (the Bill), Chairman. According to clauses 3 to 5, all statutory bodies would be exempted unless otherwise provided for by the Chief Executive in Council under clauses 3(2) and 5(1). Parts 2, 4 and 6, as well as Schedule 7 (Mergers) of the Bill do not apply to statutory bodies. The Chief Executive in Council may specify that a specified statutory body, or a statutory body to the extent that it is engaged in a specified activity be subject to regulation of the Ordinance. We do not agree with this arrangement because some statutory bodies do not engage in economic activities, some have insignificant amount of economic activities, while some are actively engaging in economic activities. I will not repeat what "Hulk" has just said, and I will say no more about the Urban Renewal Authority or other examples. Let us discuss the case of universities.

At present, the Government's Self-financing Post-secondary Education Fund provides subsidies, land grant as well as 10-year interest-free loans to some private tertiary institutions. Recently, much controversies have been created by the Harrow International School (Hong Kong) Limited, but it is not a tertiary institution. Institutions such as the University of Hong Kong (the HKU) are exempted under the Bill, but these higher institutions with subvention from the Government compete with the private sector by organizing associate degree courses, SPACE programmes or extra-mural courses, and charging expensive tuition fees. How can private tertiary institutions maintain their operation?

Will Hong Kong Shue Yan University and Chu Hai College of Higher Education be forced to close down soon? How can they enrol students? Are courses organized by the exempted institutions not some sort of economic activities? They are all trying to make profits. As students will definitely choose to study the courses organized by those universities, private tertiary institutions cannot compete with them in respect of student enrolment. Would students choose to study in the private tertiary institution operated by the HKU, or a private tertiary institution? If asked, the students would say: "Hong Kong U SPACE", with the word "SPACE" slightly muffled. Institutions operated by universities definitely have the advantage, right? I have only cited a very simple example.

Many self-financed courses are being organized by various universities with subvention from the Government. The large number of self-financed courses and extra-mural courses organized by the universities will all be exempted from the regulation of the Bill. Mr Ronny TONG's amendment is of course another extreme. I have talked about it earlier, and the Chairman was not in the Chamber then.

Another problem will arise if the exemption is cancelled across the board. We have already discussed this issue earlier. According to the Government, only six statutory bodies should not be exempted. I am not familiar with some of these six statutory bodies. Why should the Federation of Hong Kong Industries (HKFI) not be exempted? HKFI, HKFI General Committee, The Helena May, Kadoorie Farm and Botanic Garden Corporation, Matilda and War Memorial Hospital and Ocean Park Corporation would be subject to regulation of the Bill. Apart from these six bodies, all other statutory bodies are exempted. That is the point that Mr Albert CHAN felt infuriated as he said just now.

I dare not say Mr Ronny TONG is silly; he is naive. Regarding the amendment proposed by the naive Mr Ronny TONG, we consider that it is another extreme although the damage it brings about would not be as serious. Nonetheless, I think his amendment would also create problems for organizations such as the Hospital Authority and the Hong Kong Housing Authority. We do not agree with this arrangement because statutory bodies which do not engage in economic activities should be exempted, and those which have insignificant extent of economic activities should also be exempted. However, some statutory bodies are actively engaged in economic activities and enjoy advantages in market competition.

In the course of scrutiny, the Bills Committee noted that the Administration's lists of statutory bodies to be exempted and not to be exempted were proposed after preliminary screening. But it turned out that the Administration had, as I just said, proposed that only six statutory bodies should not be exempted. We do not accept this proposal. The Administration's initial proposal also made us realize that more cautious arrangements should be provided under clauses 3 to 5. We do have worries about how the Government and the Chief Executive in Council will exercise the powers conferred under clause 5 in future.

In the course of scrutiny of the Bill, the Government as well as many members have expressed the view that some matters should be left to be handled by the Competition Commission (the Commission). Even the amendment proposed by Mrs Regina IP to have the guidelines scrutinized and approved by the Legislative Council is considered unacceptable. In that case, why should the powers under clause 5 not be vested with the Commission which is supposed to be most conversant with the Ordinance? The Government has said before that statutory bodies are required to accept the monitoring by the public. Even though exempted statutory bodies are not subject to the regulation by the competition law, they are still required to adhere to the competition rules. The Administration will strive to ensure that exempted bodies would not undertake anti-competitive activities unless there are justifiable causes. The Government has also stated clearly that in case these statutory bodies refuse to comply with the Government's request to rectify their anti-competitive conduct, the Administration can invoke clause 5(1)(a) to mandatorily enforce the competition rules.

We are puzzled by this logic. If statutory bodies only have a moral obligation to comply with the Ordinance, how can the Government ensure that they will adhere to the competition rules? There are serious problems with the Government's statement that "the Administration will strive to ensure that exempted bodies would not undertake anti-competitive activities unless there are justifiable causes". What is meant by the four words "will strive to ensure"? If the statutory bodies only have a moral obligation to comply with the Ordinance, how can the Administration ensure that they will do so? Given that statutory bodies should comply with the competition rules — the rules and the Ordinance are of course not the same — why can those engaged in economic activities not be subject to regulation as well? In that case, the logic is clearer. Things have

their root and their branches, and affairs have their end and their beginning, but in the present case, the cart is put before the horse.

An amendment has been proposed by the Administration to take out the provisions in the original Bill relating to private action, which the Council has already passed. At present, the Commission is the only enforcement agency of the Ordinance, and the enforcement options available to the Commission are not limited to prosecution. For instance, there is a warning notice mechanism for dealing with less severe contravention, and the leniency agreement provided under clause 78. We consider that all statutory bodies engaging in economic activities should be subject to regulation because the blanket exemption of statutory bodies will, on the one hand, make them less inclined to understand and comply with the Ordinance, and on the other, eliminate an redress avenue for victims who suffer from their contraventions of the Ordinance but cannot get any assistance and compensation in law.

Notwithstanding the Government's clear statement that in case the statutory bodies refuse to comply with its request to rectify their anti-competitive conduct, the Administration can invoke clause 5(1)(a) to mandatorily enforce the competition rules, we consider that exemption should not be granted to statutory bodies. If any statutory body considers that it should be exempted, it should made an application separately for partial exemption under the Bill — this is a point we have also mentioned previously — for the Administration to consider according to the principles stipulated in clause 5(2). These principles are as follows: First, the statutory body is engaging in an economic activity in direct competition with another undertaking ("該法定團體正從事的經濟活動，與另一業務實體存在直接競爭"). Second, the economic activity of the statutory body is affecting the economic efficiency of a specific market ("該法定團體的經濟活動，正在影響特定市場的經濟效率"). Third, the economic activity of the statutory body is not directly related to the provision of an essential public service or the implementation of public policy ("該法定團體的經濟活動，並非直接與提供主要公共服務或施行公共政策有關"); and fourth, there are no other exceptional and compelling reasons of public policy against making such a regulation ("沒有其他異常特殊而且強而有力的公共政策理由支持不訂立該規例"). I have just read out the principles as stated in clause 5(2) of the Bill because I think there are many problems with the drafting of the Chinese text of the provision.

As we know, for civil law countries, in particular Mainland China or Taiwan, many adjectives were used in legal provisions in the past. If we look at the following sentence: "Being a serious repeated offender who is very evil in nature, the defendant has violated good social customs and should be severely punished", we will notice that the judgments in Mainland China and Taiwan — Taiwan has already improved in recent years — are quite similar. In the courts of Hong Kong and other common law jurisdictions, we seldom find the abundant use of these adjectives in the judgments. Instead of learning from the good, the Government learns from the bad without explanation. I would like to ask the Government to explain the fourth point in clause 5(2) which reads, "沒有其他異常 ....." (there are no other exceptional .....) — Mrs Regina IP is not in the Chamber now; she has also proposed to amend this provision but it only involves changing the wording — "沒有其他異常特殊而且強而有力的公共政策理由支持不訂立該規例" (there are no other exceptional and compelling reasons of public policy against making such a regulation). Buddy, the Chinese text of this provision is made up of some 30 characters without a single stop. Chairman, an asthma patient will not be able to finish reading this sentence, not to mention the phrases in between ....., Can you read the sentence for me? Where would you stop in between? The expression "沒有其他異常特殊" (no other exceptional) has two components "異常" (meaning extraordinary) and "特殊" (meaning special). It would be a big deal if the reason is special — the adjective is quite incomprehensible in itself — not to mention both "extraordinary" and "special". Descriptions such as "非常特殊" (very special), "十分特殊" (extremely special) and "異常特殊" (extraordinarily special) are already special enough, right? Then why is it necessary to add the expression "強而有力" (compelling) in the provision? Secretary, what is actually meant by "強而有力的公共政策理由" (compelling reasons of public policy)? Chairman, I am not fastidious about words, but people subject to regulation by law must understand the legal requirements.

If not for the statement that "the Administration can invoke clause 5(1)(a) to mandatorily enforce the competition rules", there is the principle about statutory bodies making "an application separately for partial exemption under the Bill .....", Then I will just talk about this principle. There are four principles under clauses 5(2)(a), (b), (c) and (d). The first three principles are very clear. But the Secretary should really explain the last principle to Members. I am at a lost as to the meaning of "沒有其他異常特殊而且強而有力的公共政策理由支持不訂立該規例" (there are no other exceptional and compelling reasons



of public policy against making such a regulation); pardon me for my stupidity, OK? The Secretary must relieve my perplexity. The first three principles are very clear and definite. First, "該法定團體正從事的經濟活動，與另一業務實體存在直接競爭" (the statutory body is engaging in an economic activity in direct competition with another undertaking); Second, "該法定團體的經濟活動，正在影響特定市場的經濟效率" (the economic activity of the statutory body is affecting the economic efficiency of a specific market) — this requirement is slightly vague. What is meant by "特定市場的經濟效率" (the economic efficiency of a specific market)? That can be arguable.

As the legislation is drafted in such a way, it will only serve to benefit lawyers in court because they can argue that the relevant policy is neither "異常特殊" (exceptional) nor "強而有力" (compelling). If the argument is that such a regulation should not be made on reasons of public policy, the Government can provide for the relevant public policy specifically, or give some practical and specific descriptions. However, it is not the case for this provision; instead, the expression "異常特殊而且強而有力的公共政策理由" (exceptional and compelling reasons of public policy) is used. I seldom or rarely hear other people use the expression "異常特殊的理由" (exceptional reasons).

Mr Ronny TONG ..... My speaking time is up, and I still have other things to say (*The buzzer sounded*) ..... Thank you, Chairman.

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

(Mr LEUNG Kwok-hung stood up)

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): First, I request a headcount.

**CHAIRMAN** (in Cantonese): Do you request a headcount?

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes, Chairman.

**CHAIRMAN** (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)

**CHAIRMAN** (in Cantonese): Mr LEUNG Kwok-hung, you may speak.

**MR LEUNG KWOK-HUNG** (in Cantonese): Chairman, I will speak on clauses 3, 4 and 5. Certainly, we have to examine these clauses altogether in order to identify the problems. In general, the clauses are about imposing conditions for the Chief Executive in Council to formulate regulations to exempt the application of the competition law to statutory bodies, so that practices which the Competition Commission (the Commission) may impose on others, such as prosecution, warning notice and leniency agreement, and so on, will not be applicable to these statutory bodies.

In my view, the first problem is about the authority of the Chief Executive in Council under the series of provisions in clause 3(1), say from paragraphs (a) to (d) — I will not read out the provisions, to specify when the legislation is not applicable. This authority has immense significance, for the Commission is said to be empowered by the competition law to enforce the laws on competition. If so, what criteria does the Chief Executive base on in making the laws not applicable? Clause 5(2). Regulations on statutory bodies are made according to clause 5(1)(a)(i) or (ii). In fact, this proviso is definitely of utmost importance, for it states the conditions which the legislation is not applicable.

Members should examine paragraphs (a), (b), (c) and (d) carefully. What conditions will the Chief Executive in Council consider? That is to say, regarding the statutory bodies, they should be satisfied that the statutory bodies fulfil all the four conditions before proceeding. It is stated under clause 5(2) that the Chief Executive in Council may only make a "blah blah blah" if he or she is satisfied that the following conditions are fulfilled. The following conditions

include, and I quote "the statutory body is engaging in an economic activity in direct competition with another undertaking". What is it talking about? What is the definition of direct competition? To put it in the opposite perspective, it means the legislation is not applicable when there is no direct competition, though there is competition in the objective environment. How can this be proved?

In fact, this legislation is related to the economy. I am a member of the Bills Committee. We have spent a lot of time discussing these terms which are so difficult to interpret. What is direct competition? It is relatively difficult to say. Therefore, the Chief Executive in Council will definitely encounter difficulties when it considers one of the four conditions. When it finds that the economic activity which the statutory body is engaging in involves direct competition with another undertaking, that is, another enterprise (no matter it is a statutory body or not), the first condition is met.

It may arouse queries about what direct competition is. If the Chief Executive in Council considers that the economic activity engaged by the statutory body is not in direct competition with another undertaking, that is to say there is only indirect competition, the provision will not be applicable. As such, the proviso is in double negative, which is difficult for an ordinary member of the public to understand. In actuality, it will definitely provoke many disputes. We have now empowered the Chief Executive in Council, which is a small coterie, to handle this issue. Indeed, the exemption provision in the competition law is an integral part, though not the essence, of the entire legislation, for it is about who will and who will not be "trapped" under the regulation of the legislation.

However, during the discussion of the legislation, the Government had put forth some statutory bodies to test the water and asked Members whether those bodies should be included. We could not make the decision. Therefore, this is impracticable. I think the first condition alone will pose many difficulties to the Chief Executive in Council in making a regulation according to the legislation or imposing regulation.

The second condition is even more absurd, and I quote, "the economic activity of the statutory body is affecting the economic efficiency of a specific market". Chairman, the provision does not include the phrase "is engaging in"

(正從事), does it? Under the same legislation, the phrase "is engaging in" is used in the first condition but not the second condition, which reads "the economic activity of the statutory body is affecting the economic efficiency of a specific market." According to my interpretation, I am not sure if it is so interpreted, since it is stated in paragraph (a) that the statutory body "is engaging in an economic activity" (正從事的經濟活動), this phrase should be put in paragraph (b) in substitute of "economic activity" (經濟活動). In fact, both conditions should be referring to an economic activity which the statutory body "is engaging in", otherwise, it can hardly be explained. If we describe an activity as an activity the statutory body "is engaging in" and an activity that it is not "engaging in", does it mean that activity was engaged in the past? It is an issue when there is dispute. How the legislation should be interpreted if one of the provisions refers to the condition that the statutory body "is engaging in an economic activity" and the other provision, paragraph (b), refers to "the economic activity of the statutory body". I believe this may include activities engaged in the past. Yes, I think it may include the past activities. The provision also states that the activity "is affecting the economic efficiency of a specific market". It is really queer. Is the provision referring to an economic activity in the past, as well as an economic activity at present, or is it only referring to the economic activity in the past? Since it says that the economic activity "is affecting the economic efficiency of a specific market", does it mean that the economic activity was engaged in the past yet it is affecting the economic efficiency of a specific market? Should this be interpreted this way?

In interpreting the phrase that the statutory body "is affecting the economic activities of a specific market", what is "a specific market"? How should we define "a specific market"? What is "economic efficiency"? I think this is comparable to a "blank book". This can be interpreted from two perspectives. On the one hand, this gives the Chief Executive in Council ample room to show their imagination and interpret the provision in their own way. I wonder if their decision will be challenged by judicial review, where queries will be raised about these provisions: What is an economic activity? Is it the same as that in paragraph (a) which says the statutory body "is engaging in an economic activity"? What is "a specific market"? What is "economic efficiency"? Frankly, after reading the provisions, one cannot tell what it is all about. In some extent, some people may use this "blank book" to arouse a sense of fear, is this possible? There is neither quantification nor precise definition.

In paragraph (c), it states that "the economic activity of the statutory body is not directly related to the provision of an essential public service or the implementation of public policy", where the phrase "not directly" meaning "indirectly" (間接) is used — "not directly", it is the preferred phrase — yet it means indirect after all, is it not?

Only when these three conditions are met can the Chief Executive in Council ..... and the condition in paragraph (d) should not be met. What is the picture when these conditions are put together? Chairman, even though you are so intelligent and smart, you may not know what I have just said if I ask you now. The meaning is reversed again and again, and I have to go back to clause 3. It is difficult for me to read these due to my presbyopia.

This is a very bad legislation. Worse still, paragraph (d) is included for your "appreciation". This is the provision read out by Mr WONG Yuk-man earlier: "沒有其他異常特殊而且強而有力的公共政策理由支持不訂立該規例"(no other exceptional and compelling reasons of public policy against making such a regulation). How about the English version? The words "exceptional" and "compelling" are translated into ..... The word "exception" is translated into "異常特殊" in Chinese. Let us disregard the meaning of "異常特殊" for the time being. This Chinese term is comparable to the term "super powerful" (超勁), a slang or remark posed by netizens. If something is "powerful" (勁), simply say that it is "powerful" (勁). Why use terms like "super powerful" and "super super powerful". Brother, we are not browsing the Internet now, are we? If the Chinese term "異常特殊" is used, what is the definition of "異常特殊"? There should be a degree of specialty (特殊) to reach this "exceptional" specialty (異常特殊). Chairman, what if the case is only "special" but not "exceptionally" special? The term "compelling" (強而有力) means it is irresistible, which is very strong. These reasons of public policy, which have not been put forth but are special in a very special way and are compelling to a degree beyond one's control, are not stated in the provision. Regarding the phrase "支持不訂立該規例" (against making such a regulation), if the words "不" (meaning no) and "沒有" (meaning there is not) are deleted, it will be alright. However, the provision is not drafted in this straightforward manner. It goes for the approach of "playing on words". As such, all explanation is in vain, it is too difficult to understand.

On the whole, I think that at present ..... Chairman, we all know that the structure of the five Secretaries (corpses)<sup>2</sup> of Departments and 14 Directors of Bureaux will not work without the two "corpses" — the Deputy Chief Secretary for Administration and the Deputy Financial Secretary. Brother, the competition law you put forth has already driven us into fierce disputes now. Regarding the issues of who to exempt and who not to exempt, when these cases are submitted to the Chief Executive in Council, they will be drawn into endless disputes every week, just like us at the moment. After the decision is made, it may be challenged by judicial review. "Hey, you should not make such a decision!" Since the Government has failed to go through the political procedure and consultation in the drafting of the exemption provision for certain familiar statutory bodies, it is opening a can of worms, is it not? I would say it is putting a worm into a hole, and the worm will die. Tell me, what kind of law is this? The Legislative Council has said to them, so not pour all the goldfish into the sea in one go and appoint a Chairperson to catch the goldfish; catch as many as he can, and let go those that cannot be caught. This practice simply does not work.

Therefore, despite all the twists and turns in clauses 3 to 5, the provisions seek to empower an incapable institute to govern certain bodies with vested interest. Is it possible to exempt them from the competition law which they show some fear. It is disastrous, is it not? This has "built in" the inherited suspicion of collusion between the Government and the business sector. In future, if the Chief Executive accepts the offer of a shark's fin banquet, and later he approves granting exemption to a certain statutory body by regulation, it will be inappropriate. So, if the Commission is to be set up, this task should be left to the Commission. If the Commission fails to fulfil the duty properly, we may deal with the Commission under your leadership. The issue should be submitted to the Legislative Council for scrutiny, for the Executive Council adopts the black-box operation, where no one knows what it is doing, not even members in the Government. As such, the guidelines formulated by the Commission should be submitted to the Legislative Council for open scrutiny, so as to handle issues related to statutory bodies from the upstream. (*The buzzer sounded*) .....

Chairman, I have not finished yet, but it is very late already.

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<sup>2</sup> The pronunciations of "司" (Si1) (meaning Secretaries) and "屍" (Si1) (meaning corpse) are the same.

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

(Mr Albert CHAN stood up)

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

**CHAIRMAN** (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).

#### **SUSPENSION OF MEETING**

**CHAIRMAN** (in Cantonese): It is now 9.52 pm. I now suspend the meeting until 9 am tomorrow.

*Suspended accordingly at seven minutes to Ten o'clock.*

**Annex I**

## Competition Bill

**Committee Stage**Amendments moved by the Secretary for Commerce and Economic  
Development

<u>Clause</u>	<u>Amendment Proposed</u>
2	By renumbering the clause as clause 2(1).
2(1)	By deleting the definition of “shadow director” and substituting— ““shadow director” (幕後董事), in relation to a company, means a person in accordance with whose directions or instructions all the directors or a majority of the directors of the company are accustomed to act, but a person is not to be regarded as a shadow director by reason only that all the directors or a majority of the directors act on advice given by that person in a professional capacity;”.
2(1)	In the Chinese text, in the definition of “競委會資金”, by deleting “金。” and substituting “金 ; ”.
2(1)	By deleting the definitions of “Broadcasting Authority”, “competition regulator” and “Telecommunications Authority”.
2(1)	By adding— ““Communications Authority” (通訊事務管理局) means the Communications Authority established by section 3 of



the Communications Authority Ordinance (Cap. 616);

“company secretary” (公司秘書) includes any person occupying the position of company secretary, by whatever name called;

“competition authority” (競爭事務當局) means—

- (a) the Commission; or
- (b) the Communications Authority;

“serious anti-competitive conduct” (嚴重反競爭行為) means any conduct that consists of any of the following or any combination of the following—

- (a) fixing, maintaining, increasing or controlling the price for the supply of goods or services;
- (b) allocating sales, territories, customers or markets for the production or supply of goods or services;
- (c) fixing, maintaining, controlling, preventing, limiting or eliminating the production or supply of goods or services;
- (d) bid-rigging;

**Note—**

See also subsection (2).”.

2

By adding—

“(2) For the purposes of the definition of “serious anti-competitive conduct”—

“bid-rigging” (圍標) means—

- (a) an agreement—
  - (i) that is made between or among 2 or more undertakings whereby one or more of those undertakings agrees or undertakes not to submit a bid or tender in response to a call or request for bids or tenders, or agrees or undertakes to withdraw a bid or tender submitted in response to such a call or request; and
  - (ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity controlled by any one or more of the parties to the agreement; or
- (b) a submission, in response to a call or request for bids or tenders, of bids or tenders that are arrived at by an agreement—
  - (i) that is made between or among 2 or more undertakings; and
  - (ii) that is not made known to the person calling for or requesting bids or tenders at or before the time when a bid or tender is submitted or withdrawn by a party to the agreement or by an entity

controlled by any one or more of  
the parties to the agreement;

“goods” (貨品) includes real property;

“price” (價格) includes any discount, rebate, allowance, price  
concession or other advantage in relation to the supply  
of goods or services;

“supply” (供應)—

(a) in relation to goods, means sell, rent,  
lease or otherwise dispose of the goods,  
an interest in the goods or a right to the  
goods, or offer so to dispose of the goods  
or of such an interest or right; and

(b) in relation to services, means sell, rent or  
otherwise provide the services or offer so  
to provide the services.

(3) A note located in the text of this Ordinance is  
provided for information only and has no legislative effect.”.

6 By deleting subclause (2).

7 In the heading, by adding “**and “effect”**” before “**of**”.

7 By adding—

“(3) If an agreement, concerted practice or decision  
has more than one effect, it has the effect of preventing,  
restricting or distorting competition under this Ordinance if  
one of its effects is to prevent, restrict or distort competition.”.

10 By deleting subclause (1) and substituting—

“(1) Before making a decision on an application

made under section 9, the Commission must—

- (a) in order to bring the application to the attention of those the Commission considers likely to be affected by the decision, publish notice of the application—
  - (i) through the Internet or a similar electronic network; and
  - (ii) in any other manner the Commission considers appropriate; and
- (b) consider any representations about the application that are made to the Commission.”.

12(2) By adding “to the extent of the first conduct rule or this Part, and” after “only”.

14(2)(a) By deleting “give notice in writing in any manner it considers appropriate for bringing the proposed rescission to the attention of those undertakings it considers likely to be affected by the proposed rescission” and substituting “in order to bring the proposed rescission to the attention of those undertakings the Commission considers likely to be affected by it, publish notice of the proposed rescission”.

14 By adding—

“(2A) The notice referred to in subsection (2) must be published—

- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission

considers appropriate.”.

- 14(3) By deleting “a notice” and substituting “the notice published”.
- 14(3) By deleting “given” and substituting “published”.
- 14(4)(a) By deleting “given” and substituting “published”.
- 16 By deleting subclause (1) and substituting—  
“(1) Before issuing a block exemption order, the Commission must—  
(a) in order to bring the proposed block exemption order to the attention of those the Commission considers likely to be affected by it, publish notice of the proposed block exemption order—  
(i) through the Internet or a similar electronic network; and  
(ii) in any other manner the Commission considers appropriate; and  
(b) consider any representations about the proposed block exemption order that are made to the Commission.”.
- 20 By deleting subclause (2) and substituting—  
“(2) Before varying or revoking a block exemption order, the Commission must—  
(a) in order to bring the proposed variation or revocation to the attention of those the Commission considers likely to be

affected by it, publish notice of the proposed variation or revocation—

- (i) through the Internet or a similar electronic network; and
  - (ii) in any other manner the Commission considers appropriate; and
- (b) consider any representations about the proposed variation or revocation that are made to the Commission.”.

21 By adding—

“(2A) Without limiting the matters that may be taken into account in determining whether an undertaking has a substantial degree of market power in a market, the following matters may be taken into consideration in any such determination—

- (a) the market share of the undertaking;
- (b) the undertaking’s power to make pricing and other decisions;
- (c) any barriers to entry to competitors into the relevant market; and
- (d) any other relevant matters specified in the guidelines issued under section 35 for the purposes of this paragraph.”.

22 In the heading, by adding “**and “effect”**” before “**of**”.

22 By adding—

“(3) If conduct has more than one effect, it has the effect of preventing, restricting or distorting competition under

this Ordinance if one of its effects is to prevent, restrict or distort competition.”.

- 25 By deleting subclause (1) and substituting—
- “(1) Before making a decision on an application made under section 24, the Commission must—
- (a) in order to bring the application to the attention of those the Commission considers likely to be affected by the decision, publish notice of the application—
    - (i) through the Internet or a similar electronic network; and
    - (ii) in any other manner the Commission considers appropriate; and
  - (b) consider any representations about the application that are made to the Commission.”.
- 27(2) By adding “to the extent of the second conduct rule or this Part, and” after “only”.
- 27(2) In the Chinese text, by deleting “凡” and substituting “如”.
- 29(2) In the Chinese text, by deleting “取消決定” and substituting “取消任何決定”.
- 29(2)(a) By deleting “give notice in writing in any manner it considers appropriate for bringing the proposed rescission to the attention of

those undertakings it considers likely to be affected by the proposed rescission” and substituting “in order to bring the proposed rescission to the attention of those undertakings the Commission considers likely to be affected by it, publish notice of the proposed rescission”.

- 29 By adding—
- “(2A) The notice referred to in subsection (2) must be published—
- (a) through the Internet or a similar electronic network; and
- (b) in any other manner the Commission considers appropriate.”.
- 29(3) By deleting “a notice” and substituting “the notice published”.
- 29(3) By deleting “given” and substituting “published”.
- 29(4)(a) By deleting “given” and substituting “published”.
- 29(7) In the Chinese text, by adding “的” before “生效”.
- 33(2) In the Chinese text, by adding “藉決議通過” before “修訂該命令”.
- 33(3) In the Chinese text, by deleting “屆會期” and substituting “會期”.
- 33(5) In the Chinese text, by deleting “屆會期” and substituting “會期”.
- 34 By deleting subclause (3) and substituting—
- “(3) The Commission must make the register available for inspection by any person—



- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.”.

35(4) By adding “the Legislative Council and” after “consult”.

35 By deleting subclause (5) and substituting—

“(5) The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

(6) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them.

(7) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as

tending to establish or negate the matter.

(8) Guidelines issued under this section and all amendments made to them are not subsidiary legislation.”.

39(1)(c) By adding “or the Tribunal” before “has”.

41(2)(a) In the Chinese text, by deleting “複本” and substituting “副本”.

45 By deleting subclause (2) and substituting—

“(2) No statement made by a person—

(a) in giving any explanation or further particulars about a document; or

(b) in answering any question,

under this Division is admissible against that person in proceedings referred to in subsection (3) unless, in the proceedings, evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person’s behalf.”.

48 By renumbering the clause as clause 48(1).

48(1) By adding “authorizing a person specified in the warrant, and any other persons who may be necessary to assist in the execution of the warrant,” after “warrant”.

48 By adding—

“(2) A warrant under subsection (1) may be issued subject to any conditions specified in it that apply to the warrant itself or to any further authorization under it (whether granted under its terms or any provision of this Ordinance).”.

- 50(1) By deleting “named” and substituting “specified”.
- 50 By deleting subclauses (2) and (3).
- 53(1)(a) In the Chinese text, by deleting “後果” and substituting “實情”.
- 56(2) In the Chinese text, by deleting “並非” and substituting “在其他情況下”.
- 56 In the Chinese text, by deleting subclause (3) and substituting—  
“(3) 在競委會發給上述核證副本之前，該會須在該會認為適當的時間及地點，容許在其他情況下對該文件享有管有權的人或該人所授權的人，查閱和複製該文件，或摘錄其內容。”.
- 56(4) In the Chinese text, by deleting “法庭” and substituting “法院”.
- New By adding—  
**“57A. Legal professional privilege**  
(1) Subject to subsection (2), this Part does not affect any claims, rights or entitlements that would, but for this Part, arise on the ground of legal professional privilege.  
(2) Subsection (1) does not affect any requirement under this Ordinance to disclose the name and address of a client of a counsel or solicitor.”.
- 58(3) By adding “the Legislative Council and” after “consult”.
- 58 By deleting subclause (4) and substituting—

“(4) The Commission must make available copies of all guidelines issued under this Part and of all amendments made to them—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

(5) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this Part or any amendments made to them.

(6) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(7) Guidelines issued under this Part and all amendments made to them are not subsidiary legislation.”.

59 By adding—

“(1A) The action referred to in subsection (1)(a) does not include making a payment to the Government.”.

61(1)(b) In the English text, by adding “new” before “commitment”.

- 63 By deleting subclause (3) and substituting—
- “(3) The Commission must make the register available for inspection by any person—
- (a) at the offices of the Commission during ordinary business hours;
  - (b) through the Internet or a similar electronic network; and
  - (c) in any other manner the Commission considers appropriate.”.

66 By deleting subclause (1) and substituting—

“(1) Subsection (2) applies where—

    - (a) the Commission has reasonable cause to believe that—
      - (i) a contravention of the first conduct rule has occurred and the contravention involves serious anti-competitive conduct; or
      - (ii) a contravention of the second conduct rule has occurred; and
    - (b) the Commission has not yet brought proceedings in the Tribunal in respect of the contravention.”.

66(3) By deleting paragraph (a).

66 By adding—

“(4) The action that may be specified by the Commission under subsection (3)(b) does not include making a payment to the Government.”.

- 77 By deleting everything after “the infringement notice” and substituting—  
“—  
(a) through the Internet or a similar electronic network; and  
(b) in any other manner the Commission considers appropriate.”.
- 78 In the definition of “officer”, in paragraph (a), by adding “company” before “secretary”.
- 78 In the Chinese text, in the definition of “高級人員”, in paragraph (b), by deleting “員 ;” and substituting “員 。”.
- 78 By deleting the definition of “Commission”.
- 80 By deleting subclause (3) and substituting—  
“(3) A notice under subsection (2) must specify the period within which representations may be made to the Commission about the proposed termination.  
(4) The period specified for the purpose of subsection (3) must be a period of at least 30 days beginning after the day on which the notice is given.  
(5) Before terminating a leniency agreement, the Commission must consider any representations about the proposed termination that are made to it.”.
- New In Part 4, by adding—

**“Division 4—Warning Notices**

**80A. Warning notices**

(1) If the Commission has reasonable cause to believe that—

- (a) a contravention of the first conduct rule has occurred; and
- (b) the contravention does not involve serious anti-competitive conduct,

the Commission must, before bringing proceedings in the Tribunal against the undertaking whose conduct is alleged to constitute the contravention, issue a notice (a “warning notice”) to the undertaking.

(2) A warning notice must—

- (a) describe the conduct (the “contravening conduct”) that is alleged to constitute the contravention;
- (b) identify the undertaking (the “contravening undertaking”) that has engaged in the contravening conduct;
- (c) identify the evidence or other materials that the Commission relies on in support of its allegations;
- (d) state—
  - (i) that the Commission requires the contravening undertaking to cease the contravening conduct within the period (the “warning period”) specified in the notice, and not to repeat that conduct after the warning period;
  - (ii) that, if the contravening conduct continues after the expiry of the warning period, the Commission

may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and

(iii) that, if the contravening undertaking repeats the contravening conduct after the expiry of the warning period, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct; and

(e) indicate the manner in which the contravening undertaking may cease the contravening conduct.

(3) In determining the warning period, the Commission must have regard to the amount of time which the contravening undertaking is likely to require to cease the contravening conduct.

(4) After the expiry of the warning period—

(a) if the Commission has reasonable cause to believe that the contravening conduct continues after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct; and

(b) if the Commission has reasonable cause to believe that the contravening



undertaking repeats the contravening conduct after the expiry, the Commission may bring proceedings in the Tribunal against the contravening undertaking in respect of the contravening conduct and the repeated conduct.

(5) To avoid doubt, proceedings under subsection (4) may not be brought in respect of any period that precedes the warning period.

(6) The Commission may, either of its own volition or on application made to it in writing, extend the warning period specified in a warning notice if it considers that there is a good reason for doing so.

(7) An application for an extension under subsection (6) must be made before the expiry of the period sought to be extended.”.

81 In the definition of “reviewable determination”, by adding—

“(ba) a decision relating to the issue of a block exemption order, made by the Commission under section 15;

(bb) a decision relating to the variation or revocation of a block exemption order, made by the Commission under section 20;”.

84 By deleting subclause (3) and substituting—

“(3) On the hearing of the case, the Court of Appeal may—

(a) determine the question stated;

(b) amend the case or require the Tribunal to amend the case in any manner the Court specifies; or

- (c) remit the case to the Tribunal for reconsideration in the light of the decision of the Court.”.

91 By deleting subclause (3) and substituting—

“(3) The amount of a pecuniary penalty imposed under subsection (1) in relation to conduct that constitutes a single contravention may not exceed in total—

- (a) subject to paragraph (b), 10% of the turnover of the undertaking concerned for each year in which the contravention occurred; or
- (b) if the contravention occurred in more than 3 years, 10% of the turnover of the undertaking concerned for the 3 years in which the contravention occurred that saw the highest, second highest and third highest turnover.”.

91 By deleting subclause (4) and substituting—

“(4) In this section—

“turnover” (營業額) means the total gross revenues of an undertaking obtained in Hong Kong;

“year” (年度) means the financial year of an undertaking or, if the undertaking does not have a financial year, a calendar year.”.

92(3) In the Chinese text, by deleting “請。” and substituting “請，”.

94(1) In the Chinese text, by deleting “開支或” and substituting “開支

及”。

- 99(2)(b) By adding “or provisional liquidator” after “liquidator”.
- 101(2)(c) In the Chinese text, by deleting “該人” and substituting “某人”.
- 104 In the definition of “follow-on action”, by deleting “108(1);” and substituting “108(1).”.
- 104 By deleting the definition of “stand-alone action”.
- 106 By deleting everything after “if” and substituting—  
“—  
(a) the cause of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule; or  
(b) the proceedings are founded on more than one cause of action and any of the causes of action is the defendant’s contravention, or involvement in a contravention, of a conduct rule.”.
- 108 By deleting subclauses (2) and (3) and substituting—  
“(2) Subject to section 115, a claim to which this section applies may only be made in proceedings brought in the Tribunal, whether or not the cause of action is solely the defendant’s contravention, or involvement in a contravention, of a conduct rule.”.
- 108(4) By adding—

“(ab) the Court of First Instance has decided, in any proceedings transferred to it by the Tribunal under section 115A(3), that the act is a contravention of a conduct rule;”.

108(4)(b) By adding “or the Court of First Instance” after “Tribunal”.

108(4)(c) By deleting “and” and substituting “or”.

109(1) By deleting paragraph (a) and substituting—

“(a) in the case of a decision of the Tribunal, the period during which an appeal may be made to the Court of Appeal under section 153;

(ab) in the case of a decision of the Court of First Instance, the period during which an appeal may be made to the Court of Appeal; and”.

109(1) By adding “, (ab)” after “paragraph (a)”.

109 By deleting subclause (2) and substituting—

“(2) Despite subsection (1), the Court of First Instance or the Tribunal may, on the application of the party seeking to bring the proceedings, permit proceedings for a follow-on action to be brought within any period specified in subsection (1).”.

Part 7 By deleting Division 3.

114 By deleting the clause.

115 By deleting the clause and substituting—

**“115. Transfer of proceedings from  
Court of First Instance  
to Tribunal**

(1) Subject to subsection (2), the Court of First Instance must transfer to the Tribunal so much of the proceedings before the Court that are within the jurisdiction of the Tribunal.

(2) Subsection (1) does not apply to any proceedings that—

(a) are within the jurisdiction of the Tribunal under section 141(1)(f); and

(b) the Court of First Instance considers should not, in the interests of justice, be transferred to the Tribunal.

(3) Without limiting subsection (1) but subject to section 115B(2), if, in any proceedings before the Court of First Instance, a contravention, or involvement in a contravention, of a conduct rule is alleged as a defence, the Court must, in respect of the allegation, transfer to the Tribunal so much of those proceedings that are within the jurisdiction of the Tribunal.

(4) The practice and procedure of the Tribunal apply to the proceedings transferred by the Court of First Instance under subsection (1) or (3).

**115A. Transfer of proceedings from  
Tribunal to Court of  
First Instance**

(1) The Tribunal must transfer to the Court of First Instance so much of the proceedings brought in the Tribunal that are within the jurisdiction of the Court but are not within the jurisdiction of the Tribunal.

(2) Subject to subsection (1), the Tribunal may transfer to the Court of First Instance any proceedings brought in the Tribunal but only if—

- (a) those proceedings are within the jurisdiction of the Tribunal under section 141(1)(f); and
- (b) the Tribunal considers that those proceedings should, in the interests of justice, be transferred to the Court.

(3) If the Court of First Instance transfers any proceedings to the Tribunal under section 115(3), the Tribunal may transfer back to the Court so much of those proceedings that the Tribunal considers should, in the interests of justice, be transferred back to the Court.

(4) The practice and procedure of the Court of First Instance apply to the proceedings transferred by the Tribunal under subsection (1), (2) or (3).

**115B. No further transfer of proceedings from Court of First Instance to Tribunal**

(1) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(2), the Court must not transfer back those proceedings to the Tribunal.

(2) If the Tribunal transfers any proceedings to the Court of First Instance under section 115A(3)—

- (a) section 115(3) does not apply to those proceedings; and
- (b) the Court must not transfer back those proceedings to the Tribunal.

**115C. No further transfer of proceedings from Tribunal to Court of First Instance**

If the Court of First Instance transfers any proceedings to the Tribunal under section 115(1), the Tribunal must not transfer back those proceedings to the Court.”.

116 By deleting subclauses (2), (3) and (4) and substituting—

“(2) If the Tribunal makes an order transferring proceedings to the Court of First Instance under section 115A, it may make an order for costs prior to the transfer and of the transfer.”.

117 In the heading, by adding “**or Tribunal**” after “**Instance**”.

117 By deleting subclause (1) and substituting—

“(1) In any proceedings before the Court of First Instance or the Tribunal in which a contravention, or involvement in a contravention, of a conduct rule is alleged, the Court or the Tribunal may, either of its own motion or on application by a party to the proceedings, refer the alleged contravention or alleged involvement to the Commission for investigation under this Ordinance.”.

117(2) By adding “, or alleged involvement in a contravention,” after “contravention”.

118 By deleting subclauses (1) and (2) and substituting—

“(1) This section applies to proceedings under this Part before the Court of First Instance or the Tribunal in which a contravention, or involvement in a contravention, of a conduct rule is alleged in relation to a particular act.

(2) Subject to subsection (2A), in such proceedings the Court of First Instance or the Tribunal (as the case requires) is bound by an earlier decision of the Court or Tribunal that the act in question is a contravention, or involvement in a contravention, of the conduct rule.

(2A) Subsection (2) does not apply in relation to a decision of the Court of First Instance or the Tribunal until the period specified in subsection (3) has expired.”.

118(3) By deleting “(2)” and substituting “(2A)”.

118(3) By deleting “any such” and substituting “such an”.

119 By deleting subclauses (1) and (2) and substituting—

“(1) This section applies to proceedings involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule, before the specified Court or the Tribunal, that are brought by a person other than the Commission.

(2) The Commission may, with the leave of the specified Court or the Tribunal, and subject to any conditions imposed by the specified Court or the Tribunal, intervene in any such proceedings.”.

119 By adding—

“(5) In this section—  
“specified Court” (指明法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal; or
- (c) the Court of First Instance.”.



120

By deleting the clause and substituting—

**“120. Commission may participate in proceedings**

(1) The Commission may, with the leave of or at the invitation of the specified Court or the Tribunal (as the case requires), participate in proceedings before the specified Court or the Tribunal involving an alleged contravention, or alleged involvement in a contravention, of a conduct rule that have been brought by another person and, in particular may—

- (a) make written submissions to the specified Court or the Tribunal; or
- (b) apply for, or join an application for, the adjournment of the proceedings pending the completion of the Commission’s investigation into the alleged contravention or involvement that is in issue in the proceedings.

(2) In this section—

“specified Court” (指明法院) means—

- (a) the Court of Final Appeal;
- (b) the Court of Appeal; or
- (c) the Court of First Instance.”.

121

In the definition of “specified person”, by deleting paragraphs (d), (e), (f), (g) and (h) and substituting—

- “(d) the Communications Authority;
- (e) any person who is or was a member of the Communications Authority;
- (f) any person who is or was a member of a committee of

the Communications Authority, appointed under section 17 of the Communications Authority Ordinance (Cap. 616);

- (g) any person who is or was a public officer serving in the Office of the Communications Authority;
- (h) any person who is or was an employee or agent of the Office of the Communications Authority; or”.

123(1) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.

125(1)(h) By deleting “regulator” and substituting “authority”.

125(2)(c)(i) By adding “company” before “secretary”.

139(2) By deleting “may” and substituting “is to”.

141(1) In paragraph (a), by adding “, or alleged involvements in contraventions,” after “contraventions”.

141(1) In paragraph (c), by adding “, or involvements in contraventions,” after “contraventions”.

141(1) By adding—  
“(ca) allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;”.

141(1) By deleting paragraph (f) and substituting—  
“(f) any matter related to a matter referred to in paragraph

(a), (b), (c), (ca), (d) or (e) if the matters arise out of the same or substantially the same facts.”.

142(2)(a) By deleting “in civil or criminal proceedings”.

149(1) By deleting everything before paragraph (a) and substituting—

“(1) A finding of any fact by the Court of First Instance in any proceedings transferred to it by the Tribunal under section 115A(3), which is relevant to an issue arising in any other proceedings, either in the Court or in the Tribunal, relating to a contravention, or involvement in a contravention, of a conduct rule, is evidence of that fact in those other proceedings if—”.

153 By deleting subclauses (1), (2) and (3) and substituting—

“(1) Subject to subsection (2) and section 153A, an appeal lies as of right to the Court of Appeal against any decision (including a decision as to the amount of any compensatory sanction or pecuniary penalty), determination or order of the Tribunal made under this Ordinance.

(2) An appeal does not lie—

(a) against an order of the Tribunal allowing an extension of time for appealing against a decision, determination or order of the Tribunal;

(b) against a decision, determination or order of the Tribunal if it is provided by any Ordinance or by the rules of the Tribunal made under section 156 that the decision, determination or order is final; or

(c) without the leave of the Court of Appeal

or the Tribunal, against an order of the Tribunal made with the consent of the parties or relating only to costs that are left to the discretion of the Tribunal.

(3) Rules of the Tribunal made under section 156 may provide for decisions, determinations or orders of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or interlocutory.

(3A) An appeal does not lie against a decision of the Court of Appeal as to whether a decision, determination or order of the Tribunal is, for any purpose connected with an appeal to the Court, final or interlocutory.”.

New

In Part 10, in Division 3, by adding—

**“153A. Leave to appeal required for interlocutory appeals**

(1) Except as provided by the rules of the Tribunal made under section 156, an appeal does not lie to the Court of Appeal against any interlocutory decision, determination or order of the Tribunal unless leave to appeal has been granted by the Court of Appeal or the Tribunal.

(2) Rules of the Tribunal made under section 156 may specify an interlocutory decision, determination or order of any prescribed description as being an interlocutory decision, determination or order to which subsection (1) does not apply and accordingly an appeal lies as of right against the decision, determination or order.

(3) Leave to appeal for the purpose of subsection (1) may be granted—

- (a) in respect of a particular issue arising out of the interlocutory decision, determination or order; and
- (b) subject to any conditions that the Court of Appeal or the Tribunal considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal may only be granted under subsection (1) if the Court of Appeal or the Tribunal is satisfied that—

- (a) the appeal has a reasonable prospect of success; or
- (b) there is some other reason in the interests of justice why the appeal should be heard.”.

155(3) By deleting “in any criminal or civil proceedings”.

157 By deleting the clause.

158 In the heading, by deleting “**Telecommunications**” and substituting “**Communications**”.

158(1) By deleting “Telecommunications Authority” and substituting “Communications Authority”.

158(1) By deleting paragraphs (a) and (b) and substituting—

- “(a) licensees under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562);
- (b) persons who, although not such licensees, are persons

whose activities require them to be licensed under the Telecommunications Ordinance (Cap. 106) or the Broadcasting Ordinance (Cap. 562); or”.

158(2) By deleting “Telecommunications” and substituting “Communications”.

159 By deleting the clause.

160 By deleting the clause and substituting—

**“160. Transfer of competition matter  
between competition  
authorities**

(1) Where one competition authority is performing a function in relation to a competition matter and another competition authority also has jurisdiction to perform functions in relation to that matter, the 2 competition authorities may agree that the matter be transferred to and be dealt with by one of them.

(2) Where more than one competition authority has jurisdiction to perform functions in relation to a competition matter, if one of them is performing or has performed a function in relation to that matter, then, unless there is an agreement of a kind mentioned in subsection (1), the other competition authority must not perform any function in relation to that matter.”.

161(1) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.

- 161(2) By deleting “may” and substituting “must”.
- 161(3) By deleting “, the Telecommunications Authority and the Broadcasting Authority” and substituting “and the Communications Authority”.
- 161 By adding—  
“(3A) Before signing any Memorandum of Understanding, or any amendment to it, under this section, the Commission and the Communications Authority must consult the Legislative Council.”.
- 161 By deleting the subclause (4) and substituting—  
“(4) The Commission and the Communications Authority must, within 6 weeks after the Memorandum of Understanding, or any amendment to it, is signed by them, publish it in any manner they consider appropriate.  
(5) The Commission and the Communications Authority must make available copies of any Memorandum of Understanding prepared and signed under this section and of all amendments made to it—  
(a) at their offices during ordinary business hours;  
(b) through the Internet or a similar electronic network; and  
(c) in any other manner they consider appropriate.  
(6) A Memorandum of Understanding prepared and signed under this section and all amendments made to it are not subsidiary legislation.”.

New

By adding—

**“162A. Determination of turnover  
of undertaking**

(1) For the purposes of this Ordinance, the turnover of an undertaking is to be determined in accordance with the regulations made by the Secretary for Commerce and Economic Development under subsection (2).

(2) The Secretary for Commerce and Economic Development may, by regulations published in the Gazette, provide for the determination of the turnover of an undertaking.

(3) Without limiting subsection (2), the regulations made under that subsection may—

- (a) specify a period as the turnover period of an undertaking for the purpose of section 5(4) or 6(3) of Schedule 1;
- (b) provide for different ways for the determination of the turnover of an undertaking obtained in Hong Kong or outside Hong Kong; and
- (c) provide for different ways for the determination of the turnover of an undertaking in respect of different periods, including—
  - (i) a calendar year;
  - (ii) a financial year; and
  - (iii) a period specified as the turnover period of the undertaking under paragraph (a).”.



- 166(1)(d) By deleting subparagraph (ii) and substituting—
- “(ii) by sending it by post in a letter addressed to the undertaking at any place in Hong Kong at which the undertaking carries on business or, if the undertaking’s address is unknown, addressed to the undertaking’s last known place of business;”.
- 167(1)(b)(ii) By adding “this Part or” after “under”.
- 167(1)(b)(iii) By deleting “required” and substituting “ordered”.
- 167(3) In the definition of “officer”, in paragraph (a), by adding “company” before “secretary”.
- 172(3) In the Chinese text, by deleting “或” and substituting “及”.
- 174(1) By adding “company” before “secretary” (wherever appearing).
- 176(1) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(2) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- 176(2) In the Chinese text, by deleting “或保留” and substituting “及保留”.
- 176(3)(b) By deleting “Authority” and substituting “(Miscellaneous Provisions)”.

- 176(5)(b) By deleting “that date” and substituting “the date on which the regulations are published in the Gazette”.
- Schedule 1 By deleting “& 36]” and substituting “, 36 & 162A]”.
- Schedule 1, section 1 By deleting paragraph (a) and substituting—  
“(a) contributes to—  
(i) improving production or distribution; or  
(ii) promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;”.
- Schedule 1 By adding—  
“4. **Mergers**  
(1) To the extent to which an agreement (either on its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.  
(2) To the extent to which conduct (either on its own or when taken together with other conduct) results in, or if engaged in would result in, a merger, the second conduct rule does not apply to the conduct.  
  
5. **Agreements of lesser significance**  
(1) The first conduct rule does not apply to—  
(a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$200,000,000;

- (b) a concerted practice engaged in by undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$200,000,000; or
- (c) a decision of an association of undertakings in any calendar year if the turnover of the association for the turnover period does not exceed \$200,000,000.

(2) Subsection (1) does not apply to an agreement, a concerted practice, or a decision of an association of undertakings, that involves serious anti-competitive conduct.

(3) Subject to subsection (4), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(4) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—
  - (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the

preceding calendar year is less than 12 months; or

(b) for an undertaking that does not have a financial year—

(i) the undertaking is not engaged in economic activity in the preceding calendar year; or

(ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(5) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year mentioned in subsection (1)(a), (b) or (c);

“turnover” (營業額)—

(a) in relation to an undertaking that is not an association of undertakings, means the total gross revenues of the undertaking whether obtained in Hong Kong or outside Hong Kong; and

(b) in relation to an association of undertakings, means the total gross revenues of all the members of the association whether obtained in Hong Kong or outside Hong Kong.

## 6. Conduct of lesser significance

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which

does not exceed \$40,000,000 for the turnover period.

(2) Subject to subsection (3), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—
  - (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months; or
- (b) for an undertaking that does not have a financial year—
  - (i) the undertaking is not engaged in economic activity in the preceding calendar year; or
  - (ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(4) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

“turnover” (營業額) means the total gross revenues of an undertaking whether obtained in Hong Kong or outside Hong Kong.”.

Schedule 2,  
section 1(a)

By deleting “or”.

Schedule 2,  
section 1(b)

By deleting “61.” and substituting “61; or”.

Schedule 2,  
section 1

By adding—

“(c) accept a new commitment in substitution for such a commitment under section 61.”.

Schedule 2,  
section 4

By deleting everything after “or variation” and substituting—

“—

(a) through the Internet or a similar electronic network; and

(b) in any other manner the Commission considers appropriate.”.

Schedule 2,  
section 5

By deleting paragraph (b) and substituting—

“(b) publishing the notice—

(i) through the Internet or a similar electronic network; and

(ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the

notice relates to the attention of those the Commission considers likely to be affected by it.”.

Schedule 2,  
section 9

By deleting everything after “withdrawal” and substituting—

“—

(a) through the Internet or a similar electronic network; and

(b) in any other manner the Commission considers appropriate.”.

Schedule 2,  
section 10

By deleting paragraph (b) and substituting—

“(b) publishing the notice—

(i) through the Internet or a similar electronic network; and

(ii) in any other manner the Commission considers appropriate,

for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.

Schedule 2,  
section  
12(2)(b)

By deleting “and”.

Schedule 2,  
section 12(2)

By adding—

“(ba) any other facts that the Commission considers to be relevant to the proposed release; and”.

Schedule 2,  
section 14

By deleting paragraph (a) and substituting—

“(a) publish the release—

(i) through the Internet or a similar electronic

- network; and
- (ii) in any other manner the Commission considers appropriate; and”.
- Schedule 2,  
section 14(*b*) In the English text, by deleting “the person who made the commitment” and substituting “that person”.
- Schedule 2,  
section 15 In the English text, by deleting “is” and substituting “must be”.
- Schedule 2,  
section 15 By deleting paragraph (*b*) and substituting—
- “(b) publishing the notice—
- (i) through the Internet or a similar electronic network; and
- (ii) in any other manner the Commission considers appropriate,
- for the purpose of bringing the matter to which the notice relates to the attention of those the Commission considers likely to be affected by it.”.
- Schedule 3 By deleting “, 110 & 113]” and substituting “& 110]”.
- Schedule 3,  
section 2(*b*) In the Chinese text, by deleting “須” and substituting “可”.
- Schedule 5,  
section 2(1) By adding “and not more than 16” after “5”.
- Schedule 5,  
section 5(1)(*d*) In the Chinese text, by deleting “或管理” and substituting “及管理”.
- Schedule 5,  
section 5(3) In the definition of “officer”, in paragraph (*a*), by adding “company” before “secretary”.



- Schedule 5,  
section 7(2) By adding “the remainder of” after “beyond”.
- Schedule 5,  
section 13(2) By deleting “For the purpose of determining the quorum, a” and substituting “A”.
- Schedule 5,  
section 18(d) By deleting “the merit of”.
- Schedule 5,  
section 27(2)(c) In the Chinese text, by deleting “及文件” and substituting “或文件”.
- Schedule 5,  
section 27 By adding—  
“(4) Subsection (1) does not operate to entitle the Director of Audit to question the merits of the policy objectives of the Commission.”.
- Schedule 5,  
section 28(3) By deleting “one” and substituting “a member of the Commission who is also a”.
- Schedule 5 By adding—

#### “PART 7A

#### REGISTER AND DISCLOSURE OF INTERESTS

##### 28A. Register of interest

(1) A member of the Commission, or a member of a committee established by the Commission, must disclose to the Commission any interest that the member has which is of a class or description determined by the Commission under

subsection (2)—

- (a) in the case of a member of the Commission, on the member's first appointment to the Commission;
- (b) in the case of a member of the committee who is not also a member of the Commission, on the member's first appointment to the committee;
- (c) at the beginning of each calendar year after the member's appointment;
- (d) on becoming aware of the existence of an interest not previously disclosed under this subsection; and
- (e) after the occurrence of any change to an interest previously disclosed under this subsection.

(2) The Commission may, for the purposes of this section—

- (a) determine the class or description of the interest required to be disclosed;
- (b) determine the details of the interest required to be disclosed and the manner in which such interest is to be disclosed; and
- (c) from time to time change any matter determined under paragraph (a) or (b).

(3) The Commission is to establish and maintain a register relating to any disclosure required to be made under subsection (1) (the "register").

(4) If a person makes a disclosure as required by subsection (1), the Commission must cause the person's name

and the particulars of the disclosure to be recorded in the register, and if a further disclosure is made, the Commission must cause the particulars of the further disclosure to be recorded in the register.

(5) The Commission must make the register available for inspection by any person—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

#### 28B. Disclosure of interests

(1) If a member of the Commission has—

- (a) a pecuniary interest, whether direct or indirect; or
- (b) a personal interest greater than that which the member has as a member of the general public,

in any matter under discussion at a meeting of the Commission, the member must disclose the nature of the interest at the meeting.

(2) The following provisions apply for the purposes of a disclosure under subsection (1)—

- (a) the disclosure must be recorded in the minutes;
- (b) if the disclosure is made by the member presiding, the member must vacate the chair during the discussion;
- (c) the member (including one who has

vacated the chair under paragraph (b)) must, if so required by the majority of the other members present, withdraw from the meeting during the discussion and must not in any case, except as otherwise determined by the majority of the other members present, vote on any resolution concerning the matter under the discussion or be counted for the purpose of establishing the existence of a quorum.

(3) When a matter is being dealt with by way of the circulation of written resolutions under section 17 of this Schedule, and a member of the Commission has—

- (a) a pecuniary interest in the matter, whether direct or indirect; or
- (b) a personal interest in the matter greater than that which the member has as a member of the general public,

the member must disclose the nature of the interest by attaching to the resolutions being circulated a note recording the disclosure.

(4) If a member has made a disclosure under subsection (3), the member's signature (if any) is not to be counted for the purpose of section 17(1) of this Schedule unless the Chairperson directs otherwise.

(5) If the member making a disclosure in respect of a matter under subsection (3) is the Chairperson, section 17 of this Schedule ceases to apply to the matter.

(6) The validity of any proceeding of the Commission is not affected by the failure by a member of the Commission to comply with this section.

(7) Subsections (1), (2) and (6) apply to a member of a committee established by the Commission, as if any reference to the Commission in subsections (1) and (6) were a reference to the committee.”.

Schedule 5,  
section 29(2)

By adding—

- “(ba) the power to vary or revoke a block exemption order under section 20;
- (bb) the power to issue an infringement notice under section 66;”.

Schedule 5,  
section 29(2)

By adding—

- “(ca) the duty to give a copy of its annual report, its statement of accounts, and the auditor’s report on the statement of accounts, to the Chief Executive under section 26 of this Schedule;”.

Schedule 5,  
section 29(2)

By adding—

- “(la) the power to appeal to the courts;”.

Schedule 6

In the heading, by deleting “MAY” and substituting “MUST”.

Schedule 6,  
section 4

In the Chinese text, by deleting “某些特定事宜或某類” and substituting “特定事宜或特定類別”.

Schedule 6,  
section 6

By deleting “other parties” and substituting “the other party”.

Schedule 7,  
section 3(4)

In the Chinese text, by deleting “自動” and substituting “自主”.





Schedule 7,  
section 17(4)

By adding “the Legislative Council and” after “consult”.

Schedule 7,  
section 17

By deleting subsection (5) and substituting—

“(5) The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

(6) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them.

(7) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(8) Guidelines issued under this section and all amendments made to them are not subsidiary legislation.”.

Schedule 8

In the Chinese text, in the heading, by deleting “相關” and





““Commission” (競委會) means the Competition Commission established by section 128 of the Competition Ordinance ( of 2010);”.”.

Schedule 8,  
section 34(2)      By deleting “Broadcasting”.

Schedule 8      By adding—

“PART 10

AMENDMENTS TO COMMUNICATIONS AUTHORITY  
ORDINANCE

39. **Functions of Authority**

Section 4 of the Communications Authority Ordinance (Cap. 616) is amended by adding—

“(1A) The Authority has all the functions conferred on it by or under Part 11 of the Competition Ordinance ( of 2010).”.”.

Schedule 9,  
section 1      In the Chinese text, in the definition of “原有《廣播條例》”, by deleting “章)。” and substituting “章);”.

Schedule 9,  
section 1      By deleting the definition of “pre-amended Broadcasting Authority Ordinance”.

Schedule 9,  
section 1      By adding—  
““pre-amended Broadcasting (Miscellaneous Provisions) Ordinance” (原有《廣播(雜項條文)條例》) means the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391) in force immediately before the commencement date;”.

- Schedule 9,  
section 2
- By deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- Schedule 9,  
section 3(2)(a)
- In the Chinese text, by deleting “發生” (wherever appearing) and substituting “作出”.
- Schedule 9,  
section 3(8)
- By deleting “Telecommunications Authority” (wherever appearing) and substituting “Communications Authority”.
- Schedule 9,  
section 3
- By deleting subsection (9).
- Schedule 9,  
section 4
- In the heading, by deleting “**Authority**” and substituting “**(Miscellaneous Provisions)**”.
- Schedule 9,  
section 4(1)
- In the definition of “pre-amended Ordinance”, in paragraph (a), by deleting “Authority” and substituting “(Miscellaneous Provisions)”.
- Schedule 9,  
section 4(2)(a)
- In the Chinese text, by deleting “發生” (wherever appearing) and substituting “作出”.
- Schedule 9,  
section 4(2)
- In the Chinese text, by deleting “訂立” and substituting “制定”.
- Schedule 9,  
section 4(3)
- In the Chinese text, by adding “繼續” before “適用”.
- Schedule 9,  
section 4(3)
- In the Chinese text, by deleting “訂立” and substituting “制定”.

Competition Bill

Committee Stage

Amendments moved by the Honourable Mrs Regina IP LAU Suk-ye, GBS, JP

<u>Clause</u>	<u>Amendment Proposed</u>
1(2) [NEGATIVED]	By deleting “This” and substituting “Subject to subsection (3), this”.
1 [NEGATIVED]	By adding— <p style="margin-left: 40px;">“(3) Sections 6 and 21 may only come into operation after the guidelines referred to in section 35 have been approved by the Legislative Council under section 35(4A)(a).”.</p>
3(1)	By adding “if the conditions in subsection (4) are fulfilled” after “statutory body”.
3	By deleting subclause (2).
3	By deleting subclause (3) and substituting— <p style="margin-left: 40px;">“(3) In this section, a reference to a statutory body includes an employee or agent of the statutory body, acting in that capacity.”.</p>
3	By adding— <p style="margin-left: 40px;">“(4) The conditions referred to in subsection (1) are—</p> <p style="margin-left: 80px;">(a) the statutory body is not engaging in an</p>

economic activity in direct competition with another undertaking;

- (b) the economic activity of the statutory body is not affecting the economic efficiency of a specific market; and
- (c) the economic activity of the statutory body is directly related to the provision of an essential public service or the implementation of public policy.”.

5 By deleting subclause (1) and substituting—

“(1) The Chief Executive in Council may, on being satisfied that there are exceptional and compelling reasons of public policy, by regulation disapply the provisions referred to in section 3(1) to—

- (a) any person; or
- (b) any person, to the extent that the person is engaged in an activity specified in the regulation.”.

5 By deleting subclause (2).

5 By deleting subclause (3) and substituting—

“(3) In this section, a reference to a person includes an employee or agent of the person, acting in that capacity.”.

35(1) By adding—

NEGATIVED

“(aa) indicating the manner in which it expects to interpret the expressions “market” (市場), “market power” (市場權勢) and “substantial degree of market power” (相

當程度的市場權勢) used in this Ordinance;”.

35  
[NEGATIVED]

By adding—

“(4A) Without limiting subsection (4)—

- (a) before any guidelines are first issued under this section, the guidelines must be submitted to the Legislative Council for approval; and
- (b) before any amendments to the guidelines are issued under this section, the amendments must be submitted to the Legislative Council for approval.

(4B) The Legislative Council may by resolution amend the whole or any part of the guidelines or amendments submitted under subsection (4A).”.

35  
[NEGATIVED]

By deleting subclause (5) and substituting—

“(5) The Commission must make available copies of all guidelines issued under this section and of all amendments made to them—

- (a) at the offices of the Commission during ordinary business hours;
- (b) through the Internet or a similar electronic network; and
- (c) in any other manner the Commission considers appropriate.

(6) A person does not incur any civil or criminal liability only because the person has contravened any guidelines issued under this section or any amendments made to them.

(7) If, in any legal proceedings, the Tribunal or any other court is satisfied that a guideline is relevant to determining a matter that is in issue—

- (a) the guideline is admissible in evidence in the proceedings; and
- (b) proof that a person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(8) Guidelines issued under this section and all amendments made to them are not subsidiary legislation.”.

## Competition Bill

**Committee Stage**Amendments moved by the Honourable Ronny TONG Ka-wah, SC

<u>Clause</u>	<u>Amendment Proposed</u>
2	By deleting the definition of “statutory body”.
3	By deleting the clause.
4	By deleting the clause.
5	By deleting the clause.
9(1)(b)	By deleting “section 15;” and substituting “section 15; or”.
9(1)(c)	By deleting “; or” and substituting a full stop.
9(1)	By deleting paragraph (d).
24(1)(a)	By deleting “Schedule 1;” and substituting “Schedule 1; or”.
24(1)(b)	By deleting “; or” and substituting a full stop.
24(1)	By deleting paragraph (c).
Schedule 1	By adding— “4. <b>Mergers</b> (1)    To the extent to which an agreement (either on



its own or when taken together with another agreement) results in, or if carried out would result in, a merger, the first conduct rule does not apply to the agreement.

(2) To the extent to which conduct (either on its own or when taken together with other conduct) results in, or if engaged in would result in, a merger, the second conduct rule does not apply to the conduct.

**5. Agreements of lesser significance**

(1) The first conduct rule does not apply to—

(a) an agreement between undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$100,000,000;

(b) a concerted practice engaged in by undertakings in any calendar year if the combined turnover of the undertakings for the turnover period does not exceed \$100,000,000; or

(c) a decision of an association of undertakings in any calendar year if the turnover of the association for the turnover period does not exceed \$100,000,000.

(2) Subsection (1) does not apply to an agreement, a concerted practice, or a decision of an association of undertakings, that involves serious anti-competitive conduct.

(3) Subject to subsection (4), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(4) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—
  - (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months; or
- (b) for an undertaking that does not have a financial year—
  - (i) the undertaking is not engaged in economic activity in the preceding calendar year; or
  - (ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(5) In this section—

“preceding calendar year” (對上公曆年) means the calendar

year preceding the calendar year mentioned in subsection (1)(a), (b) or (c);

“turnover” (營業額)—

- (a) in relation to an undertaking that is not an association of undertakings, means the total gross revenues of the undertaking whether obtained in Hong Kong or outside Hong Kong; and
- (b) in relation to an association of undertakings, means the total gross revenues of all the members of the association whether obtained in Hong Kong or outside Hong Kong.

**6. Conduct of lesser significance**

(1) The second conduct rule does not apply to conduct engaged in by an undertaking the turnover of which does not exceed \$11,000,000 for the turnover period.

(2) Subject to subsection (3), the turnover period of an undertaking is—

- (a) if the undertaking has a financial year, the financial year of the undertaking that ends in the preceding calendar year; or
- (b) if the undertaking does not have a financial year, the preceding calendar year.

(3) The turnover period of an undertaking is the period specified as such for the purpose of this subsection in the regulations made under section 162A(2) if—

- (a) for an undertaking that has a financial year—

- (i) the undertaking does not have a financial year that ends in the preceding calendar year; or
  - (ii) the financial year of the undertaking that ends in the preceding calendar year is less than 12 months; or
- (b) for an undertaking that does not have a financial year—
- (i) the undertaking is not engaged in economic activity in the preceding calendar year; or
  - (ii) the period in which the undertaking is engaged in economic activity in the preceding calendar year is less than 12 months.

(4) In this section—

“preceding calendar year” (對上公曆年) means the calendar year preceding the calendar year in which the conduct mentioned in subsection (1) is engaged in;

“turnover” (營業額) means the total gross revenues of an undertaking whether obtained in Hong Kong or outside Hong Kong.”.

Schedule 7, section 11(2) By deleting everything after “if completed” and substituting “be, excluded from the application of the merger rule by or as a result of section 8 (Exclusions) of this Schedule.”.

**Appendix I****WRITTEN ANSWER****Written answer by the Secretary for Security to Mr IP Wai-ming's supplementary question to Question 5**

As regards the information disseminated to the media in respect of the incident which occurred on a passenger flight of Cathay Pacific Airways on 16 April 2012, the information disseminated to the media in the form of "Attention News Editors" through the Government News and Media Information System of the Information Services Department (only available in English) is provided at Annex for Members' reference.

Annex

附件

Information disseminated to the media in the form of "Attention News Editors" through the Government News and Media Information System of the Information Services Department at 9:26 p.m. of 16 April 2012 (only available in English)

警察公共關係科於二零一二年四月十六日晚上九時二十六分以「編輯注意」形式透過政府新聞處的新聞公布系統發放予傳媒機構的信息。(只有英文版本)

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PPRB INC: Request for Police assistance

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Below please find information on an incident report received by the Police:

1. Request for Police assistance / 1, Cheong Hong Road, Airport / 1930 hours

Police Report No. 278

Issued by PPRB

Ends/Monday, April 16, 2012

Issued at HKT 21:26