

# OFFICIAL RECORD OF PROCEEDINGS

Thursday, 21 June 2012

The Council continued to meet at Nine o'clock

## MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE TANYA CHAN

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

**MEMBERS ABSENT:**

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

DR THE HONOURABLE LEUNG KA-LAU

**PUBLIC OFFICERS ATTENDING:**

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

PROF THE HONOURABLE K C CHAN, S.B.S., 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 RAYMOND TAM CHI-YUEN, J.P.  
SECRETARY FOR CONSTITUTIONAL AND MAINLAND AFFAIRS

**CLERKS IN ATTENDANCE:**

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

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

**MOTIONS**

**PRESIDENT** (in Cantonese): Good morning, Members. This Council now continues to debate the motion moved by the Chief Secretary for Administration. Does any Member wish to speak?

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

**MOTION UNDER RULE 91 OF THE RULES OF PROCEDURE****Continuation of debate on motion which was moved on 20 June 2012**

**MR ALBERT CHAN** (in Cantonese): President, some Members are neither obedient students nor good students and they are often late. Will you ring the bell to summon them back here?

**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): Does any Member wish to speak?

**MISS TANYA CHAN** (in Cantonese): President, today, this incident described by us as the "queue-jumping incident" has been widely discussed in newspapers and radio programmes. Of course, we can also see that the President has made a ruling. If not, we would not have held a debate for several hours yesterday and continued with it today. In fact, I have also called on Honourable colleagues to make sure that they read the whole document carefully ..... the officials have arrived. Just now, at 9 o'clock, there was no government representative here, so there was no alternative but to call for a headcount.

The Chief Secretary for Administration, Mr Stephen LAM, issued a letter on 19 June. I wonder how many Honourable colleagues have read it, including the Chinese and English versions, carefully. In fact, the letter was addressed to

the President, giving an account of this matter and why it was necessary to jump the queue, as well as asking the President to waive the notice requirement. Of course, as the President said, he has already made a ruling but this letter is really very important.

If Members still remember this, the night before, when Mr Albert CHAN spoke, the President let out a secret unwittingly. Luckily, both Dr Margaret NG and Ms Audrey EU heard it. Then, after confirming this, Dr Margaret NG stood up while a headcount was being done to inquire about the comments made by the President, which revealed a secret unknowingly. It was then that we learnt it was estimated that ..... what was the time then? It was about 15 minutes before the suspension of the meeting, that is, at about 9.45 pm.

The President then made a clean breast of everything, and added, "The Secretariat is perhaps preparing to issue a paper to Members now.". Of course, I kept an eye on my emails all the time. When I received the email ..... I wonder if Members have noticed at what time they received the email. It was 10.01 pm. President, that was really cleverly planned. Of course, colleagues of the Secretariat were very busy but they really arranged everything thoughtfully well. When the Chief Secretary for Administration gave an instruction, he sounded very polite in asking the President to make a ruling but all matters were arranged in such a way that they could tie in with one another seamlessly.

Concerning the letter issued on 19 June, as the President said, the relevant resolution had been waiting in line since 10 May or thereabout, so why did the Chief Secretary request to jump the queue only on 19 June? On that day, Chief Secretary Stephen LAM still hosted a press conference and said that he had a contingency plan and if the resolution could not be passed, it did not matter as he could still handle this matter. However, at the same time, he issued such a letter. I do not know which move was taken first and maybe the Chief Secretary can explain it later.

Let us look at the body of the letter. First, let us talk about the first paragraph. It says, "..... the Council would need to complete scrutiny of eight government bills and 11 government motions before SCMA's motion can be considered." That means to consider the proposed resolution under section 54A of the Interpretation and General Clauses Ordinance. If we read on, it says, "SCMA's motion is time critical ..... (in Chinese version of the letter)為了讓立

法會能適時處理有關的議案，現特函請主席同意免卻預告(In order to enable the Council to process this motion in a timely manner, I am writing to seek your approval to give leave to dispense with the notice requirement)". With such a sentence, this matter is dealt with. Because the motion is time critical, this matter should be dealt with in this way and for this reason, he wants to have the notice requirement dispensed with.

President, I am not challenging your ruling but it looks as though this sentence were a through train that could take one anywhere. With the two words "time critical", Legislative Council Members have to go from one place to another to hold meetings with them every day, be it Finance Committee meetings or Legislative Council meetings. After panel meetings, we have to attend the meetings of the Establishment Subcommittee. Each day, we have to rush to meetings, all because the motion is "time critical" and now, he even came here to ask for approval to dispense with the notice requirement.

Suppose the leave to dispense with notice requirement is approved, Members must not think that this is the end of the matter. Let us look at the wording of the motion in Annex II to the paper. The motion is very short and consists of just one sentence. However, this sentence is already very lethal. It says, "That Rule 18(1) of the Rules of Procedure ..... be suspended", and this motion, that is, the motion under discussion now, is quite destructive. President, in fact, you have also said that this is not something that has never been done before. This is true, but the situation back then was very different from the one now. Moreover, is there any urgency? Is it true that notice cannot be given?

According to Rule 29 of the Rules of Procedure (RoP), only 12 days of notice is required. Since the Administration could give notice some time in May, what is the problem in counting back 12 days? President, only 12 days that are referred to as "clear days" are required. What has happened to make it so urgent that ..... Mr CHEUNG Man-kwong also said yesterday that the sky would not collapse, so would the sky really collapse then? Or is this a project of face and all for the sake of a photo?

President, to break the rules of the Legislative Council this way and to act in such a high-handed manner ..... this Chief Executive is just waiting to assume office and has not yet done so, but we have already been given a taste of his style time and again. He undermined our system, which is originally very sound,

repeatedly and continually and now, he even wants to resort to such a tactic. The Chief Secretary sounded very polite when proposing this motion to you, asking for leave to dispense with the notice requirement but most importantly, he also put down the way that he hopes the President would deal with this matter after the motion has been passed, so is this not tantamount to giving the President instructions on how to deal with this matter?

Members can look at page 2 of this letter, "In deciding the agenda of the Council meeting under Rule 19(1), we should be most grateful if you could allow Government motions under Rule 18(1)(j) and Rule 18(1)(ja) to be transacted before Government bills under Rule 18(1)(i) in view of the reasons above. Further," — he wants to make more suggestions — "we propose that Government motions should be transacted in the following order .....".

President, there are two suggestions therein teaching you how to arrange the order. Now only does he want to jump the queue, he goes on to teach you how to arrange the order, so has this not gone too far? Members can look at Rule 18 of the RoP about "Order of Business at a Meeting". It is about the order and there are rules. There are reasons for such an order. The items are (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (ja), (jb), (k), (l), (m) and (n). The order is specified and there are reasons, including historical ones, for this sequence, and discussions were also held on this. Now, not only is a request made to enable the relevant resolution to jump the queue, the President is also taught the most preferable course of action — the words "most preferable" are added by me — the President is instructed what to do, that is, he has to deal with (j), (ja) before going to (i) but the usual practice is for (i), that is, the bills tabled by the Government to be dealt with first but now, it has to follow (j) and (ja). Why? Again, this is because of the resolution under section 54A. Originally, the other government motions have been waiting in line but another motion can also jump the queue, that is, the resolution relating to senior judicial appointments. As regards all the other motions relating to people's livelihood, they do not matter, so just let them queue up and defer them further.

President, why do we adopt the approach of queuing so often? Frankly speaking, everyone has to queue up, but do you think Hong Kong people knew how to queue up from day one? This is not so and we had to form this habit slowly, so that when people in other places see us do this, they also want to learn



from our orderly behaviour and adherence to rules. Of course, sometimes, some people may jump the queue, but they have to state the grounds. However, can you consider "time critical" to be a ground? President, just imagine: If you queue up to get married but someone jumps the queue for no reason, how can you explain this to your "honey"? You also have to give a ground. Can you do this because something is time critical? I really cannot see how time critical this is, and he even forces the President to deal with it according to the Agenda suggested by him. I have to tell Members that things do not stop here and perhaps Ms Audrey EU will also talk about this later.

Have Members ever noticed that a paper was issued on 19 June concerning the revised motion? The Government also had another matter to tell Members. Can Members find the paper issued on 19 June on their desks? It is issued by the Legislative Council Secretariat to all Members. After reading this notice and the revised motion in the enclosed Annex I, Members may think that there is nothing special. Annex II is also a revised motion and Annex III is a notice. It is Annex III that is terrible, President. This is another matter on which approval for a waiver by the President is sought. What is it about? Originally, notice is also required but the President is asked to grant leave to dispense with the notice requirement again. President, what should we do? You are asked to grant exemption time and again. What should we do? Do we have to conduct a debate, wage a struggle against the Government and be accused of filibustering again?

However, President, the Government is really jumping the queue and departing from the procedure out and out, asking for waivers time and again. Can you see that? If Members leaf through this notice, they will find that I am not joking. Have Members ever read it? Again, it says "Dear President", then it says, "I would, therefore, wish to seek your approval to give leave to dispense with the notice of amendment. As per the amendment relating to the reference of the Secretary for Commerce and Economic Development mentioned in paragraph 2 of my previous letter, subject to your approval to waive the notice requirement, I would move this other amendment at the Legislative Council sitting on 20 June 2012.". President, according to the RoP, originally, it was also necessary to give notice but again, the Government asked for a waiver. President, are you going to grant the leave again? If you approve of everything, are there still rules anymore?

What can the public see now? What they can see is somewhat like a repeat of the Express Rail Link incident. Why do I say so? Initially, the opinion of all people was that this was something desirable and apparently, a service was being done to the public. Just like the proposal of five Secretaries of Departments and 14 Directors of Bureaux, we want public housing to be built and to see the resolution of many problems that the incumbent Government cannot solve, but after the public have gained a better understanding, we began to find that some newspapers and public opinion polls started to find this issue increasingly controversial, so the differences got smaller and smaller and the controversies became greater and greater. By differences, I mean that the proportions of people for and against the proposal became more or less the same. The same is true of the Express Rail Link incident. Initially, many people supported the construction of the Express Rail Link but after the truth had been borne out by debates and after we had wrung more and more information out of the Government, people became more and more fearful, realizing that the Express Rail Link is actually a slow one instead of an express one. It is actually a "medium-speed railway", or even a "slow railway".

The same is true of the present proposal of five Secretaries of Departments and 14 Directors of Bureaux. At first, we all thought that it was very useful, then we found out that this was actually an unauthorized structure and also an illegal structure. Moreover, the Deputy Secretaries of Departments are just like phantoms. We cannot find them in the laws but they are very powerful. Just like "vote-rigging", for some unknowns reason, many people with different surnames who have never met each other in their lives are living in the same abode and they use the same address as yours for voter registration. This is how the Deputy Secretaries of Departments are like. They have flesh and power — I do not know if they have flesh — that is, they have titles but no responsibility, drifting about and when something happens, they do not have to assume responsibility, yet they wield enormous powers.

President, I believe that today, many press reports have reported on what the public find the most terrifying in what you have done on this occasion. If the legislation on Article 23 of the Basic Law makes a comeback, this approach can also be adopted to suspend, freeze and put on hold all matters, then add the legislation on Article 23 to the Agenda without the need for any discussion or consultation, as is the case on this occasion. If the legislation on Article 23 makes a comeback, similarly, there is no need to tell you. You would only be

told that the consultation was already conducted a decade ago, that your views are here and kept very well, locked up in a box. Can you hear that? Then, the legislation would be put on the desk and you will have no time even for protests, rallies or consultations, nor is there any need to do so. Then, Members would — at that time, maybe 70 people would debate this in the legislature — this would be like a big wave towering over us. Members seated here all know in their hearts that motions proposed by the Government only require the support of a majority. With people inside and outside the legislature scheming together, their unscrupulous tactics and their determination to achieve their goals at all costs, our established tradition and rules would be destroyed.

The Chief Executive elect does not follow any rules, so after he has taken office, what should Hong Kong do? What he says is very pleasing to the ears, with the talk of "working for the people, change in stability" but he is causing damage right now, so can this be called stability? The whole boat is rocking, so what does he mean by stability? Now, everything is changing, so how can this be considered stability? At present, we already cannot find any stability.

President, it is entirely correct to describe the Chief Executive elect as a wolf. He is grasping and also cruel and unscrupulous as a wolf. All Hong Kong people are now watching. At present, since public opinion is changing, the Chief Executive elect is anxious to resort to ploys and queue jumping, but public opinion is very clear. July 1 is coming, so I call on everyone to take to the streets on 1 July to congratulate "Chun-ying the Wolf" on his taking office, so that he would remember that he should serve the Hong Kong public rather than those people holding less than 700 votes.

**MR WONG SING-CHI** (in Cantonese): President, first, allow me to tell a story that is relevant to whether or not the discussion on the resolution on five Secretaries of Departments and 14 Directors of Bureaux should proceed first. The story so goes that an "Uncle Kwok-him" and "Uncle Yiu-chung" were walking in the street holding the hands of a child. Suddenly, they heard another child on the other side of the street speak foul language, so they said, "Speaking foul language would set a bad example for children. Children must not imitate this and they should not speak foul language. We should behave like an educated person."

Then, they came across an "Auntie Sophie" who said, "We must follow the dictates of our conscience as a human being and face up to anything properly. We should do more for the public." Next, they queued up together to buy the tickets for a horror movie called "five cadavers and 14 lives" but could not get the tickets. They found the cinema thronging with people and since they were eager to watch this horror movie called "five cadavers and 14 lives", they cut in line at will. The child then asked, "Uncle Kwok-him, Uncle Yiu-chung and Auntie Sophie, you said just now that we should not speak foul language, that we must be a nice guy and that we have to do this and that and follow the dictates of our conscience, so why did you make me jump the queue together with you just now? Why did we ignore the pleas of all those people asking us not to jump the queue and continued to go ahead and jumped the queue instead?" Obviously, this Uncle Kwok-him, Uncle Yiu-chung and Auntie Sophie LAU did not practise what they preached. So long as something they like is at stake, jumping the queue unscrupulously is in order. If something they dislike is involved, they would say that it sets a bad example for children and ask people to put everything on hold.

As human beings, we must not preach one thing but practise another. Mr LAU Kong-wah said, "Did you not filibuster to cause delays earlier on?" They are two different matters. No matter what, you cannot criticize others for speaking foul language or filibustering, saying this or that is wrong, whereas you jump the queue, saying something like "I just like it" at the same time. If this kind of tactic is adopted, how would the public find this convincing? They are even helping the Government of "Chun-ying the Wolf" here, so this is really a serious cause for concern.

President, many Members of the pro-establishment camp say, "It does not matter. Just let him do his job first. Many members of the public have said that he should be allowed to do his job first and whether they trust him or not is another matter. What he said about this and that is all very desirable and all the tasks need to be done.". However, the press has pointed out very clearly today that there are unauthorized structures in Mr LEUNG Chun-ying's luxury property on the Peak. Prior to this, he went so far as to tell all people that there was no unauthorized structure at his home. Since he believed that there was no unauthorized structure and he thought that there was no unauthorized structure, so there was no unauthorized structure. Therefore, even though the truth is that there are unauthorized structures, he does not consider them as such.

Obviously, this is queue jumping and letting the resolution on five Secretaries of Departments and 14 Directors of Bureaux jump the queue arbitrarily, saying all the while that this is not queue jumping, that this is something time critical, that this is not queue jumping because prior to this, some people had been filibustering and that this is not queue jumping because the public are waiting for the Government to take over. How is this different from Mr LEUNG Chun-ying's claim that there was no unauthorized structure in his luxury property but there actually is?

Moreover, there are unauthorized structures in Mr LEUNG Chun-ying's residence but he did not admit to this, so his credibility is questionable. Why is it still maintained that we should let him do his job first, that we should trust him and let him do his job first, that this is not a problem and very soon, he will let us all have flats to live in and that he can also solve the problems in people's livelihood? He could even lie about such a small matter, so how can we trust him? He does not have a lot of administrative experience or other political achievements. He said that it was necessary to put in place five Secretaries of Departments and 14 Directors of Bureaux and with them, everything could be achieved. Now, it is said arbitrarily that there is not even any need for discussion and that there is no need to queue up before the proposal is implemented high-handedly. Why is it like this? Why are the procedures, justice and credibility totally disregarded? Why is it like this? What on earth is this group of Members in the pro-establishment camp doing?

President, this horror movie called "five cadavers and 14 lives" should not jump the queue in waiting to be screened. We should continue to study if it should be classified as a category III or IV movie before allowing it to be screened. Otherwise, after screening and the public have fallen victim to it, making amends would be impossible.

President, Mr LEUNG Chun-ying once said something that both Mr IP Kwok-him and Mr TAM Yiu-chung have also said. What is it? They said, "The relationship between the executive and the legislature should be improved.". We have also said so all the time and Ms Emily LAU also talks about the need to improve the relationship between the executive and legislature all the time. What this means is that the Legislative Council has to do its work properly by following the procedures. Our duty is to monitor the Government, so will it

please be candid, such that we can monitor it. We have to scrutinize the policies and bills proposed by the Government, so will it please be candid, clear and specific explanations to the Legislative Council without playing any tricks, shrugging anything off or telling any lies. In this way, we can discharge our due responsibilities together as quickly as possible. This is how a good relationship between the executive and the legislature should be like.

However, be it Mr LEUNG Chun-ying, Mr IP Kwok-him or Mr TAM Yiu-chung — I have left some people out, since perhaps Mr LAU Kong-wah should also be included — what they mean by improving the relationship between the executive and legislature is to organize a meal for the purpose of "great reconciliation". After this meal, the Government would not be stopped from doing anything. The relationships among all the people are very good — and everyone chatted happily at the meal and all people were happy — so the meaning of the meal is to "improve the relationship between the executive and the legislature" and this is what "great reconciliation" is about. Sorry .....

(Mr IP Kwok-him stood up)

**PRESIDENT** (in Cantonese): Mr IP Kwok-him, what is your point?

**MR IP KWOK-HIM** (in Cantonese): Mr WONG Sing-chi said that Mr IP Kwok-him had talked about "great reconciliation". When did he hear me say this? Concerning the elaboration made by him just now, I ask him to say clearly here ..... do not lie.

**MR WONG SING-CHI** (in Cantonese): President, I was telling a story just now. If Mr IP Kwok-him thinks that he is that Uncle Kwok-him or Uncle Yiu-chung, sorry, he just thinks that the pigeon hole fits him, but I was not talking about him. I was telling a story.

**PRESIDENT** (in Cantonese): Mr WONG Sing-chi, please hold on. If any Member thinks that a Member giving his speech has said something incorrect about him, he can wait until the Member delivering the speech has finished his

speech to request elucidation, or he can also give a response when giving his own speech.

**MR WONG SING-CHI** (in Cantonese): Thank you, President. President, you heard clearly just now that I said I was telling a story. I made it clear that it was a story. However, what I am going to say now is a fact. Sometime ago, when the Chairman of the Finance Committee, Ms Emily LAU, was about to start a Finance Committee meeting, Mr IP Kwok-him said, "Ms Emily LAU, you must not be unfair and you must discharge your duties as the Chairperson properly. You must not assist Members of the pro-democracy camp in filibustering, or I will move a vote of no confidence.". This is what I learnt from the press and the remarks are true. I am not talking about "Uncle Kwok-him". Those remarks were surely made by Mr IP Kwok-him.

Although Mr IP Kwok-him made those remarks, when the President ruled that the Government could be allowed to jump the queue — this kind of conduct is so unfair — he did not say anything. He has not yet spoken, but I hope that he would speak and give an explanation later on. Ms Emily LAU is really fair in acquitting herself as the Chairperson of the Finance Committee. She set the speaking time at five minutes, four minutes, three minutes ..... because there were also meetings on the next day. She would only let us speak for two minutes, so how were we supposed to speak? In spite of this, we still spoke because the Chairperson had made arrangements on the procedure and it was how the procedure operated. However, this is not an approach that is adopted only now, but an approach that has all along been used from the past to the present. Be it the meetings relating to the Express Rail Link or other meetings, I found that Ms Emily LAU made the same arrangement in all of them. Dr Margaret NG's conduct of meetings in the Establishment Subcommittee also complies with the rules fully. When Mr KAM Nai-wai or I raised questions that might have deviated from the subject matter sometimes, Dr Margaret NG would say, "Member, please speak to the question. You have to come back to the subject matter.". The Finance Committee and the Establishment Subcommittee both follow procedures in dealing with their business but why did the President — I am only asking you rather than criticizing you — allow the Government to jump the queue without having to follow the normal procedure?

I feel rather disappointed. Both Mr TAM Yiu-chung and LEUNG Chun-ying said just now that they wanted to improve the relationship between the

executive and the legislature and that no matter what, a good relationship with the Government had to be forged. What they mean is that there is no need to follow any procedure, nor does the Government have to give clear accounts to Members and the legislature, and there is no need for the Government to consult the public on all matters candidly before the legislature is made to allow the Government to do whatever it wants. Is this what is meant by improving the relationship between the executive and the legislature? If this is, sorry, I must say a trace of the dignity or duties of the Legislative Council would remain. In fact, this is the case now and this is what Dr PAN Pey-chyou meant in saying "the legislature is sick" just now. Of course, he considers such things as filibustering to be sickness but, sorry, this is not a sickness, rather, this is something that we are forced to do. If we do not do this sort of thing, we would become stooges.

How actually is the legislature sick? It is sick in that there is this group of Members in the pro-establishment camp the majority of whom belong to functional constituencies, and they do not have to be accountable to the public, so they can let the Government do whatever it wants, let the Government jump the queue, let the Government jump the gun arbitrarily by introducing the resolution into the Legislative Council without following the procedure, thus denying the public of an opportunity to ask questions thoroughly, and without waiting for the Finance Committee to scrutinize the relevant financial arrangements thoroughly. Indeed, such conduct is really the consequence of the sickness of the legislature and the fact that half of the people in the legislature belong to functional constituencies that do not have to be accountable to the public and only have to be accountable to a small number of people. President, as long as the functional constituencies are not abolished, the legislature would only get even sicker and the LEUNG Chun-ying Administration would not see any good days. However, the most miserable thing of all is that good days for the Hong Kong public would also be even more out of reach.

President, why is it necessary to put the resolution on the five Secretaries of Departments and 14 Directors of Bureaux before the many resolutions related to people's livelihood? Of course, the pro-establishment camp would say that it was because of our filibustering that the discussion on these motions were impeded. Many Members also pointed out just now that when we were debating the draconian law relating to the replacement mechanism or the resignation of Members, we requested the Government to defer the discussion of this piece of legislation, so that matters related to people's livelihood can be dealt with first.



Let me give an example. Many elderly people are waiting to take various modes of transport at a fare of \$2 after 1 July, but apart from failing to defer the bill on the resignation of Members at that time and wanting to push the bill through, the Government also forgot that it had caused delays to some important motions coming before this bill. Now, it is trying to bring forward the discussion on the proposal on five Secretaries of Departments and 14 Directors of Bureaux high-handedly.

On this resolution on five Secretaries of Departments and 14 Directors of Bureaux, be it the LEUNG Chun-ying Administration or the former President of the Legislative Council, Mrs Rita FAN, both have said that even if it could not be passed, the sky would not collapse. The Chief Secretary for Administration also said that if it could not be passed, all Secretaries of Departments and Directors of Bureaux could take their oaths under the present set-up of three Secretaries of Departments and 12 Directors of Bureaux. In fact, this resolution would be passed sooner or later, for there are so many Members of the royalist camp and pro-establishment camp in the legislature. So it will surely be passed and five days after its passage, the other five people can take their oaths and assume office. Therefore, why can we not deal with the \$2 fare concession for elderly people first before introducing this resolution into the Legislative Council? Obviously, the LEUNG Chun-ying Administration is doing this all for the sake of face and wants to have the full team taking oaths in front of President HU Jintao. If this is not a project of face, what is it? It is for the sake of this project of face that the fact that many elderly people are waiting for the fare concession, which many Members have lobbied for many years, was forgotten. This is really disappointing.

Today, President, you permitted the Government to propose the motion on bringing forward the discussion on the resolution and it has to be voted on by Members. However, we are all very clear that this cannot be considered voting at all because the system in the Legislative Council will enable government motions to win the votes of a great majority of Members and gain passage without having to carry out separate voting. This is total disrespect for the voice of the minority in the legislature and actually, such minority voice is precisely the voice of the general public. However, the Government has gone so far as to ignore them and seeks to flout the rules blatantly, so this is not giving priority to the people's livelihood at all.

President, I believe that if this goes on for an extended period of time, the LEUNG Chun-ying Administration will not win the trust of the people. Today, the LEUNG Chun-ying Administration has, as Mr LEE Wing-tat put it, hastened to destroy all evidence and signs of the unauthorized structures in LEUNG Chun-ying's luxury property on the Peak. I believe that although today, Members have criticized them for jumping the queue, disregarding public opinion and disrespecting such views as those of the Legislative Council, later on, Members of the pro-establishment camp would similarly destroy all evidence and signs of all such acts and even accuse us of making unreasonable demands. Therefore, President, I believe some Members of the pan-democracy camp would also stay behind a while longer to listen to how Members of the pro-establishment camp will forcibly put this horror movie of "five cadavers and 14 lives" on show and how they will destroy all evidence and signs of such a fallacious move.

Thank you, President.

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

**MR ALAN LEONG** (in Cantonese): President, it seems this is a carefully planned and well orchestrated surprise attack on the Legislative Council sprung by LEUNG Chun-ying under the manipulation of the Western District, together with the concerted actions of the President and a majority of Members of this Council. On such rough treatment of the Legislative Council even before the Chief Executive elect, LEUNG Chun-ying, has assumed office, I can only say that he is already manipulating his power before he has taken office and he is being overweening even before he has taken centre stage. He wants face and attaches little importance to the people's livelihood, so his claim of "sensing the urgency of the people" is just all empty talk that does not yield any actual benefit.

The extent to which LEUNG Chun-ying disrespects Hong Kong people and the legislature is far greater than that of Donald TSANG, whom we want to impeach. LEUNG Chun-ying is posing as an emperor giving orders to the entire world, so one cannot help but begin to feel nostalgia for Donald TSANG.

President, it is said that one of the political missions for LEUNG Chun-ying is to enact the legislation on Article 23. I congratulate myself on the fact that today, we are only going to discuss the proposal on five Secretaries of Departments and 14 Directors of Bureaux but not the legislation on Article 23 of the Basic Law. Otherwise, the personal freedom and the protection for the human rights of Hong Kong people can vanish in a few days, and this is something that Members are working towards now. I ask Members to imagine this: If what is put on the Agenda of a Legislative Council meeting is the legislation on Article 23 of the Basic Law on which the public have never been consulted, given this tactic adopted by LEUNG Chun-ying to trample on the dignity of the Legislative Council openly, blatantly and unscrupulously, such a piece of legislation can actually be rushed through the Council perfunctorily.

The Government's request to let the resolution on five Secretaries of Departments and 14 Directors of Bureaux jump the queue this time around is a demon detector that has exposed the fact that so long as the Rules of Procedure (RoP) of the Legislative Council is placed in the hands of Legislative Council Members who are willing to tango with LEUNG Chun-ying, the rights and freedoms of Hong Kong people are utterly devoid of any protection.

President, suppose the Government wants to bulldoze the legislation on Article 23 through and the President of the Legislative Council has the power to approve the Government's request to suspend Rule 18(1) according to Rule 91 of the RoP by cutting short the deliberation on all bills and resolutions related to people's livelihood, so as to give way to the legislation on Article 23, and in addition, the President can also invoke Rule 92 of the RoP to cut the debate short on the ground that the time spent by Members on debating the provisions is far too long, so that Members cannot even speak, in this way, the debate on the legislation relating to Article 23 can be terminated immediately and the legislation can be put to vote and passed immediately.

This time, in order to clear the way for Mr LEUNG Chun-ying, a number of bills related to people's livelihood have to give way, including the bill on the "semi-portability" arrangement for MPF accounts, which has a bearing on the rights of wage earners and which has already entered the Committee stage. The bill on protecting investors buying first-hand residential properties also has to give way and the resolution on compensation for pneumoconiosis is also off the radar screen. All of a sudden, it looks as though all policies on people's

livelihood were not as important as the proposal on five Secretaries of Departments and 14 Directors of Bureaux. This is why I said that the steamrolling this time around is like a demon detector that has exposed, upon the casting of votes, the true nature of those people who always talk about concern for people's livelihood and the rights of wage earners. They can all forget about the interests of the public when it comes to clearing the way for and coming to the defence of LEUNG Chun-ying.

President, as I said when you invoked Rule 92 of the RoP to close the debate on the Legislative Council (Amendment) Bill 2011 relating to the replacement mechanism, each time the President makes a ruling, it has the effect of setting a precedent for the legislature. Should a bad precedent be set, no matter if what comes in the future is the legislation on Article 23 or a proposal on bogus universal suffrage, the same high-handed tactic can be employed to prevent Members of the pan-democracy camp in this Council from examining the legislation, standing firm, keeping the gate and monitoring the Government on behalf of the public.

Of course, we are the people defending the tradition and rules of the legislature. On the ruling made by the President this time around, we will not comment on it, but on the question of how the powers under Article 91 of the RoP should be exercised in the future, I think I have to express my views here, for the record.

The President surely understands that in exercising the discretionary power under the RoP, the President of the legislature would not do so for personal ends, still less should he exercise it to make the going easy for the executive. It can be exercised only to protect the legislature in fulfilling its constitutional duty of monitoring the Government in the best and most favourable way possible. On this basis, I cannot help but ask if, before making the ruling, the President had asked himself in his heart if, by letting LEUNG Chun-ying spring an ambush on the Legislative Council, thus taking it totally by surprise, and before Members had sufficient time to study if the Government had the power to invoke Article 91 of the RoP, the President allowed the Government to take a short cut in such a way, he had given up the gatekeeper function of the legislature? With such a precedent, in the future, how can the Legislative Council perform its constitutional functions effectively to monitor the Government on behalf of the public?

This issue reminds me of the fact that when The Link REIT was about to be listed, Ms LO Siu-lan applied for a judicial review according to section 4 of the Housing Ordinance. At that time, both TUNG Chee-hwa and Henry TANG made an open and high-profile request to the then Chief Justice of the Court of Final Appeal, Mr Andrew LI, to set an early date for Ms LO Siu-lan for the sake of the executive, so that the Court of Final Appeal could conclude the appeal proceedings before the planned listing of The Link REIT. I believe that this is still fresh in the memory of Members and our honourable President. Luckily, the Chief Justice, Mr Andrew LI, stood firm in gate-keeping, so that in the end, Ms LO Siu-lan was given the sufficient time to which she was entitled to deal with the appeal lodged with the Court of Final Appeal.

President, if the Legislative Council can become a stooge of the LEUNG Chun-ying Administration today, would the time of co-operation among the three powers of the executive, the legislature and the Judiciary in the SAR, as espoused by the State Vice-President, Mr XI Jin-ping, still be far off? A man must first despise himself before others will despise him. I really find the self-denigration of the legislature and its degeneration into such a most lamentable state.

President, apart from setting the bad precedent of putting all important bills and resolutions on hold, for the sake of face, LEUNG Chun-ying also requested that this resolution be passed today by forcibly introducing it into the Legislative Council and seeking to jump the queue, so as to create a *fait accompli* even before the Finance Committee of the Legislative Council has approved the funding for the creation of the posts.

In fact, in 2007, there was a reorganization of the Policy Bureaux and in 2008, the accountability system was modified and expanded on two occasions, but the current procedure was never adopted. The Government would submit the funding proposal to the Finance Committee first and after the Finance Committee had given its approval, the relevant resolution would then be put to vote in a Legislative Council meeting. Is it because LEUNG Chun-ying knows that the royalist camp would surely clear the way for him and come to his defence by approving the funding application that he has disregarded this procedure? However, if in the end, the Finance Committee does not approve of the funding, would the time spent by us on discussing the motion moved by the Chief Secretary for Administration and the deliberation of the resolution moved according to section 54A of Chapter 1 be all in vain? Would not all the

sacrifices inflicted on the motions related to people's livelihood, which have to make way for this resolution, all be rendered meaningless?

Apart from sacrificing the bills that have a close bearing on people's livelihood for the sake of face and putting the cart before the horse by reversing the rationale of holding meetings of the Finance Committee first and Legislative Council meetings later, LEUNG Chun-ying also requested that the Legislative Council meeting scheduled for next Monday and Tuesday to make way for additional Finance Committee meetings, so that the Finance Committee can work overtime to examine the funding proposal. This has undermined the tradition of holding Legislative Council meetings first. These three sins reflect the desire of LEUNG Chun-ying to strip the Legislative Council of its power of oversight even before he has taken office, so his motive is indeed condemnable.

When LEUNG Chun-ying visited the local communities to lobby for public support for his reorganization proposal, he claimed that if the reorganization could not be carried out, no public housing could be built, the problem of sub-divided units could not be solved and the policy of developing industries could not be implemented. Now, LEUNG Chun-ying wants all bills relating to the people's livelihood to give way to his project of face, including the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 and the Residential Properties (First-hand Sales) Bill, which was originally scheduled for debate next Wednesday. All of them have to be set aside. In that event, is LEUNG Chun-ying not giving himself a slap on the face, since he said he had to deal with issues of people's livelihood? The Government-in-waiting said that the two Deputy Secretaries of Departments would be mainly responsible for co-ordination only. If this is the case, why is it absolutely necessary to pass the resolution immediately? Does LEUNG Chun-ying has any unspeakable design that makes it necessary for him to change the three-tier structure into a four-tier one hastily, even before Members have had the opportunity to take all this in? What actually are these unspeakable arrangements and considerations?

President, through this demon detector embodied in steamrolling staged by the Government, I hope the Hong Kong public can see clearly who are preaching one thing but practising another when it comes to matters of distinct right and wrong by claiming oneself to be the Chief Executive for the people who mingles with the masses on the one hand, yet disregards public opposition to the restructuring proposal and bulldozes the resolution through on the other.

Moreover, who are the people who claim to care about people's livelihood but reveal their true nature by defending the Chief Executive pre-ordained by the Central Authorities without regard for the interests of the public?

I believe Hong Kong people have clear minds as well as sharp eyes and ears. President, Hong Kong people should now understand how much we need Members who can stand firm and defend our rights and freedoms to keep the gate for the public in the legislature.

The legislature performs the function of monitoring the executive. This function is specified by rules and regulations and established through the exercise of its power for years. If we destroy the tradition and system developed in the course of so many years in one stroke, this is not a blessing for Hong Kong, nor is this a price that Hong Kong people are willing to pay.

With these remarks, I oppose the motion moved by the Chief Secretary for Administration.

(Mr Albert CHAN stood up)

**MR ALBERT CHAN** (in Cantonese): President, we have to summon the "bad students" back to this Chamber.

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

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

**MS STARRY LEE** (in Cantonese): President, Members who spoke against the motion both today and yesterday have criticized the Government for its executive hegemony and the President for having set an extremely bad precedent, undermining the parliamentary rules. What happened in this Council in the past two months and the double standard applied in Members' statements or arguments is indeed an eye opener for me. I wish to express my feelings.

First, although we must admit that this approach is unsatisfactory, given that this Council is suffering from the "filibustering disease", this is an option in the absence of other alternatives. What is the double standard? While we lashed out at the Government for its executive hegemony and criticized that it wanted to force its way through, we should understand that the Government has actually acted in accordance with the RoP which allows the authorities to reshuffle the agenda. If we consider it improper, why did those Members who have bombarded the Government not criticize some Members who have resorted to filibustering? Although both approaches are permitted by this Council, Members insist that filibustering is allowed by the RoP and the legislature. Is this not double standard?

Though the filibustering war has lasted for a long time, have we sternly criticized those who resorted to filibustering? In the debate on the replacement mechanism earlier, some Members had the courage to admit that they were filibustering. Later on, when the discussions on the Competition Bill and the bill on Mandatory Provident Fund (MPF) schemes were held, Members refused to admit that they were filibustering. Meanwhile, Members who supported and tolerated filibustering did not state their stance openly. We also understand that the public do not support filibustering and do not wish to see that this Council would adopt filibustering to obstruct the passage of the motion on the reorganization of the Government.

While lashing out at the others, including the Government and the President, we should apply the same standard to ourselves, as well as those Members who have resorted to filibustering. Members cannot deny that they are engaged in filibustering. Let us discuss the bill on MPF schemes rather than the controversial Competition Bill. Just now, Mr Alan LEONG criticized us sternly and in all righteousness that we had given priority to the Government's reorganization proposal at the expense of livelihood-related motions. If Mr LEONG or other Members attach weight to the bill on MPF schemes and hope that protection can be provided to wage earners, why did they not criticize the repeated requests for a headcount by some Members as this would cause delay to those bills related to people's livelihood and thus inappropriate? We started to discuss the bill on MPF schemes on Tuesday. The meeting lasted for five hours, in which two hours were spent on waiting for the resumption of meeting. Why did you not criticize this with the same standard? Why did you criticize the Government's request for reshuffling the Agenda on the ground that it would



cause delay to livelihood-related motions? This is also an example of double standard.

Also, let me discuss the observation of rules. I very much agree that rules should be observed when meetings are conducted in this Council. But who took the lead to violate the rules? Though I am a greenhorn in this Council, I have seen a lot of situations in which the rules are violated, such as hurling bananas and resorting to violent acts. Have those Members who lashed out at the Government and the President today severely criticized those who have violated the rules? Why did they remain silent when things happened as they wished, but criticize the President and the Government with another standard in order to prevent the motion from being discussed in this Chamber when they did not want the resolution relating to the reorganization to be passed? I hope Members will apply the same standard to themselves when they criticize other people.

President, though I am a newcomer in this Council, what happened in this Council recently made me feel all sort of emotions and I found those happenings unacceptable. As Members of this Council, we hope to do more practical work for the people. As we may remember, we visited the local communities to listen to public views after a series of incidents, or because of public grudge due to the surging property prices. After listening to public views, we lashed out at the Government for its unwillingness to increase public housing production and adjust land supply. Also, in this Council we have bombarded the Government for ignoring culture and as a result of its policy, Hong Kong has been reduced to a cultural desert. Besides, many Members have also criticized the Government for failing to develop science and technology. When Mr LEUNG Chun-ying will assume office on 1 July, we can see that — regardless of whether you have confidence in him or not — he wishes to do a lot of things such as reorganization of the Government, rationalizing housing and land supply, and setting up a Culture Bureau and a Technology and Communications Bureau. These initiatives have been discussed in this Council, and Members also hope that he can implement them. However, when he wants to revamp the Government in order to implement his policies, he is hindered by Members. Are you really concerned about people's livelihood, hoping that he can implement his policies? Or you do not want him to do anything at all, do you? Now, you do not even give him the chance.

The public are indeed very rational and fully understand what is going on in this Council. If we, on the one hand, say that we are very much concerned

about livelihood-related issues and hope that the Government can implement certain measures expeditiously, while refusing to give Mr LEUNG the chance to form his governance team on the other, the public can see it clearly with their discerning eyes. So, I very much hope that Members who criticized this motion today or yesterday will stop criticizing and correct themselves, or else the image of this Council will be undermined continually.

We often criticize the Government for its low popularity rating. But may I ask whether Members have done any self-reflection and examine whether our popularity rating is very high? If Members have visited the local communities and listened to the public views, they will hear that they have also been criticized for bombarding each other and failing to live up to people's expectations. Some Members said just now that if this resolution were passed, it would completely damage the dignity of this Council. If you really want to uphold the image and dignity of this Council, can you tolerate no more filibustering and violence so that the livelihood-related bills and motions, or motion related to the Government's reorganization can be discussed in this Council in accordance with the formal and rational procedures?

Having attended meetings of the Finance Committee for so many times and compiled all the information, I just feel that — initially I do not believe this — Members who speak sternly have a common goal, that is, to make "a show of authority" to the Government led by LEUNG Chun-ying because they do not want to see that he can form his ruling team and all the newly appointed Secretaries of Departments and Directors of Bureaux can appear in front of the public on 1 July. Otherwise, why did you not stop Members from filibustering when delay was caused to the livelihood-related bill on MPF schemes due to filibustering? Why did you deny consent when we proposed that additional meetings be held to make up for the time lost? In fact, you tried every means to cause delay to the meeting schedule so that the Agenda of the Finance Committee or the Legislative Council meetings cannot proceed in accordance with the normal procedure.

As I said at the beginning, I also admit that the Government's approach is not at all desirable and no one wants to see it. However, as this Council has been trapped in filibustering, how can we deal with it if we do not adopt such an approach? The new-term Government will take office on 1 July and Mr LEUNG said that the sky would not collapse even if his whole team were not

formed. I am sure about this. However, given the people's high expectations and Members' numerous requests, why do we not let Mr LEUNG put his method of administration into practice and form his governance team so that he can strive every minute for the implementation policies that the public have longed for?

President, once again I call on Members to note that the public expect the legislature to do practical work and they do not want to see any incessant disputes. I very much hope that Members will rein in and do not support or tolerate filibustering anymore so that the normal operation of this Council can resume and its due dignity restored.

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

**MS AUDREY EU** (in Cantonese): President, according to Rule 44 of the RoP, your decision is final. We Members cannot openly criticize it; nor can we debate it with you in this Chamber. But President, I would like to ask whether you recall that when you invoked Rule 92 of the RoP to guillotine the debate, Dr Margaret NG of the Civic Party rose to ask you if you could listen to Members' views, and she requested a discussion with you in your office at that time in order not to openly comment on an action that you intended to take, thereby ensuring compliance with Rule 44 of the RoP.

Do you remember the outcome? The outcome was that some people hinted that after Members of the pan-democratic camp had gone into your office, the atmosphere was very good and no objection was raised. They said that everyone was supportive of your decision and that these Members had even shaken hands with you when they left. President, I have now realized that anyone in this Council who wants to be a person of integrity and who wishes to do good deeds does not necessarily come to a good ending. Worse still, he may become the target of mud-slinging and wronged by the villains. President, think about this: Rule 44 of the RoP stipulates that we cannot openly criticize or attack rulings made by the President or point out what is wrong with them. This is like our hands being tied up, eyes covered and we then being punched. Some people have played "corrupted referee" and "played foul", but you said that nobody

should complain about the pain because Rule 44 of the RoP does not allow us to make comments. This is what happens in this Council nowadays.

Ms Starry LEE said in her speech earlier that since some people have "played foul" and even though it is true that what the Government's approach is unsatisfactory, the Government can also "play foul". President, have we degenerated to such a sorry state now? Is it that when there are people who do not abide by the rules, the Government can refuse to abide by the rules and Members can support the Government in not abiding by the rules? If somebody does not abide by the rules, you can enforce the RoP in your capacity as the President and tell him to stop. If he does not stop, you can drive him out of this Chamber. But why can Ms Starry LEE and other Members say in their speeches today that this Council has, on the contrary, fallen sick and set a bad example to children and so, there is no alternative even though it is true that the Government's approach is unsatisfactory?

President, the Civic Party does not accept this. The Civic Party insists on doing what is right. When there are people who do not abide by the rules in this Council, it does not mean that we should refrain from abiding by the rules. Ms Starry LEE said that there is no alternative and that this is the only option. This is not true in reality. The Civic Party has all along suggested solutions, just that the pro-establishment camp does not support them and we are in the minority. Some time ago when some Members adopted the filibuster tactic in this Council, we proposed that in view of the circumstances, Members should agree on a way to postpone the controversial issues but they refused, insisting that the debate should continue and engaging in internal conflicts with the filibustering Members at all costs.

We have proposed solutions but they did not take them on board. When other Members have acted in accordance with the RoP, President, you should also act in accordance with the RoP but this is not the case now. Now, it is said that we do not have to comply with the RoP and we can just put them aside. This is like people queuing up at a bank .....

**PRESIDENT** (in Cantonese): Ms EU, are you saying that I did not comply with the RoP? Please make your point clear.

**MS AUDREY EU** (in Cantonese): President, I am responding to the speech made by Ms Starry LEE earlier on. Ms Starry LEE said that there is no alternative now .....

**PRESIDENT** (in Cantonese): Please make it clear whether you are alleging that I have failed to comply with the RoP.

**MS AUDREY EU** (in Cantonese): President, I said that when some people do not comply with the RoP, you can enforce the RoP. This is what I have said. President, I did not say anything that ....., If you think that I have not acted in accordance with the rules .....

**PRESIDENT** (in Cantonese): I have enforced the RoP in giving permission to the Chief Secretary to propose this motion. Therefore, please do not speak in a roundabout way with insinuations about my ruling.

**MS AUDREY EU** (in Cantonese): President, since you said that I was speaking in a roundabout way, it means that you admitted that I did not say what you have just accused me of saying. If you think that I have said it, and if you think that I have acted against the rules, you can certainly stop me from speaking or drive me out of this Chamber. But I have been very careful, and all I have said is that Rule 44 of the RoP has tied up our both hands and covered our mouths, not allowing us to make any comment. This is like being kicked by someone but not being allowed to cry out in pain. Having said that, I will continue to go by the RoP. I said if anyone fails to act in accordance with the rules, President, you have the power to enforce the rules, but it does not mean that the Government can "play foul".

President, I was saying that the situation is like people queuing up at a bank. When people at the front end of the queue are particularly slow in action and they are not only picky but also demanding, it does not mean that people waiting at the back of the line can jump the queue. Shortly after its victory in the election, LEUNG Chun-ying's Administration said at the outset that there was no longer "Leung camp", "Tang camp" or "Ho camp" but only "Hong Kong camp". He also said that a great reconciliation would be needed. But a great

reconciliation means achieving unity among the majority of the people and reducing disputes.

Concerning the reorganization proposal on a structure comprising five Secretaries of Departments and 14 Directors of Bureaux, at the first meeting convened by the relevant panel, the Civic Party and I already asked Fanny LAW whether the proposal could be split and tabled in parts and whether all parts of the proposal must be bundled up for passage. We support some parts of the proposal and we are willing to throw weight behind them, but there are some details that really warrant discussion and can hardly be considered acceptable. An example is the recruitment of Political Assistants. All Hong Kong people know that the system of Political Assistants is fraught with problems and has failed to achieve the desired purpose. However, Mr LEUNG Chun-ying has refused to admit this point and even intended to expand it by providing funding to each Director of Bureau for the recruitment of Political Assistants.

We have asked questions on the criteria of appointment and the requirements in respect of education qualifications and experience. No answer has been given. As regards the creation of the two posts of Deputy Secretary of Department, the resolution has not given any explanation either. These posts are like "unauthorized building works". We have made enquires about why, in the organizational chart, there are dotted lines and solid lines. Regarding the two Deputy Secretaries of Departments, why is it that the Deputy Financial Secretary, for instance, will be responsible for managing Radio Television Hong Kong? Dr Margaret NG has also asked about the positions of the two Deputy Secretaries of Departments and the Chief Justice on the precedence list insofar as the protocol arrangement is concerned. No answer has been given to these questions.

I have made enquiries for several times about the 36 recommendations made by Honourable Andrew LI, and it was only two days ago that the Government handed to me a paper explaining how and when the 36 recommendations will be implemented, stating that the relevant code is currently being revised. We then asked whether the text of the code could be provided for our reference, and the answer was that it was not yet ready and it was not known as to when it could be provided to us. But the Government said that in spite of this, this resolution would still have to be passed.

President, I wish to point out that what is most scandalous about this "queue-jumping" incident is not the Government jumping the queue, but the

Government having no integrity and going back on its words. The Government said at first that it hoped that the proposal could be passed by the Finance Committee as soon as possible while the resolution could be dealt with at a later time. Some people then questioned that given that the resolution had not yet been passed, there would be no legal basis, so how could it be passed in the Finance Committee? The Government insisted that approval should be sought from the Finance Committee first and the resolution could be dealt with later. But now, while the Finance Committee has not yet passed the proposal, the Government is asking us to pass the resolution first, saying that the Finance Committee procedure can be dealt with later. The Administration has even sought to amend the resolution to the effect that the commencement date will be five days after the proposal is approved by the Finance Committee instead of 1 July as originally proposed. It shows that the Government has changed its decisions frequently.

I have joined the Legislative Council for 12 years, and it has never happened before that when I am asked if I have time to spare the following Monday, I have to reply that I do not know, and when I am asked what meetings will I attend, I have to reply that I do not know. It is because I can only find out from the notice given to me at night whether I have to attend a meeting of the Finance Committee or a meeting of the House Committee or a meeting of the Legislative Council the next morning, because there could be changes anytime. The Government, however, can do whatever it likes. When it says that this issue should need more discussion, we have to hold more meetings; and when it says that a certain issue has to be discussed expeditiously, we also have to hold more meetings. When I am asked what arrangements I will have for the following week or even what I will do tomorrow, I often cannot tell. I even do not know when I can go home after work. All I can say in reply is that I do not know whether the President will punish me by putting me on detention.

Ms Starry LEE asked earlier why those people who requested the ringing of the bell and a headcount are not taken to task. President, in the presence of all the people in this Chamber now, I wish to tell all members of the public who are watching the television that there are a total of 60 Members in this Council and the required quorum of a meeting is 30 Members. If it is necessary to do a headcount, that would be the fault of Members. Why is it that our attendance at a meeting is less than 30 Members?

(Mr Albert CHAN stood up)

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

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

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

**PRESIDENT** (in Cantonese): Ms Audrey EU, please continue.

**MS AUDREY EU** (in Cantonese): President, just now I was saying that sometimes when my family members ask me if I can be home by 10 pm, I can only say that I do not know, for I do not know if the President will put me on detention, in order to make up for the time taken up by Members who did not return to the Chamber when a headcount was requested. I first thought that I should wait and see how long it would take for Ms Starry LEE to return to the Chamber, but I did not see her after the bell had been rung for a long time. Ms Starry LEE said in her speech earlier that those Members who requested a headcount should be taken to task, but I have to tell Hong Kong people that the purpose of doing a headcount is to ascertain whether 30 of the 60 Members are in this Chamber. But as far as I can see, it took 13 minutes for Ms Starry LEE to return to the Chamber every time, and she even did not return when the bell was being rung just now. President, it is precisely because some Members returned only 13 minutes later that the bell had to ring for a long time on every occasion when a headcount was requested. Had they remained in this Chamber throughout the meeting, it would have been impossible and unnecessary for any headcount to be done, in which case no time would have been wasted.

President, I think you can bear testimony to the fact that I am one of the few Members who always remain in the Chamber throughout a meeting. Of course, I need to go to the washroom and I need to take meals too, and sometimes I may be away for a short while to take a call or to see or hold a meeting with other people, but these circumstances apart, I will remain in the Chamber all the time because this is my duty as a Member returned by the people. So, if doing a



headcount is regarded as a waste of time, those Members who did not return to the Chamber should be held responsible, not Members requesting headcounts.

President, let me come back to the question under discussion today. I said just now that this is not only a question of jumping the queue, but also an integrity issue. The Government has always reneged on its words. While it said at one time that the resolution should be dealt with first, it said at another time that the approval of the Finance Committee should be sought first, changing its mind depending on the progress of deliberations. Now that the Government has even requested the tabling of an amendment at short notice and sought the President's waiver of the notice requirement. President, you have waived this requirement, but what is involved here is five full days of notice. All these should have been expected by the Government but the Government has neglected them. Some Members opposing the proposed set-up of five Secretaries of Departments and 14 Directors of Bureaux criticized that this is a "face project". I do not think so. We do not mean to make him lose face.

The Civic Party has stated right at the outset that we agree with many of the details, but the Government should not force us into opposing the proposal. Mr Alan LEONG and I as well as other people from the Civic Party have repeatedly told Fanny LAW this. We asked her not to force us into opposing this proposal. The Government should unite the majority by first handling the parts that have commanded extensive support, as this is what we have been doing. Even during discussions on the order of business and the question of jumping the queue, Dr Margaret NG had proposed for innumerable times in the House Committee that as some government bills had little controversy and were agreed by us all, such as the proposed allocation of \$100 million for legal aid service, the proposal to increase the compensation for people suffering from pneumoconiosis, and the subsidiary legislation relating to the Tate's Cairn Tunnel. The Government could deal with them first. The Government should be receptive to opinions and handle those uncontroversial items first, but this is not quite the case in reality.

The Government insisted that it would not split the proposal into parts. We had proposed that the proposal be split, so that the uncontroversial parts should be handled first, while plans could be made for the controversial parts at a later time. But the Government insisted on tabling the proposal in full and attempted to force it through after securing sufficient supporting votes. As a

result, Members who originally wished to support the Government have found it impossible to give their support. This is what Mr LEUNG Chun-ying will do now. He has neglected the rules, and he will force things through as he likes when he can secure sufficient supporting votes. I believe Mr LEUNG will eat his own bitter fruits in future, because when he takes this approach of implementing policies hastily, people supportive of him now will become people who hurl the fiercest and most vicious criticisms at him in future.

The questions that I have raised are supported by concrete reasons. For example, I know that the proposed structure comprising five Secretaries of Departments and 14 Directors of Bureaux will definitely be passed because the "royalists" can always make up the majority of this Council, but as there are so many proposals in his platform, I asked whether he could tell us when he would implement which proposal, so that we can make a comparison in the interim review to see which proposals in his platform have been put into practice. I did not request that he must implement a certain proposal, and he can make a decision on his own. I only asked Mrs LAW to convey these views to Mr LEUNG for him to give us a reply. But she refused and considered that we were asking them to accomplish an impossible task. President, how can we be asking them to accomplish an impossible task? Is the platform not drawn up by Mr LEUNG himself? She rejected our request, saying that they could tell us when the proposals would be implemented only when all the five Secretaries of Departments and 14 Directors of Bureaux have taken office. Does it not mean that he was deceiving people during the election?

President, as Political Assistants have attended no more than 20 meetings of the Legislative Council and District Councils (DCs) altogether for the past four years since they took office, I also asked whether an objective index could be provided to tell us how many meetings of the Legislative Council or DCs that Political Assistants would be expected to attend at a minimum and whether any performance pledge would be made in this respect? She again said "No", arguing that there could be a clear picture only after all the appointments had been made. President, how can her reasons be so far-fetched? We asked those questions not for filibustering purposes, and they are all well-justified. Counting on a sufficient number of votes that it thinks it can secure, the Government has sought to bulldoze the proposal through and resorted to sophistry. But President, the Civic Party will firmly uphold our position and raise opposition based on good reasons. Thank you, President.

**MRS REGINA IP** (in Cantonese): President, I would not query any ruling you made, but I would throw out my grievances. With respect to this motion from the Government, we have discussed it for some eight to nine hours. Members from the pan-democratic camp as well as those from the pro-establishment camp have been making accusations of each other over matters like filibustering, ringing the bell, jumping the queue, playing foul and who are to blame.

President, I would think that all these arguments are not at all meaningful. This is because we have the RoP and regardless of whether you as the President would want to put an end to the filibustering or invoke Rule 91, you are acting according to the RoP. It is the same when you ring the bell. Mr TAM, the chairman, has also admitted that he had once engineered the abortion of a Council meeting. Back in those days, the official responsible for scrapping the two Municipal Councils, Mr Michael SUEN, had also employed the filibustering tactic. So with respect to making use of the RoP to play tricks, I am sure everyone is equal. I have not done that myself. Although I had spoken for nine times in the deliberations on the Competition Bill, that was because I had very strong views on that Bill.

As we look around the parliamentary assemblies all over the world, we can find members of these parliaments would make use of the grey areas in their parliamentary rules to block the passage of certain motions which they do not like. I am sure this sort of thing will happen and it will not stop when we point an accusing finger at each other like what we do today. And I am sure everyone will all have a chance to do such things. I therefore think that it is not at all sensible to go on arguing who is to blame.

After listening to the speeches made by many Members, I went home and did some study. Since the speech made by the Secretary for Constitutional and Mainland Affairs earlier in moving this motion was rather short, plus the fact that I am a newcomer to this Council, I would be grateful if the Secretary could answer to the following questions I wish to ask: Are there any precedents where Rule 91 is invoked to suspend the RoP? How many times did this happen and under what kinds of circumstances? Was it invoked in extreme cases such as when a catastrophe had struck and we had to pass certain urgent bills or funding at once before we could put aside the regular agenda? Or is this possible with motions which are not too urgent in nature? Does such a practice exist in

overseas parliamentary assemblies? This is especially the case because we know that the RoP in Hong Kong was drafted according to the parliamentary traditions in the United Kingdom and our experts have also made reference to the works of Erskine MAY. What do the works by Erskine MAY say? As Members, we have a responsibility to defend the tradition of this parliamentary assembly. So I hope the Government can respond to this.

I do not have Erskine May on hand. But last night I checked *Robert's Rules of Order*. The first edition of that book published in the United States dates back to 1876. It is known that this is a bible for the American parliamentary assembly. That book has got a detailed explanation in the section "Suspend the Rules". There are also detailed discussions on under what circumstances can the rules be suspended.

People who have been engaged in this sort of parliamentary work told me that any parliamentary assembly may suspend its rules for the rules are determined by the assembly itself and by the members of that assembly. An assembly can of course amend its rules but often it would require a motion moved by members and it is very rare that an official would move such a motion. Of course, the situation in Hong Kong is quite special. It is because we have a colonial tradition and Members of this Council in the past were actually officials and the Council was led by these officials. So when there is a requirement that the motion should be moved by an official, it is because there is no other option. Hence this is something passed on from history.

However, there has to be some principles to go by if we want to suspend some rules. First, it must not be unconstitutional. Mr Paul TSE queried last night whether the present move was a contravention of Article 72(2) of the Basic Law. I know that later on the Chief Secretary would respond to that. Second, the move must not be a violation of any subsidiary legislation or formal law. Third, it must not be a violation of the fundamental principles of parliament. For some assemblies, there are basic principles like protecting the rights of members not in attendance or their personal rights. This is because we cannot put certain rules aside when other people are not in attendance and urge that certain motions be passed or to suppress other people. These things should not be done in an assembly.

I notice that there is a part in the book which says this and let me read that out: "At a regular meeting of an organization that has an established order of business, the assembly cannot, even unanimously, vote to dispense with that order of business (in the sense of voting, in advance of the time when it adjourns, that the order of business shall not be gone through at all at that meeting). If the assembly, by two-thirds vote, adopts a motion to suspend with the regular order of business and proceed to a certain subject, it has in effect voted to pass all classes in the order of business which normally would precede that subject. In such a case, when a matter taken up out of its proper order has been disposed of, even if it has consumed as much time as the usual meeting, the chair must return to the regular order of business and call for the items in sequence, unless the assembly then votes to adjourn." This is a rather complicated part and so I just read out from the book for the record.

I am not saying now that we must clone overseas parliamentary rules. But from these guidelines we can see that it is a grave matter to dispense with the regular order of business in an assembly. Hence the matter must be treated seriously. Suppose we are to dispense with the order of business, after the relevant resolution is discussed and put to vote, we should resume the discussion on other matters of importance as soon as possible. As many Honourable colleagues have pointed out, we still have some 20 bills and motions relating to people's livelihood and they should be passed expeditiously.

Against this backdrop of such a grave matter, I must consider the question of what kinds of effect will be caused on the principles and tradition of this Council and the Council as an entity for sustainable development if we are to lend our support to this motion. Despite the fact that I used to be a public officer, my present position is a Member of this Council. Members be they returned by functional constituencies or geographical constituencies should hold themselves accountable to our voters. We cannot see ourselves as some kind of tool, though at times I have this impression of being relegated a deplorable status no better than servants and slaves. Our life during the past few days or weeks is terribly inhuman. I can say that I could barely avoid the meeting which lasted the over night because I had to go to the United States to see my daughter. Though this is a mere coincidence, I was whipped on return to Hong Kong. I could not escape this sort of chastisement after the happy time in the United States. I do not know if my attendance record is like that of Ms Audrey EU, but I can say I have tried my best to attend the meetings. And I was not able to attend on

certain occasions like when I went out for a meal, meet some family members, consult a lawyer or doctor, and so on, things that I had to do.

On this issue of reorganization of the government structure, the President has told us not to debate the merits or otherwise of this reorganization plan, but I have to consider this question: Is the reorganization so important that we must put aside all agenda items and accord a priority to it? And if the reorganization plan is not passed, will it be like what some Honourable colleagues have suggested, that the Government will be unable to do anything? Will the Chief Executive elect have to embark on a lonely and miserable journey and will he not be able to do anything at all? I must give serious thoughts to these questions. President, when you waived the notice requirement for this motion to be tabled under Rule 91 of the RoP, I can say that this will lead to serious consequences.

Please allow me to say something about long-term implications. Now we are celebrating the 15th anniversary of reunification. Many media people both local and overseas have asked me for comments and my outlook on the future.

I believe the next Chief Executive will strive for strong leadership and governance and he will deal with economic and livelihood issues. He will certainly work very hard. However, I must say that there are two deep-rooted problems that have to be addressed during the next five years.

First, the constitutional issue. How are we to achieve dual universal suffrage and forge a consensus in the community regarding the constitutional framework and the rules of the game in elections? After this consensus is reached, every candidate should contend for office according to these rules of the game. They should not waste the time on political disputes. It is because it is a waste of their own time as well. These are deep-rooted conflicts in the constitutional system that must be well addressed. The second problem is this lack of momentum in the drive to economic restructuring.

Hong Kong is facing such a large number of deeply entrenched problems. There is this rather philosophical question I am pondering over. Is there really a need for the next-term Government to storm this Council like this and does it have to do something to cause a stalemate in its relationship with certain Members even before it has assumed office? If we are to vote in favour of the

motion, are we helping the Chief Executive elect and his team or will our action do nothing to resolve these deeply entrenched problems or achieve harmony in society?

President, I need to ponder these questions seriously. Apart from going out for a meal, I will stay here and listen carefully to what Honourable colleagues and the Chief Secretary have to say. But I can say I have reservations about supporting this motion for the time being.

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

**MR FRED LI** (in Cantonese): President, Rule 91 of the RoP provides that the RoP may be suspended and the Government has moved this motion by invoking this rule. There is no doubt that there has not been sufficient notice for its disposal on Wednesday, for the request was only handed in on Tuesday evening. We take issue with this.

President, this stack of Agenda documents for weekly meetings on Wednesdays has become thicker and thicker, but new items are still being added each week. Is the Government not aware of this? Can the Government not see that outstanding issues have been piling up? Though the Competition Bill was passed and the bill on the Mandatory Provident Fund scheme is now being processed, eight more bills, 17 Members' Motions and a whole lot of government motions have all been clearly set out on our Agenda; and these items have appeared not overnight. We knew about them, one, two or three weeks ago. So, why has the Government not followed the rule by giving 12 days' notice? I could not help but ask, what is the Government thinking about?

In fact, as the Deputy Chairman of the House Committee, I have been in constant contact with the Secretariat, asking whether the Government has taken any actions. Whether it has acted in accordance with the procedures? I had contacted the Secretariat almost every day and was told that the Government had not handed in any documents. And, this went on day after day. I am one who abides by the rules, and I think that the Government should act in accordance with the RoP. Why has it failed to give 12 days' notice and forced the President to give consent, with regard to the hastily submitted motion, to dispense with the

notice requirement? I think that the Government has placed the President and us in a very difficult position of being biased. Since the Government has been in full grasp of the situation, why has it been so slow in taking actions? I think that the focus of our whole debate should be on why has the Government acted in such a manner? Is it just obtuse, or is the move deliberate? I really do not see why we should spend eight or nine hours on this debate for no reason at all.

Furthermore, several Members have spoken on the Government's resolution on the reorganization plan, but the President was quite lenient and did not stop them, so everyone has debated on the subject quite freely. Since I believe that the points made will later be repeated, I will now exercise some self-control and refrain from joining in the debate on the resolution, and I shall follow the rules. However, I cannot help responding to the speeches of colleagues. For example, Ms Starry LEE — she is not present — talked about double standards earlier, yes, she was right, for many people actually have double standards and we are not alone.

I would like to quote an example. Some colleagues present are also aware that the Bills Committee on Competition Bill spent a lot of time meeting for the scrutinization of the Bill, but the meetings were not attended by the majority of Members, including myself, of the pan-democratic camp. Why? Because I support the Bill, as in the case of Members of the pro-establishment camp who support today's motion, and since they support every limb of the motion, they have very little to say, or even do not wish to speak. They just hope that the motion can be passed as soon as possible, and that had also been the same for us. I had fought for a long time in the Bills Committee on Competition Bill. I said that the Bill suffered from a "periodontal disease", and we were not very happy about it. However, since we have always felt that the Competition Bill must be passed so as to enact a competition law in Hong Kong, we have lent it our full support.

However, as Members representing the industrial and business sectors asked chains of repeated questions during the scrutiny process, government officials had to appeal to us for help. We were asked to attend the meetings in order to block the "filibustering" acts of such Members. The Government and the officers in charge of the Bill were plainly aware that Members representing the industrial and business sectors were actually "filibustering", by asking repeated questions and for the examples of one country after another. What exactly were they doing? Have we ever accused them of "filibustering"? We



did not say anything. We never criticized colleagues for repeating their questions in the Bills Committee.

Members of the pan-democratic camp (mainly those of the Democratic Party) asked many questions and did repeat our questions at the meetings of the Establishment Subcommittee, Finance Committee and the Subcommittee to Study the Proposed Legislative Amendments Relating to the Re-organization of the Government Secretariat. We did so for a simple reason, for we thought that those issues were very important but the Government had not given good answers. We hope that Mrs LAW and Secretary Mr Raymond TAM could be forced to see the problems highlighted by us. The same had been done by Members representing the industrial and business sectors who continued to force the Government to make one concession after another, and eventually succeeded in forcing the Government to make two or three concessions and introduced amendments. Of course, some Members were still unhappy, and finally voted against the Bill or abstained at the vote. It was a perfectly normal thing to do. However, as a member of the Democratic Party, have I ever accused these colleagues of "filibustering", repeating their questions and pestering others? I do not think that we have done so. But, when we make the same effort, colleagues of the pro-establishment camp have peppered us with arrows and accused us of "filibustering", "fooling around", "throwing tantrums", "blocking issues", and so on. Is this not double standard? If we were to talk about double standards, then I would say everyone has double standards. I think that I am very objective and fair in looking at the issue. We greatly supported the passage of the aforesaid Bill, but Members of the pro-establishment camp held successive meetings of long durations. I think everyone should look at this objectively.

The position of the Democratic Party on the accountability system has been very clear since 2002, but I will not talk about that right now. I am going to discuss it later. However, some colleagues, such as Dr PAN Pey Chyou, have said many times that Hong Kong people should do this and that, and I find that rather annoying for Dr PAN is not a Member returned by direct elections and I do not know how he went about visiting the districts and representing Hong Kong people. He talked about "Hong Kong people" in general, and not just "some" or "most" Hong Kong people. He only said Hong Kong should do this and that, and that is, Hong Kong people think that we have done wrong and that Members of the pan-democratic party are "filibustering" and obstructing the administration of the new Government. With regard to this point, we found out through different public opinion polls that Hong Kong people think differently. He

cannot say that he represents Hong Kong people for there is no way he could have done so. I am a directly elected Member, but I dare not say that I represent all the people of Hong Kong. OK?

Furthermore, Mrs Sophia LEUNG, a Member whom I very much respected, said we have no right to block the work of LEUNG Chun-ying, and she used the kitchen as an analogy. The accountability kitchen has been built since 2002, with the employment of many first chefs, second chefs and food choppers. Donald TSANG recruited some even "cheaper" Political Assistants in 2007 and 2008, and there were no Under Secretaries and Political Assistants, but only first chefs in Mr TUNG's era. Has the Government been well administered? Have the people not had grievances? The answer is definitely in the negative; otherwise Mr TUNG would not have to step down.

Mr TSANG expanded the accountability system and spent more money on recruiting second chefs and trainees to chop food when he assumed office. He publicly said quite recently in this Chamber that the expansion of the accountability system was a watershed and he had failed to gauge public opinions after the expansion of the kitchen and people were seething with resentment at various negative issues. He personally said that things had gone downhill since the expansion of the accountability system.

Today, Mr LEUNG has further expanded the accountability system by adding a senior second chef under the first chef and above the second chef, and employing several additional chefs. Is this good? Is this feasible? We certainly are duty-bound to ask questions for our past experiences were not good. What are the duties of Legislative Council Members? According to Article 64 of the Basic Law, "the Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region". Mrs LEUNG may not remember the provisions of this Article in the Basic Law and thinks that we do not have the right and should not block the actions of others. She has forgotten that Legislative Council Members represent the people. As the Government does not represent the people and Mr LEUNG is not elected by all the people of Hong Kong, we should seriously scrutinize his reorganization proposal for a set-up of five Secretaries of Departments and 14 Directors of Bureaux. Though the previous kitchen did not do a good job, the Government has now sought to expand it further. As Members of the Legislative Council, we think that we have to seriously scrutinize the proposal for

this is the work of Legislative Council Members. I hope colleagues will remember that they are Legislative Council Members and this is their duty.

Furthermore, as regards the issue of "filibustering", the Democratic Party has actually held a number of internal meetings, and our staff and research assistants have seriously and carefully located all past documents on the accountability system dating back several years, or even nine or ten years ago. We have read and reread all the documents to study the effectiveness of today's accountability system. We have tried our best to list all the problems and assigned Members to ask questions and follow-up questions. We think that this is the role we ought to play and we do not wish to be "labelled" and criticized by others for our actions. I only wish to say that the Government itself should be held chiefly responsible for the motion that it has to move today.

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

**MR ALBERT CHAN** (in Cantonese): President, I am the instigator of "filibustering", and our "filibustering" action has exposed the abominable state of this Council, the brutality of the Government and the feeble opposition and resistance of the pan-democratic camp.

From the "filibustering" over the Legislative Council (Amendment) Bill, we could see that Members had no desire to attend meetings and acted as if under torture even when they did so; 18 headcounts had to be done in a day, and they only waltzed back into the Chamber after the bell had rung for 12 or 13 minutes and the President had to make repeated pleas in this Chamber to Members to come back on hearing the bell, but they still "dallied".

President, a quorum is not present, do a headcount.

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

(While the summoning bell was ringing, Mr Paul TSE stood up)

**MR PAUL TSE** (in Cantonese): President, as I said yesterday, we have to follow certain rules if we ask the President to exercise his powers under the RoP and must definitely not yell at the President and told him to do things. I hope the President can remind Members of this. Though Mr LEUNG Kwok-hung does not abide by the rules, at least he could be educated. I hope that Mr Albert CHAN would not remain obstinate and refuse to be educated. Thank you.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, I pointed out yesterday while you were not present that any Member who wishes to draw my attention to the fact that a quorum is not present in accordance with Rule 17 of the RoP should raise his/her hand to indicate a wish to speak. You could have mentioned in your speech that you think a quorum is not present, and I would then ask the Clerk to summon Members back to the Chamber, but please do not just say "do a headcount".

**MR ALBERT CHAN** (in Cantonese): President, I have no intention to offend you, and did not yell at you earlier. I was only yelling at those empty chairs. President, in accordance with the RoP, I would like to point out that a quorum is not present and request a headcount.

**PRESIDENT** (in Cantonese): Please request a headcount in accordance with the provisions of the RoP.

**MR ALBERT CHAN** (in Cantonese): According to Rule 17 of the RoP, a quorum is not present. I implore the President to do a headcount.

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

**PRESIDENT** (in Cantonese): Mr Albert CHAN, please continue.

**MR ALBERT CHAN** (in Cantonese): President, the behaviour of Members of the pro-establishment camp is evident to the public. Since they have wanted to act as bodyguards and escorts, they need to show loyalty and commitment, and put in manpower resources, instead of just making an appearance and spending a minute or so to press the button only when votes are counted, and then expect to be rewarded. To be Members of the pro-establishment camp, they need to pay a price.

President, the performance of the Government in the whole "filibustering" process and to date, has revealed its carelessness, incompetence and lack of a sense of crisis. In fact, we did announce our intention of "filibustering" in advance. We had already given advance notice that we would move 1 000 amendments when the Government put forward its replacement proposal initially, but it still acted as if nothing had happened, did not put in place any preventive mechanism, did not act as if it was prepared to handle a crisis and did not have any plans for alleviating the pressure of "filibustering".

It had only hastily dealt with the issue with a ruthless attitude of executive hegemony over and over again when faced with the problem. The Government has already become accustomed to winning, for Members of the pro-establishment camp would respond to its orders at the press of a button. If they failed to obey when the political power in Central pressed the button, then the Western District would do so; and sometimes if it still failed to work when the Western District did so, then pressure might be applied from a higher level, which would result in all Members of the pro-establishment camp taking their places obediently and executing the orders of the Central Government. I quite sympathize with Members of the pro-establishment camp for many of them are elderly persons of 70-odd years and not in very good health; some Members had just undergone surgeries, but they still had to stay up late at the risk of their lives to face the "filibustering".

However, this is a crucial moment for the interest of Hong Kong people. Why do we have to stop the replacement proposal? Why do we have to stop "Internet Article 23"? Why do we have to stop the implementation of "five cadavers and 14 lives" (referring to the proposed new government structure of "Five Secretaries of Departments and 14 Directors of Bureaux")? It is because this series of actions will lead to a disaster for Hong Kong. Many Members said LEUNG Chun-ying should be given a break. We gave TUNG Chee-hwa and

the Cyberport a break back then, but it has resulted in disasters and real estate hegemony, made many former shareholders of the Cable and Wireless suffer great losses, and many of them were left with nothing at retirement. Shares which were originally valued at \$20 to \$30 per share eventually dropped to a few cents. You go and explain to the elderly people who held the shares of Cable and Wireless back then. Who is going to give these elderly people a break? Who is going to give the poor and needy people of Hong Kong a break?

Fifteen years into the reunification of Hong Kong, the disparity between the rich and the poor has hit a record high, so who is going to give the poor people of Hong Kong a break? Who is going to give Hong Kong people at the grassroots a break? Members of the pro-establishment camp now present are rich and powerful. I have done some computations and found that they are worth over \$100 billion. They would certainly say that LEUNG Chun-ying should be given a break because LEUNG Chun-ying has given them opportunities to grab power and money. They can continue to bully others with their powers and take advantage of their political status to gain profits. Over the past 15 years since the reunification, what policies have been proposed by Members of the pro-establishment camp to fight for the rights of Hong Kong people? The disparity between the rich and the poor has become more and more serious. Housing prices soared after the abolition of the Home Ownership Scheme under "SUEN's Nine Strokes", and these Members took part in the real estate speculation activities. LEUNG Chun-ying's property which had a market value of \$60 million back then has now risen to \$200 million, and he is now accused of unauthorized building works. Who is going to give our friends, Hong Kong people who have nowhere to live, a break? So, how can we talk about giving people breaks?

The "five cadavers and 14 lives" proposal is simply an arrangement to share the political spoils, to allow people who supported LEUNG Chun-ying, including Mr Paul CHAN, to take a share. Members of the DAB and the FTU have queued up to apply for the posts of Secretaries of Departments, Bureau Directors and Political Assistants. As such, President, looking back at the series of events and the Government's lack of crisis management in governance, it really makes us shake our heads and sigh in exasperation.

"Filibustering" is a tactic employed by WONG Yuk-man and I in a dying struggle and protest and to make a feeble voice of opposition in this Chamber under circumstances which we are powerless, but we have still managed to put the whole Government in great chaos and confusions. Just think about how these officials will perform when faced by the big consortiums we have talked about, such as the China Light and Power Company Limited, real estate and financial hegemonies or when engaged in contests with international masters? President, we are just two small potatoes, but we have managed to put the Government in such a difficult position, so where is the Government's ability of governance? The officials are all Senior Administrative Officers, with monthly salaries of \$200,000 to \$300,000. President, there are only two of us here, with occasional help from "Long Hair", but their crisis management ability can be so poor.

President, then they abuse their power and when we look at the recent situation of the Government ..... President, I was so sad that I was almost short of words in this Chamber at the time you "stopped the filibustering", and that was the saddest day of my political career, and of this Chamber. However, I have started to become accustomed to such situations.

The fact that the Government has invoked Rule 91 of the RoP this time to allow it to "jump the queue" by suspending the relevant Rule is to announce to the whole world that Hong Kong has formally entered the era of communist rule with no regard at all for regulations and traditions. The traditional British or the so-called Westminster-style parliamentary traditions have disappeared completely, and it has now formally been announced that the Hong Kong communists have taken over and the Legislative Council has formally become "the Hong Kong Special Administrative Region's Great Hall of the People". It has been changed.

This is exactly like what Patrick TSE Yin said in the movie "Shaolin Soccer" and President, he was talking about soccer. When you changed the commencement time of the Council meeting before the amber rainstorm warning actually came into effect last time, I had also accused you of being a corrupt referee. What happened in the movie was Patrick TSE Yin was the leader of the Evil Team, which is comparable to the existing pro-establishment camp, but members of the Evil Team are not confined to Legislative Council Members. What did Patrick TSE Yin say? He said, "The referee, assistant referees,

members of the football association, federation of football and football committee are all my men, so how do you expect to fight with me?"

The current situation of Hong Kong is the same for all government officials, Legislative Council Members of the pro-establishment camp, the President, senior government officials, the police, the army and the media are all the men of the Hong Kong communists, so how will we be able to fight with them? Their forces and lineups were so powerful and the Evil Team, trained with the help of high-technology, also used prohibited drugs when they played on the fields. The pro-establishment camp has now taken control through the functional constituencies, and in addition to "snake soup feasts, vegetarian dinners, moon cakes and Dragon Boat Festival rice dumplings", and "vote planting", there is also the police. The police had gone so far as to chasing after an unarmed woman who had originally just stood there without moving and spraying her with pepper spray, and the clips of this incident could be found on the online news. This is really comparable to the Evil Team in "Shaolin Soccer". The police did not only make illegal detention — detaining a University of Hong Kong student who wanted to make a petition for an hour; but also arrested a man who wore a June 4 T-shirt and walked along a private road in his own housing estate. Such acts of tyranny have happened one after another.

They also employed tactics like "sweeping feet" and beating up people when they played soccer on the fields, and they would move away and damaged the goal when you had been beaten to a pulp and when you were about to shoot at the goal, like what the Evil Team did in "Shaolin Soccer". What happens today is similar to what the Evil Team did in "Shaolin Soccer"; they damaged their own goal when the Shaolin Team was about to make a score.

The fact that they have invoked Rule 91 of the RoP today is to damage the one and only one parliamentary assembly which is comparatively comprehensive, credible and the only parliamentary assembly which has a popular mandate — though not very popular — but this is the only remaining assembly which people still have some expectations of, will soon be destroyed by the Evil Team now sitting here, by the devil who will soon read a course of theology. What kind of theological course is he taking? I really find it very ridiculous that while he is going to attend a theology course, he is now destroying a wonderful tradition. It is very funny when he said that he is attending a theology course in the United Kingdom, for the only remaining meagre value of tradition of British democracy



of this Council, and also part of the core values of Hong Kong people, has been destroyed by him, "Eunuch LAM", thanks to his motion, and he has single-handedly destroyed it. It is a coincidence that I have talked about the Evil Team in "Shaolin Soccer" earlier for he is the devil in disguise.

Is there someone with abilities like Vicki ZHAO Wei in Hong Kong? She was bald when she acted as a goalkeeper and though my head is also bald, my abilities are not as great as hers, so we have to leave it to the people of Hong Kong to fight against the Evil Team. The power of the 23 Members of the pan-democratic camp now present is feeble. And, as for the People Power, "Yuk-man" and I have already tried everything in our power to do something. However, if we were to destroy the Evil Team, we have to rely on the wisdom and power of Hong Kong people. If we continue to let them to do whatever they like and to trample on the dignity of Hong Kong people, trample on the dignity of this Council — we have already become accustomed to all these and the Council has been left with no dignity at all. However, can we allow the Hong Kong communists to rule Hong Kong and trample on the well-being, rights and interests and the future of Hong Kong people? Whether we can uphold the core values of Hong Kong or not has to depend on the people of Hong Kong.

Hong Kong people, have you woken up? You are now faced with the manipulation of the powers and the devil, trampled by the powers and faced with harder and harder lives. I said at the old Legislative Council Building 10 years ago that the middle-class people of Hong Kong would gradually become impoverished. That was what I said 10 years ago, and it has now been proven that the middle class of Hong Kong is different from that of 10 years ago, and the livelihood of some middle-class families are even worse than that of Comprehensive Social Security Assistance (CSSA) recipient families, not to mention that some middle-class people have to live in cubicle apartments, while others even have to live in "sub-divided units". Such are the adverse effects of 15 years of poor governance and the accountability system.

During the early stages of implementation of the accountability system, there was still a faint trace of accountability, when Directors of Bureaux were held accountable and had to step down. However, since Donald TSANG's time, officials have all colluded with and covered up for each other, currying favour with and transmitting benefits to each other, and the accountability system has just existed in name only. Now the accountability system has been further

expanded to add two Under Secretaries, two Directors and a group of Political Assistants, which will lead to further collusion, favour currying and benefit transmission under the accountability system where no element of accountability could be found.

President, this motion on the suspension of the RoP today will certainly be passed and this marks the official beginning of the devil's advent and Hong Kong communists ruling Hong Kong. The situation will only continue to worsen if Hong Kong people still do not wake up and step forward. As such, I call upon the people of Hong Kong to take to the streets on July 1 and say "No" to the Hong Kong communists with your feet and voices!

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

**MR WONG YUK-MAN** (in Cantonese): I am already sitting here, so how will it be possible that no one wishes to speak.

**PRESIDENT** (in Cantonese): If Member wishes to speak, will he please press the "Request-to-speak" button or raise his hand to indicate such wish.

**MR WONG YUK-MAN** (in Cantonese): You have wasted seven seconds of my time. I could not be civil to you today.

**PRESIDENT** (in Cantonese): Mr WONG, I remind you that you have to follow the RoP. You must press the "Request-to-speak" button or raise your hand to indicate your wish if you wish to speak next time and should not just rise. You have to wait until I call your name before you can rise to speak.

**MR WONG YUK-MAN** (in Cantonese): The situation of this Council actually fits the description of the first line of the couplet in a popular lantern riddle on the Internet. One can tell what kind of Council is this when you hear the answer to

the riddle. The riddle is "eunuch attending a theology course", which describes this Council, so what is the answer to this riddle of "eunuch attending a theology course"? I would certainly not disclose it. I have listened to the speeches of many Members, but I will not make individual responses like Mr TAM Yiu-chung, the honourable Chairman of the biggest party, who has performed a "stand-up comedy", at your expense. However, I find it very strange that he should have turned himself into Stephen LAM for what he said should have supposedly come from Stephen LAM.

This is a parliamentary assembly, the legislature, and, President, we are the representatives. For this reason, I raised the question of who should we representatives represent in my conclusion speech for the Legislative Council (Amendment) Bill, but you all did not listen carefully. This is a legislature, and by virtue of the separation of powers, the Legislative Council should have its own dignity, power and traditions. You are not only willing to act as a rubber-stamp, but even prepared to serve as a hatchet man. It is bad enough to be a rubber-stamp, President, do you still want to be a hatchet man? I have served in this Council for nearly four years and I can tell everyone today that what made me feel most regretful is that Dr Margaret NG is not going to run for re-election, thus resulting in fewer and fewer quality Members. What exactly am I talking about? The problem we have to address today is Rule 18(1) of the RoP, and that is, to suspend Rule 18(1).

Two thousand years ago, there was this teaching in *The Great Learning*: "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *The Great Learning*." What is the meaning of these words? In this context, it is referring to the RoP. "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *The Great Learning*." People call the breaking of the order of priority "playing foul", but this is not "playing foul", it is the "castrating" of this Council. Stephen LAM, this cannot be called "playing foul", for you are "castrating" this Council and openly trampling on the dignity of this Council. Why is this question on Rule 18(1) tabled before us? Why has there been such a long debate of eight to nine hours? This is precisely because you want to suspend Rule 18(1). President, what Rule 18(1) represented is "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *The Great Learning*."

The so-called "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *The Great Learning*" is a rule laid down by a non-elected Council that allows Government Bills to be placed before everything, to be followed by Resolutions and finally Members' Motions. Members, are you well-versed in the RoP? Do you know why Rule 18(1) is made? It is meant "to know what is first and what is last", and although the rule itself is a product of an unfair Council, at least it has developed the so-called rules of the game. The rules of the game and parliamentary rules developed by other countries have gone through centuries of practice and constant adjustments, and every parliament and country has their own tradition. Furthermore, parliamentary rules also have a direct bearing on the number of parliament members, Mr LAM, are you aware of this?

For example, since the minority party of the United States Senate has often taken advantage of their right, as conferred by the Senate, to make long speeches, the minority can often manage to "hijack" the majority by taking advantage of their unlimited speaking time, so they have to draw up a regulation in their parliamentary rules to give the majority and the Chair a chance to stop lengthy debates and such are the circumstances of the United States Senate. However, the House of Representatives of the United States is different in that it is similar to the House of Commons of the United Kingdom, which cannot be "hijacked" by the minority party for it is evident that the United Kingdom practises a cabinet system, where the Government is formed by the majority party, so how could it be "hijacked" when Members of the Parliament are the Government itself?

As regards our RoP, there is already a limit on the speaking time of Members, and our RoP was made by Members who were returned through an extremely unfair election system, and every amendment made to the RoP was not intended to restrict the actions of the Government, but that of Members. How absurd! Even if I were given 30 minutes, I would still think that it is not enough.

Stephen LAM has a back-up plan. In the event that the proposal is approved by the Finance Committee after July 1, then the Resolution can only come into effect five days after passage. In other words, you have already got a back-up plan, which means, as Dr Margaret NG said, the Resolution has no

urgency, is that right? But despite that, you still try to force it through, even though your job will end in 10 days and you said you are going to read a course on theology, you are still doing the dirty work for the incoming Government. I do not blame the President, for after all, you have already got your hands dirty. If he can abuse Rule 92, then he will not remind abusing Rule 91, so why does it matter? He has already paid a personal price for this.

According to the RoP, the Government — that is your interpretation, you are the one who has not taken our RoP seriously — has moved a motion to suspend Rule 18(1) of the RoP, but Rule 91 clearly states that, President, "the motion shall not be moved except after notice or with the consent of the President.". This means that your "good self" shall have to be held responsible. You have taken responsibility for Rule 92 and you should now do so for Rule 91. I would stop now, otherwise, I would be accused of commenting on the President's ruling. "The Resolution is not urgent and pressing, the President shall not exercise his discretion to waive the requirement".

Let us take a look at the Standing Orders of the Parliament of Australia, under which is this rule: "In cases of urgent necessity, standing or other orders of the Senate may be suspended on motion without notice, if the motion is carried by an absolute majority of the whole number of senators.", President, here it refers to an absolute majority. The Parliament of Australia deals with motion with advance notice and those without notice in different ways; while only a simple majority is required for motion with advance notice, an absolute majority is required for motion without notice. As such, this motion which calls for the suspension of the RoP under Rule 91 is rather ridiculous. President Jasper TSANG, even the Parliament of a fully democratically elected country would distinguish between simple majority and absolute majority and between motion with advance notice and without notice.

Chairman TAM Yiu-chung has rightly said that the date of 20 June was fixed a long time ago. However, we have now got issues after this item which are originally not only scheduled for discussions on 20 June, but for 2 May and 9 May, and they have been on the waiting list of many meetings before they could get a chance to be discussed. As such, if we were to say the Resolution which has been scheduled earlier for discussion on 20 June has not jumped the queue, then how should it be described? What should be done with the earlier

mentioned issues? Buddy, please give me an explanation. A specious argument advanced a thousand times will not become the truth just because of this for here good reasoning prevails.

If we were to talk about how notice was given a long time ago that the motion will be submitted on the meeting of 20 June, then what should be done about the above mentioned Government Bills, not to mention ours? It could be said that the situation of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 is the most outrageous, for it is currently under discussion, so why was the adjournment of debate not been called for? You should have called for an adjournment of debate with regard to the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 now under discussion, in accordance with Rule 40 of the RoP, but you have not done so, thus you are just acting at your own whim.

I am now trying to reason with you, and the fact that I speak in a loud voice does not mean that I am being unreasonable. I am now speaking in a very loud voice, but what I say makes great sense. Well, now that it is mentioned, I would like to ask who have such calibre. After listening to so many speeches, can we find anyone who has ever talked about such issues? It is alright when no one mentions this, but I cannot help flaring up once it is mentioned, and to think that some people have the nerve to be so loud. There is no doubt that this has to do with "filibustering", for it was evident there would be "filibustering" and I am the instigator. I was accused of getting things into such a sorry state, and I humbly accept the criticism.

However, "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *The Great Learning*." Mr TSANG, what caused the "filibustering"? It is precisely because of this person, and how can he gain my respect? When the Bill was first read in the old Legislative Council Building, I intended to rush over and slap you in the face, but I was restrained by six security guards. That scene could still be viewed on YouTube, and we have often rerun it. Some 200 000 people will take to the streets on 1 July, also thanks to you. This is really a case of "eunuch attending a theology course", which means "beyond redemption".

With regard to such executive hegemony, frankly speaking, President, when the issue of who we representatives should represent was raised back then, I really wanted to speak on some theories. What does it mean by the rule of law in democratic politics? The law has, on the one hand, restricted the kind of opposition activities which the opposition can be engaged in, and at the same time, offered adequate protection for opposition activities within such confines. This is the essence of the rule of law in democratic politics. Dr Margaret NG has mentioned this briefly, and I have just built upon it.

The laws which have nothing to do with power struggle at the highest level are the same under the democratic and non-democratic systems, where no inherent differences could be found. That is to say, there are no differences between the laws of a democratic system and a non-democratic system in terms of people's relationships, and it is only different in terms of the relationship between the government and the people, and that is, the ruler and the ruled.

Mr Stephen LAM is going to attend a theology course in the United Kingdom which is under a democratic political system, where the law comes before politics. Human rights are protected under the law, and what kind of human rights is that? It is the kind of human rights which the Government does not like in particular and has always tried to infringe upon. Freedom is also protected under the law, and what kind of freedom is that? It is the kind of security governance that threatens the political power, and the kind of freedom which those who are in possession of power are most jealous of and bitterly hates.

Under a democratic system, the government is subject to greater restraint in law than the people, and the reason for this is very simple, for it is meant to prevent the government from taking advantage of its existing powers or abusing its powers to obstruct or ban all open and potential competitors for power. Tactics like muckraking were employed in our small-circle election campaign, which was not even an open, fair and impartial election. However, such acts are not allowed under the rule of law in a democratic political system.

The nature of the rule of law under a democratic system is very simple and that is, to maintain a system under which competitions for power can be conducted in an open manner without resorting to illegal means. It embodies the freedom of publication, freedom of assembly and association, as well as the

freedom of election and parliamentary conduct, and further embodies the spirit of tolerance and various customs and conventions.

It does not matter that a Member is in the pro-establishment camp as long as he is in the ruling party, but you are not and you are only a representative of the people. You have spoken in the same breath as the Government on a motion which is so crucial, which tramples on the traditions of the Council and humiliates Members and which calls for the suspension of the RoP, so how can you call yourself a Legislative Council Member? You said some bills which are related to the people's livelihood failed to be submitted as a result, so please tell me how has this come about? It is precisely that "Things have their root and their branches. Affairs have their end and their beginning. To know what is first and what is last will lead near to what is taught in *The Great Learning*.", President TSANG.

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

(No Member indicated a wish to speak)

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

**CHIEF SECRETARY FOR ADMINISTRATION** (in Cantonese): President, I thank Members very much for using more than nine hours to deal with this Agenda item. Regarding the viewpoints raised by various political parties and groupings and Members, I would like to give a response in a relatively comprehensive manner.

First of all, Mr Albert HO stated right at the very beginning that he does not accept this motion. He also claimed that what we are doing is a kind of "surprise attack". In fact, as the President said, we had already informed the Legislative Council in early May that the resolution would be submitted on



20 June for scrutiny and voting. Therefore, Members all should know our schedule very well, and now, we are just proceeding with our original plan.

Secondly, I have to tell Members that what this Council is currently addressing is not just this resolution concerning the reorganization of the Government. Rather, it is the filibustering by some Members that started in early May, resulting in a huge backlog of Council business. Such a situation is not only a matter of concern to this Council, but also a grave concern to the Government. Eventually, we decided to take this step, that is, discussing with the President of this Council to see if we can propose this motion under Rule 91 of the Rules of Procedure (RoP). This is a decision made by us after taking the entire situation into account.

Mrs Regina IP and a number of Members hope that we can give a further explanation for this step. In fact, we understand very well that it is quite rare to make such a decision. As mentioned by Mrs Regina IP, after suspending a certain rule of the RoP and disposing of the resolution, we should revert to the Council business originally scheduled on the Agenda.

What is the entire situation right now? At present, the Legislative Council already has seven to eight outstanding bills. If those bills to be submitted to the Legislative Council for resumption of Second Reading on 27 June are also counted, the number of bills pending examination should be more than 10. Moreover, apart from bills, there are also a considerable number of motions relating to subsidiary legislation. About two weeks ago, the Legislative Council Secretariat submitted a paper to the House Committee, presenting an estimate that more than 220 hours would be required for the Legislative Council to examine these Agenda items.

However, the time required for examining the Competition Bill was not included at that time. In view of the filibustering during the scrutiny of the Bill such that a longer time was taken for its passage, I believe if we do not take this step, it is doubtful whether the Legislative Council, in the remaining days of this term, can complete its business regarding the Agenda items which are of grave concern to us all. These items include the bill concerning Mandatory Provident Fund schemes that was still being examined on the day before yesterday, the bill concerning first-hand sales of residential properties which is a matter of grave

concern to us all, as well as the bill concerning the privacy of personal data that we are interested in. In fact, we have never encountered such a situation before.

In order to bring the Council business back onto the right track, it is necessary to deal with this proposal relating to the reorganization of the Government first, which I know is controversial in nature. If the Resolution relating to the reorganization proposal remains unresolved, other outstanding bills will also be vulnerable to filibuster, rendering it difficult for us to deal with Agenda items relating to social, economic and livelihood issues which are matters of concern to us. Worse still, the controversial proposal relating to the reorganization will remain unresolved as well. This is not a right state of affairs. President, having assessed the entire situation, we eventually made this decision in the late afternoon on the day before yesterday. We are aware that such a decision is very rare. However, we hope that after taking this step, the Council business can be brought back onto the right track. As such, the two camps can deliberate collaboratively and deal with those social, economic and livelihood issues which members of the public in Hong Kong are longing for.

The third main point I wish to respond to Members is whether the reorganization is a "face project", simply aiming at taking a photo for the Chief Executive elect's full team on 1 July. I can tell Members categorically that this is not the case. In fact, the Chief Executive elect, who has just gone through the election process, has a political platform. It is a global practice that political platforms should be implemented as soon as possible after elections, as expected by society.

As we can see, the Chief Executive elect has talked about a number of subjects on various public occasions recently, including how to deal with Home Ownership Scheme flats, whether more public rental housing flats should be built to expedite the allocation of flats and the preparatory committee for the Commission on Poverty to be established. Therefore, I will say that this is not a "face project" at all. Even if the resolution cannot be passed today, the sky will not collapse, nor will it give rise to any insurmountable deficiencies. On the contrary, I will say that this has reflected the sincerity of the Chief Executive elect and his team in striving to implement these policies expeditiously, so that both society and people in Hong Kong can be benefited. Therefore, the incumbent Government also hopes that Members can provide the Chief Executive

elect team with an opportunity to implement these policies as soon as possible. This is the third main point.

The fourth main point is, as mentioned by a number of Members, instead of putting the cart before the horse, whether we should leave this issue to the Finance Committee before discussing it in this Council. President, in developing this political appointment system in 2002 and during the reorganization of the Government in 2007, we did seek funding from the Finance Committee before passing the resolution concerning the reorganization in this Council. This is what we wished to do at the outset, but the events have simply overtaken our plan. In view of the huge backlog of Council business now, it is necessary for us to tackle it right away. At the same time, we also hope that this Council can proceed to vote on the resolution relating to the reorganization as soon as possible.

President, we have in fact adopted both of these two methods. Under certain circumstances, we will seek funding from the Finance Committee before proceeding to the legislative work at Council meetings. Under some other circumstances, it is just the other way round. For example, after passing the 2012 political reform package in the former Legislative Council Building in 2010, we proceeded to the legislative work on the one-person-two-votes proposal for the 2012 Legislative Council Election in 2011, so as to increase the number of seats in the Legislative Council from 60 to 70. The provision for the 10 additional seats was passed by virtue of the 2012-2013 Financial Budget only this year. Under certain circumstances, it is possible to proceed with the legislative work before seeking funds. Therefore, we have made a proper arrangement this time, which is also in line with the tradition and the RoP of the Legislative Council.

President, in addition to these several main points, we also wish to take this opportunity to respond to the questions raised by some Members. Mr KAM Nai-wai said that it took six months for us to complete the reorganization plan in 2007, and the voting was conducted after negotiation and discussion. President, this is not the truth. We put forward the reorganization proposal in April 2007, so as to reorganize the Government from three Secretaries of Departments and 11 Directors of Bureaux to three Secretaries of Departments to 12 Directors of Bureaux. The proposal was made in April and passed after voting in June.

Dr Margaret NG considered that we should be honest, querying why we had not informed the Legislative Council until so late on the day before yesterday. She also queried why we suddenly came up with this proposal after I had given an explanation to the mass media on television that we had made preparations for some scenarios. President, although our decision came a little late, we had given a full account on it in a transparent manner. Both this motion and the two amendments to the reorganization proposal put forward to the Legislative Council today are in order under the RoP, which can be submitted to this Council only after obtaining the President's approval. Moreover, we have also given an account on them to the public.

However, we should always act cautiously by all means. As the English saying goes, "hope for the best, prepare for the worst". Though we expect or hope for the best outcome, we should take precautions before it is too late, so that we know what to do even in an unfavourable position. Hence, we have come up with such an arrangement. If this proposal can be passed by both the Legislative Council and the Finance Committee before 1 July, it can be implemented on 1 July. If this Council passes the resolution whilst the Finance Committee cannot approve the funding until 1 July, the proposal can be implemented only five days after the date on which the resolution is passed. Such practice can ensure that our legislative work is clear and conducted in an orderly manner.

Mr CHEUNG Man-kwong queried in his speech whether there are still checks and balances between the executive and legislature. President, it is a certainty, I must assert. I know the motion we have put forward today is controversial. However, it can only be passed after discussion by Members in accordance with the RoP of the Legislative Council.

The media asked me yesterday, as it might take nine to ten hours to discuss the motion proposed by us, was it worthwhile to do so? Would it be more desirable to leave it in the queue and discuss it later? President, I think it is worthwhile to do so because after discussing this issue for eight or ten hours, we can deal with it in this Council officially. And after putting it to vote, we can deal with other bills in this Council as well. As such, the Council business can be brought back onto the right track for discussion, decision and voting by Members.

Mr LEE Cheuk-yan said that before putting forward this re-organization proposal, we should have conducted a consultation and a review first. I believe that a review of the political appointment system will be conducted, and the Chief Executive elect's Office has committed to doing so in this Council.

Mr LEE Wing-tat (though he is not here right now) has highlighted in his speech that he has shown great respect to the RoP over the past years, which explains why he always wears jackets and shirts in this Council. I would like to show my respect to him in this regard. In fact, not only do I wish to pay my respect to Mr LEE Wing-tat, I would like to pay my respect to his party as well. In 2010, his party decided not to take part in the "five geographical constituencies referendum". But eventually, they took the lead in giving support to the one-person-two-votes proposal. In view of this, being the largest political party in the pan-democratic camp, it is possible that one day, they should face squarely the present situation with other political parties and groupings, where the RoP of the Legislative Council has been abused a tool of filibustering, which is not beneficial to members of the public in Hong Kong. In fact, it simply runs contrary to their interest. Being the largest political party, they should address this problem squarely.

Next, I would like to respond to Mr CHIM Pui-chung's question raised yesterday, that is, whether this proposal belonged to the third-term Government or the fourth-term Government. In fact, this is a proposal put forward by the fourth-term Government in its political platform. However, being the third-term Government of the Special Administration Region, we had also scrutinized this proposal in the Executive Council, and decided to adopt and implement it. Therefore, as mentioned by Mr Gabriel LEUNG, we have now come forward to state that both terms of the Government have the same goal. Moreover, what we are doing is fully in compliance with the Basic Law. This important policy, after being scrutinized in the Executive Council, is put forward by a Principal Official to the Legislative Council of this term.

Ms Miriam LAU made it a point to remind me yesterday that the executive and the legislature should be interactive. She queried why this time, we had not made the decision until so late on the day before yesterday, nor did we inform the Legislative Council via her at an earlier stage. I had apologized to her yesterday. However, with the filibustering having persisted for more than a month, a huge backlog of Council business had been developed, giving rise to a

situation we have never encountered before. In view of this, we came up with this decision after a very thorough examination. Anyway, I can tell Ms Miriam LAU that the SAR Government will, by all means, continue to show great respect to the co-operation and communication with the Legislative Council. And I believe both the new Chairman of the House Committee and the new Chief Secretary for Administration will welcome and cherish such an arrangement of weekly meetings in future.

Mr Paul TSE particularly made reference to Article 72 of the Basic Law last night, enquiring about the coverage of the "bills" (that is "議案" in the Chinese version). I would like to give an explanation to Mr Paul TSE, Ms Miriam LAU and other Members via the President here. As we all know, "議案" and its English translation "bills" stated in Article 72(2) of the Basic Law do not fully tally with each other. However, over the years, no matter in the Government or this Council, the term "motions" is used to cover both bills and motions proposed in respect of subsidiary legislation. It is because both bills aimed at amending ordinances and motions aimed at amending subsidiary legislation will be put forward in the form of motions. Over the years, we all know clearly that the official interpretation of the Basic Law should be based on its Chinese version. Therefore, the motion we have raised this time is in compliance with the RoP of the Legislative Council and has not contravened the Basic Law at all. We have taken this step after seeking legal advice.

President, I would like to say a few more words before concluding my speech. Mr WONG Yuk-man has mentioned a nickname repeatedly just now. I guess he wants to insinuate that I will pursue studies in Divinity. His comments are quite insulting. But I decided not to object to it here, as the God in whom I believe teaches us in the Bible that we should bless those who compel us. President, though he tries to compel me, I will bless him. May I bless Mr WONG Yuk-man that his wrath can go away from him one day, following a teaching in the Bible, "put off the Old Man, put on the New Man".

President, we have proposed the motion this time as we believe that if the reorganization proposal can be endorsed expeditiously, it will be conducive to the future development of Hong Kong society. If the full team of the Chief Executive elect can assume office with a clear delineation of duties, initiatives in public housing and poverty alleviation can be launched right away. This is what members of the public in Hong Kong expect. Since early May to the

accumulation of a huge backlog of Council business today, items of concern to various political parties and groupings have been withheld. We cannot deal with, discuss and vote on these items expeditiously. This is a critical moment, which is neither healthy nor what we would like to see when formulating the RoP by virtue of the Basic Law. All of us should address this situation squarely, as this problem will arise again during this term or next term of the Government, as well as during this term or next term of the Legislative Council.

We also hope very much that the Legislative Council, no matter at its meetings or those of the Finance Committee, can continue to scrutinize the controversial proposal relating to the reorganization of the Government, which is a matter of concern to the public. We should settle it and draw a conclusion as soon as possible. I am confident that we can secure sufficient support in this Council to get it done. Regarding the time slot or timing, we can only wait and see. Upon completion of the process of discussion, debate and voting on the resolution relating to the reorganization of the Government, we may know when the Finance Committee can consider the funding proposal again.

President, I implore Members to support this motion. Thank you, President.

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the motion moved by the Chief Secretary for Administration be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert HO rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert HO has claimed a division. The division bell will ring for five minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Dr Raymond HO, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Dr Samson TAM voted for the motion.

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Dr Joseph LEE, Mr Ronny TONG, Mr CHIM Pui-chung, Mr KAM Nai-wai, Ms Cyd HO, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr Paul TSE, Mr Alan LEONG, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

Mrs Regina IP abstained.

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

THE PRESIDENT announced that there were 54 Members present, 27 were in favour of the motion, 25 against it and one abstained. Since the question was



not agreed by a majority of the Members present, he therefore declared that the motion was negatived.

**PRESIDENT** (in Cantonese): As the motion has been negatived, this Council will proceed to deal with other items of business according to the order stated in the Agenda.

(A number of Members tapped on the bench to mark the occasion)

**PRESIDENT** (in Cantonese): Will Members please remain silent and turn to Part II of the Script.

## **BILLS**

Council went into Committee.

### **Committee Stage**

**CHAIRMAN** (in Cantonese): Council is now in committee to consider the original provisions of clauses 7 to 12, 15, 16, 19 22 and 27 of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011, as well as the amendments thereto.

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

### **MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2011**

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

**MR ALBERT CHAN** (in Cantonese): Chairman, as the voting result is somewhat abrupt, and regarding the preparation for the motions to follow ..... Can you give us 10 minutes for preparation, Chairman?

**CHAIRMAN** (in Cantonese): Perhaps we shall take our lunch break early and have some rest.

**MR ALBERT CHAN** (in Cantonese): That is excellent. Thank you, Chairman.

**CHAIRMAN** (in Cantonese): I now declare the meeting suspended until 1.30 pm.

11.50 am

Meeting suspended.

1.30 pm

Committee then resumed.

**CHAIRMAN** (in Cantonese): Committee continues to consider the original provisions of clauses 7 to 12, 15, 16, 19 22 and 27 of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011, as well as the amendments thereto. Does any Member wish to speak?

**MR ALBERT CHAN** (in Cantonese): Chairman, I want to preserve the fine tradition of this Council to have more Members present in the Chamber. I sincerely request the Chairman to take 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): Does any Member wish to speak?

**CHAIRMAN** (in Cantonese): Secretary for Financial Services and the Treasury, please speak.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, all the amendments proposed by the Administration have been scrutinized by the Bills Committee, and no objection has been raised thereto. Hence, I hope Honourable Members will support the relevant amendments. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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, Mr LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr LEUNG Yiu-chung, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr KAM Nai-wai, Ms Cyd HO, Mr CHAN Hak-kan, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr Samson TAM and Mr Alan LEONG voted for the amendments.

Mr LEUNG Kwok-hung and Mr Albert CHAN abstained.

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

THE CHAIRMAN announced that there were 40 Members present, 37 were in favour of the amendments and two abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

**CLERK** (in Cantonese): Clauses 7 to 12, 15, 16, 19, 22 and 27 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the clauses as amended read out just now stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

**CHAIRMAN** (in Cantonese): Those against please raised their hands.

(Members raised their hands)

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

**CLERK** (in Cantonese): Clauses 13 and 21.

**CHAIRMAN** (in Cantonese): The Secretary for Financial Services and the Treasury has given notice to move amendments to clauses 13 and 21. Mr WONG Sing-chi has also given notice to move an amendment to clause 13.

Irrespective of whether the amendments of the Secretary for Financial Services and the Treasury are passed or not, Mr WONG Sing-chi may move his amendment to clause 13.

Members may now have a joint debate on the original provision of clauses 13 and 21, as well as the amendments thereto. I will first call upon the Secretary for Financial Services and the Treasury to speak and move his amendments, to be followed by Mr WONG Sing-chi but he may not move his amendment at this stage.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, I move the amendments to the clauses read out just now, that is, clauses 13 and 21 of the Bill, as set out in the paper circularized to Members.

Clause 13 of the Bill seeks to add a new Part IVA to the Mandatory Provident Fund Schemes Ordinance (MPFSO) to centralize the regulation on sales and marketing activities, as well as to give advice in relation to Mandatory Provident Fund (MPF) schemes (collectively known as regulated activities). Part IVA contains a total of 59 provisions, *viz* clauses 34E to 34ZZK. Generally speaking, these provisions, which modelled after the Securities and Futures Ordinance (SFO), have established a fairly comprehensive registration system for MPF intermediaries, including the qualifications and procedures to obtain registration, the conduct requirements for intermediaries, the corresponding inspection and investigation powers of frontline regulators (FRs), the disciplinary sanction powers of the Mandatory Provident Fund Schemes Authority (MPFA),

as well as the procedural requirements to be followed by FRs and the MPFA when exercising the above powers.

Clause 21 of the Bill provides a two-year transitional period for MPF intermediaries under the existing administrative regulatory arrangements, such that they may continue to carry on MPF intermediaries activities without applying for registration. But they must still comply with the requirements applicable to registered MPF intermediaries within the transitional period, including those in relation to disciplinary sanctions.

Taking into account the views of the Bills Committee, the industry as well as the Law Society of Hong Kong (the Law Society), I will move a number of amendments to clauses 13 and 21 of the Bill. Major proposals of the amendments include firstly, to adjust the level of penalties under the new section 34N (which sets out the maximum level of penalties for carrying on regulated activities without registration) so as to bring the penalties in line with those stipulated in the SFO. The amendment, which lowers the maximum penalties applicable to individuals acting as employees, agents or representatives of principal intermediaries, has taken into account the views of the Bills Committee and the industry.

Secondly, in respect of the new section 34ZF which sets out the relevant arrangements when a subsidiary intermediary no longer possesses the required statutory qualifications (including the capacity of an insurance agent, the capacity of a licensed person under the SFO, and so on), the registration of the relevant person as a subsidiary intermediary and an attachment to a principal intermediary will be revoked under the circumstances specified in the original provision. Considering the arrangement of the insurance industry for revoking the qualification of an insurance agent, that is, a person's qualification as an insurance agent is revoked immediately upon leaving service, I will move an amendment to allow a person to retain his qualification as a subsidiary intermediary for 90 days, but he should not carry on any regulated activities within the period. If he cannot obtain approval for a new attachment within 90 days, his registration will be revoked. The transitional arrangements under clause 21 of the Bill will also be amended accordingly.

Thirdly, in respect of the new section 34ZK which empowers the MPFA to revoke the approval of a responsible officer of a principal intermediary if it is satisfied that the responsible officer has ceased to have sufficient authority, or to

be provided with sufficient resources or support, for carrying out the relevant management responsibilities, I will move an amendment to specify that before exercising its power to revoke the approval, the MPFA must give the responsible officer concerned an opportunity to make representations, so as to ensure the proper use of such power.

Fourthly, in respect of the new section 34ZL which outlines the conduct requirements for registered intermediaries when carrying on regulated activities, I will move an amendment to impose the requirement that a principal intermediary must keep records of activities carried on by himself and his subsidiary intermediaries who carry on regulated activities on his behalf. The purpose of this amendment is to ensure effective inspection and investigation by FRs.

Fifthly, in respect of the new section 34ZW which empowers the MPFA to impose disciplinary sanctions against registered intermediaries and responsible officers under specified circumstances in the legislation, I will move an amendment that the MPFA may disclose to the public details of its decision to impose disciplinary sanctions, including the reasons for making the decision and any material facts of the case. The proposed amendment can further increase the transparency of enforcement.

The remaining amendments to clauses 13 and 21 of the Bill are mainly technical in nature or to improve the drafting of the Bill, so as to better reflect the original policy intent and enhance the consistency between the Chinese and English texts of the Bill.

The amendments also seek to introduce some minor changes to the detailed arrangements in practical operation. Of these, we have taken on board the Law Society's views on the drafting aspect, for example, various provisions in relation to applications (that is, the new sections 34T to 34W) should be simplified so that the provisions in relation to applications of principal intermediaries, applications of subsidiary intermediaries, applications for approval of attachment of subsidiary intermediary to principal intermediary, applications for approval as responsible officer will be more readily understandable. As such, some other new clauses will have to be amended correspondingly, such as updating the numbering of reference provisions. The Bills Committee agrees to the amendments to be moved by the Administration, and I hope Members will support and endorse these amendments.

Chairman, regarding Mr WONG Sing-chi's proposed amendment to clause 13 of the Bill stipulating that the MPFA must inform the complainant its preliminary view on whether the MPF intermediary concerned has any misconduct before the completion of the statutory disciplinary proceedings, the Government does not support this amendment. As in other legislation, the Bill has provided that when exercising its statutory powers, the regulatory authority must comply with the specified procedural arrangement, so as to ensure the proper use of such powers and tally with the principle of procedural justice.

Insofar as disciplinary powers are concerned, generally speaking, the Bill provides that if the MPFA forms a preliminary view that it should make a disciplinary order against a regulated person, the MPFA must, before making the disciplinary order, give the regulated person a notice in writing of the preliminary view and the reasons for it, and give the regulated person an opportunity to make representations. If the MPFA makes the disciplinary order formally after considering such representations, the regulated person can lodge a complaint against the MPFA's decision in accordance with the independent appeal mechanism provided under the MPFSO.

The appeal arrangement aims at safeguarding the proper rights of the regulated person on the one hand, while an equally important consideration is to ensure that the MPFA can make an appropriate decision after considering all relevant information. In the course of the Bills Committee's deliberation, Mr KAM Nai-wai has explained the background and objective of Mr WONG Sing-chi's amendment. It is learnt that the amendment mainly intends to target the situation where the regulated person may want to reach a settlement with the complainant before the MPFA formally makes the disciplinary order, in the hope that the MPFA would reduce the penalty. The amendment intends to ensure that the complainant will have the same information as the regulated person when deciding whether or not to accept the settlement offer.

As I have said earlier, the purpose of requiring, under the Bill, that the MPFA must give a notice in writing to the regulated person about its preliminary view on a disciplinary order, and that the MPFA must give the regulated person an opportunity to make representations is to ensure procedural justice in the course of disciplinary proceedings. The giving of notice in writing simultaneously to a third party (that is, the complainant) at this stage about the



preliminary view of the MPFA will not only be unfair to the regulated person concerned, but will also disrupt the integrity of the disciplinary proceedings.

In addition, the MPFA will take into account all relevant factors before deciding a disciplinary sanction. Hence, if the regulated person has taken advantage of the complainant when negotiating a settlement, it would not help him secure a more lenient disciplinary sanction. From the complainant's perspective, if he makes the decision to accept the settlement offer or otherwise based on the MPFA's preliminary views which are made without considering all relevant information (that is, incomplete information), there may be counter effects.

The Bills Committee has discussed Mr WONG Sing-chi's amendment at length, and members generally concurred with the Government's views as stated above. Besides, as in other legislation, the Bill has stipulated confidentiality provisions on the disclosure of information by public officers and other specified persons, whereas Mr WONG's amendment has not provided any arrangement to prohibit the complainant from disclosing publicly information he obtained to individuals or through the media, and so on. Moreover, as the amendment provides that the MPFA must provide the relevant information, the MPFA must comply even if the complainant refuses to sign a confidentiality agreement, or he even states expressly that the information will be disclosed. While the Government supports enhancing the transparency of enforcement, as evident from the proposed amendment to section 34ZW I have just mentioned which intended to ensure timely public disclosure of the MPFA's decision to make a disciplinary order, a reasonable balance must be struck. Mr WONG Sing-chi's amendment violates both the principle of procedural justice as well as the principle of confidentiality.

Chairman, on account of the above considerations, the Government does not support the amendment proposed by Mr WONG Sing-chi.

*Proposed amendments*

**Clause 13 (See Annex I)**

**Clause 21 (See Annex I)**

**MR WONG SING-CHI** (in Cantonese): Chairman, the amendment I propose today mainly seeks to include a requirement in the new section 34ZZ(2) under clause 13, stipulating that the Mandatory Provident Fund Schemes Authority (MPFA) must, when giving a notice in writing to the regulated person concerned of its preliminary view on a disciplinary order, also give a copy of the notice to the complainant. The objective of this amendment is to ensure that investors will also be provided with information fairly.

Chairman, under the arrangement specified in the Bill, in the event that an investor lodges a complaint to the MPFA against the misconduct of a regulated person in the MPF sales process, the MPFA must give a notice in writing to the regulated person concerned after completing its investigation and forming its preliminary view on a disciplinary order. The objective of requiring the MPFA to give a notice in writing to the regulated person of its preliminary view is to allow him an opportunity to make representations thereon. We consider that this is a reasonable arrangement.

According to the relevant requirements, the notice in writing must also include particulars of the disciplinary order or further action the MPFA proposed to make or take. In other words, the MPFA has already formed a preliminary view and it also intends to take certain action, while the regulated person, upon receipt of the notice, will have the incentive to make a settlement offer to the investor concerned. That is because when a particular complaint is likely to be substantiated, the regulated person would want to reach a settlement as soon as possible. Why would he want to reach a settlement? Because if a settlement can be reached, the regulated person may secure a more lenient sanction from the MPFA; or the MPFA may even decide to revoke the disciplinary order. Hence, reaching a settlement is advantageous to the regulated person. Moreover, he has the incentive to reach a settlement first, instead of following the procedure to make a settlement offer after the decision on disciplinary sanction has been finalized, because if he resorts to settlement only after the decision has been finalized, he would miss the opportunity to secure a more lenient disciplinary sanction from the MPFA or have the disciplinary order revoked.

As once pointed out by Mr Mark STEWARD, the Executive Director of Enforcement of the Securities and Futures Commission (SFC), the SFC will consider and if appropriate, accept other means of settlement. Moreover, it will make efforts to seek remedies to rectify the misconduct of firms and banks, so as

to mitigate the adverse financial effects of misconduct on investors. This statement well indicates that our predicted situation can really happen, that is, the regulated person is highly motivated to make a settlement offer to investors upon receipt of the preliminary view.

Chairman, when dealing with complaints relating to the Lehman Brothers-related investment products, the Democratic Party observed that many complainants, who have been complaining for years but to no avail, were suddenly approached by the regulated persons for settlement. However, at that point of time they did not have information about the investigation results of their complaints and the intended disciplinary actions to be taken against the regulated persons.

My proposed amendment seeks to remove the inequitable situation related to the notice in writing of the preliminary view. When the regulated person receives the notice in writing given by the MPFA of its preliminary view on a disciplinary order, he will learn about the MPFA's findings concerning his misconduct, as well as the severity of the disciplinary order. While it is only a preliminary view, I trust that such a preliminary view, which is formed after efforts made by the MPFA in investigation and evidence-taking, will be more or less in line with the final decision. Otherwise, I will have serious doubts about the MPFA's role if its preliminary view, which is formed after much effort, deviates substantially from the final decision.

However, under this circumstance, an investor who has lodged a complaint with the MPFA does not have any information about the misconduct of the regulated person concerned, the particulars of the disciplinary order, as well as the severity of disciplinary sanctions to be imposed. As such, the regulated person can assess the situation and see if he may secure a more lenient sanction from the MPFA or even have the relevant complaint revoked if he reaches a settlement with the complainant. For example, the regulated person learns from the notice in writing of the preliminary view that he has committed 10 alleged counts of misconduct, yet this information is not known to the complainant — according to the logic I just explained, the MPFA's conclusion is basically premised on certain evidence, or else the notice in writing itself is questionable — he can then take the initiative to propose settlement offer to the complainant on six counts of misconduct as the remaining four are related to matters the complainant is totally unaware of. As the complainant does not have any

information, he may readily accept the settlement offer because from his point of view, it is better to get at least some compensation after the protracted complaint process.

From our experience in handling the complaints relating to the Lehman Brothers-related investment products or other financial problems, we have time and again come across cases where the complainant was suddenly notified of compensation offer by the bank or insurance company concerned. Very often, given the lack of information and the protracted complaint process, the complainants would readily accept the compensation offer, and they would not even mind the amount of compensation offered. This is in fact gravely unfair to the investors or complainants because they do not have comprehensive information. On the other hand, the regulated persons may secure a more lenient disciplinary sanction from the regulatory authority because they have taken the initiative to reach a settlement. Under such unfair access to information, the terms of settlement offered may be disadvantageous to the investors, yet they may not resist the offer at all, or even accept it readily.

Chairman, the Secretary has just said that this issue is related to procedural justice, and it is necessary to treat the regulated persons in an appropriate or fair manner. However, it seems that the Government has never considered that it is also necessary to treat investors fairly.

Chairman, the focus of our discussion today is not members of the public who invest in the Lehman Brothers products, or engage in stock trading in banks, or invest with their extra money; we are talking about people who work hard for their salary and entrust 5% of their hard-earned money to the insurance companies as MPF contributions in order to prepare for their retirement. For people who make contributions to the MPF with their hard-earned money to prepare for their retirement, why can't the Government treat them fairly? Why does the Government oppress these investors time and again with concepts such as the so-called procedural justice, due process, and so on ..... They are not really investors, they are ordinary members of the public who make contributions to the MPF with their hard-earned money. Why must the Government make them face the pressure arising from these problems?

Chairman, if our workers, our people subscribe to the notions of MPF Full Portability or Semi-portability, their only hope is that they can ultimately save up

more money to enable them live a stable life after retirement. That is in fact a good thing for the Government because it is unwilling to implement universal retirement protection, but keeps saying how good the MPF is and makes the people pay MPF contributions, yet it is not willing to treat the people fairly. Where there is any irregularity, the Government just protects the regulated persons who get the investments.

When there is any irregularity, the preliminary view formed by the MPFA after investigation should at least be based on some definite evidence or a framework of events which can substantiate the misconduct of the regulated person concerned. Procedure-wise, the regulated person is given the opportunity to appeal or to explain. If the explanation given during the process is reasonable, it will not only be accepted by the MPFA, but members of the public as well. How come investors or workers who make contributions to the MPF with their hard-earned money are left in the dark before the regulated person makes an appeal? The Government should not always use legal terms such as procedural justice to suppress the right to know of these ordinary members of the public, which is totally unfair.

Chairman, many Honourable Members keep saying that they are fighting for the reasonable rights and fairness for members of the general public. Previously, I have also moved a number of motions in the Legislative Council on the implementation of universal retirement protection, which have been supported by Members. Unfortunately, the Government is unwilling to do so. Nonetheless, at this moment, we can help members of the general public, who make contributions to the MPF with their hard-earned money in the hope of having some slight protection after retirement, gain access to more information and be treated fairly, how can we refuse to take actions?

What we seek to do now is merely to include a provision in the Bill so that the notice of preliminary view will also be given to ordinary members of the public who use their hard-earned money to make MPF investments. So what is the big deal? If, in the preliminary view on the complaint, there is information to prove that 10 counts of misconduct have been committed by the regulated person, yet all of them are overturned eventually, it means that the complaint is wrong. The truth is always true, and as the saying goes, one cannot falsify truth nor verify lies. But if the complaint is true and these 10 counts of misconduct are only known to the regulated person and not to workers, it means that the truth or the preliminary truth is also only known to the regulated person, and ordinary

members of the public may agree to settlement in order to get back some of their hard-earned money because they cannot get hold of the preliminary truth. At the end of the day, the regulated person gets a more lenient sanction and pays less compensation, while the investors or ordinary members of the public have to bear the loss. Who can fight for justice for them? Sorry, nobody can because it has already been stipulated by law that nothing can be done.

Under such circumstances, why should we allow the entitled rights of ordinary members of the public be deprived of for some abstract reasons, such as procedural justice, appropriate actions, integrity of disciplinary proceedings, and so on? We should bear in mind, the money we are talking about is neither the extra money of these ordinary members of the public, nor investments they make in order to gain more money or get rich. Instead, the money is the pocket money people receive when they retire, given that the Government is unwilling to implement universal retirement protection and forces the people to contribute to the MPF. Perhaps the money is not their pocket money, but the money they live on for survival after retirement. However, to this date, the Government is still unwilling to give the people more information. I really have no idea where does justice lie? How can a judgment be made? What is the meaning of maintaining the integrity of disciplinary proceedings? I really have no idea at all.

Hence, I hope Members present who honestly pride themselves in defending the rights of the grassroots will support my amendment for the purposes of protecting labour rights, and securing more benefits and fair treatment for the elderly people as well as ordinary members of the public who must live on their MPF benefits after retirement as the Government has yet to implement universal retirement protection. Thank you.

**MR KAM NAI-WAI** (in Cantonese): Chairman, all along, we have been concerned about whether a stringent regulatory regime will be put in place on the sale of Mandatory Provident Fund (MPF) products by intermediaries. Why does it have to be stringent? Just now, Mr WONG Sing-chi said that in relation to ..... The money should not be called "investment"; instead, it is the MPF benefits of wage earners, and even if they do not want to make contributions, they are forced to do so. For wage earners, MPF is not an investment, but rather a contribution they must make.

Nonetheless, if there is no suitable arrangement under the existing regulatory regime to ease the mind of wage earners, the public will be more resentful to the MPF. As I have just said during the resumption of the Second Reading debate, the Government has yet to respond to some of the recommendations set out in this voluminous Report of the Subcommittee on the Lehman Brothers incident (the Report). Even though three Honourable colleagues have presented a minority report, the Report is still supported by Members belonging to different political parties and groupings.

I would like to point out, Mr WONG Sing-chi's proposed amendment today is resulted from the lessons learnt from the Lehman Brothers incident. The procedures provided in the Bill relating to the investigation and sanction on the misconduct of MPF intermediaries are no different from the existing investigation procedures on complaints relating to the purchase of complicated structured products by general investors. In this Bill, I cannot find ..... Perhaps Prof K C CHAN can explain to us later what improvements have been proposed after the Lehman Brothers incident. I cannot find any. Therefore, the Democratic Party must move amendments to rectify the problems identified.

Mr WONG Sing-chi's amendment provides that when giving a notice in writing to the regulated person concerned of its preliminary view on a disciplinary order, the Mandatory Provident Fund Schemes Authority (MPFA) must also let the complainant — that is, the victim — know of the preliminary view on the disciplinary order. Why is it necessary to do so? As we all know, the Report also mentions that ..... The reason is that in the past, some regulatory authorities were most inclined to reach settlement agreements with financial institutions about their misconduct in the sale of financial products, but these settlement agreements had not been willingly accepted by many victims. Of course, some victims might have already received the compensation payments, as many of them have accepted the settlement agreements. However, many victims also told us that they had been forced to accept the settlement because if they took legal action ..... My amendment is related to litigation because the Government has also exempted the procedure for bringing civil proceedings to recover financial loss. I will further explain further when my proposed amendment is discussed later.

However, the investors are gravely disappointed by these settlement agreements. Let me cite an example. As stated in paragraph 6.41 of the

Report, some investors were designated as "experienced investors" and excluded from the Minibonds repurchase offers announced on 22 July 2009. Some members of the Subcommittee questioned the rationale and fairness of such designation which was not found in existing legislation. According to the testimony of Mr Martin WHEATLEY, then Chief Executive Officer of the Securities and Futures Commission (SFC), the definition of "experienced investors" had set a very high benchmark of demonstrated experience in purchasing structured financial products. Accordingly, such an investor had to be a person with very recent experience and familiarity with products like Minibonds. The SFC therefore considered it reasonable for "experienced investors" to be treated differently from inexperienced investors in the Minibonds repurchase offers. The Subcommittee — that is, the Legislative Council — had noted that according to the information available to the Hong Kong Monetary Authority (HKMA) at that time, approximately 25 000 customers were eligible for the Minibonds repurchase offers. Out of 1 098 customers who were not eligible for the repurchase offer, 879 were "experienced investors". Although "experienced investors" and other ineligible customers were able to obtain remediation based on assessment of the merits of individual complaint cases through the enhanced complaint-handling procedures, the Subcommittee considers it unfair and unjustifiable to draw certain lines which are arbitrary and lack legal basis to exclude certain investors from the repurchase offers.

Today, the Government lectures us on procedural justice, but when the SFC and other regulatory authorities suddenly reached settlement agreements with the financial institutions, the victims had been excluded and they had no idea of what was going on. The Government did not have any legal basis in the definition of "experienced investors". Today, we are only making a very simple request and that is, upon the completion of the preliminary disciplinary investigation, the findings of such should be made known to the complainant, so that the victim would know what is going on. But the Government says that it is against procedural justice.

As we all know, concerning the preliminary disciplinary investigation, the findings will not be available overnight after the complaint has been lodged. According to the experience in the Lehman Brothers incident, the time taken to investigate complaint cases can take six months to one year in the least, or the investigation may have been going on for two to three years but yet to be completed, and there is no way to tell the progress of investigation. As shown



by the experience in the Lehman Brothers incident, the regulatory authorities will conduct stringent investigation on the complaints. First of all, the regulatory authority will ask the complainant to lodge his complaint in writing, to be followed by an interview. After interviewing the complainant, the regulatory authority will interview the financial institution being complained, or with misconduct, or allegedly with misconduct. The process involves the signing of confidentiality agreements and many other formalities. In some cases, no preliminary disciplinary investigation finding is available even after two years of work. It takes more than a couple of interviews before the findings of preliminary disciplinary investigation can be established. The HKMA and SFC must conduct their investigations carefully.

Of course, notwithstanding these careful investigations, many victims of the Lehman Brothers incident are still complaining that the investigation findings are partial to the relevant financial institutions. We are even more worried about the situation of "four regulatory authorities for one industry" in the future, which a number of Honourable colleagues have also mentioned earlier. Under the existing legislation, the MPFA is the principal authority, that is, even if members of the public buy these MPF products from banks, they cannot lodge a complaint to the HKMA. They must lodge a complaint to the MPFA because according to the Government, a one-stop mode is adopted for dealing with complaints. However, for wage earners or victims who have been cheated, they may be very confused and have no idea what to do. They may have bought the investment products from insurance agents or sales personnel at bank counters, or through brokerage firms, yet the Government tells them now that their complaints will be dealt with under a one-stop mode. In other words, a complaint against an MPF intermediary for misconduct will be received by the MPFA first — the Government has prepared a chart for illustration, let me hold it first — it will then make a preliminary assessment on the case, and the assessment is by no means simple. If, after preliminary assessment, the MPFA considers that the complaint is substantiated initially — that is my understanding, and it is also illustrated in this chart — the case will be referred to the relevant frontline regulator (FR) for follow-up. In other words, if the complainant buys the product from a bank, the case will be referred to the HKMA for investigation, rather than the MPFA. When the FR completes its investigation, it will report its investigation findings to the MPFA for a decision as to whether there is enough evidence to activate the disciplinary process, and if so, to proceed with the disciplinary process as specified in the Bill accordingly.

In other words, a highly complicated process is involved, and it is not causally ..... Because just now, I was told by Prof K C CHAN and even Mr WONG Ting-kwong, Chairman of the Bills Committee, that, "Mr KAM, the findings may be reversed after the investigation is completed. The outcome may be different from the preliminary disciplinary investigation findings and a heavier sanction may be imposed." I have heard of nothing like this before, that is, the final outcome turns out to be substantially different from the preliminary disciplinary investigation findings. If there are indeed such cases, I hope Prof K C CHAN can share them with me later. After the Lehman Brothers incident, the HKMA has accumulated extensive experience in this regard because it has received over 20 000 complaint cases. Hence, the HKMA has a lot of experience in this regard.

I would also like Prof K C CHAN to tell me, after conducting the preliminary disciplinary investigation, hearing the intermediary's explanation — such explanation is nothing new because as I have just said, the investigation of some cases have been ongoing for almost two years — and completing the investigation, is there any case where the preliminary investigation finding is found to be wrong or a wrong sanction has been imposed such that the final outcome is reversed completely? If there are such cases, I would like him to tell me, of the 20 000-odd cases with investigation completed, how many of them have the preliminary disciplinary investigation findings completely reversed, or a wrong sanction imposed, or a heavier sanction imposed? Is there any such case at all?

Regarding the preliminary disciplinary investigation, Prof K C CHAN told us about the importance of procedural justice. In that case, I will reason with him about procedural justice. For example, if he informs the MPF intermediary the preliminary disciplinary investigation with regard to the alleged misconduct, yet the victim or wage earner has no knowledge about the details, and then the intermediary concerned suddenly starts to "negotiate" with the victim — that is, making a settlement offer as commonly known — the victim has no idea what conduct rules the intermediary has breached, and he is just offered a 60% compensation offer by the intermediary.

Prof CHAN, to this date, if you come to my office, you will see that there are still over 100 files on my desk about the Lehman Brothers incident. Some victims said to me, "They have paid some 50%, 30%, 40% compensation to me

initially; Mr KAM, can I get more compensation now?" They accepted the compensation initially because they had no idea how their cases would develop eventually and there was nothing they could do, or perhaps they had an urgent financial need, and so on. Regardless of how much compensation they get eventually, say 30%, 40% or 50%, they have already signed an agreement. If Prof CHAN comes to my office, my entire desk ..... I still have a dedicated staff member in my office to handle the complaint cases in relation to the Lehman Brothers incident.

Hence, instead of providing information to wage earners who have been cheated, the Administration gives favourable treatment and protection to non-compliant intermediaries so that they can enjoy the so-called procedural justice. Is such practice acceptable? Why does the Government always show favouritism to large financial institutions? Why can the Government not consider the matter from the perspective of wage earners? Has the Government ever considered why members of the public are so resistant about and dissatisfied with the MPF system, and why does it still show partiality for non-compliant intermediaries?

Chairman, I hope that Honourable colleagues will support this amendment. We only want to have an opportunity to ensure that investors can access to information fairly. Chairman, as time is running out, I must stop here. If time allows, I will speak further on the matter about secrecy later. Thank you, Chairman.

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

**MR ALBERT CHAN** (in Cantonese): Chairman, originally, I have prepared many speeches, but in order not to let Secretary Prof K C CHAN have the impression that we are stalling and not to affect his mood, I will act with reservation. However, his response just now is disappointing because Yuk-man and I have asked him on what grounds he proposed the previous amendment, that is, why the order of the names of the organizations has to be re-organized, but he did not give any explanation. I hope he will later provide more information.

Chairman, I wish to say a few points briefly. First, it is about the proposed section 34T(7) of clause 13 which provides for the issue of giving

notice. Of course, the proposed section only provides for a general situation; and an amendment is to be proposed to amend the proposed section 34ZN(5), in order to change the time of giving notice from 10 working days to 15 working days.

I wish to say something about giving notice in writing. Chairman, I have expressed similar views on the statutory procedure for giving notice in writing on a number of occasions. In particular, I am concerned about cases where it is not stipulated that important documents should be delivered by registered post. When we undertook district work in the past, many people approached us for assistance with regard to the receipt of documents. They did not receive important documents, such as court documents, application documents for public housing or prosecution statements. As they were not familiar with legal procedures, they ended up in big troubles, because they had to pay more as pecuniary penalty for late payment. Very often, the responsibility is not on them. Given their poor living environment, in particular those living in a tenement building, the mailboxes are often mounted onto the entrance wall of the building and the situation is rather confusing. Thus they may not necessarily receive the documents. Hence, I think it is inappropriate if a legal document is not delivered by registered post to ensure receipt.

Another point is about pecuniary penalty. Chairman, the proposed section 34ZW(6) of clause 13 sets out the pecuniary penalty, which is \$10 million. This is set out in paragraph (a) and there is paragraph (b) which I am not going to read out. I only wish to make a comparison. Chairman, I wonder if you have crossed reference this with the Securities and Futures Ordinance (SFO). A person who contravenes a certain section of the SFO is liable on conviction on indictment to a fine of \$5 million and imprisonment for seven years. In other words, pecuniary penalty is often coupled with imprisonment. Another pecuniary penalty is a fine of \$500,000 together with imprisonment for two years. As for offences liable to a maximum fine of \$10 million, if my understanding is correct, there is no accompanying imprisonment provision. By not stating any imprisonment provision as a criminal penalty for contravening white collar crimes, the Government is actually letting go the rich people because they do not care about pecuniary penalty. If there is no imprisonment provision, the deterrence effect will be undermined.

In many past debates, such as those on speed driving or drink driving, I have repeatedly said that it is justified to use imprisonment as a penalty. It is because the imprisoned person, no matter he is rich or poor, will lose his freedom. Rich people may find a pecuniary penalty of a few million dollars or \$10 million negligible, but it is a lifelong humiliation to them if they are sentenced to a seven-day imprisonment and subject to rectum searches on admission to prison. Hence, by not adopting imprisonment as a penalty for white collar crimes, the Government is tilted in favour of a certain social stratum. This is the result of a biased system.

Chairman, if you refer to the Estate Agents Ordinance, you will find that the role of MPF intermediaries is very similar to that of estate agents. In respect of regulation on MPF intermediaries, estate agents have in fact been sentenced to imprisonment more often than MPF intermediaries. If estate agents operate without a license, for instance, if he commits an offence under section 55(1)(a), he is liable on conviction upon indictment to a fine of \$500,000 or imprisonment for two years, or he is liable on summary conviction to a fine at level 6 or imprisonment for six months; whereas if he commits an offence under section 55(1)(b), (e), (f), (h), (i), (j) or (k), he is liable to a fine of \$200,000 or imprisonment for one year. Next, if he commits an offence under section 55(1)(g), he is only liable to a fine of \$150,000, but he is still liable to six-month imprisonment; or if he is sentenced to a fine at level 5, he may still be sentenced to three-month imprisonment.

However, as I have just said, despite the fact that the pecuniary penalty in the Bill can be as high as \$10 million, there is not imprisonment provision. I am strongly dissatisfied in this regard.

Chairman, regarding the amendments proposed by the Democratic Party, we support their direction and spirit, but given that People Power opposes the entire concept of MPF and supports a universal retirement protection scheme, we would have to vote in abstention regarding their amendments.

Thank you, Chairman.

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

**MR WONG SING-CHI** (in Cantonese): Chairman, I wish to join Mr KAM Nai-wai to continue to respond to Secretary Prof K C CHAN's comment that my amendments are flawed in the sense that it cannot ensure or safeguard secrecy.

Chairman, actually, I have also thought about this issue, but if what I propose is fair, the secrecy issue is not difficult to be dealt with. I propose that the complainant should also be notified when the regulated person receives a copy of the notice of preliminary view. If the Government opposes the proposal owing to the failure to meet the secrecy provision, it is actually using a procedural, technical or administrative excuse to oppose my amendments which are based on the principle of fairness. It seems to me that the Government opposes the amendments for the sake of convenience; it does not truly wish to protect the employees who make Mandatory Provident Fund (MPF) contributions with their hard-earned money. Employees do not voluntarily make the contributions; they are forced to do so.

While forcing employees to make contributions, the Government is now willing to relax the restriction a little by implementing the MPF "Semi-portability", such that employees can have a choice to invest in capital preservation products or aggressive investment products. However, Chairman, to be honest, we know that many or most of the employees who put aside 5% of their salary as MPF contributions may not have any investment experience; they do not know how to handle their investment and they may not even have made any investment before. If they have to lodge a complaint, the situation must have caused them great agony or concern, or even have affected their living or retirement. Hence, should we not make an extra effort to protect them and monitor the situation?

However, the Government said that if the complainants are also given a copy of the notice (let us not talk about procedural justice prior to giving notice), they may disclose the information to reporters and thus secrecy cannot be safeguarded. Of course, from my point of view, if a complainant is telling the truth, and after the Hong Kong Monetary Authority or the MPFA has conducted a preliminary investigation, the complaint case established should not be too far from the facts. If this is the case, what is wrong in disclosing the information? Moreover, by so doing, the company concerned will have an incentive to do better because it knows that the public is concerned about the complaint.

Chairman, my legal knowledge pale in comparison with that of the barristers, solicitors or other legal practitioners, but as I often learn from the press, as long as there is *prima facie* evidence to suggest that the suspect has committed a crime, the case will be publicized. When *prima facie* evidence is established, the whole world will know about the case. Instead of privately giving a piece of paper to the complainant or defendant to notify them that there is *prima facie* evidence, the information will be made public and everyone will know about it. It does not matter whether in the end the defendant is acquitted on the charges or found guilty of committing more offences. Just like the election bribery case concerning the Tai Wai Constituency reported a few days ago, the case was already made public, disregarding the fact that the defendants might later be sentenced to more severe penalties or otherwise. Hence, as long as *prima facie* evidence is established, the case will be made public unreservedly.

Hence, if the Government says that it is necessary to maintain secrecy, in principle, it is no big deal to me; even in case secrecy cannot be maintained, it is no big deal to me either. Of course, if the Government wishes to maintain secrecy, let it be; it does not matter. The point is, after I had proposed the amendments, the Government had more than enough power and time to refine them, but why did it not do so? If the Government thinks that maintaining secrecy is very important and that my amendments are justified, it should fine tune my amendments. The MPFA can issue a copy of its preliminary view to the complainant after it has issued the same to the regulated person, requiring the complainant to maintain secrecy of the information according to the legal or administrative procedures set out in the notice.

The Government could do so, why not? It costs the Government no effort at all to add a sentence to my amendments; actually, I also have only added a sentence to the Bill, requesting the Authority to concurrently give a copy of its preliminary view to the complainant. How difficult is that? But the Government refused to do so.

Chairman, I am on the horns of a dilemma. To begin with, the Government is unwilling to implement a universal retirement protection scheme and insists that we should support the MPF scheme; but the reality is that the MPF cannot afford much retirement protection to the people. Now, realizing that if people only have MPF as the only means of retirement protection, such kind of investment may be too conservative (at least to some MPF contributors),

the Government thus decided to give more choices to the people, allowing them to choose a different investment portfolio under their MPF scheme account, in a bid to accumulate more accrued benefits for a better retirement. However, the Government is unwilling to provide comprehensive protection for workers against MPF scams or losses. The Government's act is truly puzzling.

The Government is often unwilling to take an extra step; it stops when it has made some progress. I hope that the Government will not only take care of the regulated companies, but also pay more attention to the living standard and status of the people of the lower echelons. With much regret, it seems that the Government is still worried about the investment environment of Hong Kong or the investments of some companies being negatively affected, thus it has stepped back from doing more for the people of the lower echelons.

Chairman, I hope the Government can reconsider and adopt our small request; that is, apart from giving the preliminary view to the regulated person, it should also concurrently give a copy of the notice to the complainant. If the Government truly has an issue of maintaining secrecy ..... of course, I have already made my stand clear just now that I do not think this will be a big problem ..... If the Government truly thinks that maintaining secrecy is necessary, or if the industry holds that there is such a need, they should refine my amendments, or they should adopt administrative measures or some other means after passage of my amendments to request the complainant to maintain or guarantee secrecy. Why does the Government refuse to do so? Why?

Hence, Chairman, I hope the Government can take one more step and do a little more for workers. I hope Members can empathize with the plight of the people of the lower echelons. Many elderly people will have to live by their MPF accrued benefits in the future. If a universal retirement protection scheme is not put in place by then, they can only rely on the MPF. If justice is not upheld in handling these complaints, not only the elderly people, but also the general public as well as Hong Kong will suffer. I thus hope that Member will consider supporting my amendments.

Thank you, Chairman.



**CHAIRMAN** (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, regarding the amendments proposed by Mr WONG Sing-chi on clause 13 of the Bill, which request that prior to making disciplinary order as set out in the Bill, the Mandatory Provident Fund Schemes Authority (MPFA) should give a copy of the written notice of its preliminary view to the complainant while issuing the same to the regulated person. As I have just said, the Government does not support the amendments. I will not repeat the reasons, but .....

**CHAIRMAN** (in Cantonese): Secretary, please hold on. Mr WONG Yuk-man, what is your point?

(Mr WONG Yuk-man stood up)

**MR WONG YUK-MAN** (in Cantonese): The Secretary is speaking. There should not be so few people in the Chamber listening to him. I request a headcount.

**CHAIRMAN** (in Cantonese): Secretary, please hold on. 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): Secretary for Financial Services and the Treasury, please continue.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, regarding the justifications which Mr WONG Sing-chi has just put forth, I have already expressed my view in my speech earlier. All in

all, it is unfair to the regulated person if, before completion of the disciplinary procedure, the third-party complainant is also concurrently issued the written notice of the preliminary view, and it will also shatter the integrity of the disciplinary procedure. From the perspective of the complainant, if he bases his decision of whether or not to accept a settlement proposal on the preliminary view which is formed by the MPFA without taking into account all relevant information, that is to say, if he bases his decision on this piece of non-substantiated information, he may make an uninformed decision.

As I have just said, the secrecy provision of the Bill seeks to regulate public officers and other public figures and prevent them from disclosing the information concerned. However, Member has not provided any arrangement in his amendments in respect of limiting the complainant from disclosing the information to other individuals or publicizing the information through the mass media. This is against the principle of secrecy.

Moreover, I thank Mr Albert CHAN for his view. He mentioned that there are imprisonment provisions in the Securities and Futures Ordinance. As a matter of fact, there are similar provisions in the Bill now. The pecuniary and imprisonment penalties are set out in the proposed section 34N of clause 13 of the Bill. The imprisonment terms are between two years to seven years. Thank you, Chairman.

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

(Members raised their hands)

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

(No hands raised)

Mr WONG Sing-chi rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr WONG Sing-chi 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 CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Dr Samson TAM and Mr Alan LEONG voted for the amendments.

Mr LEUNG Yiu-chung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that there were 41 Members present, 37 were in favour of the amendments and three abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

**CLERK** (in Cantonese): Clause 21 as amended.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That clause 21 as amended stands part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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 Fred LI, Dr Margaret NG, Mr James TO, 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 Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Mr KAM Nai-wai, Ms Cyd HO, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Dr Samson TAM and Mr Alan LEONG voted for the motion.

Mr LEUNG Yiu-chung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that there were 42 Members present, 38 were in favour of the motion and three abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CHAIRMAN** (in Cantonese): Mr WONG Sing-chi, you may now move your amendments.

**MR WONG SING-CHI** (in Cantonese): Chairman, I move that clause 13 be further amended.

*Proposed amendments*

**Clause 13 (see Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the amendments moved by Mr WONG Sing-chi 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 WONG Sing-chi rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr WONG Sing-chi 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:

Mr CHEUNG Man-kwong, Ms LI Fung-ying, Dr Joseph LEE, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendments.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM Pui-chung, Mr Paul CHAN, Mr CHAN Kin-por, Mr IP Kwok-him and Dr Samson TAM voted against the amendments.

Dr Margaret NG abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr WONG Kwok-hing, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi and Mr WONG Kwok-kin voted for the amendments.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung and Mrs Regina IP voted against the amendments.

Ms Audrey EU, Mr Ronny TONG, Mr Alan LEONG, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 21 were present, five were in favour of the amendments, 15 against them and one abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 10 were in favour of the amendments, four against them and five 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 negated.

**CLERK** (in Cantonese): Clause 13 as amended.

**CHAIRMAN** (in Cantonese): As the Secretary for Financial Services and the Treasury's earlier amendments to clause 13 have already been passed by the committee of the whole Council, I now put the question to you and that is: Clause 13 as amended stands part of the Bill.

**CHAIRMAN** (in Cantonese): 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 James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou and Mr Alan LEONG voted for the motion.

Mr WONG Yung-kan voted against the motion.

Mr LEUNG Yiu-chung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that there were 40 Members present, 35 were in favour of the motion, one against it and three abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CLERK** (in Cantonese): Clause 20.



**CHAIRMAN** (in Cantonese): Mr KAM Nai-wai has given notice to move two amendments to clause 20.

The Committee will first put to vote Mr KAM Nai-wai's first amendment. If that amendment is passed, Mr KAM Nai-wai may not move his second amendment.

Members may now have a joint debate on the original provision of clause 20, as well as the two amendments stated above. I will first call upon Mr KAM Nai-wai to speak and move his first amendment.

**MR KAM NAI-WAI** (in Cantonese): Chairman, I will propose two amendments to clause 20. I am aware that shortly, the first amendment will be put to vote first. The objective of my first amendment is to empower the Mandatory Provident Fund Schemes Authority (MPFA) under the Bill to make ruling and awards for damages to be paid by regulated persons to investors. That is the first amendment which will be put to vote first. If this amendment is negated, I will move the second amendment, namely that section 45 of the Mandatory Provident Fund Schemes Ordinance (MPFSO) also applies to MPF intermediaries for the purpose of safeguarding the investors' right to bring civil proceedings to demand compensation. As I know some Honourable colleagues will only support one of these amendments and not the other, I hope Members are clear that the amendment to be put to vote first is about the right of investors to be awarded compensation for damages.

Chairman, why do I propose these two amendments? They arise from lessons learnt from the Lehman Brothers incident. Chairman, regarding the Report of the Subcommittee on the Lehman Brothers incident (the Lehman Report), I have time and again gone to tedious lengths to read out extracts from the Lehman Report. I think among various studies ever conducted by the Legislative Council, the study into the Lehman Brothers incident is definitely the one spanning the longest time and costing the most resources. As stated in this Report — I have mentioned it earlier, but I have no idea whether the Government has read the Report or not — the power to compel payment of compensation is one of the most important observations of this Subcommittee of the Legislative Council. By the power to compel payment of compensation, it means that if there are substantiated cases of mis-selling, the institution concerned will not only

be liable for sanctions such as fines and suspension, but it should also pay compensation to the victims concerned.

I will now quote four extracts from the Lehman Report because some Honourable colleagues may not have the opportunity to read through the Report. It is stated in paragraph 6.42 of the Lehman Report that, "The Subcommittee notes that before the Securities and Futures Commission (SFC) exercise its power under section 201 of the Securities and Futures Ordinance (SFO) and enters into any agreement, two statutory pre-conditions must be met. Firstly, SFC must be contemplating the exercise of its disciplinary power against the person concerned. Secondly, SFC must be satisfied that the agreement to be entered into is one that is appropriate in the interest of the investing public or in the public interest."

Paragraph 6.43 of the Lehman Report goes on to state that, "In the light of the above, it is clear to the Subcommittee that when contemplating to enter into an agreement pursuant to section 201 of SFO in relation to the Lehman Brothers (LB)-related complaints, SFC must have already gathered evidence from its investigation which enabled it to exercise disciplinary power against the registered institutions (RIs). Under the existing legislation, while SFC may impose penalties for breaches of regulatory requirements under SFO, neither SFC nor MA has the power to order the RIs to make payment of compensation to the affected investors. As explained by Mr WHEATLEY at the hearings on 26 June and 3 August 2009, banks might make voluntary offers if they felt that SFC had a strong case that they had failed in their duties and breached the Code of Conduct. They might realize that providing an equitable solution would be in their interests. However, the making of such offers was a voluntary action on the part of the RIs."

In fact, as I have just pointed out, the amendment proposed by Mr WONG Sing-chi requires that the notice in writing of the preliminary view should also be given to the victim lodging the complaint. Regrettably, this amendment fails to have the support of Honourable colleagues. Hence, it remains a voluntary action on the part of the RIs as to whether or not they make the so-called offers of settlement.

Paragraph 6.44 of the Lehman Report states that, "The Subcommittee notes that the agreements pursuant to section 201 of SFO are often the compromise reached after long-drawn negotiation, as reflected in the length of time taken to

reach the five settlement agreements with the RIs in question, and the terms of such agreements ..... Another issue of concern is the decision of SFC and the Hong Kong Monetary Authority not to pursue enforcement/disciplinary action against the RIs in question and their employees in respect of the cases covered by the settlement agreements. The Subcommittee believes that the regulators' not pursuing enforcement/disciplinary action might be a crucial condition without which the settlement agreements with distributing banks could not have been reached. In this regard, the Subcommittee is seriously concerned that these agreements can lead to the impression that a regulated person who has failed to comply with regulatory requirements can escape sanction so long as the person is willing to come to a monetary settlement with the complainants."

According to paragraph 6.45 of the Lehman Report, "The Subcommittee considers that if the regulator responsible for enforcement is also vested with appropriate powers to order the payment of compensation where the findings so justify, the existing system of handling and resolving LB-related complaints can be enhanced. In particular, the regulator needs not consider discontinuing their enforcement actions in deserving cases in return for a settlement deal with the regulated persons. Payment of compensation and consideration of disciplinary action ..... may proceed in parallel. The Subcommittee would however emphasize that even if a regulator is empowered to order the party guilty of misconduct to pay compensation, the entitlement of aggrieved investors to compensation and the amount payable would still depend on the circumstances of individual cases. The exercise of the power by the regulator to order payment of compensation may also be the subject of litigation." Perhaps the last sentence is one of the reasons why the Government does not support my amendment.

Chairman, I must point out that the relevant recommendation of the Subcommittee, namely that the relevant institution guilty of mis-selling should make payment of compensation, is not unique to Hong Kong. We have also made reference to other places. For example, the Financial Ombudsman Services in the United Kingdom is a dedicated organization to handle and determine cases of compensation claims from investors. As I pointed out just now, a relevant recommendation has been made in the Lehman Report.

In Hong Kong, although the regulatory authorities will impose pecuniary penalty on financial institutions guilty of misconduct, the fines received are regarded as Government revenue. As Members will know, pecuniary penalty

has also been provided in the Bill; and if I remember correctly, the maximum fine is \$10 million. If I am wrong, the Secretary can correct me later. Notwithstanding the provision on pecuniary penalty, the fines received are Government revenue and investors cannot obtain their due compensation. If the MPFA is empowered to make ruling and awards for compensation to be paid by regulated persons to investors, the MPFA can seek reasonable financial compensation on behalf of MPF scheme members who have sustained financial loss as a result of mistakes made by the intermediaries. As such, victims who cannot afford the costs of instituting legal proceedings will not be prevented from seeking proper compensation from the regulated persons. Hence, the Democratic Party proposes the relevant amendment to empower the MPFA to order regulated persons, in particular intermediaries whose misconduct has been substantiated, to pay damages to investors (that is, wage earners), so as to offer reasonable protection to wage earners.

The objective of clause 20 of the Bill ..... As we all know, the existing section 45G of the MPFSO does not apply to intermediaries. According to the Government's reply, the policy intent of section 45G of the MPFSO is to provide a statutory avenue for scheme members to obtain damages resulting from a breach of the relevant provisions of the MPFSO or governing rules of a registered scheme. To put it simply, under the existing MPFSO, affected persons have the right to institute civil proceedings in court to seek compensation. If MPF intermediaries are exempted under section 45G, an affected person cannot invoke the MPFSO to institute legal proceedings in court, and he must resort to other ordinances to seek compensation and prove that the misconduct of the intermediary concerned may cause losses to him.

I recall that at the meeting of the Bills Committee, Mr WONG Ting-kwong, Chairman of the Bills Committee, had also said that in case of any misconduct, the affected persons could seek compensation in court. In fact, he also supports this viewpoint. I do not know whether Mr WONG Ting-kwong is aware that exemption has been granted to MPF intermediaries under the current Bill, such that affected persons cannot institute civil proceedings in court to seek damages as a result of any misconduct of the intermediaries. I do not know whether Mr WONG Ting-kwong, Chairman of the Bills Committee, is aware of the provision of such exemption under the Bill.

I hope Members can review the contents of the Bill. I am aware that Members have different views about the proposal of empowering the MPFA to compel payment of compensation from non-compliant intermediaries because this represents a fundamental change to the system. Although the Report has made this recommendation to the Government, many Honourable colleagues dare not implement the same in legislation. I find this very odd. Members should understand that we are now seeking to protect the 3 million-odd wage earners who are forced to pay MPF contributions. It has been said in the past that investment involves risks — if a person invests his surplus funds and incurs a loss, he may be regarded by others as having made an imprudent investment decision. However, as Mr WONG Sing-chi has said, wage earners must pay 5% of their monthly salary as MPF contributions; they are mandatorily required to make such "investments". Does it make any sense if neither the Legislative Council nor the Government steps up protection for wage earners?

As I have just mentioned, has the Government really learnt from the Lehman Brothers incident and applied the same to the present Bill on the regulation of MPF intermediaries? The Government is speechless, that is, the Government has not taken any actions correspondingly. On account of the lessons learnt from the Lehman Brothers incident, as well as the Lehman Report of the Legislative Council, the Democratic Party has proposed this amendment to compel payment of damages by non-compliant intermediaries to the victims concerned. That is how we really learn from the experience and put the lesson into implementation to protect the several million wage earners in Hong Kong. As to Honourable colleagues who oppose the inclusion of the provision to compel payment of compensation into the Bill, I hope they can explain why they endorse the contents of the Lehman Report on the one hand, but oppose an amendment aiming to step up protection for the hard-earned money of wage earners on the other? Perhaps this is something the public want to know as well because this Bill is really ..... I forget which Member has just mentioned that even The Law Society of Hong Kong has difficulty in understanding the Bill and queried why the legislation has been drafted in such a complicated way. I think ordinary members of the public will find it even more difficult to grasp the contents of the Bill. As the Government has not improved the regulation on the sale of relevant products by intermediaries through experience gained and lessons learnt from the Lehman Brothers incident, the Democratic Party proposes the relevant amendment.

Chairman, if time allows, I will further respond to the part on claiming compensation through court proceedings later with additional information .....

**CHAIRMAN** (in Cantonese): Mr KAM, please move your first amendment now.

**MR KAM NAI-WAI** (in Cantonese): Chairman, I move the first amendment to clause 20 under my name.

*Proposed amendment*

**Clause 20 (See Annex I)**

**MR ALAN LEONG** (in Cantonese): Chairman, are we having a joint debate on the two amendments proposed by Mr KAM Nai-wai now?

**CHAIRMAN** (in Cantonese): Yes.

**MR ALAN LEONG** (in Cantonese): First of all, regarding Appendix III of the Bills Committee's report, that is, the question about which organization should make a decision on compensation, Mr KAM proposes that instead of a decision by the Court, proceedings can be instituted before the Mandatory Provident Fund Schemes Authority (MPFA) to recover from another person the amount of loss as damages and make awards. When speaking during the debate on the resumption of Second Reading on the Bill, I have expressed views on the Bill on behalf of the Civic Party. The Civic Party has reservation about changing the usual practice of leaving the Court to decide on the amount of compensation because we all along consider that it is more appropriate to have the decision made by court. Section 45G clearly provides that if a regulated person has been found guilty of misconduct in the course of investigation, the complainant needs not prove in court that the regulated person concerned has indeed breached his duty to the complainant. Hence, we consider it suffice to have such a provision in this regard. Hence, we have reservation about the first amendment, and we cannot support it.

Regarding the second amendment, I think it has a wider scope of discussion. Chairman, regarding this Bill, the Government proposes that misconduct of intermediaries be excluded from the application of the original section 45G(1). Clause 20 of the Bill proposes to add the wording "(except Part IVA)", and Part IVA is exactly about the regulation of MPF intermediaries. These intermediaries may be regulated by three different regulatory authorities, namely the Securities and Futures Commission (SFC), the Insurance Authority (IA) and the Hong Kong Monetary Authority (HKMA).

I recall that in the course of deliberation by the Bills Committee, the Government had explained that cases of misconduct by intermediaries are excluded from section 45G(1) because the civil liability for inducing others to invest money in certain cases has already been dealt with under section 108 of the Securities and Futures Ordinance (SFO). The Government's stance is that given the protection to complainants under section 108 of the SFO, it is not necessary to provide another protection repeatedly under section 45G(1) — that is what I understand; if that is so, I think the Secretary will point it out later. However, as I have just pointed out, these intermediaries are not necessarily subject to the regulation by the SFC because there are two other regulatory authorities, namely the IA and the HKMA, which can also exercise regulation over the intermediaries. If the intermediaries are indeed regulated by the IA or the HKMA, persons who have been cheated by these intermediaries or the complainants referred to in this Bill will not be protected under section 108 of the SFO. What kind of protection can these complainants get?

I also want to hear the Secretary's view on this matter. Given the clear provision of section 45G(1), it can help reduce the burden of proof required on the part of the complainant in court if that provision can apply. The complainant only needs to prove the amount of loss incurred in court, and an award will be made. In that case, why not include those non-compliant intermediaries under section 45G(1)? If the Government's reply is that regulation has already been provided under section 108 of the SFO, I think such a reply is incomprehensive.

Hence, the Civic Party is still open on this question. I hope the Secretary can explain clearly the reasons of its stance, or perhaps he can point out whether there is any mistake or omission in my understanding gained in the course of the deliberation on the Bill as I have just cited. I will stop for the time being.

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

(Mr KAM Nai-wai raised his hand to indicate his intention to speak)

**CHAIRMAN** (in Cantonese): Mr KAM, let me see if other Member wishes to speak. If no one wants to speak, I will let you speak again.

**MR KAM NAI-WAI** (in Cantonese): Chairman, I want to talk about the point just raised by Mr Alan LEONG, which is incidentally the point I did not have time to finish just now. Because the Government has informed Members that Mandatory Provident Fund (MPF) scheme members can lodge complaints or make compensation claims through certain avenues — as I just said, Mr WONG Ting-kwong also holds this view, which is similar to that held by Mr Alan LEONG — the Administration has stated that they can in fact institute court proceedings to seek compensation and hence, it does not agree to empower the Mandatory Provident Fund Schemes Authority (MPFA) to handle compensation claims.

What is in fact the avenue for seeking compensation in court? At present, the Mandatory Provident Fund Schemes Ordinance (MPFSO) provides that an affected person can institute proceedings in court for civil claims. I do not know why the Administration has excluded the application of the original provision under the Bill. The amendment I propose now is about the regulation of MPF intermediaries, that is, in case of mis-selling by an intermediary that incurs loss on any person ..... According the Government's amendment, an affected person cannot institute proceedings in court for civil claims under the original provision because its application has been excluded. In that case, what should the affected person do? The Government has proposed two options: The affected person can make a claim under the common law; if the mis-selling of the intermediary concerned is substantiated under the common law, he may make a compensation claim to court. Secondly, he may claim compensation under section 108 of the Securities and Futures Ordinance (SFO).

Just now, Mr Alan LEONG has mentioned section 108 of the SFO, which seeks to regulate the relevant restricted persons, and not intermediaries. In this connection, further explanation from the Secretary is required. Nonetheless, I think if section 108 of the SFO is to be relied upon in seeking compensation — I



will presume for the time being that this provision covers all scenarios — what is section 108 about? The provision is about the making of fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation which creates civil liabilities as a result of pecuniary loss sustained from investment made on the basis of such misrepresentation. As Members all know, the scope of fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation is very wide and without any fine definition. Hence, it is very difficult to prove such misrepresentation.

I do not know whether Mr LEONG has any knowledge about such cases in the past, or perhaps he may have come across some cases in the lawsuits he has handled, that is, whether there is any case of successful prosecution in court under section 108? I want to draw Members' attention that under the existing Bill, if these intermediaries ..... In fact, conduct requirements for registered intermediary have been specified in section 34ZL, viz "When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary" — or in other words, agents or frontline sales personnel; as the term "subsidiary intermediary" is used in the legislation, Members may have no idea what it is referring to — "(a) must act honestly, fairly, in the best interests of the client, and with integrity; (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity; (c) may advise only on matters for which the principal or subsidiary intermediary is competent to advise; (d) must have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client; (e) must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision; (f) must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client; (g) must ensure that client assets are promptly and properly accounted for; and (h) must comply with other requirements that are prescribed by the rules." I will not read out the other provisions because there are other rules for a principal intermediary as well. In other words, the rules, regulations and conduct specified under (a) to (h) above are specific and easily understandable. Compared with terms such as the so-called "fraudulent misrepresentation", "reckless misrepresentation" or "negligent misrepresentation", it is obvious which way is easier in terms of making a claim in court for mis-selling of MPF products.

When it comes to proving a breach against the rules under (a) to (h) mentioned above, the task is of course by no means simple, but at least those rules are understandable to wage earners and intermediaries generally. However, if the case is adjudicated in court — perhaps Mr Alan LEONG can talk more about it — it will be very complicated to prove the making of fraudulent misrepresentation, reckless misrepresentation or negligent misrepresentation as I just mentioned.

As I just said, even if Members do not agree with this avenue of making claims, that is, the power be transferred from the Court to the MPFA, perhaps it is a matter of principle or policy ..... Members may not agree with this arrangement. Notwithstanding the clear recommendation made by the Report of the Subcommittee on the Lehman Brothers incident, Members may have different views and disagree that the avenue of making claims be transferred from the Court to the MPFA; but even if the matter is to be decided by court, it will take strenuous effort to claim compensation. As Members know, wage earners pay 5% of their monthly salary as MPF contributions, which is a very small amount.

Honestly, the existing MPF ..... I always use this leaflet for illustration; I cannot see the small prints even with a magnifying glass. It turns out that some so-called steady growth retirement funds incur a loss every year, with a total of 6% loss accumulated since the funds were rolled out. In other words, assuming that the accumulated contribution of a person is \$300,000, a loss of 6% is equivalent to some \$18,000. Would a person institute civil proceedings in court against the mis-selling in order to claim compensation for merely some \$18,000? Would a person go to court to claim compensation? That is impossible ..... The amount should be \$18,000, which is not a big sum after all. In fact, MPF benefits do not involve large sums of money. I do not think any person would go to court for it.

I hope Members ..... Even in the case of victims of the Lehman Brothers incident who have incurred a lost of several tens of thousands of dollars, several hundreds of thousands of dollars, several millions of dollars or even several tens of millions of dollars, they do not have the resources to institute legal proceedings. As Members can see for themselves, how many legal proceedings have been instituted on cases related to the Lehman Brothers incident? Just a few. As far as I can recall, even if some cases do make it to court, no case has ever reached the stage of closing with a verdict handed down finally. When a

case goes to court, the financial institution concerned will offer compensation because the litigant does not have the financial resources to fight a legal battle with banks or intermediaries who have earned so much money that they cannot even put their socks on. This is really a case of asking a tiger for its skin.

Hence, if the Government now proposes to exclude intermediaries from the application of the specified avenue of instituting civil proceedings in court for compensation which is currently available, is it reasonable and justifiable? I would like to hear the Secretary's reply before stating my views further. Thank you, Chairman.

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

(No Member indicated a wish to speak)

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, the Government does not support the two amendments proposed by Mr KAM Nai-wai. The first amendment is divided into two parts. The objective of the first part is to allow any person who has sustained loss as a result of the breach of an intermediary against a requirement or standard under Part IVA of the Ordinance to institute legal proceedings in court. That is also the major content of Mr KAM Nai-wai's second amendment.

In fact, section 108 of the existing Securities and Futures Ordinance (SFO) has already provided a statutory avenue for claiming compensation in relation to misrepresentations in the sale of collective investment schemes including Mandatory Provident Fund (MPF) schemes, regardless of whether the person making such misrepresentations is a licensee under the SFO or not. Both the Government and the Mandatory Provident Fund Schemes Authority (MPFA) support that under reasonable and appropriate circumstances, investors or MPF scheme members should be facilitated to claim compensation in court.

The Government does not support Mr KAM Nai-wai's amendment because the proposal fails to fully consider the far-reaching implications of the provision and no consultation has been conducted. All in all, under the regulatory regime on the sale and marketing of MPF schemes, conduct of intermediaries which

causes loss to scheme members is generally regarded as misrepresentations. As I have just said, section 108 of the SFO has already provided a statutory route for claiming compensation in relation to misrepresentations of MPF products.

The Bills Committee had only focussed its discussion on empowering the MPFA to award compensation, and no discussion had been held on this part of the amendment. Notwithstanding the complicated legal viewpoints involved in Mr KAM Nai-wai's amendment which had considerable impact on the intermediaries, no prior consultation had been conducted. From past experience, the legal profession as well as people from other sectors are probably gravely concerned about similar provisions both policy-wise and drafting-wise. For instance, regarding sections 108 or 391 of the SFO which I just mentioned, many invaluable views have been suggested by the legal profession during the policy-formulation as well as legislation stages. It is undesirable to pass the amendment haphazardly before stakeholders and the legal profession have the opportunity to state their views on the far-reaching implications of the amendment. Moreover, at this stage, the Government does not consider that the amendment can offer any actual and extra protection to scheme members on top of section 108 of the SFO.

On account of another consideration, the Government cannot support Mr KAM Nai-wai's amendment because the starting point for instituting proceedings is that if a person has sustained loss as a result of the breach of an intermediary against a requirement or standard under Part IVA of the Bill. However, unlike the provisions regulating MPF schemes and trustees in the existing the Mandatory Provident Fund Schemes Ordinance (MPFSO), the provisions in Part IVA have specified some highly subjective standards. For instance, section 34ZL requires that intermediaries must act honestly and fairly. If these subjective standards become statutory grounds for a person to institute proceedings in court, it will increase the potential risk of litigation faced by about 30 000 intermediaries — most of them are individuals. The second part of Mr KAM Nai-wai's first amendment empowers the MPFA to directly order regulated persons to pay compensation to scheme members; likewise, no public consultation has been conducted for this part of the amendment.

In addition, the Government also cannot support this amendment on account of the following reasons. Firstly, the Bill has already empowered the MPFA to impose disciplinary sanction and to arrange settlement with the relevant

persons. In addition, apart from the avenues under the common law, scheme members may also institute proceedings in court to seek compensation on account of misrepresentation under section 108 of the SFO. Mr KAM Nai-wai's proposal to further expand the MPFA's role to replace the Court is inappropriate. Apart from the consideration of the different roles to be played by the MPFA, it does not possess the necessary expertise and experience to handle compensation claims. Similar views have also been stated by some members during the deliberation by the Bills Committee.

In addition, the proposed amendment is flawed fundamentally. Under Article 10 of the Hong Kong Bills of Rights, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. According to the opinion of the Department of Justice, as the MPFA's role in the disciplinary process can hardly be regarded as an independent and impartial tribunal, and the amendment has not provided an appeal mechanism against the MPFA's decision, it does not comply with the principles under the Hong Kong Bills of Rights.

Chairman, according to the MPFA's understanding, the proposed power is not available in other overseas countries regulating major financial products including Singapore, Australia and the United States. While similar power is available in the United Kingdom under the Financial Services Authority (FSA), such power has never been invoked. Conversely, the original arrangement in the Bill is in line with regulatory arrangements adopted in other similar jurisdictions. From a macro point of view, if regulatory authorities of financial products are empowered to award compensation, it will have far-reaching and unforeseeable implications on the overall financial regulatory framework in Hong Kong. Hence, I implore Members to oppose the two amendments proposed by Mr KAM Nai-wai.

**MR KAM NAI-WAI** (in Cantonese): Chairman, just now, the Secretary has explained the reasons for excluding the application of Part IVA and quoted one of the provisions I have just cited, that is, section 34ZL on the conduct requirements of registered intermediaries. According to him, it is a highly subjective requirement that an intermediary "must act honestly, fairly, in the best interests of the client, and with integrity", and it may give rise to many litigations. Chairman, I do not quite understand. If that is the case, why are the relevant

requirements incorporated into the Guidelines on Conduct Requirements for Registered Intermediaries? These conduct requirements are not only guidelines, but also statutory provisions specifying that registered intermediaries must act honestly, fairly, in the best interests of the client ..... Of course, apart from these guidelines, I think other detailed arrangements may also apply, for example, the intermediary concerned may have to follow certain procedures in order to comply with the so-called requirements of acting honestly, fairly, in the best interests of the client, and with integrity. If the Secretary also considers these requirements highly subjective, many non-compliant intermediaries may quote the Administration's view that the conduct requirements are subjective and query about the standards to apply. When formulating these conduct requirements, the Government must have already made certain assessments as to what is meant by acting honestly, fairly, in the best interests of the client, and with integrity. Has the Government made these assessments? After all, the Administration cannot just require compliance by the intermediaries with a mere provision.

I recall that in the Lehman Brothers incident, the Securities and Futures Commission has always explained the conduct requirements on intermediaries in a question-and-answer (Q&A) format. When implementing these guidelines, will the Government adopt the Q&A format I just mentioned to increase public awareness of the required standards? Secretary, if you consider these requirements highly subjective and worry that this legislation may be invoked to institute proceedings against the intermediaries, have you ever considered the reverse scenario, that is, the intermediaries may tell wage earners that they have already met the requirements of acting honestly, fairly and in their best interests according to your so-called subjective requirements. One must look at both sides of the matter. Once again, it shows that the Government is only concerned about the interests of the consortia, and pays no attention at all to the plight of wage earners. Why is the Government only concerned about the possibility of intermediaries being sued? If the intermediaries are genuinely acting honestly, fairly and in the best interests of the client, they will not be sued. I would like the Government to tell me whether the guidelines must be issued? This is the first point.

Secondly, on the point about the avenues to seek compensation, the Secretary has mentioned that no other country in the world has similar legislation except in the United Kingdom. In addition, even though there is similar legislation in the United Kingdom, it has never been invoked. Hence, it is not

appropriate to invoke the relevant legislation. Secretary, even though a piece of legislation has never been invoked, it does not mean that it is inappropriate. Why does the United Kingdom enact that piece of legislation in the first place? Why does the United Kingdom empower the Financial Ombudsman Services (FOS) to make compensation? Has the Secretary ever ascertained the situation? Why does the United Kingdom enact that piece of legislation? Does it mean that there is no procedural justice, as mentioned by the Secretary, in the United Kingdom? By the Secretary's reasoning, as the FOS accepts complaints, conducts investigations and orders payment of compensation, it is an inappropriate arrangement; and given that this arrangement is inappropriate, the relevant procedure will be subject to challenge. Why is the United Kingdom not afraid of being challenged? Given such a system in the United Kingdom, can the Secretary explain why the FOS is empowered to order compensation payment in the United Kingdom? Notwithstanding the Secretary's statement that the legislation has never been invoked in the United Kingdom, why does it have no fear of the problem you mentioned?

Of course, some people will say that if the MPFA is responsible for awarding compensation, the intermediaries may be dissatisfied with the relevant compensation awarded. On the contrary, the Court can then act as the gatekeeper.

Just now, I have already explained the reasons why I suggest that the MPFA should be responsible for the compensation procedure. That is because if wage earners must engage in an expensive and tiring process to seek compensation, they would be deterred from instituting the proceedings in court. If the matter is to be handled by the MPFA, as evident from past experience, if the MPFA has ruled that compensation should be paid, large financial institutions very often dare not appeal. As these organizations are mindful of maintaining their reputation, they will not lodge an appeal or seek the court's judgment easily.

On the contrary, if wage earners want to institute legal proceedings in court to seek compensation on their own accord, they do not have the necessary financial means to do so. As I have already reiterated this viewpoint, I will not make any comments further. I hope the Government will proceed from the starting point of protecting wage earners. If section 108 of the Securities and Futures Ordinance (SFO) is to be invoked, can the Secretary tell me the number of successful cases in the past?

I recall that in the Lehman Brothers incident, the Commercial Crime Bureau of the Police Force has tried to invoke section 108 of the SFO to bring prosecution against the sales personnel of the relevant banks. In the end, given the difficulty in collecting evidence, the Court indicated that the Government could not press charges in these cases due to insufficient evidence. At present, even when the Government wants to prosecute the financial institutions on behalf of the victims, it cannot defeat the financial institutions. Secretary, how can you ask ordinary members of the public and wage earners to sue these institutions?

Hence, I hope the Government would stop giving preferential treatment to those profiteering financial institutions which are widely criticized by Hong Kong people. Otherwise, I think the people will hate the MPF even more.

Thank you, Chairman.

**MR ALAN LEONG** (in Cantonese): Chairman, when I spoke for the first time, I have already clearly stated the Civic Party's stance that we cannot support Mr KAM Nai-wai's first amendment. In other words, when determining the amount of compensation, the arrangement of having the Court make the decision should still be retained. However, regarding the Secretary's reply to Mr KAM Nai-wai's second amendment just now, I want to respond briefly on two points.

Firstly, Chairman, I hope the Secretary will understand that section 108 of Cap. 571 — Chairman, Cap. 571 is of course the Securities and Futures Ordinance — section 108 and section 45G of the Mandatory Provident Fund Schemes Ordinance (MPFSO) under our scrutiny now are totally different. Section 108 of Cap. 571 cannot actually help litigants claim compensation without having to prove that the intermediary concerned has breached his statutory duty to him. Chairman, if section 108 is to be invoked, the litigant must still prove two points, namely that the intermediary concerned is indeed liable, either it is contractual liability or liability in tort. The litigant must first prove liability before proceeding to the second step, that is, asking the Court to assess or determine the amount of loss.

Nonetheless, the basic arrangement under section 45G is different. Section 45G provides that once it has been proved that the intermediary ..... If Part IVA is added to the MPFSO according to the amendment, in the event that



the misconduct of the intermediary concerned has been proved, he will be sanctioned by the Mandatory Provident Fund Schemes Authority (MPFA). If intermediaries are also covered under section 45G, the victim concerned does not even need to go through the part of proving the intermediary's liability in court because section 45G is directly related to the part about assessing the amount of compensation by court. Hence, this is the fundamental difference between section 45G and section 108.

Hence, first of all, I hope the Secretary can see that there is such a difference. Moreover, the Secretary has said that if section 45G(1) also applies to the intermediaries, he is afraid that some victims or investors may consider themselves deceived as a result, that is, they may be prone to institute legal proceedings. However, this question is also non-existent because the pre-condition or premise of section 45G is that the intermediary must have already been proved under Part IVA that he has been sanctioned for breaching certain requirements specified in Part IVA. It is only in such cases that the complainant or the victim can rely on this fact to activate section 45G and seek the Court's assessment on the amount of loss directly. Hence, I hope the Secretary can deal with these two points.

Chairman, perhaps my response will end here.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): I want to respond briefly. For example, regarding the Financial Services Authority (FSA) of the United Kingdom mentioned just now, although procedures have been provided for the FSA to order compensation, an appeal mechanism has also been provided. I think it is most important for us to review the overall experience adopted internationally. Regarding the practice of the

FSA, I consider it inappropriate to adopt them firstly because we have not adopted this arrangement before and secondly, other arrangements are available.

**MR KAM NAI-WAI** (in Cantonese): Chairman, the brief response just made by the Secretary really indicates that an appeal mechanism is available, yet he has said that the intermediaries lack the opportunity to appeal. According to the Secretary, an appeal mechanism has been provided under the Financial Services Authority in the United Kingdom; even if the aggrieved person feels dissatisfied after the appeal, he can still appeal to court. As an appeal can be lodged in both situations, there is no question about the intermediaries being treated unfairly. That is the first point.

Secondly, there is a point I would like to draw Mr WONG Ting-kwong's attention, and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) can also give due consideration. Although you do not agree with the relevant compensation principles, the Secretary has not responded to the point just raised by Mr Alan LEONG. What is the situation I am talking about now? That is after all the investigations have been conducted by the Mandatory Provident Fund Schemes Authority (MPFA) — which would be very complicated as I have just said — it will give a notice of preliminary view of a sanction order to the intermediary concerned, who may then lodge an appeal. When there is a final outcome of the appeal, the MPFA will inform the intermediary concerned of the sanctions. For example, the MPFA may order the intermediary concerned to pay a maximum fine of \$10 million and revoke his licence. Originally, upon the completion of all these procedures, the victim concerned can institute civil claims in court for compensation under the existing provisions; but as the Government presently proposed to exclude their application on MPF intermediaries, the victim concerned can no longer do so under the original provisions. Mr WONG Ting-kwong, do you mean that the victim can institute proceedings in court to claim compensation after the MPFA's ruling?

But this is not the case now. The Government disallows the victim to invoke that provision; sorry, you cannot institute proceedings in court to claim compensation even though the intermediary concerned is convicted of mis-selling and sanctioned to pay a fine of \$10 million with his licence revoked. The victim must take another route. The Government is asking the victim to invoke section 108 of the Securities and Futures Ordinance (SFO) and make a claim afresh on grounds of fraudulent misrepresentation, reckless misrepresentation,

and so on. Originally, the MPFA has completed the investigation on the case, and the intermediary concerned is found guilty of misconduct and sanctioned to pay a fine of \$10 million with his licence revoked. Originally, the victim can institute proceedings in court to claim compensation on the basis of this charge. That is the viewpoint raised by Mr WONG Ting-kwong at the Bills Committee, who did not agree that the award should be made by the MPFA. I recall that this is the viewpoint of Mr WONG Ting-kwong. Now, the Government has adopted another stance, even if the intermediary has been fined \$10 million with his licence revoked, the victim concerned still cannot institute a proceeding in court to claim compensation on this basis. He must make a claim under section 108 of the SFO.

Hence, I hope that members of the DAB can consider supporting my proposal in view of your stance at the Bills Committee that it is the normal course to institute proceedings to make civil claims. I will move two amendments. The first amendment is to empower the MPFA to award compensation, which you do not agree. In fact, I only propose that wage earners should have the right to institute proceedings in court to make civil claims on the basis of the MPFA's sanction. This is completely in line with the stance you expressed at the Bills Committee. You have expressed support for this arrangement. I hope the DAB will carefully reconsider this matter. Thank you, Chairman.

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

(No Member indicated a wish to speak)

**CHAIRMAN** (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

(The Secretary for Financial Services and the Treasury shook his head to indicate that he would not speak again)

**CHAIRMAN** (in Cantonese): Before I put the question on Mr KAM Nai-wai's amendment, I would like to remind Members that if Mr KAM Nai-wai's first amendment is passed, he cannot move his second amendment.

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the first amendment of Mr KAM Nai-wai 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 KAM Nai-wai rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr KAM Nai-wai has claimed a division. The division bell will ring for five minutes.

**CHAIRMAN** (in Cantonese): Will Members please proceed to vote.

**CHAIR**

**MAN** (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:

Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendment.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendment.

Dr Margaret NG and Ms LI Fung-ying abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr WONG Kwok-hing, Mr KAM Nai-wai, Mr WONG Sing-chi and Mr WONG Kwok-kin voted for the amendment.

Mr CHAN Kam-lam and Mr LAU Kong-wah voted against the amendment.

Ms Audrey EU, Mr Ronny TONG, Ms Cyd HO, Dr Priscilla LEUNG, Mr Alan LEONG and Mr WONG Yuk-man abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present, two were in favour of the amendment, 14 against it and two abstained; while among the Members returned by geographical constituencies through direct elections, 18 were present, nine were in favour of the amendment, two against it and six 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): Mr KAM Nai-wai, you may now move your second amendment.

**MR KAM NAI-WAI** (in Cantonese): Chairman, I move the second amendment to clause 20 under my name.

*Proposed amendments*

**Clause 20 (See Annex I)**

**CHAIRMAN** (in Cantonese): I now put the question to you and that is: That the second amendment of Mr KAM Nai-wai 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 KAM Nai-wai rose to claim a division.

**CHAIRMAN** (in Cantonese): Mr KAM Nai-wai 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, Mr IP Wai-ming and Dr PAN Pey-chyou voted for the amendments.

Dr Raymond HO, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr

Paul CHAN, Mr CHAN Kin-por and Mr IP Kwok-him voted against the amendments.

Ms LI Fung-ying and Mr CHIM Pui-chung abstained.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Ms Audrey EU, Mr WONG Kwok-hing, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Mr WONG Sing-chi, Mr WONG Kwok-kin and Mr Alan LEONG voted for the amendments.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung and Ms Starry LEE voted against the amendments.

Dr Priscilla LEUNG and Mr WONG Yuk-man 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, four were in favour of the amendments, 14 against them and two abstained; while among the Members returned by geographical constituencies through direct elections, 20 were present, 13 were in favour of the amendments, four 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 as stated. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

(Mr WONG Yuk-man stood up)

**CHAIRMAN** (in Cantonese): Mr WONG Yuk-man, what is your point?

**MR WONG YUK-MAN** (in Cantonese): Have we proceeded to voting now? I have no further question.

(Mr WONG Yuk-man sat down)

**CHAIRMAN** (in Cantonese): I declare the motion passed.

**CLERK** (in Cantonese): New clause 23A.

**SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY** (in Cantonese): Chairman, I move that new clause 23A be added to the Bill.

*Proposed Addition*

**New Clause 23A (see Annex I)**

**CHAIRMAN** (in Cantonese): I now propose the question to you and that is: That new clause 23A be added to the Bill.

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

(Members raised their hands)

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

(No hands raised)

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

**CHAIRMAN** (in Cantonese): Council now resumes.

Council then resumed.

### **Third Reading of Bills**

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

### **MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL 2011**

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

Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

has passed through the Committee stage with amendments. I move that this Bill be read the Third time and do pass.

**PRESIDENT** (in Cantonese): I now propose the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 be read the Third time and do pass.

Does any Member wish to speak?

**MR KAM NAI-WAI** (in Cantonese): President, we have already stated during the Second Reading of the Bill that the Democratic Party will support the Second and Third Readings of this Bill which relates to the implementation of Mandatory Provident Fund (MPF) "Semi-portability".

The Democratic Party has proposed three amendments to this Bill in the hope of enhancing the protection of MPF contributions made by wage earners. Regrettably, all of them have been vetoed. Nevertheless, we still have expectation for this Bill which relates to MPF "Semi-portability", primarily because, as we all know, the MPF itself has drawn many criticisms in the past. Firstly, the MPF scheme only takes care of the interests of big consortia. Secondly, the relevant fees are extremely high. Hence, we very much hope that after the enactment of the Bill, the relevant administrative fees, that is, the fees of intermediaries charged by big consortia and big companies will be lowered, not only marginally but substantially.

Meanwhile, how can the rights of wage earners be protected? Although our proposed amendments have not been passed this time, it is my hope that the Government must strengthen supervision in the future. I hope that after the enactment of the Bill, I will no longer see this leaflet which I often use for illustration purpose. I hope that in the future, the promotional leaflet of MPF, particularly the part cautioning wage earners about potential risks, would be printed in large font size and the contents would be easily understandable. Notwithstanding the use of larger font size, the intermediaries should not resort to all kinds of excuses, just as they are doing now, to hold the investors responsible on the ground that they have already read and signed the papers. In that case, many disputes would arise. I am aware that the enacted legislation will not immediately come into operation, but will be implemented at the end of the year. In the meantime, I hope the Government will enhance the work on publicity, education as well as training of intermediaries, so that MPF can genuinely offer some slight protection for wage earners.

Of course, what the Democratic Party wishes most is the implementation of a universal retirement protection scheme, and MPF "Semi-portability" is merely a halfway stop. Ultimately, in addition to MPF "Full Portability", a universal retirement protection scheme will be implemented. That is the ultimate wish of the Democratic Party.

Thank you, President.

**MR RONNY TONG** (in Cantonese): President, although we support this Bill, we must state clearly that at the end of the day, we do not support the Mandatory Provident Fund (MPF) system and hope for its abolition as soon as possible. When we were having lunch just now, I heard the voice of many wage earners outside calling for the early abolition of the MPF system.

President, this system has all along been criticized for three major shortcomings. Firstly, high administrative fees but low level of returns; secondly, many employers — unscrupulous employers — try by all means to manipulate the employers' contribution to exploit the rights of wage earners, such that they cannot benefit ultimately; thirdly, President, this system can certainly neither provide a comprehensive safety net for future retirees of Hong Kong, nor address the problem of an ageing population in society.

President, to a certain extent, the present Bill has slightly responded to the three shortcomings I just mentioned. The implementation of MPF "Semi-portability" or even "Full Portability" can eventually lower the administrative fees. President, why is that so? Under the previous system before the amendment, employers decide which MPF scheme employees should join. Given that the decision is made by employer, the number of MPF scheme members is extremely small, in the range of hundreds of thousands of employees. However, if the choice of MPF scheme is given back to wage earners, the number of MPF scheme members can be increased to over 2 million.

With a substantial increase in the number of scheme members, it will be a boost to increasing competition, and as we all know, competition is the best market force as service cost can be reduced to an acceptable level in the market. With the impending MPF "Semi-portability", management fees of many funds have in fact been reduced, with some even up to nearly 20%. At present, if I

remember correctly, the fees of the most basic, the most conservative funds have already come down to 0.7%. It shows that MPF "Full Portability" is the only means to apply pressure on management fees to a certain extent. I think this is definitely one of our objectives.

President, regarding unscrupulous employers who deploy every means to abuse their employees or try every trick in the book, such as compelling employees to sign false statements or contracts, claiming to be self-employed, such cases have been revealed by the media constantly. We can only seek to impose heavier penalty on employers through legislation, in order to deter such malpractices. Obviously, this is an objective we hope to achieve. I also hope that the Secretary can keep up the effort and stringently prevent employers from abusing the basic rights of employees by unscrupulous means.

Nonetheless, President, I wish to point out finally that the MPF system can neither offer comprehensive protection for all retirees nor address the problem of ageing population in society. That is the system's inherent shortcoming, which also explains why many wage earners are so resistant about the system. In respect of wage earners whose salary is so low that they are not required to make MPF contributions, the amount of minimum contribution has been increased when the legislation was last amended, so that many employees are exempted from making MPF contributions. President, the fact that they have been exempted from making MPF contributions does not mean that their well-being is being taken care of. Rather, the benefits they receive upon retirement in future may barely cover their travelling expenses, let alone meals or rental.

This system utterly fails to bring benefits to the overall community. At the end of the day, the Government must also bear the greatest economic responsibility as it must maintain a relatively stable society through various social welfare systems such as the Comprehensive Social Security Assistance for elderly persons or "fruit grant". President, that is absolutely unacceptable. Hence, we strongly demand that — I hope if the Secretary will agree to stay in the post — I strongly demand that the Government should expeditiously give overall consideration to implementing a universal retirement protection scheme.

The implementation of a universal retirement protection scheme has got the consensus of the pan-democratic camp. The Legislative Council has also set up a subcommittee to study the issue. After more than one year of study, the

subcommittee has put forth many useful recommendations. I very much hope that the SAR Government can consider this issue seriously, unlike Chief Executive Donald TSANG who conveniently swept this proposal, which had a fairly broad basis of public opinion, under the carpet with just one sentence in his policy address.

I hope that when the new Chief Executive comes into office, he will deal with the issue seriously, rather than treating it at his leisure without giving it any serious thoughts in implementing the policy.

President, ultimately, we will of course support this Bill today.

**MR LEUNG YIU-CHUNG** (in Cantonese): President, just now, I have abstained when voting on some of the amendments, and I have only voted for the two amendments proposed by a friend of the Democratic Party.

Some people may ask me, why do I abstain from voting even on some of the amendments proposed by the Government? Actually, I will also abstain when the question on the Third Reading of the Bill is put to vote later. President, the most important reason is that I should have voted against the motion, but since the Mandatory Provident Fund (MPF) system has existed for some time, we cannot overturn it today. Hence, we must resign ourselves to proposing amendments to the Bill for the purpose of protecting workers. In particular, the two amendments proposed by the friend of the Democratic Party are intended to offer more protection to employees and hence, I support him. But I want to tell the Government that even though I abstain from voting, I am actually against the entire MPF system.

In 1995, I also voted against the relevant Bill. The most important reason was that I did not think the MPF system could offer retirement protection to employees. I am even more concerned about the so-called MPF "Semi-portability" under discussion today. What am I concerned about? Although employees are allowed to choose their own MPF trustees under the "Semi-portability" arrangement, the level of risk would increase correspondingly. While employees can make constant switches, loss might be incurred as a result of risky investments. In fact, MPF is different from investments in stocks and funds. If we invest in stocks and funds, we are doing it voluntarily — we are

not mandatorily required by law to make such investments — such that we can maintain the level of risk at an acceptable level and should hence bear the responsibility of such risk. However, that is not the case of MPF. We are mandatorily required by law to make such investment. Even though we must make such investment, no protection is given for our sustained loss and we are left to bear the responsibility ourselves. This arrangement is most inappropriate, unreasonable and unfair. Hence, I am against the MPF system through and through.

In fact, during the resumption of Second Reading debate of the Bill, I have said that what concerned us most is that the MPF system cannot help or benefit the unemployed, especially housewives. As they have no earning power when they grow old, they must still rely on assistance from friends and relatives. Notwithstanding the Government's claim of helping employees when they retire, the MPF system can actually offer no help at all. Furthermore, as I have said previously, most of the workers whom I know of have told me that they have less than \$100,000 as their accrued MPF benefits to date, even though the MPF system has been implemented for 12 years. Let us consider this: If their current accrued benefits are less than \$100,000, what will happen if they make contributions for another 30 years? How much money will be accumulated? That is indeed worrying. Even if their accrued benefits can increase to some \$300,000 to \$400,000 after 30 years, or say, the amount is doubled to some \$500,000 to \$600,000, what will happen? Is this sum of money really enough to support their retirement life?

As we all know, some people as well as the Government have kept saying that the society is ageing as our lifespan is increasing. How can they survive a retirement life of more than 10 years? What is the solution to the problem? There is in fact no solution. Nonetheless, it seems that the Government's current attitude and direction is to improve the MPF system continuously. But what is the use of these improvements? Are there any changes to the essence of the system? The Government cannot change the essence of the system; it can at most introduce piecemeal amendments, and what purpose does that serve? At most, they only serve to tell people that the Government cares about the well-being of the public; it is well aware of the problems and tries to introduce relevant amendments. But what purposes can these amendments achieve if the Government does not change the major premise and the general principle of the MPF system?

To date, the Government is still unwilling to reconsider whether a provident fund system should be established. It has not done so. Just now, Mr Ronny TONG mentioned that a consensus has been fostered among the general public and even among many Members of the pan-democratic camp, or even — I do not know if I have been unfair to Mr WONG Kwok-hing by saying so — the Hong Kong Federation of Trade Unions also supports the implementation of universal retirement protection. Why does the Government refuse to consider this matter? It refuses to consider the matter even to this date, and just says that the issue must be considered by the Central Policy Unit (CPU). How long has the CPU's study been going on? After years of study, the CPU still refuses to publish its report. What kind of Government is it? Donald TSANG kept saying that his governance should be people-based, but what is the basis? The Government has been avoiding the problem even though it keeps saying that the problem of an ageing population must be solved, or that one in four persons in Hong Kong is an elderly person by 2033. We have proposed a solution, yet the Government refuses to listen and keeps on making piecemeal amendments to the legislation. What is the use?

The situation now is different from that in 1996. When we discussed whether the MPF system should be established at that time, I had voted against the proposal. But as the system is already in place now and cannot be abolished instantly, I can only abstain because that is my principle. I would like to say to the Government once again that our stance has always been against the MPF system. We have all along stated that — and as many workers have also said — the MPF system can only bring benefits to fund managers and consortia. Why does the Government enact laws to benefit those people? I really do not understand. The only reason I can think of is the collusion between the Government and business. The Government is helping the consortia or people with vested interests, rather than ordinary members of the public, because our hard-earned money is practically handed over to the consortia. If one is lucky and the economy is good, he may get a meagre return; if he is unlucky, he may lose all the money. Many workers have been telling me that they are worried about losing all their money. That is a possibility. Given that the Government will not cover their losses, what will happen if all their money is lost?

The situation will be different if the MPF system is replaced by a central provident fund because the Government will be the "underwriter". We proposed as early as 1996 that a central provident fund should be established instead of the



MPF system. If a central provident fund was established, the Government would be the "underwriter". But now the Government is unwilling to cover the losses; if any loss has been incurred, we have to bear the loss ourselves. When we retire in future, what protection can we get? There is no protection at all. Hence, all in all, President, I oppose to the MPF system. Regarding the piecemeal amendments introduced by the Government today, I must resignedly abstain from voting.

President, I so submit.

**MR WONG KWOK-HING** (in Cantonese): President, I speak on behalf of the Hong Kong Federation of Trade Unions. We will vote for the motion in the Third Reading of the Bill.

President, the implementation of Mandatory Provident Fund (MPF) "Semi-portability" has been discussed for a long time. Undoubtedly, the MPF system is imperfect given the structural defects. Moreover, it fails to solve the livelihood problems of wage earners when they retire. This issue has been mentioned so often that we do not want to speak any further. During the Second Reading of the Bill, I had put forth my views on four aspects. Regrettably, the Secretary has not responded accordingly in his reply. I do not know whether or not the Secretary will respond later.

Against this background, why should we vote for the Bill? That is because it is better to take half a step forward than making no advancement at all. For this reason, we support this amendment Bill on MPF "Semi-portability".

President, I hope that upon the passage of the Bill today, the Government will continue to deal with the several problems we are now facing. First, it is the offsetting arrangement under the MPF structure, that is, employers are allowed to offset severance payment and long service payment with MPF .....

(Mr LEUNG Kwok-hung stood up)

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I have a point of order. It is stipulated in Rule 17(2) of the Rules of Procedure that, "If the attention of the President is drawn to the fact that a quorum is not present, he shall direct the Members to be summoned."

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

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

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, please continue.

**MR WONG KWOK-HING** (in Cantonese): President, due to the structural problems of the MPF system, where MPF benefits can be used to offset long service payments and severance payments, the hard-earned contribution made by wage earners are forfeited. Given the offsetting mechanism, no matter how much employees put in their MPF account, they can only get a meagre amount at the end, and they cannot get much protection for their livelihood in their twilight years. In this connection, I hope that the authorities will attach importance to and face squarely the discontent of all wage earners in Hong Kong. We adamantly urge the Administration to solve this problem and do not tilt towards the interest of employers.

Moreover, I hope that when the Secretary replies later, he will no longer evade my proposals raised during the Second Reading debate, that is, allow wage earners to invest their contribution under "Semi-portability" in the Exchange Fund under the Hong Kong Monetary Authority (HKMA). I think this arrangement will boast the confidence of employees; while to other trustees, this can be regarded as the most desirable form of fair competition. If the Government is willing to implement this proposal, I believe other MPF trustees cannot but reduce their administration and management fees in the face of competition. In order to compete with the Exchange Fund, these trustees have to make proper investment on behalf of their clients in a serious and responsible manner. As such, all wage earners will have confidence in the investment of

their MPF, which will provide them with better protection. I hope the Secretary will not dodge this issue any more when he responds later.

Finally, I would like to point out that the MPF system has after all failed to address at root the problems of ageing and retirement protection in Hong Kong. It fails to ensure that all elderly are well-supported and have a sense of security. After all, the authorities should implement a universal and comprehensive retirement protection system. In this connection, the Government should brook no delay, nor should it overlook the problem.

Regarding the three proposals mentioned above, though there are only 10 days left for the incumbent Government, I hope it will face the problem squarely and forward our requests and proposals made on behalf of wage earners to the next Government for follow-up.

As for the amendments put forth earlier, we have cast a vote of support. We hope that this will exert pressure on the Government, and we hope that a little step forward is better than none.

President, I have heard a number of Members from the pan-democratic camp, that is, the opposition camp, bombarding the Government with all kinds of criticisms, condemning the Government for this and that, and blaming the Government for not taking any actions. While Members may continue to rebuke the Government, the current-term Government has only 10 days left in its term. As for the next Government, the Chief Executive-elect, LEUNG Chun-ying, does want to do something. He has set out his vision in his manifesto. We harbour hopes in him, hoping that he will make some accomplishments after he takes office on 1 July. Regrettably, today, under the previous agenda item, this Council has negated, merely by one vote, the motion proposed by the Government for discussing the restructuring of the Government Secretariat. As a result, Mr LEUNG Chun-ying of the new Government will have to take office as "a lone man" or a general with no troops on 1 July. We ask the Government to improve .....

**PRESIDENT** (in Cantonese): Mr WONG, during the debate at the Third Reading of the Bill, Members should speak on the contents of the Bill.

**MR WONG KWOK-HING** (in Cantonese): President, I am precisely speaking on the theme of the Bill.

**PRESIDENT** (in Cantonese): Just now, I said that Members should speak on the contents of the Bill.

**MR WONG KWOK-HING** (in Cantonese): Yes, I am speaking on the contents of the Bill. Speaking of the retirement protection system and the enhancement of the MPF .....

(Mr LEUNG Kwok-hung stood up)

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I have a point of order. I have gone through the entire Bill, but I cannot find the term "a lone man".

**PRESIDENT** (in Cantonese): Mr LEUNG, this is not a point for order.

**MR LEUNG KWOK-HUNG** (in Cantonese): Sorry, I am wrong. But I really cannot find the term "a lone man".

**PRESIDENT** (in Cantonese): Mr LEUNG, please be seated. Mr WONG Kwok-hing, please do not deviate from the subject.

**MR WONG KWOK-HING** (in Cantonese): ..... I have not strayed from the subject. Had Members pay attention to what I said earlier, they would have remembered that I said as there were only 10 days left for the current-term Government, many things could not be done or had yet to be done. Hence,

regarding the problems on universal retirement system and the enhancement of the structure of MPF, the next-term Government .....

(Mr LEUNG Kwok-hung stood up)

**PRESIDENT** (in Cantonese): Mr LEUNG, what is your point?

**MR LEUNG KWOK-HUNG** (in Cantonese): President, a point of order. According to Rule 17(2) of the Rules of Procedure, I hope that the President will fulfil the duties by calling more Members to listen to Mr WONG Kwok-hing's explanation about "a lone man".

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

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

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, please continue.

**MR WONG KWOK-HING** (in Cantonese): Just now, I said that the current-term Government could not undertake the work on the retirement protection system and the enhancement of MPF, so we hoped that the accountability officials of the current-term Government would hand over the tasks to the next-term Government, so that the new Government would follow up. However, since the previous motion had not been passed, the Government can in no way follow up .....

**PRESIDENT** (in Cantonese): Mr WONG, the debate on the Third Reading of the Bill is for Members to discuss the contents of the Bill. In particular, you should stop discussing the decision that this Council had already made. Please do not deviate from the subject.

**MR WONG KWOK-HING** (in Cantonese): President, I have not deviated from the subject. Concerning the enhancement of the MPF system, I point out that we have to make further effort to urge the Government to hand over the task to the next-term Government. I have not deviated from the subject, and this is exactly the subject under discussion. We criticize the Government for inaction, yet we do not allow the Government to take actions. How is this deviated from the subject? How is my criticism deviate from the subject? No, it has not deviated from the subject, President.

**PRESIDENT** (in Cantonese): You have deviated from the subject. If you continue to speak on this, I can only stop you from speaking. I reiterate that you should only speak on the contents of the Bill.

**MR WONG KWOK-HING** (in Cantonese): The contents of the Bill require the current-term Government to be aware of the existing structural problems. But with only 10 days left, should the current-term Government hand over the task to the next Government? If no one from the next-term Government is going to take over and handle the issue, is it acceptable? President.

**PRESIDENT** (in Cantonese): You are not speaking on the contents of the Bill now. Please stop.

**MR WONG KWOK-HING** (in Cantonese): By all accounts, I consider my remarks righteous. All Members preventing the next-term Government from taking the helm should bear the political responsibility.

**PRESIDENT** (in Cantonese): Mr WONG, please stop speaking.

**MS CYD HO** (in Cantonese): President, with great unwillingness and reluctance, I vote to support this amendment. I support this amendment for only one reason, that is, according to the amendment, if an employer fails to comply with a court order made in civil proceedings for the payment of arrears of mandatory

contributions and contribution surcharges, and in the case of a continuing offence, he will be subject to a daily penalty. Based on this reason, I support the amendment.

In the past, some employers, including media organizations, had defaulted on Mandatory Provident Fund (MPF) contributions for their employees. Even when their unscrupulous acts were revealed, they still refused to make the contributions in arrears to fulfil their obligation as employers. The imposition of heavier penalty may prevent employers from assuming that the compliance of court orders made in civil proceedings may be delayed continuously. Hence, I support the proposal to stipulate that it is a criminal offence not to comply with a court order.

However, the MPF system is really fraught with problems. Besides, it fails to address the issue of providing universal retirement protection. The Government often talks about its three-pillar approach, with MPF being one of the pillars, and basic welfare and individual savings being the other two pillars. However, housewives who do not go out to work are not involved in any employment relationship, and since they do not receive any monthly wage, they do not have an MPF account. They can only rely on savings or support from their family members to meet the daily expenses. Yet, there is no protection for their retirement life. This is a major problem. The best solution to the problem is the provision of universal retirement protection.

In fact, Prof WONG Hung had put forth a very comprehensive plan last year, proposing that contributions be made immediately, so that pension could be given to the elderly immediately. I believe if the current-term Government or the next-term Government is committed to addressing the poverty problem brought by an ageing population, it can at any time draw reference from the proposals on universal retirement protection put forth by academics in the civil society. It will be more desirable if these proposals can be implemented expeditiously.

The greatest problem with MPF lies in its "mandatory" nature, which carries the implication of compulsory, by force and sophistry. All the connotations are negative. As a colleague said earlier, there is no problem if the contribution is voluntary, for it is only a matter of different choices of saving money. However, this is not so when contribution is made "mandatory". When wage earners who cannot make ends meet are still required to contribute

5% of their income to MPF, and contribution by employers are deductible from their wages, this is actually adding misfortunes to people with a hard time.

Moreover, under the MPF system, over \$10 billion of contributions are collected each year for investment. I learn the following remarks from the former boss, Prof CHAN, of the Secretary. Since MPF contributions amounted to over \$10 billion each year, the investment (including property investment) of this amount will benefit the finance sector, bringing up a group of high-pay practitioners in the finance sector with high consumption power, who help fuel inflation. At the same time, the colossal sum of contribution spent on property investment has pushed up property prices. Wage earners are pitiful as 5% of their monthly wages will be deducted for MPF contribution, and employers will deduct another 5% from their wages. Their hard-earned wages have fuelled inflation, and they are immediately impacted by high inflation. By the time they retire, only a small amount will be left in their MPF account, which can in no way provide for their retirement life.

Therefore, to address the problem of lack of retirement protection for wage earners and the grassroots, the Government should consider the proposals put forth by Prof WONG Hung by implementing a universal retirement protection scheme, under which immediate contribution will be made and pension will be immediately provided. Thank you, President.

**MR LEE CHEUK-YAN** (in Cantonese): The Bill now reads for the Third time, which means the regulatory regime for intermediaries will be implemented and "semi-portability" will be implemented on 1 November. However, we often say that the authorities should not consider the "semi-portability" arrangement a panacea to the administration fee issue. I think the "semi-portability" arrangement cannot solve the problem on administration fees, and "full-portability" of MPF contribution should be implemented. In the end, the authorities should legislate on the maximum level of administration fees, so as to address the major problem causing widespread grievance against MPF. Secretary, seeing that our MPF accounts have been "shrinking", in terms of our investment and the administration fees charged, we are really furious as administration fees will be charged even if loss is incurred in investment. We are mad at seeing our saving shrink continuously.



Against this background, wage earners have great grievances about MPF, and we are caught in a dilemma. If the MPF system is abolished, honestly, employers will be most happy, for they do not have to make the 5% contribution. Employers will definitely be happy about this, but this is a kind of regression. However, if we support the continual operation of the MPF system, there will be widespread indignation and discontent, for the system is fraught with problems. These problems include the shrinkage of contribution in two aspects mentioned earlier, as well as the arrangement of offsetting severance payment with MPF mentioned by Members at the Second Reading. These problems have not been solved so far. The Government should identify a solution to solve these problems and examine whether the administration fees can be capped. We also hope that another kind of product, the Exchange Fund, can be offered as a choice for the public.

The Exchange Fund may be offered to the public as an alternative. As we trust the Hong Kong Monetary Authorities (HKMA), which is making an investment of \$2,000 billion, we want to get a free ride. We trust that the experts involved in managing an investment amount of some \$2,000 billion should in no way be inferior to other investment managers. Besides, due to the colossal amount involved, the security of investing in the Exchange Fund will be higher. All along, we have been proposing this practice, yet we do not get any feedback. Are we allowed to get a free ride on the investment of the Exchange Fund of the HKMA? If we are allowed to do so, I hope it will solve the "shrinkage" problem of MPF on two fronts.

Yet, regarding the fundamental problem to be solved, as we have mentioned a number of times ..... Mrs LAM is now in the Chamber, listening. Earlier, a Member mentioned the next-term Government. We would like to tell the next Government ..... Mr WONG Kwok-hing does not have to be so angry, saying that the next Government does not have any officials, the Secretary is here now. Do you think that when the motion on "five Secretaries of Departments and 14 Directors of Bureaux" failed to jump the queue, it would .....

**MR WONG KWOK-HING** (in Cantonese): President, a point of order. He has deviated from the subject, why do you not stop him? When I slightly deviate from the subject, you stop me immediately.

**PRESIDENT** (in Cantonese): Mr WONG Kwok-hing, rightly because I allowed you to say a few lines deviating from the subject earlier, I cannot but allow other Members to respond to those remarks. If I allow you to continue expressing your views, we will be repeating the debate this morning. Now, you should understand why I did not allow you to continue speaking earlier.

Mr LEE Cheuk-yan, please focus on the contents of the Bill when you speak.

**MR LEE CHEUK-YAN** (in Cantonese): President, I will only speak on this issue for one minute, since he has spoken for one minute, so will I. Earlier, Mr WONG Kwok-hing said that the handover to the next Government could not be carried out. Though the motion on "five Secretaries of Departments and 14 Directors of Bureaux" had failed to jump the queue — we do not know when that motion will eventually be passed. No matter how, on 1 July, LEUNG Chun-ying will not be "a lone man", he will at least be joined by "three Secretaries of Departments and 12 Directors of Bureaux". So, a handover is completely feasible, and there is no problem at all.

In particular, Mrs LAM is now in this Chamber, I earnestly hope that the problem of ageing population will be handed over to her and see how she will address the problem. If we do not do it now ..... Reports on the population issue in Hong Kong often state that the future situation in Hong Kong is worrying, where one out of four persons will be an elderly person, and the dependency ratio will be 1 000 to over 1 040, which means the number of dependent persons will exceed the number supporting them. In view of the various problems, we cannot just implement the MPF system instead of the universal superannuation arrangement. The fundamental inadequacy of MPF is that it only covers employees. Though low-income workers are exempted from making contribution, the contribution made by employers is meagre, which is inadequate for employees to cope with their life after retirement. Regarding non-wage earners or women working occasionally, that is, women who have worked for 10 years and then stop working for the following 30 years, the MPF benefits is meaningless to them. These members in society do not have any retirement protection.

Hence, the authorities have no alternative but to provide universal annuity. In this connection, the manifesto of LEUNG Chun-ying has only mentioned the studies on enhancing the Comprehensive Social Security Assistance (CSSA) scheme and the "fruit grant" but not the provision of universal annuity. It is also mentioned that a special Fund will be set up, but what is the purpose of this Fund? It is not for universal annuity. The purpose is unknown, and it is set aside as a reserve. What is the purpose of this Fund? If it merely serves as a reserve for future CSSA payments, it is meaningless. If it is just a reserve for CSSA .....

**PRESIDENT** (in Cantonese): Mr LEE, you should focus on the contents of the Bill when you speak.

**MR LEE CHEUK-YAN** (in Cantonese): We do not want this kind of special fund, we want a universal annuity scheme, so that the public do not have to live solely on MPF in their old age.

The focus of the Bill is the implementation of the "semi-portability" arrangement. However, upon the implementation of "semi-portability", MPF still fails to enable the public to lead a dignified life in their retirement. There is the weakest point in the MPF system — despite the passage of the Bill today, it will not help the elderly at present. The elderly at present are having a difficult time. Members should have learnt from recent news report that elderly who pick up paper cardboards for sale are getting less in return now, for the price of paper has dropped significantly. Some plants have indeed stopped collecting paper cardboards, for it seems that a factory in Dongguan has been burnt down and will soon cease operation. As a result, the recycling industry in Hong Kong is in the doldrums and the elderly can no longer get money by selling paper cardboards.

Even if the Bill is passed, it will not solve the problems faced by this group of elders. Therefore, I hope that with the passage of the Bill after the Third Reading today, we will not linger on this point any more, for we have not made any advancement for too long. Since the implementation of MPF in 2000, it has been 12 years by now. If we trace back to the enactment of the Mandatory Provident Fund Ordinance in 1995, it has been 17 years. We do not want to

tarry and we should enter a new stage as soon as possible. We earnestly hope that universal retirement protection will be provided, so that the elderly and wage earners will lead a dignified retirement life upon retirement.

Thank you, President.

**MR IP WAI-MING** (in Cantonese): As the Bill is now reading the Third time, I would like to give some brief remarks, since my colleague, Mr WONG Kwok-hing has expressed some views of the Hong Kong Federation of Trade Unions earlier. As I said during the Second Reading, we have all along considered the Mandatory Provident Fund (MPF) scheme a stepping stone to solving the problems on retirement protection, and this stepping stone still has many inadequacies.

In the past few years, we had expressed a lot of views in this regard and I do not want to repeat them here. The Bill will soon be passed, and according to the Secretary, the Bill will be implemented around November this year. I hope that upon the enactment of the Bill, the Government will make good preparation to enforce the legislation when it is implemented in November. Once the legislation comes into effect, workers will enjoy "semi-portability". In this connection, I hope the Government will step up its promotion effort. First, through the promotion, workers should be able to understand their rights and protection in transferring their MPF benefits. Second, workers should learn about the various kinds of investment products. What is the purpose of passing this Bill? We want to put sales personnel under regulation.

President, as mentioned in the debate earlier, from the Lehman Brothers incident, we come to understand that intermediaries like banks and insurance companies may sometimes involve in mis-selling. Regrettably, President, though the Lehman Brothers incident happened some years ago and the report on the incident had been published, we still receive complaints at times about alleged improper sales activities involving certain intermediaries. Recently, I have received a complaint from an old man. Though he only has a pension of some \$700,000, the bank concerned had persuaded him to use some \$400,000 to purchase some high-risk equity funds, and he now suffers loss. In reality, many workers do not know much about this.

We do hope that the MPF "Semi-portability" arrangement will bring about competition and lower the administration fees, but if workers lack the knowledge on investment products, they may be misled and purchase products they should not have purchased. Hence, we hope that upon the passage of the Bill, intermediaries will be subject to regulation. At the same time, we hope that the Government will step up efforts in promotion, so that workers would learn more about the products and purchase products suitable to their needs and would not be misled. The mascot of the Mandatory Provident Fund Scheme Authority (MPFA) looks good at first glance, yet it may not be so suitable. I hope the Bureau and the Secretary communicate more with the MPFA, so as to do a better job in promotion.

Finally, at the Bills Committee, I had expressed views on separate regulation, that is, "four regulators for one industry". The Bureau has said that such situation will not arise and it will do a better job. However, I have expressed at the Bills Committee the hope of conducting regular reviews two years after the implementation of the approach of "four regulators for one industry". We should examine the actual situation and see whether the implementation will live up to our expectation. I hope the Bureau will accept this proposal of conducting regular reviews, so as to better protect the interests of workers.

Thank you, President.

**MR WONG TING-KWONG** (in Cantonese): President, I support the Third Reading of the Bill on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong.

I notice that after workers reach the retirement age and close their Mandatory Provident Fund (MPF) accounts, their lives go on. In my view, the authorities have to consider promoting and educating the public about how to spend their MPF savings wisely after they have closed their MPF accounts. I am particularly concerned about this point.

Upon the passage of the Bill on MPF "Portability", the authorities should earnestly step up its effort in publicity and educate the public in choosing trustees. In selecting trustees, one should not merely consider the rate of return or lower

charges offered, but should also consider various factors. They should study information concerning the background of trustees, their goodwill and services, and so on, so that they can identify a reliable institute and entrust their lifelong savings to the trustee for investment. I think the Government should further consider educating the public on prudent use of their MPF savings after they have drawn out the money upon closure of their MPF accounts when they retire at 65. As in the case mentioned by Mr IP Wai-ming earlier, if the public spend their MPF savings on high-risk investment, they may eventually suffer loss. The Mandatory Provident Fund Scheme Authority and the relevant institutes are not involved, but obviously, in the example just cited, the significant loss will affect the man for the rest of his life.

Hence, I hope that with the passage of the Bill, the authorities will at the same time consider the consequential issues. Thank you, President.

**MR WONG SING-CHI** (in Cantonese): President, the Democratic Party also supports the Mandatory Provident Fund (MPF) "Semi-portability" scheme. Regrettably, the amendments proposed by Mr KAM Nai-wai and I have not been passed earlier. President, the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 (the Bill) has only partly met the aspirations of some people. In fact, for workers senior in age, they have more fervent hope for the implementation of a universal retirement protection scheme. It is disappointing that the Government is still unwilling to implement such a scheme.

After the Bill has been read the Third time with the passage of the MPF "Semi-portability", there are still lots of work to be undertaken by the Government. First, I hope the Government will take the lead to promote education on investment, and it should monitor various financial institutes or investment organizations, so as to make sure that they will provide proper service in an honest manner. As I have always said, workers contribute 5% of their hard-earned wages to the MPF scheme, hoping to prepare for their retirement. I hope that the intermediaries, regulated companies or investment companies will make proper retirement protection arrangement for workers in good conscience.

I hope that in the course of promoting MPF "Semi-portability", the Government or the private sector will do some work for the consideration and

reference by people of various sectors, so that they would know how to make decision on MPF investment when necessary. This is of great importance.

For instance, for elderly workers or senior workers approaching retirement age, we will not encourage them to place their MPF contribution on high-risk investment or investment that may easily incur total loss. I think intermediaries or regulated institutes should put in more efforts in this respect. They should not, through launching publicity or offering incentives to encourage employees approaching retirement age to place all their pensions in high-risk investment. Otherwise, the pension which they rely on to support their retirement life may be all lost. This is not the intended objective.

I know that though many investments do not involve high risk, loss may still be incurred in the end. For employees approaching retirement age, that will be a big blow to them. I hope we can do something about this.

For young workers, fresh graduates or those who just joined the workforce, they may consider relatively aggressive investment, which may be favourable to them in some measure. However, I do not wish to encourage young people to involve too much in aggressive investment, fearing they may develop a gambling mindset or attempting to "make big money", for they may think that they can "make big money" with the small amount of accrued MPF savings. I hope young people will have access to more information and knowledge, so that they can have a better understanding of the actual situation.

Moreover, President, upon the implementation of the MPF "Semi-portability", the entire MPF system will be slightly different from the system in the past. In the past, investment portfolios for MPF usually involve investment products with stable or guaranteed return. Now, the investment portfolio has changed to a multi-lateral approach, and employees may select their own investment products. Originally, many MPF intermediaries are insurance underwriters or insurance intermediaries, but it will be different in future. They will not only present insurance concepts but also finance management concepts, and they will help workers understand how their meagre MPF can provide greater protection to them upon retirement. As such, we think that the regulation of intermediaries or practitioners offering MPF plans should be more stringent than before. In view of the many changes in the arrangement this time, we need to follow up many new provisions.

President, during the scrutiny of the Bill, I think we should provide more opportunities or training to MPF intermediaries, so that they would understand how to ensure protection for the rights and retirement life of their clients. President, honestly, we always criticize that MPF fails to provide satisfactory retirement protection provided for the elderly. Even though we have tried so hard, we still fail to secure a universal retirement scheme. As we do not have other alternatives, we hope that the MPF scheme should by all means provide at least some protection to workers upon their retirement, so that they will not be left with nothing in the end.

President, since the ageing problem will deteriorate in a decade or two, we should ensure that the elderly will lead a life of comfort upon retirement. Last time, I criticized the Chief Executive for arranging to have a 6 000 sq ft apartment as his post-retirement accommodation, yet many people may hardly be able to feed themselves after their retirement, and they also have to face accommodation problem. If their MPF investments go down the drain eventually, they will be left in a poor condition. Hence, under the MPF system in future, I hope the Government will impose serious and stringent regulation on intermediaries, intermediary companies or regulated institutes involving in the relevant investment, so as to protect employees who earn a meager salary with strenuous effort and make MPF contribution, and in the event of any problems, they may seek to get justice done.

I hope that the passage of the Bill is not an end. We will continue to review the retirement protection for the elderly to ensure that every citizen in Hong Kong will lead a life of comfort in their twilight years. Thank you, President.

(Mr Albert CHAN stood up)

**MR ALBERT CHAN** (in Cantonese): President, according to Rule 17(2) of the Rules of Procedure, I request you to summon those lazy students to come back for the class.



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

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

**PRESIDENT** (in Cantonese): Mr LEUNG Kwok-hung, you may speak now.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, yesterday I told the story involving Emperor Yingzong of the Ming Dynasty, unfortunately, the Crisis of Tumu Fortress has become a reality. It is a good thing to read more Chinese classical writings, and when hearing Mr WONG Kwok-hing's speech, I think of the writing The First Memorial to the Emperor before the Northern Expedition .....

**PRESIDENT** (in Cantonese): Mr LEUNG, please speak on the contents of this Bill.

**MR LEUNG KWOK-HUNG** (in Cantonese): I know that. He blamed and criticized me. The last words in the writing The First Memorial to the Emperor before the Northern Expedition are "I cannot help shedding tears while writing this memorial, not quite clear myself on what I have herein related". My emphasis is on the latter part of the sentence.

First, Mr WONG Kwok-hing said that the work of the Chief Executive-elect will be hindered. President, I have read his manifesto, I am also very anxious.

**PRESIDENT** (in Cantonese): Mr LEUNG, please speak on the contents of this Bill.

**MR LEUNG KWOK-HUNG** (in Cantonese): Please listen to me first. I am speaking on this ....., Mr LEUNG Chun-ying has also talked about MPF

"Portability", which is the subject of our debate today, the issue in question is to improve MPF, that is to achieve seamless transition. After he has given his comments on MPF, he just disappeared. One must read more books before giving a person support, right? It would be senseless for him to make a fool of himself. That is the subject we are discussing today. We are discussing the subject on which he has given comments, that is, the Bill for passage today.

The presence of Secretary Carrie LAM reminds me that she was the Director of Social Welfare in 2003, and that should be right .....

**PRESIDENT** (in Cantonese): Mr LEUNG, I have to remind you again that we are now having a debate on the Third Reading of the Bill, and you should speak on the contents of the Bill. If you digress from the subject again, I have to stop you from speaking.

**MR LEUNG KWOK-HUNG** (in Cantonese): I understand, but this is a fact. Coming back to this Bill, in 2003, the reduction in CSSA payments due to fiscal deficit had caused a stir in our society. The legislation is so undesirable that the Government has to introduce MPF "Portability" to help alleviate the workers' sufferings. I think this is unnecessary. If the Government implements universal retirement protection, this debate may not even have to be held today.

Secretary Prof K C CHAN now introduces the MPF "Portability" and talks about educating the public about the investment products. At present, even the Hong Kong Monetary Authority fails to monitor structured products and similarly, the Insurance Authority or the office of the Commissioner of Insurance or the Insurance Board fails to impose regulation. As the banking and insurance industries are the major operators of these products, if the Government does not regulate them; that is, if the regulatory bodies have not regulated the products or played their gate-keeping roles, how can he, on the contrary, ask the public to have a clear understanding of what they are buying, is he talking nonsense? Is he not talking nonsense?

I have written to Mrs LAW in relation to the proposal of "five Secretaries of Departments and 14 Directors of Bureaux", asking her what ordinances allow the Financial Secretary to delegate power to the Secretary. This is a matter of relevance. If the Financial Secretary thinks that the Secretary for Financial

Services and the Treasury has not done a good job regarding his portfolio, he can do something. The Secretary has to be responsible for the Lehman Brothers incident. Now that no improvement has been made in respect of the Lehman Brothers incident and the proposal of "two regulators of the insurance industry" is going nowhere; and a minority report has been released, things are really messy in this Council.

Today, Members are just paying lip service, how can you tell people how to choose? Buddy, you may either choose arsenic or you may drink poison to quench the thirst ..... yes, I say "鳩" (cam4), do not stare at me — both are poisons .....

**PRESIDENT** (in Cantonese): The Chinese word "鳩" should be pronounced as "zam6".

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes, that is right, it should be pronounced as "zam6". I have made a mistake and I thought that it is "鳥" (meaning a bird). It is very simple ..... thank you, President. You really have a sharp mind.

**PRESIDENT** (in Cantonese): Please do not digress from the subject.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, what is the problem? If Mr LEUNG Chun-ying seeks to have seamless transition, he should discuss with the current-term government long ago. In particular, two "appointed officials", who are now in the Chamber, are among those officials under the "five corpses and 14 lives" proposal.

I believe there should be a seamless transition between the current and future legislation. This Bill that we are discussing today can be described as "in the middle of nowhere"; we can say that it is "sugar that is not sweet enough or vinegar that is not sour enough". The amendments are patchy. The labour sector talked about the offsetting issue, you do not want the offsetting arrangement, but you have not said a word, right? Mr WONG Kwok-hing

talked about the ambitious plans of Mr LEUNG Chun-ying; but has he mentioned the offsetting arrangement? Please do not just pay lip service. This arrangement has been denounced by the labour sector, I do not know for how long.

The "interesting" part, most "interesting" indeed, are the remarks of "getting killed in a car crash" given by CHEN Zuoer and KWONG Ki-chi, meaning that if we insisted on giving retirees, the aged and the infirmed universal protection, we might "get killed in a car crash". This is a crucial point. Will there be any improvement with these patch-up amendments?

President, you can stop me from speaking when you are sitting in the President's seat, but when you come down and sit with us, you will also speak, for anyone who have grasped the core of the problem will express their views. To put it simply, many people said that the current-term government is incompetent, we should hand over the work to the "five corpses and 14 lives". It is just that simple.

President, please take a look at this thing that an elderly person has given me. In asking Mr LEUNG Chun-ying to implement universal retirement protection, no vigorous actions should be taken, just implement the measure seriously.

I once threw an egg at Donald TSANG in this Chamber; and it seemed that I was fined for such act. I told Donald TSANG, "If you do not implement universal retirement protection, I will throw an egg at you every time I see you". This is the core of the problem.

MPF is actually rotten to the core. Let me tell you the 10 sins of MPF. The management fees are extremely high. According to statistics, the management fee is 1.74% in Hong Kong; 1.21% in Australia; 1.19% in the United Kingdom (a big crocodile); and 0.56% in Chile, which should not be counted. The annual management fees in Hong Kong amount to \$6.35 billion. In 2011 when MPF had a deficit, the management fee was 8.4%. On average, each person suffered a loss of \$12,000, which was a very small amount. Have we not just been given \$6,000?

President, the public's savings have been eroded. Buddy, as it is required in law that the money should be placed with fund managers, the public just have one less poison to choose from. They can either choose to die by bleeding from nose and mouth or from dehydration. Does that make any sense?

Similarly, the funds have underperformed the market over a long period of time. Relying on fund managers to safeguard the interests of the working class is tantamount to placing a cat to guard the fish. Will you do so, President? You surely will not do so. Thus, all Hong Kong people are forced to "gamble", and they may have bought some products what may turn out to be "toxic debts" at any time. I am not baffling, President. You often have meals at the CITIC Tower; the Chairman of the CITIC bought a product named "accumulator", which almost cost him a fortune. Even a businessman cum politician who has rich experience in making investments nearly has his life ruined by the "accumulator". An ordinary fund manager will invest in funds with high returns because all he cares is the bonus. On the face of it, the customers will benefit, but the fund manager is actually working for his own benefits. This is doomed.

Another point is that payments by employers may be offset by the severance payments or long service payments. Nothing more can be said on this point. Immediate assistance cannot be given to those who need the money. President, this is ridiculous. If I have made contribution to MPF, and I am going to die, but my "bad son" is unwilling to sign a "bad son statement" — family is the basis for social welfare benefits — what should I do? Will I be starved to death if I cannot withdraw my contributions from the MPF account? Will I be starved to death if I cannot receive CSSA payments? After I had been starved to death, should my contributions be withdrawn for buying a coffin or a niche? It is very unreasonable that immediate assistance cannot be given to the contributors. If this goes on, all contributors will not be able to enjoy the fruits originally described by the Government .....

**PRESIDENT** (in Cantonese): Mr LEUNG, in a debate on the Third Reading, a Member should speak on the contents of the Bill, and illustrate whether he will vote for or against the Bill when it is read the Third time.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, I have not yet made up my mind.

**PRESIDENT** (in Cantonese): Please do not take a long time discussing the merits and demerits of the MPF schemes because Members have already had plenty of opportunities to express their views on these schemes. Please do not give lengthy remarks.

**MR LEUNG KWOK-HUNG** (in Cantonese): Yes, I understand, yes, you are right. I hope Honourable colleagues, including President, will not vote for the "bogus" improvements. Coming back to my voting preference, if the Government cannot answer a basketful of questions raised by Honourable colleagues, we should not help a tyrant to do evil and vote for the Bill.

To be honest, the passage of this Bill today offers a choice of poisons, and it is just like the case in the past where we were asked to yield and allow employers' contributions to be offset by severance payments or long service payments, saying that there would be changes after the offsetting. Buddy, MPF has already been implemented for 15 years, right? "Fifteen years, President (*in Putonghua*)". Why should we listen to others' irresponsible remarks?

Another important point is that there are hundreds of thousands of elderly people. How can these elderly people make ends meet without a Pay-As-You-Go Plan? President, the Bill today is asking people to drink poison to quench the thirst. What is the word in Chinese?

**PRESIDENT** (in Cantonese): The expression should be "飲鳩止渴" (drinking poison to quench thirst). The word "鳩" should be pronounced "zam6".

**MR LEUNG KWOK-HUNG** (in Cantonese): I see, I thought that the word "鳩" in the expression "飲鳩止渴" was pronounced as "cam4" but I now know it should be pronounced as "zam6".

There is a Chinese saying that goes "taking arsenic to avoid a tiger; chopping off toes to avoid sand worms". It is useless to speak in such an elegant way, people just cannot understand what I have said.

President, the last few sentences of the writing *The Second Memorial to the Emperor after the Northern Expedition* are "Your servant bends his back to the task until his dying day, without being able to foretell the success or failure". ZHUGE Liang described the difficulties of being government officers. I cannot say that I bend my back to the task until my dying day in this Council. I have just fulfilled the responsibility to speak out, and officials should be accountable to all Hong Kong people for success or failure.

In my opinion, a universal retirement protection system should be implemented to solve the problems of elderly people after retirement, as well as the problems of housewives who have contributed their youth, tears and sweat for Hong Kong. The present system of "the person who contributes gets the benefit" is undesirable.

President, I would like to draw an analogy. It seems that we are engaging in a war of words today. Mr WONG Kwok-hing has said something about invincibility, and about the obstacles created. Why would one kill a chicken with a meat cleaver. If one kills the chicken with a broadsword, even the "five Secretaries of Departments and 14 Directors of Bureaux" will be scared off. How can one kill a chicken with a broadsword? That just does not work!

Actually, the problem can be solved easily. You must have come across a story in Zhuangzi about how the cook PAO Ding dismembered an ox. He could handle a cleaver with skill and could do a job with skill and ease. So long as the Government listens to public opinion and reforms the MPF system, taking out 2.5% of the contributions for the establishment of a seed fund, the problem can be solved. Why should one wield a broadsword recklessly? Does one need a cleaver to kill chickens? Does one need hack someone with a broadsword?

President that is all I have to say.

**MR ANDREW LEUNG** (in Cantonese): President, first of all, I declare that I am a non-executive director of the Mandatory Provident Fund Schemes Authority

(MPFA). On behalf of Economic Synergy, I support the Third Reading of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011.

In the past few years after the Lehman Brothers incident, I think the public have increasingly high expectation for the protection for investors. The MPFA has discussed for a long time about the implementation of MPF Employee Choice Arrangement (commonly known as MPF "Semi-portability"). Why has it taken so long to implement the arrangement? In our view, if we do not first enact legislation to regulate and require the registration of MPF intermediaries, it will be very difficult to implement MPF "Semi-Portability". We hope the MPFA would do its job well and properly regulate MPF intermediaries and educate the public.

While MPF "Semi-portability" will open up the market, I would also like to take this opportunity to restate one point. I have just heard many Members say that many people's savings, amounting to a few hundred thousand dollars, have been put in high-risk investments under some retirement schemes. Within the framework of the MPFA, it is impossible for investments to be made in "accumulators" or hedging products. The public should feel relieved though there are certainly various levels of risks involved: high risk, moderate risk or capital preservation. Thus, we should educate investors, so that they can select the investment methods that suit his needs.

Regarding MPF returns, we are not talking about the returns within a year or two but long-term returns for retirement. MPF returns have always outperformed the market in the past decade. During the past few years, Hong Kong has experienced a number of crises during the financial turmoil, the burst of the bubble in Europe and so on, and losses are inevitable. However, MPF returns outperform the market on a longer-term basis.

I wish to state clearly that MPF is not good for nothing. Despite the deficiencies, the community hopes that we can continue to improve the retirement protection for the elderly. Since MPF is only one of the three pillars, we hope the Government, especially the Secretary, would continue to pay attention to and protect the investors under the MPF system, so that they can have greater benefits and protection when they retire.

I so submit, President.



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

**MR ALBERT CHAN** (in Cantonese): President, during the Second Reading debate, I have already given the reasons why we would abstain from voting. We, People Power, basically oppose the Mandatory Provident Fund (MPF) policy. At the Third Reading stage, though the Government has regulated MPF "Semi-Portability" and "Portability" and has made relevant amendments, there is still a lack of protection, including the provision on notification, as I have mentioned at the Committee stage. The punishment is too lenient in view of the lack of criminal prosecution.

Last but not least, I would like to take this opportunity to call upon the Government to carefully regulate the funds involving the interests of MPF contributors, and tighten the relevant regulation and monitoring. I am not a financial professional, I am not familiar with most of the operation of the market and I have not invested in funds. However, in the course of my day-to-day work in the districts, I have constantly received tearful complaints from the public. Recently, London gold scams have reappeared and some people have bought certain investment tools. Moreover, banks have recently become more active, frequently calling up clients to persuade them to borrow loans, as though they do not need to make repayments. Maybe the banking business is not booming these days, so banks have to find ways to expand the client base. As the MPF contributions amount to over \$300 billion, which are hard-earned money, they must be prudently handled and monitored.

Let us look back at some past cases, including a case on fund investment that happened in Singapore many years ago. A young staff member misappropriated funds illegally or without the knowledge of the head office, and eventually he had lost tens of billions of dollars. As a result, even the old financial institution had to declare bankrupt and close down. Concerning the regulation of funds in Hong Kong, we have found quite a number of problems in the course of investigating into the Lehman Brothers incident. Throughout the years, not many problems have been identified by regulators and there have not been many cases where punishment has been imposed. We do not know whether there are no serious problems or the regulators have not identified the problems. It seems that there are no problems in the market.

We just need to surf the Internet and we will find that there are cases in the United States where prosecution has been made by the regulators almost each year. There are not only cases involving the Federal Government, but also involving the State Government. Let me give a few cases in 2003 as examples. On 28 April 2003, several financial institutions in the United States ..... all financial institutions on the list are world famous and I will not spend too much time reading out their names one by one; otherwise, I will be blamed for procrastinating ..... the fines for fraud totalled US\$1.4 billion. On 3 September 2003, the State Government of the United States conducted investigations into the illegal transactions of some institutions, such as crediting accounts after the deadline, and the institutions were punished. On 4 September 2003, a world famous investment institution was fined US\$9.3 million. On 28 April 2003, another blunder involving an investment institution was found and the institution was fined US\$119 million.

These are examples in overseas countries. The United States market is definitely bigger than the Hong Kong market, but in Hong Kong, the accumulated MPF funds have exceeded \$300 billion, and an extra \$30 billion to \$40 billion will be accumulated each year. Ten years later, the accumulated funds may amount to some \$700 billion to \$800 billion. Another 10 years or so later, the funds may nearly have accumulated to \$1,000 billion. The patch-up amendments of the Bill fail to give us confidence in the regulation; what should be done when there are problems? The best solution is that the Government should become the underwriter and provide protection when there are problems. At present, these investments ..... the financial institutions involved were established a century ago; Scottish investment banks are well-known for security, yet they still have problems. Many international financial institutions under the regulation of the United States Government are also riddled with problems. As I have noticed, within nine years since 2003, it seems that offences have occurred almost every day. Every large international financial institution has made mistakes and violated the laws — they have not only made mistakes, but have also violated the laws and regulations.

Nevertheless, the financial or investment institutions in Hong Kong, which manage MPF amounting to over \$300 billion, are like saints that have not made any mistakes. Is this good record attributable to the fact the Hong Kong market is too conservative and the financial practitioners in Hong Kong abide by the rules? Or, is it because many malpractices have been made behind the scenes

but the regulators are just dreaming, conniving, accommodating and harbouring, closing one eye and opening the other? For instance, nobody had sensed the danger before the outbreak of the Lehman Brothers incident. Thus, I am really worried that people's hard-earned money for retirement may go down the drain at any time after a crisis. Another example is the elderly people who have bought Cable and Wireless stocks in the past decades, they may have started making investments when they were aged 20 to 30; when they are aged over 60 and about to retire, their stocks have become penny stocks following a merger. In view of the volatility and instability of the financial market, many people do not want to get involved and take part. There are capital preservation options for MPF contributions; but if these institutions close down or go bankrupt, can the hard-earned money of the ordinary people be safeguarded.

President, I know that it is almost time for meal but it is not very exciting for me to speak here for too few Members are present. Hence, I hope that you would summon Members to return to the Chamber according to Rule 17(2) of the Rules of Procedure. Thank you, President.

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

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

**PRESIDENT** (in Cantonese): Would Members please try their best to stay in the Chamber. I would like to suspend the meeting for a meal break after the conclusion of the debate on the Third Reading of the Bill.

Mr Albert CHAN, please continue to speak.

**MR ALBERT CHAN** (in Cantonese): President, the potential problems caused by the relevant provisions ..... in respect of operation and regulation, the Bill to be passed today can make some slight or minor improvements to a certain extent. I have just discussed the regulation and the future responsibilities, especially in the event of the collapse, loss or disappearance of the funds. Will the

contributors, that is, the general public and wage earners in Hong Kong, be protected? I hope the Secretary would carefully tackle these issues after the passage of the Bill today.

As many political parties and Members have constantly emphasized throughout the years, the Government has unshirkable responsibilities in connection with retirement arrangements. In a favourable economic environment, especially when there is a considerable fiscal surplus, the Government should earmark more surplus funds in retirement arrangements, in particular, the arrangements similar to the MPF designed for the elderly and the general public.

For many years in the past, the Government had a surplus exceeding \$100 billion, and sometimes we had a surplus of \$50 billion or \$60 billion. If the Government does not give out money in the form of tax refund — the Government had refunded the rates paid by the Link, amounting to over \$90 million — if the Government had not been so generous in dishing out money to large consortia by means of tax refund and had instead, used the money for retirement arrangements, there would be sufficient funds to implement a universal retirement protection scheme. The Government will not have to worry that people will lose their hard-earned money because of the investment blunders made by investment institutions.

At that time, the turmoil and catastrophe may be even greater than that of the Lehman Brothers incident. The Lehman Brothers incident is just the tip of an iceberg; it is a yellow rainstorm; but the MPF scheme involves over \$300 billion, and the amounts involved may reach \$600 billion or \$700 billion in the future. With such a colossal amount accumulated under the MPF scheme and so many people involved, many of them have to rely on MPF payments when they retire, should there be any catastrophes, the Government has to inject funds directly to the schemes to prevent them from collapsing, hence the financial pressure will be greater.

Hence, the Government should make hay while the sun shines though it seldom does so. He whistled in a high-spirited manner when he has good luck; but he plays dead dog when he has done something wrong. The two Chief Executives are just the same .....

**PRESIDENT** (in Cantonese): Mr CHAN, you have digressed from the subject, please focus your remarks on the contents of the Bill.

**MR ALBERT CHAN** (in Cantonese): That is right, President.

President, I am just advising the Government to make efforts to safeguard and protect people's interests when the situation and financial conditions are favourable. Do not bow and apologize in times of disaster because by then, the public's money may have gone down the drain. I have cited the example of Cable and Wireless many times, when "No. 8" became a penny stock, many investors wanted to cry but they had no tears. I hope that these painful experiences will not recur in Hong Kong again and again. More often than not, those who know how to stir up trouble or manipulate financial means to "reap profits" will readily sacrifice the interests of ordinary people.

MPF, financial and investment institutions are just like dehumidifiers that extracts "water", that is, the hard-earned money of the common mass. Therefore, People Power will still abstain from voting at the Third Reading, so as to indicate that we, in principle, oppose the MPF policy. This does not mean that we do not appreciate the Secretary's efforts. It is not enough even though he has made his best efforts, as he is going in the wrong direction. No matter how hard he works, the public will eventually have opposing views and they will not appreciate the results.

Thank you, President.

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

**MR WONG YUK-MAN** (in Cantonese): Hong Kong people like to queue up and they do not like to jump the queue, so you had better queue up, "Tall Man".

People Power does not support the MPF scheme and we have repeatedly said that we advocate universal retirement protection. However, I am really pleased to see the Secretary again in this Chamber today. I originally did not know when we can .....

**PRESIDENT** (in Cantonese): Mr WONG, please speak on the contents of the Bill.

**MR WONG YUK-MAN** (in Cantonese): ..... deal with the resurrection of the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill ..... I am very happy to see Secretary Prof K C CHAN wearing a smile on his face.

This Bill is related to people's livelihood and basically, it affects the working population of Hong Kong. President, how can this Bill that affects people's livelihood give way to the proposal on the restructuring of the new government? Lord have mercy! Thank God!

What is the most significant feature of this Bill? It improves the regulatory system of MPF intermediaries. We agree that after the implementation of MPF "Semi-portability", the relevant activities and competition will become more intense; a more stringent system is thus needed for monitoring the activities of intermediaries.

Basically, that is the spirit of the amendments to the Ordinance. At the Second Reading, we had expressed our views and we had given our comments on the Bill and on some amendments; and we have not digressed from the subject. I am also pleased to see Mr WONG Kwok-hing. This morning, when he attended a radio programme, he mentioned the term "a lone commander without troops", and said that there were no "small fry" to serve him with tea. Buddy, are you insulting the principal officials-elect as "small fry"? He speaks his mind without thinking, he should quickly apologize ..... he has mentioned "small fry" twice .....

**PRESIDENT** (in Cantonese): Mr WONG, please do not digress from the subject.

**MR WONG YUK-MAN** (in Cantonese): ..... I will not digress from the subject. A wage earner is a "光棍" (the literal meaning is a "bare stick", implying a person with nothing or a swindler). Do you know the meaning of the Chinese expression "光棍遇着無皮柴" ("a bare stick meets a bare firewood", meaning a swindler takes in a swindler)? How can the Chinese words "光棍"

be used this way? There is a common Chinese saying, "光棍佬教仔，便宜莫貪" (a swindler teaches his son — not to jump at any easy baits). MPF is something deceitful, do not forget the saying, "a swindler teaches his son — not to jump at any easy baits). Why can't I link up the two? It is most important to learn more, right? I really admire him for he dare used the term "a lone commander without troops".

**PRESIDENT** (in Cantonese): Mr WONG, please speak on the contents of the Bill.

**MR WONG YUK-MAN** (in Cantonese): I know, President, just now I went upstairs. You have repeatedly asked him to stop speaking, and he linked up all these events to give support to LEUNG Chun-ying. I feel disgusted. That is all.

We are deeply concerned about the way of drafting of the Bill. The complicated way of law drafting makes life difficult for Members when they scrutinize the Bill and the public can hardly understand the requirements of the law. For this reason, I call upon the MPFA to issue guidelines as soon as possible to assist the industry and the public in understanding the requirements of the Bill. In particular, wage earners who need to make MPF contributions are in tears, for their money has been eroded, as the Chinese saying goes "beat a dog with a sponge cucumber — one half of it is lost". This is an apt analogy. People rarely eat sponge cucumber now, and we may replace it with towel gourds. When we buy towel gourds at the market, we will ask the stall owner to break the towel gourds that are too long. What will happen if you use a long towel gourd to beat a dog? One half of it will be gone, and that is what will happen to the MPF contributions of employees.

President, sponge cucumbers were much bigger in the past. When we were living in squatters when we were small, we erected sheds outside for planting sponge cucumbers. We could eat the gourd we planted, or dry it up to wash the pots .....

**PRESIDENT** (in Cantonese): Mr WONG, you have digressed from the subject.

**MR WONG YUK-MAN** (in Cantonese): ..... as the Chinese saying goes, "beat a dog with a sponge cucumber — one half of it is lost". President, that is what happens to MPF contributions. We hope the public, especially wage earners, can understand the Ordinance as currently amended. But, the public will not be able to understand the legal provisions if guidelines are not formulated. To speak in fairness, my wife, not I, operates a shop and she needs to make MPF contributions for her employees. Sometimes, we cannot answer the questions asked by the employees. Do we need to explain everything to them? Would it be better if there is a guideline?

We also ask the Department of Justice to seriously review the drafting of legislation. On that day, I specifically raised a question: whether the Chinese version, the English version or the bilingual versions should prevail. At present, laws are drafted in English and rigidly translated into Chinese; as a result, the Chinese version is hardly incomprehensible. Hence, we hope the Department of Justice .....

**PRESIDENT** (in Cantonese): Mr WONG, we are now debating on the Third Reading of the Bill, please do not repeat what you have already said at the Committee stage.

**MR WONG YUK-MAN** (in Cantonese): We hope the authorities would fundamentally reform the way of drafting of laws even though this seems to be irrelevant to the contents of the Bill, and we have already touched upon this point at the Second Reading and Committee stage. The problem is, if a law or the related guideline is incomprehensible to the affected persons, it serves no purpose at all, right?

Lastly, I must restate my position: we oppose the MPF scheme. No matter what improvements have been made or what minor amendments have been put in place by the authorities, as Mr Albert CHAN has just said, this will not be able to help low-income people or the unemployed, especially housewives, so that they can live with dignity after retirement. Housewives work around the clock without receiving any pay, and they do not have any rest days, holidays,



standard working hours or minimum wages. As for the unemployed, even if they receive CSSA payment, the amount is very small. That is the present situation in Hong Kong.

We really admire those North European countries because they have attained the Grand Union. "When the Grand course was pursued, a public and common spirit ruled all under the sky; they chose men of talents, virtue, and ability; their words were sincere, and what they cultivated was harmony. Thus men did not love their parents only, nor treat as children only their own sons. A competent provision was secured for the aged till their death, employment for the able-bodied, and the means of growing up to the young. They showed kindness and compassion to widows, orphans, childless men, and those who were disabled by disease, so that they were all sufficiently maintained"<sup>1</sup>. Can the implementation of the MPF scheme achieve this goal? Can the Grand Union as depicted in *Liji • Li Yun • Grand Union*, read aloud by me just now be achieved? Other countries such as Norway, Denmark, Sweden and Finland have attained the Grand Union. While these small countries with a small population have achieved the goal, can we, with such a high GDP, attain the Grand Union as well? No, we cannot. "Tall Man 689" makes empty promises all the time. President, do you know who "Tall Man 689" is? He is LEUNG Chun-ying. He always makes high-sounding but empty promises, right?

**PRESIDENT** (in Cantonese): Mr WONG, I have just reminded Members that they should not discuss the general merits and demerits of the MPF again in this debate, and they can express their views on other occasions. Mr WONG, please focus on the contents of the Bill and illustrate your voting intention at the Third Reading.

**MR WONG YUK-MAN** (in Cantonese): President, it is time for dinner.

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

(No Member indicated a wish to speak)

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<sup>1</sup> <<http://ctext.org>>

**PRESIDENT** (in Cantonese): Secretary for Financial Services and the Treasury, do you wish to speak again?

(Secretary for Financial Services and the Treasury shook his head to indicate that he did not wish to speak again)

**PRESIDENT** (in Cantonese): I now put the question to you and that is: That the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill be read the Third time and do pass. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr Albert CHAN rose to claim a division.

**PRESIDENT** (in Cantonese): Mr Albert CHAN has claimed a division. The division bell will ring for five minutes.

**PRESIDENT** (in Cantonese): Will Members please proceed to vote.

**PRESIDENT** (in Cantonese): Will Members please check their votes. If there are no queries, voting shall now stop and the result will be displayed.

Mr Albert HO, Dr Raymond HO, Mr Fred LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong,

Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, 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, Mrs Regina IP, Dr PAN Pey-chyou, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr LEUNG Yiu-chung, Mr Albert CHAN and Mr WONG Yuk-man abstained.

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

THE PRESIDENT announced that there were 39 Members present, 35 were in favour of the motion and three abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

**CLERK** (in Cantonese): Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011.

**PRESIDENT** (in Cantonese): I now suspend the meeting and the meeting will resume at 8 pm sharp. We will then deal with the resumption of Second Reading debate on the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

6.58 pm

Meeting suspended.

8.00 pm

Council then resumed.

**Resumption of Second Reading Debate on Bills**

**PRESIDENT** (in Cantonese): We now resume the Second Reading debate on the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill).

**CONSTRUCTION INDUSTRY LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2012****Resumption of debate on Second Reading which was moved on 29 February 2012**

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

**DR RAYMOND HO** (in Cantonese): President, after waiting for two days, finally it is time to deliberate the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012.

In my capacity as Chairman of the Bills Committee on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bills Committee), I now submit the report of the Bills Committee to this Council and report on a number of key issues relating to its deliberations. The Bills Committee has held a total of four meetings with the Administration and received views from the affected organizations and their staff unions as well as relevant trade associations and labour unions.

The Bills Committee supports the policy intent of the Bill to improve efficiency of the construction workers registration system and the operation of Construction Industry Council (CIC). The Bill seeks to effect the organizational change for the amalgamation of Construction Workers Registration Authority (CWRA) with the CIC, enhance operational efficiency of the CIC and convenience to construction workers, make the Construction Workers Registration Ordinance (CWRO) bind on the Government as Construction Industry Council Ordinance, provide for the continuation of the employment

contracts for the staff of the CWRA Secretariat upon the amalgamation of the CIC with the CWRA, and other related matters.

The Bills Committee expressed concern about the transitional staff arrangements for the CWRA Secretariat and their long-term job security. Members noted that provisions are included in the Bill to ensure the continuation of the existing employment contracts for the staff of the CWRA Secretariat upon the amalgamation of the CIC with the CWRA. The Bills Committee has requested the Administration to conduct a briefing to clearly explain to the CWRA staff about the transitional arrangements, and urged the Administration to follow through the staffing arrangements in the amalgamation exercise and afterwards. The Administration has advised that it has been maintaining close communication with the affected staff in the amalgamation exercise and assured Bills Committee members that it would follow up with the CIC on the progress in addressing the CWRA staff's concerns.

Apart from the staff serving the CWRA Secretariat, the Bills Committee has also expressed concern about the employment prospect of the contract staff filling established posts under the CIC who are performing registration functions on behalf of the CWRA. The Administration has confirmed with the CIC management that the terms and conditions of the contract staff will not be affected by the amalgamation of the CIC with the CWRA while written notice will be issued to the staff members concerned.

The Bills Committee noted that the proposed new provision in the CWRO to enable a construction worker registration card issued under the CWRO to store and display information of other construction-related cards/certificates issued by other authorities, so as to reduce the number of cards that a worker would need to carry. It has expressed concern about the detailed design and durability of the card. Bills Committee members have suggested that the trades for which a worker was registered should be shown on the registration card as far as practicable. Members have urged the authorities to protect the data privacy of the workers and monitor the card issuing process. The Administration undertook to liaise with the future amalgamated body to ensure that the personal data of the workers would not be leaked to any unauthorized third party. The data so collected will still be handled in accordance with the provisions under the Personal Data (Privacy) Ordinance.

Besides, some members have queried that the amalgamation might inflate the organizational structure, resulting in rigidity and operational inefficiency. In response, the Administration has advised that staff of the CIC and the CWRA discharge different functions and responsibilities. Upon amalgamation, staff will continue to perform their present functions, so there should not be any overlapping in organizational structure.

The Administration has proposed Committee stage amendments to refine certain draft provisions of the Bill and will also move other minor and consequential amendments. The Bills Committee has no objection to these amendments.

Next, President, I am going to speak in my personal capacity.

Although the Bill is rather simple with only limited coverage, it will have extensive impacts on the construction industry. For instance, the transitional arrangement for 350 000 registered workers has aroused our deep concern and thus a hearing was held to receive views from workers. As the Government is also compassionate with the workers' needs, the Bills Committee has not introduced amendments in this regard. Members of the Bills and the Government have maintained sound communications and collaboration.

After the staff concerned had expressed their concerns, the authorities, in particular the CIC, have made clear commitments to them in written reply that reasonable arrangements would be made to satisfy their needs. Since the transitional period is brief and there are clear arrangements in place to facilitate a smooth transition, I think a seamless transition, a term frequently used recently, can be achieved.

President, I so submit. Thank you.

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

**MR IP WAI-MING** (in Cantonese): President, I am a member of the Bills Committee on Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bills Committee). The Construction Industry Legislation

(Miscellaneous Amendments) Bill 2012 (the Bill) has made several major amendments. First, effect the organizational change for the amalgamation of the Construction Workers Registration Authority (CWRA) with the Construction Industry Council (CIC); second, enhance operational efficiency of the CIC and convenience to construction workers in terms of registration matters, and third, provide for the continuation of the employment contracts for the staff of the CWRA Secretariat upon the amalgamation of the CIC with the CWRA.

President, the amendments of the Bill have actually been discussed by the construction industry for years. The earliest actions taken could be traced back to 2000 when the Government conducted a review on the development of the construction industry, and published a report entitled "Construct for Excellence". It was suggested in the Report that a statutory industry co-ordinating body encompassing all key sectors should be formed. The construction industry generally supports the Bill and concurs with the amalgamation of the CWRA with the CIC. Upon the amalgamation of these two public bodies responsible for the development and management of the construction industry, supervision of the industry will then be handled by one single body. This helps avoid duplication and fragmentation of regulatory roles, functions and resources between the two bodies. Given that the construction industry has seen robust development over the past few years and several major infrastructure projects will subsequently reach their peaks of construction periods, an early step in rationalizing the regulatory framework is definitely conducive to the development of the industry.

Current members of the CIC include representatives from the industry, professions, business community as well as trade unions. Such a composition of members enables the industry to have a bigger voice. Upon the enactment of the Bill, I hope that the CIC will shoulder greater responsibilities in protecting workers' rights and interests while ensuring the occupational safety of workers during construction periods.

While the Bill will be passed and the CWRA will soon amalgamate with the CIC, we wish to voice our worries in respect of the Bill, hoping to arouse the Government's concern. President, first of all, we should understand why two bodies that are responsible for different areas of the construction industry should be amalgamated. According to the Administration, the amalgamation will help enhance the efficiency of the CIC for the convenience of construction workers. President, although just now I expressed my wish that this objective can be met,

past experience had proved to us that amalgamation might not necessarily enhance efficiency. To ensure better efficiency, the government departments concerned should, upon the enactment of the Bill, step up the monitoring of the operation of the CIC and the enforcement of the legislation, so as to handle and resolve expeditiously operational problems, and avoid corrupt practices that can hardly be changed. While we do hope that the amalgamation of the two bodies will help enhance efficiency, this objective can only be achieved if the Government proactively monitors the whole situation.

On the other hand, we hope to prevent the CIC from becoming an independent kingdom. Upon amalgamation with the CWRA, the CIC will be fully in charge of the future development of the entire construction industry, responsible for the operation of the industry, as well as workers registration and training. According to past experience, public bodies may turn into independent kingdoms. If so, the CIC may not be willing to act in accordance with the Government's demands. Consequently, the industry and the workers may not have a proper channel to lodge their complaints if they are dissatisfied with the CIC's operation or policies. Hence, we hope the government departments concerned will keep an eye on the operation of the future CIC to prevent it from becoming an independent kingdom before the situation becomes out of control.

Regarding the protection for workers, I wish to talk specifically about the serving staff of the CWRA. During the deliberation of the Bills Committee, I and other Members from the labour constituency had expressed our concern in respect of the transitional arrangements for the CWRA Secretariat staff. We relayed to the Government the concern of some CWRA staff about their long-term job security and requested it to urge the CIC management to duly handle the transitional staff arrangements. Upon the completion of the deliberation by the Bills Committee, we had met with some CWRA Secretariat staff to receive their views and concerns about the amalgamation, and we realized that communications between these staff and the CIC were ineffective. Here, I once again urge the Government to step up communication with the CWRA staff and instruct the CIC to have better communication with those affected staff, so as to ensure that their employment is secured upon the amalgamation.

President, most of the serving CWRA Secretariat staff members are employed on a two-year contract. The CIC has agreed to extend their employment contracts to until two years after the date of the amalgamation, but



what the situation will be like after two years? We are very much concerned about the future employment of these staff. Since the CIC will perform various functions in the future, we opine that it should set a good example by offering long-term employment contracts to all staff, including those staff that we mentioned just now. We request that the Government to safeguard the employment opportunities for such employees. Do not let employees have a feeling that the Government will "burn the bridge after crossing the river", and that the Government does not care about them upon the amalgamation.

President, I so submit.

**MR IP KWOK-HIM** (in Cantonese): President, the legal provisions should be reviewed from time to time based on the actual situation, so as to serve their due functions. Given that a considerable number of major infrastructure projects will commence in the coming decade and the demand on commercial/residential premises is keen, we believe that the demand for manpower by the construction industry, in terms of quality and quantity, will increase instead of decrease. The Construction Workers Registration Ordinance and the Construction Industry Council Ordinance have been in operation for some time. The legislative intent of these ordinances is to rectify the malpractices in the industry and co-ordinate the strategic development in the long run while implementing self-regulatory initiatives.

Drawing on past experience, the Administration pointed out that the excessive restrictions imposed by the administrative procedures under the above two ordinances had fettered the effective operation of the existing mechanism. Hence, to achieve synergy and enhance operational efficiency and effectiveness, it is necessary to amalgamate the Construction Workers Registration Authority (CWRA) with the Construction Industry Council (CIC) which were established respectively under the above two ordinances. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) opines that the amendments proposed by the authorities are conducive to the long-term development of the industry, and hence worthy of our support.

President, during the debate on the Construction Industry Council (No. 2) Bill at the Legislative Council in May 2006, Members were very concerned about the negative impacts that might have on the job security of staff serving the

Construction Industry Training Authority (CITA) upon the amalgamation of the CITA with the CIC. Similarly, the CWRA will be dissolved upon its amalgamation with the CIC and all its functions will be conferred on the CIC. Our major concern is the transitional arrangements for CWRA staff in respect of employment, remuneration, benefits, and so on.

In mid-May this year, the Legislative Council Secretariat had forwarded to Members involved in the scrutiny of the Bill an urgent letter sent by fax from the serving CWRA staff. They mentioned in the letter their various concerns regarding the transitional arrangements for staff serving the CWRA Secretariat and the public relations division. They also queried if the CIC would once again ignore the commitments made by the Administration by unilaterally changing the terms of service of its staff, as in the case of its amalgamation with the CITA. They were afraid of being treated unfairly or even laid off after two years. I hope the Secretary would pay attention to this issue which is of prime concern to those staff. I also heard Mr IP Wai-ming mention this issue just now.

President, I hope that the Administration would seriously honor its pledges and proactively follow up the work arrangement for staff of the CWRA after the amalgamation. It should not wash its hand of the issue upon the enactment of the Bill. The Administration should urge the CIC to step up communication with the CWRA staff and enhance the transparency of the transitional arrangements details, so as to address their concerns as early as possible.

President, the DAB supports the Second and Third Readings of the Bill. Thank you, President.

**DR PAN PEY-CHYOU** (in Cantonese): President, the main object of the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill) is, as mentioned by other Members just now, to confer the functions of the Construction Workers Registration Authority (CWRA) on the Construction Industry Council (CIC). You may take the move as an amalgamation of the two bodies concerned where the CWRA will be dissolved and the CIC will take over the registration of construction workers.

We have consulted the Hong Kong Construction Industry Employees General Union in this regard. The industry opines that the move will help

enhance the efficiency of the construction workers registration system as well as the development of the industry. Besides, the amendment which proposes the issuance of a construction worker registration card in which the information of other construction-related cards/certificates issued by other authorities is stored will help reduce the number of cards that a worker would need to carry. We support an amendment which will bring convenience to workers while enhancing work efficiency. However, we notice that amalgamation of different bodies will usually cause anxiety among serving staff members due to organizational change. Thus, we are very concerned about the rights and benefits of the staff, as well as their job placements upon the amalgamation.

Being a Member representing the labour sector and a member of the Bills Committee, I must point out here, on behalf of workers unions, that the Government must take serious actions in safeguarding the reasonable rights and benefits of staff serving the CWRA and the CIC upon their amalgamation.

President, I received a letter from the CWRA staff prior to the resumption of the Second Reading of the Bill. Actually the letter has been sent to other members of the Bills Committee. Ms LI Fung-ying, Mr IP Wai-ming and I had interviewed some staff members. They were primarily concerned about their career prospect upon the amalgamation of the two bodies. Having received their views, all three of us found their concerns well justified.

As an active party in the amalgamation with the CWRA, the CIC should play a proactive role in communicating with the CWRA as well as its staff. The fact that CWRA staff had resorted to relaying their concerns to Legislative Council Members reflected the insufficient communication between the CWRA and the CIC. It is easy to understand that CWRA staff are especially worried about their career prospect since the CWRA only plays a passive role in the amalgamation. They approached us to express their worries due to insufficient communication. I am of the view that the Government should act as a gatekeeper and monitor the process of amalgamation since this is a responsibility that the Government cannot shy away from. I urge the CIC to have adequate communication with all the staff affected and handle the conversion arrangements properly.

Currently, there are a total of 23 staff serving the CWRA. According to the CIC, these staff and 14 CIC staff will be offered two-year employment

contracts upon amalgamation, while 29 people will be employed on short-term contracts. If two-year employment contracts are to be offered by the CIC, it implies that there are long-term needs for the work. Hence, I hope that the CIC can offer long-term employment to these staff after two years so that they can continue their service. This can, on the one hand, safeguard the job security for staff and, on the other hand, ensure that the registration for construction workers can be carried out smoothly.

The 29 staff employed on short-term contracts are mainly responsible to handle the registration renewal applications from construction workers. We expect the demand for construction workers to be on the increase in the years ahead as many major infrastructure projects will reach their peaks of construction. Under such circumstances, we can foresee an increasing number of applications for registration renewal by construction workers in the coming few years. Hence, I hope that the Administration and the CIC will try their best to offer long-term employment for those staff appointed on short-term contracts.

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

**MS CYD HO** (in Cantonese): President, on behalf of the Labour Party, I support the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill). The Bill primarily deals with the amalgamation of the Construction Workers Registration Authority with the Construction Industry Council (CIC). Several Members have just mentioned that serving staff of the statutory bodies involved in the amalgamation should be well taken care of, so as to ensure that they will not be affected or laid off directly.

Yet, before the resumption of the Second Reading debate, we have received letters from the staff affected. I hope the Secretary can duly follow up their cases. Usually, workers dare not voice their opinions and they choose to remain anonymous, thus they approach us for help. I believe other Legislative Council Members will continue to follow up their cases.

I wish to talk about the worker registration card. In the past, one card is issued for a specific trade of the construction industry to recognize a specific skill acquired by the worker. The card serves to prove that the worker have

undergone proper training and is equipped with the knowledge and skills required to work on construction site. The main purpose of the card is not to facilitate foreman in employing the right person for the work, but to ensure industrial safety. Only when workers are familiar with the specific trade they are engaged in will they be aware of the relevant safety requirements when they take up specific jobs. While improvements have been made in industrial safety in recent years, any accidents at construction site can be fatal and may lead to casualties. It is indeed miserable.

Hence, a worker registration card accrediting a worker's skills signifies an advancement of the construction industry. It is, however, inconvenient for a worker who has acquired skills of various trades to carry a number of registration cards to a construction site. Moreover, workers of an older generation may sometimes lose their cards. Also, some workers told us that as they sweat a lot when they work on construction sites during hot days, their sweat may easily soften the card that was issued long ago. As for the new card, it is made of a durable material like that of an Octopus Card with the cardholder's photo on it.

As we have mentioned during the scrutiny of the Bill, a new type of card is now available, and the information imprinted can be updated at any time, meaning that the information of the worker's newly acquired skill of a specific trade can be added to the card with just one swipe. This saves the trouble of surrendering the card for information updates and reprinting another card. I think the authorities can easily grasp such simple technology.

Regarding the safety standard of the entire industry and whether young people will be attracted to join the construction industry, the Secretary told us more than two months ago at the Panel meeting that new initiatives had been launched on work sites. For example, workers can take a shower after work before leaving the work site. While such measure may attract young people to join the industry, I believe that the following two factors are more important: first, industrial safety and second, permanent employment offers. The previous practice of recruiting workers through a multi-layered subcontracting system should be abolished, because if contractors/subcontractors run away defaulting on wages, workers will get nothing.

I hope that with the improvement in qualification accreditation, that is, the information of all duly recognized skills of a worker imprinted on one single card

..... young people should have the opportunity to climb up the career ladder after they have joined the construction industry. After they have acquired various skills and become skilled workers in different areas, they should have the chance to take up middle management posts. If such kind of career prospect is available, young people will be attracted to join the industry; otherwise, only illegal workers or migrant workers are willing to work on construction sites, and local young people may not want to join the industry. I hope the Secretary will pay attention to this issue.

I know that we are in fact, dealing with the first stage of legislation, and the second stage of legislative amendment will be conducted in 2013. I hope that upon the enactment of the first stage of legislation, we can review the measures taken as well as the registration cards for construction workers.

Thank you, President.

**MR WONG SING-CHI** (in Cantonese): President, as mentioned by most Members, the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill) intends to effect the amalgamation of two bodies of the construction industry to form a new body responsible for workers registration.

As we are aware, the objective of the amalgamation is to help the construction industry function better. Of course, the two bodies may have to face many difficulties during the process of amalgamation, such as personnel and staffing matters after the organizational change, and even the transfer of functions, as some Members have mentioned earlier. We hope the Government will well handle all these issues.

I believe the composition and representativeness of the future amalgamated body as well as its efficiency in following up cases will become the focus of public attention. The transparency of its operation, that is, whether it will make known to the public its decisions and specific details of its work, is also our concern. Many Members have also mentioned these matters while expressing their views. I hope the new body will undergo a complete transformation and take more concrete actions that serve practical purposes.

Being a registered social worker, I am greatly dissatisfied with the Social Workers Registration Board. It only monitors the performance of social workers to see if anything has gone wrong, but has never played an active role in facilitating the professional development of registered social workers or providing support to them, not to mention offering any advice on the direction of professional development. Hence, I hope the future body responsible for construction workers registration can put in more efforts to serve the construction industry.

President, frankly speaking, I was a construction worker when I was in my teens. I remember that my first job was to mark lines by inked cord at the construction site. After I had finished my work, other workers would do the plank fixing and bar fixing work, so as to set up a framework for cement grouting. My work was very important because if the lines marked were tilted, the building would be tilted during construction, and the whole building may be hazardous. Hence, though we did not have to spend a long time learning the techniques of ink marking, we had to follow our mentor whenever he went. At that time, I felt bad for being a construction worker. I did not need to put on decent clothes; my clothes were shabby, torn and dirty. I had to follow my mentor's instruction. When he told me to go somewhere, I went there; if he told me to work, I worked. I had no self-esteem at all. It was really very miserable to be a construction worker. Well, that was the situation some thirty years ago.

What was more, even if I wanted to work hard, I could not do so, because my partner and my mentor told me not to work so hard. If I was on the morning shift, I had to go to work a bit earlier, worked for some 45 minutes and then I could be off for breakfast. Workers responsible for cement grouting would arrive at 8 am or 9 am. After they had finished their work, I worked for a while, and then I could take a meal break at around 10.45 am. That was no big deal. The lunch break was at 1 pm but I could leave at 12.30 pm. Supposedly, I should be back to work at 2 pm but I could return at 2.15 pm. There was a tea break at 3.15 pm. I should be off duty at 5 pm but I could get ready to leave at 4.30 pm. It would be fine even if I had to work overtime after 5 pm. Usually, we were expected to work overtime for four hours but in reality, we could leave after working for two hours. Better still, we got double pay. I was deeply impressed by such situation, and I wondered why people could be so undisciplined. How could they only work when they feel like to and could stop working at any time? Of course, I switched to another job a few months later.

Fortunately, I found a job working as a welfare worker. So I became a social worker from that day onwards.

President, these are various problems and difficulties affecting the construction industry, either in the past or even at present. In respect of professional image and practical work, self-regulation is enforced. The main concern is to get the work done without making mistakes, and all other matters are just secondary. Regarding professional training, I did not think I had learned much when I worked as a construction worker. Yet, with the establishment of various professional institutes of the construction industry, such as the Construction Industry Council (CIC) or other relevant bodies, construction workers have actually acquired more skills and a better image.

Therefore, President, I wish that the new amalgamated body will not, like other bodies, just focus on monitoring the professionals to ensure that there are no malpractices. Apart from facilitating the registration of construction workers and accrediting their skills, I believe the new body should also play an active role in executing certain policies. For instance, it should put in more efforts on issues concerning industrial accidents or industrial safety.

I believe Secretary Carrie LAM is aware that a large number of works projects will commence soon. If we cannot attract young people to join the construction industry, I worry that the projects will not be impeded not by lawsuit, but by the fact that there are insufficient workers. Given the number of major infrastructure projects, it will be impossible to cope with such large-scale projects if no fresh blood is attracted to join the construction industry. Hence, I hope that the future body will do more work in boosting the image and self-esteem of construction workers, as well as facilitating their professional development. Frankly speaking, while I cannot provide any suggestions today, I hope the new body can formulate more policies or carry out more discussions on the various issues in the future.

Regarding the accreditation of skills mentioned by Ms Cyd HO just now, the new body can play a more proactive role in classifying the different types of skills, so that they can complement one another and enhance the efficiency.

Furthermore, we should not let workers stay in the same post throughout their career life. I wonder if the new body can do some work, as I think we



should have higher expectation of it. I hope it will consider how it can facilitate workers' professional development, so that they will not forever work as manual workers. The new body should consider if there are other options available, such as co-operation with tertiary institutions or training institutes (such as the former Construction Industry Training Authority). If the new body can play this role, all construction workers will make some advancement in their career path, and they will not remain in the same position. As such, they would feel proud for their work. I do hope that this can be done some day, and the unpleasant feeling I had when I was working in a construction site in my youthful days could then be swept away. I believe this would help and I hope the amalgamated body would play a more proactive role.

President, during the process of amalgamation, there are bound to be some changes in personnel and difficulties are inevitable, as in the case of the establishment of five Secretaries of Departments and 14 Directors of Bureaux, or the formation of the new Government. Certainly, the difficulties involved will be greater in the latter case and more collaboration is needed. Given that two bodies are involved in the amalgamation, it is vital to make co-ordinated efforts to smooth things out and make suitable staffing arrangements. I hope that the Government would, in handling such issues, ensure that everyone's expectations can be duly met and no one should suffer any loss.

President, the Democratic Party supports the Bill. Thank you, President.

**MS LI FUNG-YING** (in Cantonese): President, our scrutiny of the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill) had progressed expeditiously. The scrutiny was completed after four meetings. Dr Raymond HO, Chairman of the Bills Committee, was also astonished by the speedy completion. According to the original schedule, there should be another four or five meetings, but it turned out that those meetings did not need to be held. I felt a little loss.

President, why had the meetings been convened smoothly? First, I would like to express my gratitude to officials of the Development Bureau. In fact, during the entire course of scrutiny, they had responded swiftly to questions and requests made by Members, as well as worries expressed by some employees of the Construction Workers Registration Authority (CWRA) on job security during the transition period. These officials had not only provided written replies to

Members' question, but had also approached the Construction Industry Council (CIC) to hold meetings with employees and brief them on the situation. Their efforts had made our work extremely smooth, so I have to thank them.

Apart from expressing gratitude to them, I think the Secretary should treasure certain members of the CIC, who are volunteers offering assistance to the Government or working for the sector. They are very enthusiastic. To address the worries of employees, they will immediately meet with them, answer their questions and make undertakings. The Secretary should cherish their passion.

However, during the course of scrutiny of the Bill, I was extremely dissatisfied with individual members of the management of the CIC. They had been so arrogant and their attitude was terribly poor. They turned a blind eye to CWRA employees' concerns about job security, and simply ignored their verbal and written questions to seek explanation. Their attitude had prompted employees to come to the Legislative Council to seek assistance from Members.

President, we hope the Secretary would be aware that we had similar problems before. In 2006, the same situation arose in the amalgamation of the CIC with the Construction Industry Training Authority. This time, history repeats itself when the CIC amalgamated with the CWRA. Why would this happen? Certainly, upon the intervention of officials from the Development Bureau, some commitments have been made. However, President, the problems have not been solved, and they have to be addressed and dealt with step by step. I hope the Secretary will face the problems squarely. Today, the Bill will be passed at the Third Reading without having any problems. Yet, I hope the authorities will not "pray no more once on shore". It should not kick away the ladder once it gets what it wants and turn a blind eye to employees' concerns about job security.

I once heard the Secretary say that the construction industry has good development potential and the CIC is a standing institute. Oddly, in this standing institute of an industry with development potential, only one employee is employed on permanent terms while all other employees are on contract terms. If an employee is employed under a contract renewable every year or every two years, how will he develop a sense of belonging to the institute? It is undesirable to the development of a standing institute. I hope the Secretary will face these problems squarely.

Two Members from the labour sector have said a lot about the worries of employees and the merits of the amalgamation, so I will not repeat them here. I only hope that in connection with the remarks I made earlier, the Secretary will make continuous effort to supervise and urge the CIC to honour the undertakings they have made to employees.

Thank you, President.

**MR LEE WING-TAT** (in Cantonese): President, during my primary school years, my parents told me that "blue-collar workers will not have a bright future". They urged to me to study hard, for if I failed to do well academically, I could only be a dim-sum seller in restaurant — the work was laborious — an apprentice or a construction worker.

President, I watch movies occasionally. In certain Japanese movies, we find an interesting depiction of construction workers. In Japan, construction workers are in tidy uniform, sometimes light blue and sometimes orange in colour. They have an office — yes, construction workers in Japan are provided with an office — a roll of rack is provided, where hammers and spanners, and all kinds of tool, are tidily arranged, and the floor of the office is clean. The Japanese are not affected by the perception that "blue-collar workers will not have a bright future". They do not presume that construction workers cannot improve their living standards throughout their life, nor the workers will fail to gain the respect of society.

I think Hong Kong has to change its mindset in this respect. Certainly, I know that the Development Bureau has made considerable efforts in recent years in this area. However, by quoting the above examples, I hope to illustrate that in Japan and Korea, construction workers, workers engaging in manual work, are provided with the working environment I mentioned above. Their partners at work, that is, the foremen, engineers or their bosses, and so on, show great respect to them. Are construction workers in Hong Kong being held in high esteem? President, I regret to say that I do not think so. At construction sites and during the construction process, developers and big bosses are the most important persons. If they inspect the construction sites, they will be accompanied by architects and engineers. Have construction workers ever been respected by society, bosses or the public? Yet, upon the completion of a

building, the credit should not only go to bosses, architects, surveyors or engineers. The toil of construction workers should be recognized as well.

Nonetheless, President, this concept has not yet developed in our society. Sometimes, when I distribute leaflets at district level, I notice that many construction workers or roadwork workers are South Asians. I think the Secretary and other Members have also noticed this phenomenon. If we ask our relatives or local young people whether they would like to work in the construction industry and whether they respect workers engaging in roadwork projects, I think 10 out of 10 interviewees will not like to work in this field. Even for those who have joined the industry, they regard this as a stepping stone in life, and the period should be as short as possible. First, as I said earlier, it is because construction workers are not being respected. People may consider that it is better to work at McDonald, for they will at least be wearing uniform and selling hamburgers at shops, and the customers in general will not be too nasty.

I understand that this legislation is related to the registration of construction workers which involves various aspects of work. Yet, the overall objective is to set up a regulatory system to ensure that young people, male or female, joining the sector will not feel inferior in society.

Secretary, I do not know when the culture in Korea or Japan will prevail in Hong Kong society. In those two countries, construction workers are provided with neat and tidy offices with chairs for taking a rest and storage area for placing their tools. President, are there any construction sites like this in Hong Kong? I dare not say there is none, for I had visited the construction site of the Housing Authority (HA) at Kai Tak. President, I have been following up land and housing issues for a long time and I have served the HA for eight years. Among the construction sites of housing estates I have inspected so far, that is the only site I consider satisfactory.

Of course, I dare not say Secretary Carrie LAM had "whitewashed" the site in anticipation of our visit. I was not the only Member, other four or five Members including Prof Patrick LAU, Mr WONG Sing-chi and Paul had joined the visit to the construction site at Kai Tak. How was the condition of the site? The floor of the site was covered with precast tiling or hard plastic tiles, so that people did not have to walk on mud. On that day, I wore a pair of leather shoes, and when I came out from the construction site, not a trace of mud was left on the

soles of my shoes. Second, an office for construction workers was provided at the construction site, which I have never seen in my life. I must stress that this was not the office for engineers or architects — for it is common to have those offices — but an office for construction workers to take a break, a place for construction workers to take a rest and drink some tea. There was also a place with lockers for them to take a bath and change clothes.

President, if the above facilities are not provided only at the construction site of the HA but at all other construction sites, I believe young people may consider that they will be respected even if they work in the construction industry. Speaking of working environment that disrespects the needs of workers, I have to talk about the days when construction workers, who engaged in projects of the Highways Department (HyD), had to answer the call of nature on the hillside. This is not surprising, President, for there were no toilet facilities a decade or two ago. I know that the situation has improved now. I do not know whether it is in the recent five or 10 years that the working condition has become more humane. At present, all construction sites under the HyD must provide shelter, so that workers may go inside to take a rest when the weather is too hot in summer. The provision of cold water and toilet facilities are mandatorily required.

President, I think this is an improvement, which tallies with our advocacy that all occupations should be respected. This is not only a slogan. For construction workers, respect is translated as a salary sufficient for them to support their families; society as a whole and their employers should respect their work and a more humane working environment should be provided. I do not know whether the facilities I mentioned just now are provided in all construction sites. I can only mention the condition of the sites I have visited before. Are these facilities provided in private construction sites and small construction sites? They may not be provided. Therefore, if the Construction Workers Registration Authority (CWRA) or the Construction Industry Council (CIC) fails to let workers and young people joining the industry feel being respected, it is undesirable.

President, certainly, speaking of the respect given to a certain occupation, we will certainly have to mention the salaries and benefits provided. In this respect, the situation has improved in recent years. This should be attributed to the increased government expenditure on works, where the expenditure has

increase from \$20 billions to \$30 billions a year to ..... I forget the figure for this year, yet I think it should be around \$40 billions to \$50 billions. Perhaps as the Chief Executive has said, when all the work projects reach their peak at a certain year, the capital expenditure may almost reach \$60 billions, which will be an increase of 100% in comparison with the past. However, I am worried about the sustainability of this increase, for we do not want to see workers in the sector will only earn money for two to three years and become unemployed afterwards.

I recall that 10 years ago, bar fixers had a high pay. Their daily wages had increased to nearly \$2,000 or \$3,000 at that time, and the daily wage offered by certain projects had exceeded that rate at a certain point. The work of a bar fixer is very tough, yet if they work for 20 days a month at a daily wage of \$3,000, they will make \$60,000 per month. At that time, some bar fixers said they only had to work for two weeks. Of course, they did not know that with a decreasing number of work projects, there will be less demand for their work, and their situation will be deplorable. I do not know how low their wages were at the worst of time. I also do not know their current wage, but it seems to be far from satisfactory.

However, construction workers have to face high risk. In the past, many tragic incidents occurred at construction sites which we still had a vivid memory. Many large-scale projects are constructed by the sweat and blood of workers. I remember that during the governance of Chris PATTEN, there was an accident — I forget at which the construction site — in which a lift had fallen down, killing four or five workers. At that time, I visited the families of the victims with Chris PATTEN. The father of one of the victims held PATTEN in his arms and cried for several minutes. President, the scene is still vivid in my mind. Why would I have this impression? These people only worked for a living, why should they loss their life? Everyone has a family; if the breadwinner died, what is to become of his wife and children?

President, the Secretary may say to me that the number of accidents at construction sites has dropped. However, accidents still happen from time to time at construction sites, even at sites of renowned developers like the ICC. I am not sure if it is last year or the year before last that a serious industrial accident occurred at the ICC construction site at Kowloon Station, causing the death of a number of workers. The officer of the Association for the Rights of Industrial Accident Victims comes to me for assistance occasionally. In fact, I

am not able to render much help, yet upon hearing their stories, I just feel sad. Hong Kong is a developed city. We must understand that even if only a handful of workers died in the construction of grand buildings, it is still intolerable. Secretary, I know you have been working hard and I know that various figures have dropped in general. However, there are hearsays that foremen, works supervisors and even contractors will often persuade workers, or advise them by other means, not to report minor injuries, such as pierced toes or minor wound in the arm, so as to lower the relevant figures. There are certainly such incidents.

President, there is a story behind every worker. With the exception of a small number of people, most young people joining the industry look for opportunities to get promoted gradually to higher posts. They may not necessarily want to be engineers. However, it is desirable that they are given the opportunities to promote from workers to foremen, and then to clerks of work, or that their techniques are respected and protected in their trade. As such, we must think about ways to provide more training opportunities for workers in the sector, particularly as I know these young people do not have high education qualification. We should enable them to have the opportunities to become technicians on the basis of their relatively low education level, as in the case of general clerical personnel who are offered promotion opportunities, pay increase and opportunities to take up management posts. In my view, the Government should make additional effort so that the trade can gain respect and honour.

President, I have not joined the Bills Committee, yet why do I have to make the above remarks? The idea that "blue-collar workers will not have a bright future" is outdated. We should no longer treat labourers with contempt, thinking that they have made no contributions to society. I would like to advise those in power at workplace, be they bosses, project managers, engineers, architects, surveyors or management personnel, to show more respect to construction workers. Society should do so to safeguard justice or harmony at work, and harmony of this type is genuine harmony. Thank you, President.

**MR WONG KWOK-HING** (in Cantonese): President, two colleagues from the Hong Kong Federation of Trade Unions (FTU), Mr IP Wai-ming and Dr PAN Pey-chyou, have stated our arguments earlier, so I will not repeat and elaborate on them. I would only talk about some other issues that my colleagues have not mentioned earlier. However, first of all, I would like to take this opportunity to

thank Secretary Carrie LAM on behalf of the Hong Kong Construction Industry Employees General Union (HKCIEGU). In the past few years, she had supported the caring campaigns of the HKCIEGU in the establishment of the Construction Charity Fund, which provides assistance to many injured workers as well as family members of workers who died at work. I would also like to take this opportunity to thank Mr Abraham SHEK, though he is not in the Chamber now, for the efforts he made. Let me express my heartfelt thanks to Mr Abraham SHEK and Secretary Carrie LAM. Their good deeds are highly appreciated by workers affected and their family members.

President, I would like to say a few more words to supplement the remarks made by colleagues from the FTU. I mainly want to express the views of various railway trade unions. Recently, I held a seminar in response to their invitation. At the seminar, they pointed out that railways were the most important means of transport in Hong Kong, carrying a daily capacity of millions of passengers. The railways lines now in operation were very busy and many new lines were in the process of construction, such as the South Hong Kong Island Line, the Island Line Extension, Shatin to Central Link and Express Rail Link, and so on, and the MTR Corporation Limited (MTRCL) had also invested and participated in the management of some overseas railway projects. Despite the fact that the development of railways in Hong Kong had a history of over a hundred years, the trade unions pointed out that Hong Kong did not have any institute on railway engineering to nurture and upgrade talents in the field.

In this connection, I had directly asked the Secretary about this issue at the relevant committee. The Secretary said at the time that upon the passage of the Bill, more courses would be provided by the Construction Industry Council (CIC) upon the completion of the amalgamation. I think this response is perhaps too brief, so I would like to take this opportunity to express the aspirations and requests of the trade unions.

According to the trade unions, a lot of talents have been nurtured during the history of railway development in Hong Kong, spanning over a century. However, the railway system is very complicated and these talents do not have the opportunity to receive professional training. The existing inadequacy is that while we have many professional engineers, a qualification accreditation and registration system for railway engineers has yet to be established. Certainly, engineers are divided into different streams. As railway systems are really complicated, there are various structural components, involving management and



even maintenance . . . . . I am not a professional in the trade, so I can only state the general condition. They feel helpless for their professional qualifications are not recognized by the Government and society, which has subsequently affected the training and upgrading of talents in the trade. Moreover, apart from engineers and various technicians, other people in the trade also need the subsidy of and solid support from the Government in establishing such a regime. However, we notice that should any railway incident or accident occurs, it will be handled by certain sub-divisions in the Electrical and Mechanical Services Department, such as electromechanical engineering, electronics engineering or other areas. As we do not have a single division for handling the entire railway system, the situation is far from adequate.

Besides, railway is now a very important industry in Hong Kong. The MTRCL is now making investment overseas and getting involved in the management work. Against this background, we should not "dwarf" ourselves. Members of the trade unions told me that they would have exchanges with the railway authorities in Macao, Shenzhen, Wuhan and Beijing from time to time, and according to their observation, professional qualifications or post titles for the railway industry have been established by their counterparts. However, this is not the situation in Hong Kong. Though we have the skills, techniques and professional knowledge, and some professionals in Hong Kong even give lectures to share the experience of Hong Kong, we do not have the professional qualification framework for railway engineering. This is reflected in the business name cards of the people concerned. The railway development in Hong Kong has a history of more than a century, and the existing railway network has advanced to a very complicated stage. The professional status in the railway industry does not commensurate with the situation, is it not? As such, they earnestly hope that in the long run, the Government will consider, examine and prepare for the establishment of an institute on railway engineering. No matter how, I hope the authorities will give serious consideration to their aspirations. Also, they fervently hope that government officials responsible for this issue will meet with them and listen to their views, so that their requests will not be turned down lightly. Upon the passage of the Bill, I hope that the qualification upgrading of the construction industry in future will not merely take into account the development of the construction industry, but will also consider the railway industry in Hong Kong which has great development potential and vitality.

President, I so submit.

**MR ALBERT CHAN** (in Cantonese): President, the proposed amalgamation of the relevant organizations in the Bill should basically facilitate the development of the construction industry as a whole. In fact, in the past many years, I had raised criticism in this aspect and had proposed to standardize the licensing scheme for construction workers, in particular, the issuance of skills certificates, which include mechanical skills certificates. Some construction workers have complained to me that they have more than 10 cards in their wallet. Worse still, the time and money spent each year on renewing each of these cards have dragged them down. They have been complaining about this situation.

Actually, many construction workers are good at many skills and they know how to operate a lot of equipment. In future, when a centralized organization is set up, only one card should be issued for licensing and accreditation of skills. Workers may apply for the card once a year and they can go everywhere with this "all-in-one card", which will avoid incurring additional costs and high administrative fees. According to workers, in the past, they have to spend a few thousand dollars on applying for various cards. Sometimes, even though they have obtained the professional qualification and certificates in a certain year, they may not have the chance to apply the skill in that year as the equipment to be used is subject to the demand of the trade and the market. I hope this legislative amendment will facilitate the centralization development in future.

President, on the issue of succession gap of construction workers, I had expressed my views at the Panel meeting when the issue of project development was discussed. Now, I would like to take this opportunity to reiterate my views. The problem of shortage of construction workers in Hong Kong begins to emerge. On the one hand, it is caused by the population policy. On the other hand, it is attributed to the immigration profile, particularly immigrants from the Mainland. In the past, immigrants from the Mainland were mainly young people suitable to be construction workers, but the situation has now changed significantly. Therefore, at present, a vast majority of construction workers are over 50 years old and some are approaching 60. Certainly, in recent years, some ethnic minorities, particularly Indians and Pakistanis, have joined the sector. However, the ageing problem of construction workers is worrying.

Back then, when I was studying in Canada, I had worked in the construction industry for several summer holidays. At that time, I could take up a land-leveling machine with one hand and I could operate a few other machines.

In overseas countries, particularly in Canada, in 1973 and 1974, many university graduates were willing to join the construction industry due to the attractive salary, regular working hours and job security. The credit should basically go to trade unions. If workers join the trade unions of certain industries, and the development of the industry is stable, they do not have to worry about their livelihood. The situation in Hong Kong is different. President, the case I mentioned earlier was the situation in Canada 40 years ago. However, despite the development of the construction industry in Hong Kong, workers are still being paid on daily wage rate for the number of days worked. On the whole, in the construction industry, apart from workers employed by large companies, or companies with certain background or special relationship, workers in general live at the mercy of the weather. Sometimes, when it rains, they do not have to work and their income is unstable.

One of the major reasons why young people are reluctant to join the trade is that the work is tough. Yet, income stability is another important reason. Certainly, due to the recent flourishing market, the daily wage for workers operating a machine is as high as \$1,000. Sometimes, the "bosses" have to operate the machine themselves since no workers are available. However, after the peak season, it will come the low season. By then, the income of workers will be unstable.

Young people in general resist joining the construction industry, for they think that manual workers will be discriminated by others. As such, many people would rather be salesmen or on-street promoters selling Cable TV services or mobile phone services plans, and so on. I think this is a matter of education on a whole and the income offered.

Moreover, the present situation in the construction industry is different from that in the past. Recently, I asked some veteran mentors in the construction industry why so few young people were willing to join the trade at present, and why they did not ask children of their friends to join the trade in times of the booming market. They said that the condition for joining the industry had changed now. In the past, young people might join the trade under the apprentice system, they would be paid, though not much, by working and learning under the guidance of a mentor and then obtain the required certificates step by step. But now, people intending to join the construction industry have to study at school for two years. Secretary, they do not get any wages during those

two years. It is true that allowances are provided for certain courses. However, if young people are required to spend two years to study in order to join the construction industry, where no wages are provided during the study and the prospect upon graduation is uncertain, many people would rather study other courses, such as professional bridging courses for degree programmes. Thus, it is extremely difficult to ask them to take a two-year course at the Construction Industry Training Authority.

At the same time, some students are concerned that they may not for sure get a job after completing the courses. It is possible that the market is booming during the one to two years when they are studying, yet the market may slump two years later and they will have difficulty in earning a living by then. I do not know whether the practice of work-study can be reinstated. In fact, after I completed my secondary school back then, I had taken up some co-op courses, where I had to work for six months and return to study at school for the other six months. I was paid during the six months of work. Later, my interest changed and I withdrew from those courses to return to the university to study.

However, these co-op programmes are very attractive to many young people, for they can work for a few months and then study for a few months. Basically, they think that they can support themselves with the income they earned and they thus have more incentive to take up such programmes. In respect of construction skills, I see no reason for requiring students to study for two years, and not adopting the co-op mode to make the programmes more attractive. Actually, in certain universities overseas, even for university degree programmes of a technical nature, such as chemists and pharmacists, they are provided in the co-op mode, and students have to spend some time for placement training with pay. As such, the construction industry in Hong Kong should focus the development in this respect.

President, I would like to take this opportunity to strongly criticize the sub-contracting practice of construction works in Hong Kong. More often than not, the sub-contracting practice is to be blamed for the low wages of construction workers. I think the Secretary and Mr Abraham SHEK are well aware of the situation, for this is an open secret. For a lot of government projects calling for tender, the licensed company being awarded the project will not carry out the construction works, but will contract out the projects in an all-inclusive mode to a sub-contracting company. I do not know whether it is the case in the prevailing

market. Mr Abraham SHEK, the successful bidder will handover the project to another company by charging a project cost of 12.5%, or even 15%, of the total bidding price, and the company taking up the project will be fully responsible for the project. The company taking up the project will then sub-contract different parts of work to subcontractors. I have asked a worker responsible for installing window sills, and he told me he was the seventh sub-contractor. In general, window installation works as a whole will be contracted to a group of two to three workers, yet the price is incredibly low. Members can imagine how front-line workers are being exploited by the multi-level of contractors. If we have a well-structured system, if there are large corporations with many subsidiary companies or specific teams, and a trade union system has been established, you can imagine the difference it will make regarding the protection given to construction workers.

The abnormality of the unique capitalistic system in Hong Kong enables powerful people in the market to reap unscrupulous profit through manipulation. Many people who work for these powerful people can earn a living and even make profits, but grass-roots workers have to suffer tremendously. Hence, the Government should take the lead to encourage successful bidders to set up their own teams or recruit their own staff. Actually, many years ago, a lot of Japanese companies have started doing so, yet I do not know the present situation. For this reason, Japanese construction companies can maintain stability and loyalty of their staff. More often than not, with a team of their own, the quality of work is safeguarded.

When we look at the case of estate developers in Hong Kong, we will notice a wide range of difference. Some of them have their own teams and designated companies to be responsible for the construction works, while some have to rely on tenders, where the works are contracted to those offering the lowest bids, and further price cuts are imposed. Some major estate developers are notorious for "water leakage". This is rightly because they do not have their own construction teams and rely merely on sub-contractors, which has led to the problem of supervision. More often than not, workers responsible for installing water taps and pipes are the sixth or seventh sub-contractors. They only want to complete the works as soon as possible so that they can get paid; they are not concerned about the quality of their works. After all, these problems will only be revealed after flat owners have moved in. The problem of wrong connection of pipes will only be revealed after digging up the concrete surface. In some of the complaints I handled in the past, newly completed flats have the problem of

continuous water leakage. When the floor tiles were removed, it was found that the pipes connected could easily be detached by hands. Evidently, the works and the supervision of works had been carried out in a careless manner. In this connection, it is hoped that with the centralization of licensing and other regulation, the quality of construction works will be guaranteed.

I hope that the problems I raised earlier are historical problems. However, we notice at the district level that for newly completed flats, no matter how much the property prices are — it might be around \$1,000 per square foot in those days, yet the current price will exceed \$10,000 per square foot — even for so-called luxurious flat priced at \$10,000 per square foot, the problem of water leakage still exists and the concrete finishing is rough. Sometimes, the horizontal level of a cross beam differs an inch or two from left to right. It is evident that the work is unprofessional. However, problems of this kind do not involve legal liability, it does not involve violation of the Buildings Ordinance. Even with the passage of the legislation on regulating the sale of first-hand residential properties, these problems may not necessarily regarded as a violation of the relevant requirements. As such, the problem of quality of works is most often addressed by means of supervision of works or the enhancement of the quality of construction workers.

I would like to take this opportunity to urge the Secretary to rectify these malpractices in Hong Kong and to encourage the younger generation in Hong Kong to join the construction industry, which is of great importance to the long-term development of Hong Kong. Certainly, the planning and support of the Government in construction works, including its support for training and the development of trade unions ..... Surely, the Hong Kong Federation of Trade Unions (FTU) has been quite successful in this respect at present, and a lot of documentation is issued by the FTU. This is another kind of political relationship and transfer of political interest.

**MR ALAN LEONG** (in Cantonese): President, I am glad that I have joined, on behalf of the Civic Party, the Bills Committee to scrutinize the Construction Industry Legislation (Miscellaneous Amendments) Bill 2012 (the Bill). Since 2001, we have been working hard to improve the regulatory system of the construction industry in Hong Kong and reform the construction industry, with a view to attracting more young people to join the trade. The scrutiny of the Bill is the last step to the successful completion of the entire project.

In 2004, the Legislative Council enacted the Construction Workers Registration Ordinance, and in the same year, the Construction Workers Registration Authority (CWRA) was established. Two years later, that is, 2006, the Construction Industry Council Ordinance was also passed by the Legislative Council. In 2007, the Construction Industry Council (CIC) was established. Between the end of 2005 and March this year, the CWRA had completed the registration for over 290 000 construction workers. Back then, when the Government submitted the Construction Industry Council Bill to the Legislative Council, it had made known its intent of making the CIC the sole regulatory body, and the CIC would eventually take up the training of construction personnel, workers registration and other self-regulatory regimes. For this reason, I describe the scrutiny of the Bill today the last step towards the completion of the reform and forward planning of the construction industry.

President, many colleagues, as well as the President, may have noticed that between January and March this year, a programme produced by the RTHK, titled "A Dream Comes True", was shown on television. The programme includes 10 episodes. The programme is attractive for portraying real-life story vividly. Workers engaging in woodwork, formwork, bar-fixing, blasting, scaffolding and crane operation were interviewed in the programme, and some engineers told their stories of success. I think the production of this type of programme will effectively enhance the social status of workers in various trades in the construction industry.

Earlier, some colleagues have praised highly the new construction sites they visited. I once visited the housing estate site at Kai Tai, where work was in progress, in the capacity as a member of the Housing Authority (HA). Apart from the inclusion of environmental-friendly elements in various works, what surprises me most is that I can visit that site in business suit and even though I put on leather shoes, I have no fear of being slipped on the ground. When you enter the construction site, do not expect the area to be muddy with pools of soiled water and that you have to walk around, rolling up your trousers leg. It is definitely not that case. In that site, you do not hear deafening noises and you can walk on solid ground. A pair of plastic shoes is absolutely unnecessary. Even if I enter the construction site with the attire I put on for attending the meeting of the Legislative Council, I will not feel embarrassed or inconvenient.

The construction industry is extremely important to Hong Kong. President, you should remember clearly that around a year and a half ago, we visited this Legislative Council Complex, which was still a construction site and many workers of the construction industry were working here. Not only the Legislative Council Complex, the footprints of various trades of construction workers are found in the airport, piers, commercial buildings, residential buildings and office buildings, and so on. However, in retrospect, the construction industry in Hong Kong had experienced downturns. Due to the impression that "blue-collar workers will not have a bright future", there is a shortage of manpower in the industry. While existing workers are ageing, no new entrants are willing to join the industry. I strongly believe that the Government has made considerable effort to facilitate the production of the 10 episodes of the programme "A Dream Comes True" by the Television Division of the RTHK, hoping this will attract more young people to join the construction industry.

President, I heard Ms LI Fung-ying recall that we had scheduled eight sessions of meeting for the scrutiny of the Bill, but it turned out the scrutiny work was completed in four sessions. We should surely give credits to Dr Raymond HO, Chairman of the Bills Committee, for conducting meetings with great efficiency. In addition, the credit should also go to the government officials attending the meetings of the Bills Committee, for they have all along listened humbly to our questions. Ms LI Fung-ying has commended them earlier.

Our gravest concerns are: Will the interest of staff serving the CWRA Secretariat be undermined when they joined the CIC upon the amalgamation? Will their terms of employment be protected after the amalgamation of the CWRA with the CIC? How will their contracts be handled? These are the major concerns of the Bills Committee. During the scrutiny, government officials had not only provided us with verbal reply, but had also addressed our queries in writing. Regarding the replies provided by the Government in removing the worries of staff serving the CWRA Secretariat, I hope the arrangements will all be implemented in future. I believe this Council will definitely continue to follow up the commitments made by the Government during the scrutiny of the legislation.

Finally, I would like to mention that government officials have heeded our views and made improvement. We have been concerned about the



documentation of construction workers for some time. Since construction workers are required to make registration of various trades, they have a dozen of registration cards in their wallet, in addition to the Construction Workers' Green Card. We hope that an "all-in-one card" can be issued, so that workers do not have to stuff cards into their wallet, or worry about forgetting to carry their cards. Of course, it is not a problem if the wallet is stuffed with money, yet it seems unnecessary to stuff the wallet with dozens of cards. We had discussed with government officials about the materials to be used for the "all-in-one card", and we proposed using some quality material to make this "all-in-one card". The government officials responded with great patience even on these details, which fully reflects that officials attending the meetings of the Bills Committee on behalf of the Government are willing to accept good advice.

With these remarks, President, I support the resumption of the Second Reading of the Bill and all the amendments proposed by the Government at the Committee stage on behalf of the Civic Party.

**MR ABRAHAM SHEK** (in Cantonese): President, I was not in this Chamber for the past hour, for today is my daughter's birthday and I have to dine out with my family. However, I have all along been listening to the speeches of Members. During dinner, I listened to the remarks made by Members. I am glad that after days of debate, during which Members have expressed various views from different aspects, we have now come to this moment showing great solidarity in supporting the motion. It is a precious moment, for we have eventually come to an agreement and achieve harmony. Why do we have to do so? President, when they criticize you, I feel so uncomfortable. Yet, after today, I think, President, you ..... I would like to take this opportunity to ..... Though I should not say so, yet you are right to do so. You are right, and you should continue to do what you should .....

**PRESIDENT** (in Cantonese): Please do not express other views.

**MR ABRAHAM SHEK** (in Cantonese): ..... You should do your job properly. President, that is all for my "shoe-shining".

**PRESIDENT** (in Cantonese): Luckily, Mr CHIM Pui-chung is not in this Chamber.

**MR ABRAHAM SHEK** (in Cantonese): I have originally prepared an English speech, but I do not want to read it out. I would like to take this opportunity to share my inner feelings with you. I have had a few glasses of wine just now, and I always pour my heart out after taking a glass or two.

President, I would like to take this opportunity to thank Secretary Carrie LAM. Many people consider her a "good fighter", yet she is a very kind person. I have to express my gratitude to her. If it is not because of her, many construction workers would not have been willing to stay in the industry. She cares about workers, and because of her, there are job opportunities and she makes us feel that we should respect our work. I hope she will not leave us, for she makes us feel that even at the worst of times, she will lead the construction industry to attain solidarity. We hope that more young people will join the industry. In this connection, the Government has given us many opportunities. Many people think that I represent the estate property sector, yet in the past 12 years, I have shown much concern to the construction industry.

I would like to take this opportunity to ..... The construction industry ..... the industry has made great contribution to the development of Hong Kong as a whole ..... When workers go to work every day, their safety is in danger and they have to endure heat and rain. But still, they continue to give their best performances, and they are worthy of our commendation. In the past five years, the Government has shown great concern to the construction industry, for it understands the great contribution the industry has made to Hong Kong. The Secretary has visited us a couple of times to show her support and care to members in the industry. I would like to take this opportunity to thank her. A charity fund had been set up, and I have to thank Mr WONG Kwok-hing for mentioning the charity fund earlier. The Secretary had personally involved in raising funds for us, so that families of victims suffering from injuries or deaths might apply to the charity fund for help. This is not a kind of alms giving. The Secretary understands the situation of the industry and shows her care for members of the industry, regarding them as family members. The Secretary has promoted the solidarity of workers in the construction industry. I would like to take this opportunity to thank Secretary Carrie LAM, for without her help, the industry would not be able to raise \$10 million. From the perspective of Hong

Kong as a whole, \$10 million is not a big sum of money, yet with that amount of money, one family, 100 families or even 1 000 families can be benefited. What I have said have actually been covered by Ms LI Fung-ying and Mr WONG Kwok-hing. I fully support their views. Regarding the views of Mr Alan LEONG, I also give my full support, so I am not going to repeat these views here. Even for the remarks from Mr Albert CHAN . . . . . More often than not, I do not agree with what he says. However, the remarks given by him in the first nine minutes of his speech are something a man should say, (*Laughter*) President, so I agree with him. Though he has made a lot of criticisms against government officials, when he commented on Secretary Carrie LAM, he lowered his voice. He is after all gentle towards the Secretary. Therefore, President, no matter how he criticized the Secretary, the contents of the first nine minutes of his speech is correct, he has spoken the truth. Secretary Carrie LAM, do not be afraid; you should continue to do your work properly — I am not "shoe-shining" — yet, I think a good official should do what he or she should do; and if a matter is good for Hong Kong, the official should take up the work.

President, when it comes to the Bill, I am a member of the Bills Committee, yet I have not spoken, for the remarks made by all colleagues are my views. I do not need to speak. Why? Their remarks, particularly that of Ms LI Fung-ying . . . . . I joined the Legislative Council in 2000, same as Ms LI. I am honoured to have the opportunity to be her colleague. Really, I must take this opportunity to point out that Ms LI does not only speak on behalf of workers, for she has pointed out on behalf of the community that we should thank the construction workers for their contribution to Hong Kong.

Under the Bill, the two organizations will be amalgamated. As pointed out by Ms LI Fung-ying, this will develop a sense of belonging among workers, and young people joining the industry will also have a sense of belonging. President, many members in the trade are senior in age, and it is a major problem. Yet, do not worry, the Government has put in place a set of good policies to encourage young people to join the industry and safeguard their safety. For government projects, a very high standard of safety has been achieved. But for private sector, I am sorry to say that they have not reached the standard attained by the Government. We earnestly hope that the standard of private projects will be upgraded to be on a par with that of government projects. We do not want to have any accident, for one is too many. We believe that workers, developers or construction companies do not want to see any accident.

I am so glad, and I take this opportunity to thank Honourable Members and the various political parties and groupings for coming together in unity to support workers in the construction industry. I hope they will have a safe and healthy working environment, so that they can work for the development of Hong Kong.

Thank you, President.

**MR LEUNG KWOK-HUNG** (in Cantonese): President, when I was small, I hated old Cantonese films, for they had a happy ending. Yet, when we returned to the real world after leaving the cinema, we knew that was not the reality.

Mr WONG Kwok-hing has expressed gratitude to this person and that person. I have read the manifesto of LEUNG Chun-ying, there was not a word on the development of the construction industry. Under the heading of Population and Human Resources, the development of construction industry has not been mentioned. It is definitely a matter of human resources and employment, yet he has not mentioned it. Besides, under the pledges to "Develop the economy, in terms of its size and depth; Encourage industries to expand and thrive; Create more employment opportunities; and Bring about a fairer sharing of the resultant prosperity", the construction industry has not been mentioned. Sorry, I am not good at "shoe-shining" as Mr Abraham SHEK. He can keep shining others' shoes for no reasons, he just applies some colourless polish in order not to stain the shoes.

We portray the Government to be omnipotent and powerful, as if it could lift someone up to heaven by moving a finger and cast someone into hell by moving the little finger. Yet, is it really so powerful? I had once worked in the construction industry. The first point I want to make is that the sub-contracting system in Hong Kong is a hotch-potch. Under the multi-level sub-contracting practice, wages of workers are eaten away by sub-contractors and contractors.

President, as mentioned by Mr Albert CHAN, once the contractors get the contract, they would get one eighth or 12.5% of the profit. How do they get the project contracts? By means of the "royal trump card". Where do they get the "royal trump card"? There is no "royal trump card" now, yet there is the "SAR trump card". Where do they get this card? Probably from former officials or some veteran members in the industry. Has anyone cared about this kind of

abuse and exploitation? The Hong Kong Federation of Trade Unions (FTU) has handled a large number of cases involving "toil without wages", yet has it mentioned such exploitation? The legislation under discussion today will certainly bring about some improvement, yet how brilliant is this measure? During the Ming Dynasty, there was also the "One Whip Law", which integrated different systems to minimize troubles.

President, contrary to the remarks of Mr WONG Kwok-hing, workers in the construction industry do not earn their living from large scale infrastructure projects. I do not know whether he has been a construction worker. For large scale infrastructure projects, we spend a huge amount of money to order a large number of precast segments, which will be shipped to Hong Kong to be assembled. A large amount of money is spent in a reverse order in the production cycle. The situation today is incomparable to the construction of a dam back in the 1930s. As for the Mainland, they carry out a large number of infrastructure projects to boost domestic consumption and thus push up its Gross National Product (GDP). In my view, more hospitals and housing estates, as well as facilities directly related to people's livelihood should be built, though the scale of such projects is smaller. Certainly, precast segments are also used in the construction of public housing. If the authorities are really concerned about local workers, they should take the trouble to draw a few more plans, so as to improve the livelihood of workers. If people involving in trade union movement know nothing about the actual situation of the trade, they will definitely become an object of ridicule. I have never heard that a government can create job opportunities by spending lavishly on infrastructural development. It will push up the GDP by boosting domestic consumption.

Moreover, President, I wonder if you have ever heard of the following analogy. What is a commodity according to a Marxist? Coffin is a commodity, for people who make a coffin will only need one for himself, and the second one made must be sold to another person.

Nowadays, workers engaging in the construction of housing or infrastructure are subject to multi-level exploitation under the outdated regime of the industry. Come to think about it, how will workers building houses be capable of purchasing their own flat. Had public housing not been provided, they would not have a roof under their head. I do not know whether the President has watched a movie titled "House". I think you may have watched

that movie. I recall that in the movie, the actor LI Qing lived in a slum. He built houses but he did not have a house to live in. At that time, I shed a few tears at the South Pacific Theater, and I wonder if friends from the FTU will shed tears today.

President, we keep praising Secretary Carrie LAM, yet it will only ruin her. She will be the Chief Secretary for Administration in future, so you start currying favour by putting shoe polish on the bottom of the horse — of course, I am not saying that Secretary Carrie LAM is a horse — do you think the horse will run faster when you cover the white patch at its bottom with the shoe polish? Acclamation without justification will only push a person to a blind alley. LEUNG Chun-ying is a case in point. As in the Crisis of Tumu Fortress<sup>2</sup>, "Go, Wala, attack Tumu Fortress!" I do not know who will now play the role as WANG Zhen, he had been in big trouble, for I know he was beaten to death by a hammer. What about the situation of our government? In my view, if Secretary Carrie LAM stands a chance to become the Chief Secretary for Administration, do not give her an avalanche of praises.

As for the legislation, the major problem is that when bits and pieces are put together to form a single organization, which seems to be all-powerful, but who will monitor this organization? Many construction workers told me ..... There is a "dai pai dong" in my housing estate at Kai Yip Estate. I am not sure if you have visited that place before. There are parking lots and many construction workers eat there. Mr CHAN Kam-lam should know that clearly, for he is from that constituency. The "dai pai dong" is an ideal place for advertising, for the flow of people is very high. They told me, "'Long Hair', we do not have to bring poker deck to play Chinese Poker, for each of us have to carry 13 cards with us, and we may play card games." Buddy, they have to bring 13 cards with them, due to the different policies adopted by different departments.

President, should we not pursue high technology? If so, should we care more for the workers? Why not store all information in one card, so that workers only need to carry one card? Just like the Octopus card, the card holder only needs to wave his card. If a worker is to do painting work today, he only needs to wave the card to indicate his registration as a painter. Why do they

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<sup>2</sup> In the Ming Dynasty, the Mongolian tribe Wala attacked the Chinese Kingdom, Wang Zhen, an eunuch, asked the emperor to lead an army in war, and the troop was defeated in Tumu Fortress.

have to carry so many cards? In fact, there is a secret. The reason for allowing different organizations to implement different policies is to leave room for these organizations to make duplicate registration.

Certainly, duplicate registration may come in many forms. When the Government legislated on Article 23, I received a letter saying, "The FTU says it will be my representative, yet what I want is its membership card, for I have to be a member to enrol in its courses and get the certificate." Buddy, the reason we take the rickshaw instead of the train is that we want to let the rickshaw man make some money. The same applies to the Vocational Training Council. I often went there in the past to attend meetings. I had been to the Workers' Children Secondary School in Mong Kok, you have also been there. It has now become the Hong Kong College of Technology (HKCT), and course fees are charged. Every day, when I return home and check my mail box, I find leaflets from the Democratic Alliance for the Betterment and Progress of Hong Kong and the FTU urging people to study at the HKCT, saying that students only need to pay half-fare with government subsidies. What is this? Is this not a transfer of interest? This is a transfer of interest driven by policies.

President, regarding this reform, the Blue Bill as a whole is correct. Yet, do we need to sing praises about this? There is someone called "AP" at present, who can sign for authorization. It is said that the regulation of minor works should be tightened, and this Council should be more stringent. Some workers and contractors do not know how to fill in the forms but they are required to do so nowadays. They are good at using a crowbar but not a pen. This is particularly so for our legislation is so complicated that one can hardly understand. Do you know the consequence of not knowing how to fill in the forms? You cannot work if you do not know how to fill in the forms. At that time, I asked Secretary Carrie LAM openly at the former Legislative Council Building about this. Secretary Carrie LAM is swift in action. She gave me a Panadol, a pain killer, immediately. She asked a Permanent Secretary to discuss with me and settled the incident.

Yet, in fact, that did not work, for the entire system is still in operation. Those do not know how to fill in the forms cannot start to work. After submitting the forms, they have to wait for approval. Yet, the authorities say it is unnecessary to wait for approval and the works can be carried out first. However, a certificate of compliance has to be issued for the works. Since

approval for the works has not been issued, a certificate of compliance will not be issued upon the completion of works. As such, workers do not get paid, and contractors can do nothing about it. Officials say that seeking approval is only a routine procedure and it is unnecessary to wait for it, yet it is required in the settlement of payment. I do not know whether this situation has improved.

President, if a legislature only lavishes praises on the administration, it can hardly put the interest of the people in the first place. Why? The Government is a machinery, which has the nature of a beast, and if ..... President, you drive, do you? I recall that your car had once been on fire. It would have hurt you or burnt you to death. I recall that you managed to escape in time in that accident. When you are in the driver's seat driving, you can jump if you dare; if not, you will be trapped.

We have created a machinery, a machinery of the State, and this machinery of the State is used by its maker. Our Government is not a machinery of the State for the time being, only for the time being. When we identify any problems, we will definitely point it out. It is simple. Just like the story written by Lu Xun. I think you remember that story, do you? When someone's one-month old baby is being praised lovely, he clapped his hands in approval — as in the case when the replacement mechanism was passed. If someone says that your kid is blessed with felicity and longevity and that he can live up to 100 or at least 99 years of age, you are happy; but if someone says to you that your kid is thin and ugly, you will give him a severe beating. This is a story written by Lu Xun, which is indeed the situation of our country. Those who speak the truth will be condemned. President, you are criticized for speaking the truth, are you not? You only say that "we cannot act arbitrarily in the Legislative Council", and others challenge you for condoning me.

President, I think the protection for construction workers hinges on changing the structure of the construction industry, so that the multi-level sub-contracting practice will cease or fade out. This is the key. As for the training of the labour force, it must be regarded as self-enhancement courses and social recognition must be accorded.

President, I only have 15 seconds left. Concerning workers, LI Wangyang was a leader of workers. It has been 15 days since his death. He belonged to Shaoyang Workers' Association and he had been imprisoned for 22



years. You want to talk about workers, do you?*(The buzzer sounded)* .....  
Speak loudly for him then!

### **SUSPENSION OF MEETING**

**PRESIDENT** (in Cantonese): It is now one minute to ten. I now suspend the meeting to 9 am tomorrow.

*Suspended accordingly at one minute to Ten o'clock.*

## Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

## Committee Stage

Amendments moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
7(2)	In the proposed section 6H(8), by deleting “the Securities and Futures Commission, the Monetary Authority, and the Insurance Authority,” and substituting “the Insurance Authority, the Monetary Authority, and the Securities and Futures Commission,”.
8	In the proposed section 6KA(5), in the Chinese text, by deleting “為該條文的施行而使用該電子系統” and substituting “該電子系統為該條文的施行而被使用”.
8	In the proposed section 6KA(6), in the Chinese text, by deleting “使用指定電子系統” and substituting “指定電子系統被使用”.
9(2)	By deleting “Part IVA)” and substituting “sections 34L, 34ZL and 34ZM), the requirements imposed under this Ordinance, or the conditions imposed under this Ordinance (except section 34X),”.
10	By deleting “Part IVA)” and substituting “sections 34L, 34ZL and 34ZM), the requirements imposed under this Ordinance, or the conditions imposed under this Ordinance (except section 34X),”.
11	By deleting “Part IVA)” and substituting “sections 34L, 34ZL and

34ZM), the requirements imposed under this Ordinance, or the conditions imposed under this Ordinance (except section 34X),”.

12 By deleting “Part IVA)” and substituting “sections 34L, 34ZL and 34ZM), a requirement imposed under this Ordinance, or a condition imposed under this Ordinance (except section 34X),”.

13 In the proposed section 34E, in the definition of *industry regulator*, by deleting paragraphs (a), (b) and (c) and substituting—

- “(a) the Insurance Authority;
- (b) the Monetary Authority; or
- (c) the Securities and Futures Commission;”.

13 In the proposed section 34E, in the definition of *prescribed person*, by deleting paragraph (a) and substituting—

- “(a) in relation to the Insurance Authority, means a public officer employed in the Office of the Commissioner of Insurance;”.

13 In the proposed section 34E, in the definition of *prescribed person*, by deleting paragraph (c) and substituting—

- “(c) in relation to the Securities and Futures Commission, means an employee of the Commission;”.

13 In the proposed section 34E, in the definition of *relevant insurance body*, by deleting “*body* (有關保險業)” and substituting “*broker body* (有關保險經紀)”.

13 In the proposed section 34E, in the definition of *Type B regulatee*, in paragraph (a)(iii) and (iv), by adding “broker” after “relevant insurance”.

- 13 In the proposed section 34F(5)(c), in the English text, by deleting “particular registered scheme;” and substituting “registered scheme;”.
- 13 By deleting the proposed section 34F(5)(d), (e) and (f) and substituting—
- “(d) the amount of contributions (including voluntary contributions) to be paid to a particular registered scheme, or the amount to be invested in a particular constituent fund of a registered scheme;
  - (e) whether, or when, to transfer accrued benefits from a particular registered scheme to another particular registered scheme, or from a particular constituent fund of a registered scheme to another particular constituent fund of the registered scheme;
  - (f) the amount of accrued benefits to be transferred from a particular registered scheme to another particular registered scheme, or from a particular constituent fund of a registered scheme to another particular constituent fund of the registered scheme;”.
- 13 In the proposed section 34F(5)(g), in the Chinese text, by adding “如此” after “何時”.
- 13 By deleting the proposed section 34F(5)(h) and substituting—
- “(h) the amount of benefits to be transferred from an occupational retirement scheme to a particular registered scheme;”.
- 13 In the proposed section 34F(5)(j), by deleting “such a claim” and substituting “a claim mentioned in paragraph (i)”.
- 13 In the proposed section 34G(1)(b), by deleting “except in section 34M(1)” and substituting “subject to section 34M(9)(a)”.
- 13 In the proposed section 34G(2)(b), by deleting “except in section

34M(1),”.

- 13 In the proposed section 34H(1)(a), by deleting “34T(5)(b)(i) or”.
- 13 In the proposed section 34H(1)(b), by deleting “except in sections 34T(2)(a) and 34V(1)” and substituting “subject to section 34V(6)”.
- 13 In the proposed section 34H(2)(a), by deleting “34T(5)(b)(i) or”.
- 13 In the proposed section 34H(2)(b), by deleting “except in sections 34T(2)(a) and 34V(1),”.
- 13 In the proposed section 34H(3)(a), by deleting “34T(5)(a)(i) or (b)(ii), 34U(7) or”.
- 13 In the proposed section 34H(3)(b), by deleting “except in sections 34M(1)(b) and 34W(3)(a)” and substituting “subject to sections 34M(9)(b) and 34W(6)”.
- 13 In the proposed section 34H(4)(a), by deleting “34T(5)(a)(i) or (b)(ii), 34U(7) or”.
- 13 In the proposed section 34H(4)(b), by deleting “except in sections 34M(1)(b) and 34W(3)(a),”.
- 13 In the proposed section 34I(1)(a), by deleting “34T(5)(a)(ii) or (b)(iii) or”.
- 13 In the proposed section 34I(1)(b), by deleting “except in section 34ZD(1)” and substituting “subject to section 34ZD(5)”.

- 13 In the proposed section 34I(2)(a), by deleting “34T(5)(a)(ii) or (b)(iii) or”.
- 13 In the proposed section 34I(2)(b), by deleting “except in section 34ZD(1),”.
- 13 In the proposed section 34I(3)(b), in the English text, by adding “principal” after “uses the”.
- 13 In the proposed section 34J(2)(b)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 197(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 197(4) of that Ordinance,”.
- 13 In the proposed section 34J(2)(b)(ii), by deleting “that section” and substituting “that section 196(1)(i)(B) or 197(1), or is deemed to be suspended under that section 197(4),”.
- 13 In the proposed section 34J(2)(c)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.
- 13 In the proposed section 34J(2)(c)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 13 In the proposed section 34K(1)(a) and (b), in the Chinese text, by deleting “中止” and substituting “終止”.

- 13 In the proposed section 34K(2)(f)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.
- 13 In the proposed section 34K(2)(f)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 13 In the proposed section 34M(5)(a)(i), by deleting “otherwise than on subscription” and substituting “(excluding one that is made available on subscription only)”.
- 13 In the proposed section 34M, by adding—
- “(9) In subsection (1)—
  - (a) a reference to a principal intermediary does not include a person whose registration as a principal intermediary is suspended under this Part; and
  - (b) a reference to a subsidiary intermediary attached to a principal intermediary does not include a person—
  - (i) whose registration as a subsidiary intermediary is suspended under this Part; or
  - (ii) the approval of whose attachment to the principal intermediary is suspended under this Part.”.
- 13 In the proposed section 34N(1), by deleting everything after “an offence” and substituting a full stop.
- 13 In the proposed section 34N, by adding—
- “(1A) Subject to subsection (1B), a person who commits an offence under subsection (1) is liable—
  - (a) on conviction on indictment to a fine of \$5,000,000 and

to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day on which the offence is continued; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence is continued.

(1B) If a person contravenes section 34L(1) or (2) by carrying on regulated activities for another person in the course of acting as an employee, agent or representative of that other person, or for holding themselves out as so carrying on regulated activities, the person is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each day on which the offence is continued; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for each day on which the offence is continued.”.

13 In the proposed section 34Q(5)(a), by deleting “registered intermediary” and substituting “regulated person”.

13 In the proposed section 34Q(5)(b), by deleting everything after “particulars of” and substituting—

“—

(i) the registration of a person as a principal or subsidiary intermediary; or

(ii) the approval of an individual as a responsible officer.”.

13 In the proposed section 34Q(6)(b), in the Chinese text, by adding “獲” before “接納”.

13 In the proposed section 34Q(6)(b)(i) and (ii), in the Chinese text, by deleting “視” and substituting “推定”.



- 13 In the proposed section 34Q(6)(b)(iii), in the Chinese text, by deleting “證據” and substituting “證明”.
- 13 In the proposed section 34R, in the heading, by deleting “**as on-line record**” and substituting “**through internet**”.
- 13 In the proposed section 34R, by deleting “in the form of an on-line record” and substituting “through the internet”.
- 13 In the proposed section 34S(1)(e), by deleting “Division 5 or 6” and substituting “this Part”.
- 13 In the proposed section 34S(2)(b)(ii), by deleting “and”.
- 13 In the proposed section 34S(2)(b), by adding—  
    “(iia) if the registration of the principal intermediary as such is suspended under this Part—  
        (A) a note to that effect; and  
        (B) a note to the effect that section 34M(1)(b) does not apply to the subsidiary intermediary; and”.
- 13 In the proposed section 34S(2)(b)(iii)(C), by deleting “Division 5 or 6” and substituting “this Part”.
- 13 In the proposed section 34T(2)(a)(i), by deleting “to the Authority” and substituting “under section 34V(1)”.
- 13 In the proposed section 34T(2)(a)(ii), by deleting “to the Authority” and substituting “under section 34W(1)”.
- 13 In the proposed section 34T(2)(b)(i), by deleting “to the Authority” and substituting “under section 34U(1)”.

- 13 In the proposed section 34T(2)(b)(ii), by deleting “to the Authority” and substituting “under section 34V(1)”.
- 13 In the proposed section 34T(2)(b)(iii), by deleting “to the Authority” and substituting “under section 34W(1)”.
- 13 In the proposed section 34T(3), by deleting “or (2)(a) or (b)”.
- 13 By deleting the proposed section 34T(4)(b)(i)(A), (B) and (C) and substituting—
- “(A) an accompanying application is made for the purposes of subsection (2)(a)(i), and the criteria for approval under section 34V(3) are satisfied; and
  - (B) an accompanying application is made for the purposes of subsection (2)(a)(ii), and the criteria for approval under section 34W(3)(b), (c) and (d) are satisfied; or”.
- 13 By deleting the proposed section 34T(4)(b)(ii)(A), (B) and (C) and substituting—
- “(A) an accompanying application is made for the purposes of subsection (2)(b)(i), and the criteria for approval under section 34U(4) (except paragraph (g)) are satisfied;
  - (B) an accompanying application is made for the purposes of subsection (2)(b)(ii), and the criteria for approval under section 34V(3)(a), (b) and (c) are satisfied; and
  - (C) an accompanying application is made for the purposes of subsection (2)(b)(iii), and the criteria for approval under section 34W(3)(b), (c) and (d) are satisfied.”.
- 13 In the proposed section 34T(5), by deleting everything after “, the Authority” and substituting “must also grant the accompanying applications made for the purposes of subsection (2)(a) or (b).”.
- 13 In the proposed section 34T(6), by deleting “under subsection (2)(a)” and

substituting “for the purposes of subsection (2)(a)”.

- 13 In the proposed section 34T(7), by deleting everything after “Authority” and substituting “must give the principal applicant a notice in writing of the results of the application made under subsection (1).”.
- 13 In the proposed section 34T(8), by deleting “(a) or (b)”.
- 13 In the proposed section 34T(8), by deleting “or accompanying applications”.
- 13 In the proposed section 34U(2), by deleting “to the Authority” and substituting “under section 34V(1)”.
- 13 In the proposed section 34U(3), by deleting “or (2)”.
- 13 In the proposed section 34U(4)(g)(i), by deleting “under” and substituting “for the purposes of”.
- 13 In the proposed section 34U(4)(g)(ii), by deleting “subsection (6)” and substituting “section 34V(3)(a), (b) and (c)”.
- 13 In the proposed section 34U(5), by deleting everything after “if” and substituting—
- “—
- (a) within 3 years immediately before the date of the application, the principal applicant has been registered as a subsidiary intermediary and that registration has been revoked; and
  - (b) the revocation, or the last revocation (if there is more than one), is not made under section 34ZP(4).”.

- 13 By deleting the proposed section 34U(6).
- 13 In the proposed section 34U(7), by deleting everything after “also” and substituting “grant the accompanying application made for the purposes of subsection (2).”.
- 13 In the proposed section 34U(8), by deleting “under subsection (2)” and substituting “for the purposes of subsection (2)”.
- 13 In the proposed section 34U(9), by deleting everything after “results of” and substituting “the application made under subsection (1).”.
- 13 By deleting the proposed section 34U(10).
- 13 In the proposed section 34U(11), by deleting “or (10)”.
- 13 In the proposed section 34U(11), by deleting “or accompanying application (as may be applicable)”.
- 13 By deleting the proposed section 34V(1) and substituting—
- “(1) A person specified in subsection (1A) may apply to the Authority for approval of attachment of another person to the specified person for the purpose of carrying on regulated activities.
  - (1A) The person is—
    - (a) a principal intermediary; or
    - (b) a person who applies under section 34T(1) for registration as an intermediary for carrying on regulated activities.”.
- 13 In the proposed section 34V(3), in the Chinese text, by deleting “附屬中介人隸屬有關主事中介人，但前提是” and substituting “的另一人隸

屬申請人，但前提是它信納”。

- 13 In the proposed section 34V(3), by adding before paragraph (a)—  
“(aa) that the other person is a subsidiary intermediary;”.
- 13 In the proposed section 34V(3)(a), (b) and (c), by deleting “subsidiary intermediary” and substituting “other person”.
- 13 In the proposed section 34V(3)(a), by deleting “principal intermediary” and substituting “applicant”.
- 13 In the proposed section 34V(4), by deleting “subsidiary intermediary” and substituting “other person”.
- 13 In the proposed section 34V, by adding—  
“(6) In subsection (3)(aa), a reference to a subsidiary intermediary does not include a person whose registration as a subsidiary intermediary is suspended under this Part.”.
- 13 By deleting the proposed section 34W(1) and substituting—  
“(1) A person specified in subsection (1A) may apply to the Authority for approval of an individual as an officer with specified responsibilities in relation to the specified person.  
(1A) The person is—  
(a) a principal intermediary; or  
(b) a person who applies under section 34T(1) for registration as an intermediary for carrying on regulated activities.”.
- 13 In the proposed section 34W(3), by deleting “principal intermediary if” and substituting “applicant if”.

- 13 In the proposed section 34W(3)(a) and (b), by deleting “principal intermediary” (wherever appearing) and substituting “applicant”.
- 13 In the proposed section 34W(3)(b), in the Chinese text, by deleting “支持” and substituting “支援”.
- 13 In the proposed section 34W, by adding—
- “(6) In subsection (3)(a), a reference to a subsidiary intermediary attached to the applicant does not include a person—
    - (a) whose registration as a subsidiary intermediary is suspended under this Part; or
    - (b) the approval of whose attachment to the applicant is suspended under this Part.”.
- 13 In the proposed section 34Y, in the heading, by deleting “**processing application etc.**” and substituting “**rejecting application, or imposing or amending conditions**”.
- 13 In the proposed Division 5, in the heading, by deleting “**Status or**”.
- 13 In the Chinese text, by deleting the proposed section 34ZC(1)(b)(ii) and substituting—
- “(ii) 有任何作為某行業監督的甲類受規管者的資格被暫時撤銷；及”.
- 13 In the proposed section 34ZD, by adding—
- “(5) In subsection (1), a reference to a responsible officer does not include an individual whose approval as a responsible officer of the principal intermediary is suspended under this Part.”.
- 13 By deleting the proposed section 34ZE(1)(d) and substituting—
- “(d) a responsible officer of a principal intermediary ceases to be an officer with specified responsibilities in relation to the

principal intermediary.”.

- 13 In the proposed section 34ZE, by adding—
- “(3A) The Authority may revoke the approval of an individual as a responsible officer of a principal intermediary if the Authority is given a notice under subsection (2) that the individual ceases to be an officer with specified responsibilities in relation to the principal intermediary.”.
- 13 By deleting the proposed section 34ZF(2), (3) and (4) and substituting—
- “(2) The approval of the attachment of the person to the principal intermediary—
- (a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to be such a Type B regulatee; or
- (b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.
- (3) Where the person is not approved as being attached to any principal intermediary after a revocation under subsection (2)(a), the Authority may revoke the registration of the person as a subsidiary intermediary if—
- (a) no application has been made under section 34V(1) for approval of attachment of the person to a principal intermediary within 90 days after the date on which the revocation under subsection (2)(a) takes effect; or
- (b) such an application has been made within 90 days after the date on which the revocation under subsection (2)(a) takes effect, and the Authority has rejected the application.”.
- 13 In the proposed section 34ZG(4)(a) and (b), in the Chinese text, by deleting “的生效” and substituting “生效的”.
- 13 In the proposed section 34ZG(4)(a), in the Chinese text, by deleting “提出” and substituting “提出的”.
- 13 In the proposed section 34ZH(3)(a) and (b), in the Chinese text, by

deleting “的生效” and substituting “生效的”.

- 13 In the proposed section 34ZH(3)(a), in the Chinese text, by deleting “提出” and substituting “提出的”.
- 13 In the proposed section 34ZK(2), in the Chinese text, by deleting “和支持” and substituting “或支援”.
- 13 In the proposed section 34ZK, by adding—
- “(3) The power under subsection (2) is not exercisable unless, before exercising the power, the Authority—
    - (a) has given the individual a notice in writing of its intention to do so and the reasons for doing so; and
    - (b) has given the individual an opportunity to make oral or written representations, or both, on those reasons.
  - (4) A notice under subsection (3)(a) must also include a statement describing—
    - (a) the right of the individual to make representations; and
    - (b) how and when the individual may make representations.”.
- 13 In the proposed section 34ZL(1)(c) and (f), by adding “(as the case may be)” after “subsidiary intermediary”.
- 13 In the proposed section 34ZL, by adding—
- “(1A) A principal intermediary must keep such records of activities carried out by the principal intermediary, and of those carried out by every subsidiary intermediary attached to the principal intermediary, as may be necessary for enabling the frontline regulator of the principal intermediary to ascertain—
    - (a) whether or not the principal intermediary has complied with subsection (1); and
    - (b) whether or not every subsidiary intermediary attached to the principal intermediary has complied with



subsection (1).”.

- 13 By deleting the proposed section 34ZN(2).
- 13 In the proposed section 34ZN(5), by deleting “10” and substituting “15 working”.
- 13 In the proposed section 34ZN(8), by deleting the definition of *chargeable period* and substituting—
- “*chargeable period* (收費期), in relation to a person who is a registered intermediary, means—
- (a) the period beginning on the date of the registration of the person as such registered intermediary and ending immediately before the specified date next following; or
- (b) each successive period of 12 months;”.
- 13 In the proposed section 34ZN(8), by adding—
- “*specified date* (指明日期) means the date specified by the Authority under subsection (7)(a).”.
- 13 In the proposed section 34ZO(4), by deleting “10” and substituting “15 working”.
- 13 In the proposed section 34ZR(1)(c), in the Chinese text, by adding “可” before “複製”.
- 13 In the proposed section 34ZR(3)(a) and (b), by deleting “frontline regulator” and substituting “inspector”.
- 13 In the proposed section 34ZR(4), in the Chinese text, by deleting “不可”

and substituting “不得”.

- 13 In the proposed section 34ZU(2)(a), in the Chinese text, by adding “可能” before “沒有”.
- 13 In the proposed section 34ZV(1), in the Chinese text, by deleting “該人沒有” and substituting “該人可能沒有”.
- 13 In the proposed section 34ZW(7)(b)(i), by adding “or such a person” after “regulator”.
- 13 In the proposed section 34ZW(8), by adding “specified for the purposes of subsection (7)(b)” after “The matters”.
- 13 In the proposed section 34ZW, by adding—  
    “(8A) If the Authority exercises a power under subsection (1) or (2) to make a disciplinary order against a regulated person, the Authority may disclose to the public details of the decision, including the reasons for it and any material facts of the case.”.
- 13 In the proposed section 34ZX(4)(c), in the Chinese text, by adding “經更改的” after “有關”.
- 13 In the proposed section 34ZY(2)(b)(i), by adding “or such a person” after “regulator”.
- 13 In the proposed section 34ZY(3), by adding “specified for the purposes of subsection (2)(b)” after “The matters”.

- 13 In the proposed section 34ZZ(4)(a), by deleting “(a)(i) or (ii) or (b)” (wherever appearing).
- 13 In the proposed section 34ZZC(6), by deleting “specified requirement imposed” and substituting “requirement imposed under section 34P or 34ZU”.
- 13 In the proposed section 34ZZC(7)(b), in the Chinese text, by deleting “等” (wherever appearing).
- 13 In the proposed section 34ZZD(5), by deleting “(2)(b)” and substituting “(3)(b)”.
- 13 In the proposed section 34ZZE(1), by deleting “inspector or” (wherever appearing).
- 13 In the proposed section 34ZZE(1), by deleting “, 34ZR”.
- 13 In the proposed section 34ZZE(2)(a), by deleting “inspector or”.
- 13 In the proposed section 34ZZE(2)(a), by deleting “, 34ZR”.
- 13 In the proposed section 34ZZF(1)(b), in the Chinese text, by deleting everything after “移走” and substituting “下述紀錄或文件：該手令所列明的人有合理因由相信是根據第34P、34ZR或34ZU條(視屬何情況而定)可被要求交出的紀錄或文件。”。
- 13 By deleting the proposed section 34ZZF(3), (4) and (5).

- 13 In the proposed section 34ZZF(6), by deleting “an authorized” and substituting “a relevant”.
- 13 In the proposed section 34ZZF(6), by deleting “the authorized” (wherever appearing) and substituting “the relevant”.
- 13 In the proposed section 34ZZF(7), by deleting “An authorized” and substituting “A relevant”.
- 13 In the proposed section 34ZZF(7)(b), by deleting “the authorized” and substituting “the relevant”.
- 13 In the proposed section 34ZZF(8)(b), in the Chinese text, by deleting “等”.
- 13 In the proposed section 34ZZF(9), by deleting “an authorized” and substituting “a relevant”.
- 13 In the proposed section 34ZZF(9), by deleting “the authorized” and substituting “the relevant”.
- 13 In the proposed section 34ZZF(11)(b), by deleting “an authorized” and substituting “a relevant”.
- 13 In the proposed section 34ZZF(13), in the definition of *authorized person*, by deleting “*authorized person* (獲授權人)” and substituting “*relevant person* (有關人士)”.
- 13 In the proposed section 34ZZF(13), in the Chinese text, in the definition

of *relevant person*, by deleting “執行” and substituting “進行”.

- 13 In the proposed section 34ZZJ, in the heading, by deleting “**Fees sharing**” and substituting “**Payment by Authority to industry regulator in relation to expenditure or cost for services**”.
- 15 By deleting the proposed section 42AA(1) and substituting—
- “(1) Section 41 does not prevent the Authority or an entity specified in subsection (4) from disclosing the information to another entity so specified if, in the opinion of the Authority or the entity disclosing the information—
    - (a) the disclosure will enable or assist the recipient of the information to perform the recipient’s functions under Part IVA;
    - (b) the disclosure will enable or assist the recipient of the information to perform the recipient’s functions (other than those under Part IVA) and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed; or
    - (c) it is desirable or expedient that the information should be disclosed in the interest of the investing public or in the public interest.
  - (1A) Section 41 does not prevent an entity specified in subsection (4) from disclosing the information to the Authority if, in the opinion of the entity, the disclosure will enable or assist the Authority to perform its functions.”.
- 15 In the proposed section 42AA(2)(d), in the Chinese text, by deleting everything after “下被披露” and substituting “，以致可被公眾人士取得，或第41條不禁止為某目的披露資料，而有關資料已為該目的而可被公眾人士取得；”.
- 15 In the proposed section 42AA(2)(e), by deleting “a liquidator appointed under the Companies Ordinance (Cap. 32), the Authority or another entity specified in subsection (4), but only if the entity disclosing the

information” and substituting “or a liquidator appointed under the Companies Ordinance (Cap. 32), but only if the entity”.

15 By deleting the proposed section 42AA(4)(a), (b) and (c) and substituting—

- “(a) the Insurance Authority;
- (b) the Monetary Authority; or
- (c) the Securities and Futures Commission.”.

15 In the proposed section 42AB, in the heading, by deleting “**or investigation**” and substituting “**, investigation or disciplinary action**”.

15 By deleting the proposed section 42AB(1) and (2) and substituting—

- “(1) This section applies to—
  - (a) a person on whom a requirement under section 34P, 34ZR or 34ZU has been imposed by—
    - (i) the Authority or a person directed by the Authority under section 34O(1)(a)(ii); or
    - (ii) an industry regulator or a person directed by an industry regulator under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b); or
  - (b) a person who has been given a notice under section 34ZZ(2)(a) or 34ZZH(2).
- (2) The person specified in subsection (1)(a) must not disclose any information obtained in the course of the requirement being imposed, or in the course of a compliance or purported compliance with the requirement, to any other person unless—
  - (a) the following consents to the disclosure—
    - (i) in the case of subsection (1)(a)(i), the Authority;
    - (ii) in the case of subsection (1)(a)(ii), the industry regulator; or
  - (b) any of the conditions specified in subsection (2B) is satisfied.
- (2A) The person specified in subsection (1)(b) must not disclose any information obtained from the notice, or from any communication with the Authority in relation to the subject

matter of the notice, unless—

- (a) the Authority consents to the disclosure; or
  - (b) any of the conditions specified in subsection (2B) is satisfied.
- (2B) The conditions specified for the purposes of subsections (2)(b) and (2A)(b) are—
- (a) the information has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by section 41;
  - (b) the disclosure is for the purpose of seeking advice from, or giving advice by counsel, a solicitor, or any other professional advisor, acting or proposing to act in a professional capacity in connection with any matter arising under a provision of Part IVA;
  - (c) the disclosure is in connection with any judicial or other proceedings to which the person is a party; and
  - (d) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.”.

- 15 In the proposed section 42AB(3), by adding “by it” after “given”.
- 15 In the proposed section 42AB(3), by adding “or (2A)(a)” after “(2)(a)”.
- 15 In the proposed section 42AB(4), by adding “or (2A)” after “(2)”.
- 16(2) By deleting the proposed section 42B(3)(a), (b) and (c) and substituting—
- “(a) the Insurance Authority;
  - (b) the Monetary Authority; or
  - (c) the Securities and Futures Commission.”.
- 19 In the proposed section 44A(1)(b)(iii), (2)(b)(iii), (3)(b)(ii), (4)(b)(ii) and (5)(b)(ii), in the Chinese text, by deleting “證據” and substituting “證明”.
- 19 In the proposed section 44A(2)(a), in the Chinese text, by deleting “或(8)” and substituting “及(8)”.

- 21 In the proposed Schedule 5B, in the Chinese text, in section 1(2), by deleting “該詞的” and substituting “該詞句的”.
- 21 In the proposed Schedule 5B, in section 2(4)(b)(ii)(A), by deleting “196(1)(i)(B) of that Ordinance” and substituting “196(1)(i)(B) or 197(1) of that Ordinance, or is deemed to be suspended under section 197(4) of that Ordinance,”.
- 21 In the proposed Schedule 5B, in section 2(4)(b)(ii)(B), by adding “or 197(1), or is deemed to be suspended under that section 197(4),” after “196(1)(i)(B)”.
- 21 In the proposed Schedule 5B, in section 2(4)(c)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.
- 21 In the proposed Schedule 5B, in section 2(4)(c)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 21 In the proposed Schedule 5B, in section 3(1)(c) and (d), by adding “broker” before “body”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 3(2)(a)(i) and (ii), by deleting “中止” and substituting “終止”.
- 21 In the proposed Schedule 5B, in section 3(4)(d)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1)



of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance.”.

- 21 In the proposed Schedule 5B, in section 3(4)(d)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 4, in the heading, by deleting “法團” and substituting “公司”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 4(1)(a), by deleting “法團” and substituting “公司”.
- 21 In the proposed Schedule 5B, in section 4(1)(b), by deleting “an authorized financial institution” and substituting “a holder of a Type A qualifying capacity”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 5, in the heading, by deleting “法團” and substituting “公司”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 5(1)(a), by deleting “法團” and substituting “公司”.
- 21 In the proposed Schedule 5B, in section 5(1)(b), by deleting “an authorized financial institution” and substituting “a holder of a Type A qualifying capacity”.
- 21 In the proposed Schedule 5B, in section 5(2)(b), by deleting “34U(7)” and substituting “34V(3)”.

- 21 In the proposed Schedule 5B, in section 6(1), by deleting “specified in subsection (2)”.
- 21 In the proposed Schedule 5B, by deleting section 6(2).
- 21 In the proposed Schedule 5B, in section 6(3)(b), by deleting “34U(7)” and substituting “34V(3)”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 7(2)(a), by deleting “法團” and substituting “公司”.
- 21 In the proposed Schedule 5B, in section 7(2)(b), by deleting “an authorized financial institution” and substituting “a holder of a Type A qualifying capacity”.
- 21 In the proposed Schedule 5B, in section 9(3), by deleting subsection (1) of the replacement section 34ZF and substituting—
- “(1) This section applies—
    - (a) if a person is a subsidiary intermediary attached to a principal intermediary; and
    - (b) if—
      - (i) the person—
        - (A) ceases to hold the relevant Type B qualifying capacity; or
        - (B) ceases to hold a Type B qualifying capacity (other than the relevant Type B qualifying capacity), and on the cessation no longer holds any Type B qualifying capacity; or
      - (ii) the person—
        - (A) has the relevant Type B qualifying capacity suspended; or
        - (B) has a Type B qualifying capacity (other than the relevant Type B qualifying capacity)

suspended, and on the suspension no longer holds any Type B qualifying capacity that is not under suspension.”.

21 In the proposed Schedule 5B, in section 9(3), by deleting subsection (2) of the replacement section 34ZF.

21 In the proposed Schedule 5B, in section 9(3), by deleting subsections (3), (4) and (5) of the replacement section 34ZF and substituting—

“(3) The approval of the attachment of the person to the principal intermediary—

(a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to hold the relevant Type B qualifying capacity or the Type B qualifying capacity; or

(b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.

(4) Where the person is not approved as being attached to any principal intermediary after a revocation under subsection (3)(a), the registration of the person as a subsidiary intermediary is revoked if—

(a) no application has been made under section 34V(1) for approval of attachment of the person to a principal intermediary within 90 days after the date on which the revocation under subsection (3)(a) takes effect; or

(b) such an application has been made within 90 days after the date on which the revocation under subsection (3)(a) takes effect, and the Authority has rejected the application.”.

21 In the proposed Schedule 5B, in section 9(4), by deleting everything after “following” and substituting—

“—

“(c) a subsidiary intermediary—

(i) acquires any qualification as a Type B regulatee;

(ii) ceases to hold any Type B qualifying capacity; or

(iii) has any Type B qualifying capacity suspended; or”.”.

- 22 In the proposed item 15(f), in the Chinese text, by deleting “等”.
- New By adding immediately before clause 24—  
**“23A. Section 2 amended (interpretation)**  
Section 2—  
**Repeal the definition of *authorized financial institution*.”**
- 27(1) In the proposed item 6A(a) and (b), by deleting “or extract of the Register” and substituting “the Register or of an extract of such an entry”.
- 27(2) By deleting the proposed item 8 and substituting—  
“8. 34T Fee payable when an application is lodged Nil”.  
with the Authority for registration as an  
intermediary for carrying on regulated  
activities
- 27(2) By deleting the proposed item 9 and substituting—  
“9. 34U Fee payable when an application is lodged Nil”.  
with the Authority for registration as an  
intermediary for carrying on regulated  
activities for a principal intermediary

## Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

**Committee Stage**Amendments moved by the Honourable WONG Sing-chiClauseAmendment Proposed

13  
NEGATIVED

In the proposed section 34ZZ(2)(a), by deleting “; and” and substituting a semicolon.

13  
NEGATIVED

In the proposed section 34ZZ(2), by adding —  
“(ab) must give a copy of the notice to any person who has lodged a complaint to the Authority against the regulated person in relation to the matter that the Authority forms the preliminary view; and”.

## Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

**Committee Stage**

Amendment moved by the Honourable KAM Nai-wai, MH

Clause

Amendment Proposed

20

NEGATIVED

By deleting the clause and substituting —

**“20. Section 45G amended (right to bring civil proceedings to recover financial loss)**

After section 45G(1) —

**Add**

“(1A) Despite subsection (1), if a person who has sustained financial loss that is attributable to the failure of another person to perform a duty, or to comply with a requirement or standard, imposed on that other person by or under Part IVA, the Authority may allow the person to bring proceedings before the Authority to recover from that other person the amount of that loss as damages and make awards as if the proceedings were brought in a court of competent jurisdiction.”.”.

## Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

**Committee Stage**Amendments moved by the Honourable KAM Nai-wai, MHClauseAmendment Proposed

20

[NEGATIVED]

(a) By renumbering the clause as clause 20(1).

(b) By adding —

“(2) After section 45G(1) —

**Add**

“(1A) A person who has sustained financial loss that is attributable to the failure of another person to perform a duty, or to comply with a requirement or standard, imposed on that other person by or under Part IVA is entitled, by proceedings brought in a court of competent jurisdiction, to recover from that other person the amount of that loss as damages.”.”.