

OFFICIAL RECORD OF PROCEEDINGS

Tuesday, 17 July 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 TIMOTHY FOK TSUN-TING, G.B.S., J.P.

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

THE HONOURABLE CHAN HAK-KAN, J.P.

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

THE HONOURABLE CHAN KIN-POR, B.B.S., 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

MEMBER ABSENT:

DR THE HONOURABLE LEUNG KA-LAU

PUBLIC OFFICERS ATTENDING:

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

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

THE HONOURABLE RIMSKY YUEN KWOK-KEUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

PROF THE HONOURABLE ANTHONY CHEUNG BING-LEUNG, G.B.S.,
J.P.
SECRETARY FOR TRANSPORT AND HOUSING

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

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

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

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

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

DR THE HONOURABLE KO WING-MAN, B.B.S., J.P.
SECRETARY FOR FOOD AND HEALTH

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, S.B.S., SECRETARY GENERAL

MR ANDY LAU KWOK-CHEONG, ASSISTANT SECRETARY GENERAL

MISS ODELIA LEUNG HING-YEE, ASSISTANT SECRETARY GENERAL

MISS FLORA TAI YIN-PING, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

BILLS**Committee Stage**

CHAIRMAN (in Cantonese): Good morning, Honourable Members. We shall now start the last 15 hours of the meeting. Based on the experience of the past few days, I have decided to suspend the meeting today respectively around 12.30 pm and 6.30 pm, so that you can have lunch and dinner. Depending on the progress of the meeting, I may slightly adjust the two meal breaks.

The committee of the Whole Council shall now resume its scrutiny of the provisions of clause 19 of the Trade Descriptions (Unfair trade Practices) (Amendment) Bill 2012 and the related amendments.

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

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

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

(No members indicated a wish to speak)

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Chairman, Mr Vincent FANG's amendments seek to amend new sections 26A and 26B proposed in clause 19 of the Bill. These two proposed provisions respectively provide an additional defence to defendants in proceedings for the offences of bait advertising and wrongly accepting payment.

In respect of bait advertising, the new section 13G proposed in clause 13 of the Bill provides that advertising by a trader of products for supply at a specified price may constitute bait advertising if there are no reasonable grounds for believing that the trader will be able to offer for supply those products for a period that is, and in quantities that are, reasonable. In order to ensure that businesses acting in good faith will not be inadvertently caught, we propose to provide an additional defence under a new section 26A which provides that if the

defendant can adduce evidence that after the occurrence of excessive demand relative to the original estimation, he already took immediate remedial actions, such as arranging another supplier to provide the same or equivalent products or services on the same terms, that the offer of such alternative arrangements was accepted by the consumer, and that he had the capability to effect the alternative arrangements, then he will be entitled to be acquitted.

Mr FANG is worried that in case an unreasonable consumer refused to accept the reasonable alternative arrangements made by the defendant, the defendant will be unable to invoke the defence under section 26A. For this reason, Mr FANG proposes to add a new section 26A(a)(i)(B) and (ii)(B) to specify that as long as the trader offered to supply, or to procure a third person to supply, the product concerned, the Court may still accept this as a defence. I must stress that the originally proposed provisions do not require the acceptance of the relevant arrangements by all consumers. The provisions only require that if the arrangements are accepted by the consumers concerned, the trader must be capable of supplying the products according to such arrangements. Precisely for this reason, we do not think that there is any material difference between Mr FANG's proposed amendment and our original intent. As a result, we do not object to the addition of the new section 26A(a)(i)(B) and (ii)(B) proposed by the amendment.

The new section 26B(1)(a)(i)(B) and (ii)(B) proposed by Mr FANG is based on the same rationale, so we do not have any objection either.

Mr FANG's amendment also proposes to add a new section 26B(2), which is about an additional defence for wrongly accepting payment. In this connection, under the new section 13I, a trader will commit the proposed offence of "wrongly accepting payment" if, at the time of accepting payment for a product, he intends not to supply the product or intends to supply a materially different product, or if there are no reasonable grounds for believing that he will be capable of supplying the product as agreed. For the protection of honest traders, section 26B proposed in the Bill provides an additional defence for the persons charged in proceedings for the offence. Under this provision, the person charged is entitled to be acquitted if he can adduce evidence that he as the trader offered to supply, or to procure a third person to supply, the same or equivalent products, that offer was accepted by the consumer, and that he was capable of effecting the relevant alternative arrangements.

Mr FANG's amendments seek to provide another additional defence for persons charged for accepting payment despite inability to supply the relevant products (section 13I(2)(c)), specifying that the defence can be invoked if refund was made to the affected consumers within a reasonable period. We are of the view that the requirement under this provision is also a reasonable remedial measure that can be adopted by a trader. In response to the concern of the industry, we do not object to the amendment.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Mr Vincent FANG, do you wish to speak again.

MR VINCENT FANG (in Cantonese): Chairman, I must first of all say that I am very grateful to the several Members who spoke on my amendments. I am more than ready to explain the stance of the wholesale and retail sectors on the concerns expressed by them. But I do not intend to spend too much time on that, and I will only offer a one-off explanation.

Although Mr Albert CHAN is not present and Mr LEUNG Kwok-hung
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CHAIRMAN (in Cantonese): Mr Albert CHAN is now present.

MR VINCENT FANG (in Cantonese): I see. Actually, the concerns expressed by Mr Albert CHAN and Mr LEUNG Kwok-hung are identical. They are both worried that my amendments may give traders a chance to "replace the Crown Prince with a raccoon."¹ Mr CHAN fears that a consumer may receive a product which is materially different from the product advertised, or that he may receive the product only after a long lapse of time. Mr LEUNG is worried that the trader may thus ask the consumer to switch to purchase another product.

¹ The allusion here is about a Chinese folk story: during the Song Dynasty, Concubine LIU and GUO Huai secretly replaced the newborn crown prince of Concubine LI with a raccoon. Concubine LI was thus consigned to the palace of abandoned concubines. This expression has since been widely used in situations where something good is replaced secretly by something bad.

My two amendments aim to add two additional defence provisions to the existing provisions of the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill), so that traders can be provided with additional defence on the basis of the protection already available under the existing provisions. A trader who, after accepting payment from a consumer, compels the consumer to purchase another product using the money already paid will commit the offence of "wrongly accepting payment" prohibited by the ordinance. As I mentioned in my remarks, my amendments seek to add a paragraph 2(a) to section 26B of the ordinance, requiring the trader to make a refund in full of the payment already received within a reasonable period after the expiry of the period referred to. Hence, there will not be any problem of a consumer being required to purchase another product using the money already paid. Besides, both section 26A and section 26B refer to "within a reasonable period". If air-conditioning charges incurred in summer are paid only in winter, then even without any court judgment, we can still know that all is unreasonable.

As for Mr CHAN's concern about the possible provision of materially different products by traders, and Mr LEUNG's concern about whether any products not manufactured in the same places as advertised will thus be provided, I wish point out that as clearly stated in section 26A, the products concerned must be of, or equivalent to, the kind advertised. Therefore, the situations of concern to Mr CHAN and Mr LEUNG will not arise.

Mr LEUNG has asked me why the Government has not included my amendments in its own amendments. The main reason, as Members have all been saying, is that the Government usually submits a whole heap of bills around the end of a legislative session. This year alone, there are already four bills connected with the wholesale sector and retail sector: the Competition Bill, the Pyramid Schemes Prohibition Bill, the Personal Data (Privacy) (Amendment) Bill 2011, and the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012. Particularly in the case of the Bill under discussion, since it was intended to be passed before the end of this session, the Bills Committee had to meet twice a week. The commercial sector must study the Bill carefully. I must at the same time consult the industries concerned, and they in turn wanted to submit their views to the Government. However, it seemed at the time that the Government wanted to see fewer amendments to the Bill, or even as few amendments as possible, so it did not accept my proposed amendments.

Nevertheless, after a number of industry bodies, including the Hong Kong Retail Management Association and the Hong Kong and Kowloon Electrical Appliances Merchants Association Limited, put forward their views one after another, and since the Bills Committee had to make way for Members' discussions on the re-organization of the Government Secretariat, there was no time for any discussions on the Bill. I therefore hastened to ask the clerk to the Bills Committee to notify the Chairman of the Bills Committee that I had no alternative but to put forward the amendments myself. Then, I do not think that I need to describe how busy the whole Legislative Council was in the time that followed. But I must still offer my explanation to the Government, assuring it that my amendments would definitely not affect the effectiveness of the ordinance. For this reason, I could not spare any time to lobby Members, and I can only explain the reasons for my amendments in my remarks. If any Members think that I have not tried to lobby them, I must ask them to excuse me for my oversight. Actually, I have a clear conscience because I have already sought a way which is acceptable to all sides within the parameters of consumer interests, the business environment of the commercial sector and the survival of small and medium enterprises.

Concerning Dr Margaret NG's comment that my amendments are extremely passive, I must admit my strong agreement. The reason is that when faced with the lofty advocacy of rights protection, traders are honestly not courageous enough to raise any objection. Usually, traders will only do their best to cope with the situation and accept what they can take as much as possible. It is only when they find the situation really intolerable that they would ask a Member like me to assist them in seeking a little bit of room for survival. I therefore hope that after Dr NG has left the Legislative Council and returned to the legal profession, she can give the commercial sector some active responses and respond to the Government's legislative proposals.

Finally, I must say I am very grateful to Mr Fred LI, Chairman of the Bills Committee, for supporting the two amendments I put forward and clarifying that they will not compromise the effectiveness of the ordinance. Mr LI can be described as a gate-keeper or goal-keeper in respect of consumer rights protection. Even he has said OK, so I hope that Members can trust him. Over the past 20 years of his career as a Legislative Council Member, he has been totally dedicated to the protection of consumer rights and food safety. The

retirement of such a dedicated and young Member is frankly a loss to consumers. I therefore take this opportunity to pay my respect and gratitude to Mr LI.

Chairman, I so submit. And, I must once again express my hope that Members can support my amendments. Thank you, Honourable Members.

CHAIRMAN (in Cantonese): The Council will now vote separately on the two amendments moved by Mr Vincent FANG.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the first amendment moved by Mr Vincent FANG to clause 19 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 minute.

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 Raymond HO, Dr David LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Kwok-him and Mr Paul TSE voted for the amendment.

Geographical Constituencies:

Mr Albert HO, Mr LEE Cheuk-yan, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr CHEUNG Hok-ming, Mr Ronny TONG, Ms Starry LEE, Mr WONG Sing-chi, Mr Alan LEONG, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr WONG Kwok-kin abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 17 were present and 17 were in favour of the amendment; while among the Members returned by geographical constituencies through direct elections, 18 were present, 16 were in favour of the amendment and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the second amendment moved by Mr Vincent FANG to clause 19 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 Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man 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.

(Prof Patrick LAU raised his hand in indication)

CHAIRMAN (in Cantonese): Prof Patrick LAU, what is your question?

PROF PATRICK LAU (in Cantonese): The lights of my voting button do not show.

CHAIRMAN (in Cantonese): Please press the button once more.

PROF PATRICK LAU (in Cantonese): Chairman, I want to vote for the amendment. But there seems to be a problem with the light for "Yes". The light does not show. Would staff members please do some checking for me.

CHAIRMAN (in Cantonese): Yes. Would the Clerk please record Prof Patrick LAU's positive vote. If there are no other queries, voting shall now stop and the result will be displayed.

Functional Constituencies:

Dr Raymond HO, Dr David LI, Dr Margaret NG, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Wong-fat, Ms Miriam LAU, Ms LI Fung-ying, Mr Vincent FANG, Mr Andrew LEUNG, Mr WONG Ting-kwong, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr IP Kwok-him and Mr Paul TSE voted for the amendment.

Geographical Constituencies:

Mr Albert HO, Mr Fred LI, Mr James TO, Mr CHAN Kam-lam, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Ms Audrey EU, Mr Ronny TONG, Mr WONG Sing-chi, Mrs Regina IP, Mr Alan LEONG, Miss Tanya CHAN and Mr WONG Yuk-man voted for the amendment.

Mr WONG Kwok-kin abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 18 were present and 18 were in favour of the amendment; while among the Members returned by geographical constituencies through direct elections, 16 were present, 14 were in favour of the amendment and one abstained. Since the question was agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was passed.

CLERK (in Cantonese): Clause 19 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 19 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man 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.

(Prof Patrick LAU raised his hand in indication)

CHAIRMAN (in Cantonese): Prof Patrick LAU, is the light still out?

PROF PATRICK LAU (in Cantonese): Yes. Despite the technician's assistance, the button is still not working.

CHAIRMAN (in Cantonese): Do you want to cast a positive vote?

PROF PATRICK LAU (in Cantonese): Yes.

CHAIRMAN (in Cantonese): Okay. Do any other members have any questions?

(No members indicated that they had any questions)

CHAIRMAN (in Cantonese): 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 LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, Ms LI Fung-ying, Ms Audrey EU, Mr Vincent FANG, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr Paul CHAN, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Miss Tanya CHAN and Mr WONG Yuk-man voted for the motion.

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

THE CHAIRMAN announced that there were 32 Members present, 31 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

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

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

Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

has passed through Committee 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 Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 be read the Third time and do pass.

Does any Member wish to speak?

MR FRED LI (in Cantonese): Many thanks to Mr Vincent FANG for his kind comments just now. I likewise hope that people in the industrial and commercial sector can be as fair as Mr Vincent FANG. There must be fair co-operation at all times between consumers on the one hand and the industrial and commercial sector on the other. Without any consumers, the industrial and commercial sector will find it impossible to sustain their businesses; without the industrial and commercial sector, consumers will have no places in which they can make any spending. I hope that all this can be attained in the future.

Secretary, apart from wishing to see the passage of the Bill today, I still want to draw the authorities' attention to several other points: first, a cooling-off period; second, unfair contracts; and third, class action. Concerning these several points, I hope that the Secretary can step up his efforts for the benefit of consumers and put forward some proposals to the next Legislative Council. I am of the view that if efforts can be made to dovetail with the fight against unfair trade practices, consumers will be able to receive stronger protection. I so submit.

MR WONG YUK-MAN (in Cantonese): Chairman, throughout the discussions on the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill), we have heard very few opinions, probably because everybody is now in a hurry to leave before the "close of business". But the fact remains that this is also an important piece of legislation, as it is conducive to the protection of consumer interests and instrumental in striking a balance between consumer

interests and those of business operators. And, this explains precisely why we support Mr Vincent FANG's amendments.

I can remember that during the late Qing dynasty and the early republican era, there was a famous scholar named GU Hongming — Chairman, you should have heard of him. Always clad in a long gown, he was a staunch and dedicated defender of Chinese culture; one can even say that he was an obstinate, old pedant. A fervent supporter of Chinese culture, he held the view that China was the best in all respects. Such a view is akin to our present approach of implementing national education, which seeks to drum certain aspects of Chinese culture and history into students, concentrating only on positive aspects and totally disregarding negative ones.

A foreigner once told GU of his observation that Chinese shopkeepers liked to display a slogan: "Honest to all, even to infants and greybeards". This slogan is a reflection of the Chinese people's commercial ethics. Its original intent is to describe the practice of being honest to all, even to infants and greybeards. Infants are children, and greybeards are old people. In other words, all people, old or young, will not be cheated.

The foreigner pointed out that in practice, Chinese shopkeepers did not follow any commercial ethics, and that they would often cheat their customers. The slogan is therefore akin to "whistling in the dark", meant largely to conceal the frequent practices of cheating customers. If this is not the case, why should people bother to put up this slogan at all? A decade or two ago, this slogan could still be seen occasionally, but it is no longer in use nowadays. Instead, shopkeepers would stick a Consumer Council label on their shop entrances, rather than putting up their own slogans to tell people that they are "honest to all, even to infants and greybeards".

This slogan is also a trade description, but it is a false one. The Chinese people are characteristically "invincible in their talks but powerless in their actions". Therefore, the Trade Descriptions Ordinance (the Ordinance) presently prohibits only false trade descriptions of goods. But in society, there have been strong public demands for extending the application of the Ordinance, that is, prohibiting other types of unfair trade practices against consumers. For this reason, I am strongly opposed to the exemption set out in Schedule 3 and Schedule 4.

Schedule 3 offers exemption to professional bodies, and Schedule 4 seeks to exclude financial products. Chairman, the latter is especially unacceptable. The exclusion of the financial products set out in Schedule 4 from the application of the Ordinance and the exclusion of the professional bodies concerned are equally absurd. The focus of our concern is generally on slimming and beauty services, telecommunication services, investment products, and so on, as there are so many insurance companies and such a huge number of investment products. But the regulation in this respect, especially sales regulation, is extremely inadequate, and will remain so even after the passage of the Bill.

The Government has responded with the same old answer: at present, financial products are already subject to various refined and tailor-made regulatory systems, and product approval, intermediaries and sales processes are all subject to regulation under various ordinances. But the point is that if there really had been so much regulation and such regulation had indeed been effective, the Lehman Brothers incident would not have broken out and it would not have been necessary for the subcommittee concerned to hold so many meetings for four whole years.

We of course support the regulation of unfair trade practices under the Ordinance. We are supportive of this piece of legislation put forward by the Government. However, the problem is that if the application of the Ordinance is not extended Well, maybe, we should wait a while and see if the Ordinance can really eradicate all unfair trade practices after its commencement.

Actually, we are also aware that in this age of goods market globalization and information dissemination, unfair trade practices are no longer confined to the physical transactions between shopkeepers and customers. There are also various online group purchases, which we have overlooked so far.

The Ordinance prohibits many unfair trade practices, in a bid to protect consumers. Such unfair trade practices cover false trade descriptions, false marks and misstatements in respect of goods provided in the course of trade. However, the Ordinance at present does not contain any provisions on dealing with other types of unfair trade practices, such as false trade descriptions of services, misleading omissions, aggressive commercial practices and bait advertising, which is why the Government wants to slightly extend the application of the Ordinance. What I have talked about are all facts about the

present sufferings of many consumers. The Government should therefore extend the application.

However, the problem lies with online group purchase, the issue I have mentioned. The Government has proposed to amend the Ordinance for regulating online group purchase, in the hope of preventing online group purchase companies or traders from continuing to sell large quantities of goods or services even when they are clearly aware of their imminent closure. Actually, this is the desired effect. But how effective can the Ordinance be? I am very doubtful about its effect.

A look at the statistics of the Consumer Council can let us know the answer. In the first half of this year, the Council Consumer received a total of 13 900 complaints. Complaints about telecommunication services topped the list, totalling some 3 000 and showing a slight decrease when compared with the figure in the same period last year. In contrast, the second largest category of complaints, those about foods and entertainment services, showed a drastic increase of more than 300%, soaring from 436 in the first half of last year to nearly 2 000 in the first half of this year. About 70% of the cases were related to dining coupons purchased through an online group purchase portal that closed down. For complaints related to telecommunication equipment, the number was close to 900, showing a 15% increase when compared with the figure in the first six months of last year. Besides, complaints related to group purchase of beauty services also rose from nine cases in the first half of last year to 154 cases in the same period this year, 88 of which were about expired beauty service coupons. Complaints related to online group purchase soared incessantly, and most of them were related to cases in which consumers were rendered unable to use their dining coupons due to the simultaneous closure of an online group purchase portal and its associated restaurants.

We observe that there is inadequate regulation and supervision of online group purchase under the law. In case an online group purchase portal closes down, consumers may not necessarily be able to get any refund. One part of the Bill is dedicated to the regulation of online group purchase services, but we still think that the relevant provisions are inadequate. Therefore, we hope that following the commencement of the Ordinance, thoughts can be given to whether there is any room for improvement.

Another issue is the introduction of a cooling-off period. I did not take part in the work of the Bills Committee, but I know that it did hold many discussions on the issue of introducing a cooling-off period. However, during the Second Reading debate on the Bill today, we did not hear any discussions on this issue — I for one could hear almost nothing at all. Maybe, Members were not eager to speak because they wanted to finish the job as quickly as possible. I myself have been following this issue, and I think a cooling-off period should be a focus of the discussions on making amendments to the Bill. Despite the Government's decision to shelve the introduction of a mandatory cooling-off period, many members of the Bills Committee still advocated the otherwise. Of course, we likewise do not agree that the Government should shelve the introduction of a mandatory cooling-off period.

In the case of the Residential Properties (First-hand Sales) Bill discussed earlier, the Government has added a cooling-off period. Regarding this item of legislation on "first-hand residential properties", the Government has at least managed to make us feel that after the many years of suffering inflicted by developer hegemony, the Government has finally made up his mind and plucked up its courage to impose restrictions on property developers. However, when it comes to our request for introducing a mandatory cooling-off period under the Ordinance, the Government is so indecisive. We simply do not know what it actually fears.

With a cooling-off period, a consumer may reverse his decision and assert his unwillingness to go ahead with the transaction. What is more, while it is true that the trader cannot provide any services during the cooling-off period, the consumer may, however, reach an agreement with the trader on cutting short the cooling-off period. A cooling-off period can safeguard the rights and interests of consumers, in the sense that consumers can thus make consumption decisions in a more comprehensive and rational manner. The Government's decision to shelve the introduction of a cooling-off period is tantamount to depriving consumers of their rights and interests. And, of course, the Government also has the duty to enhance people's understanding of a cooling-off period, so that consumers can become aware of their rights. Besides conducting consumer education, the Government should also introduce a requirement that makes it obligatory for providers of products and services (that is, salespersons) to clearly explain all consumer rights to their customers in the future.

The introduction of a cooling-off period is a matter of very great importance. The authorities may argue that property purchase is a different case, that due to the involvement of large amounts of money, there should be a cooling-off period for property purchase, but that for other goods and services, there should be no such need. In this connection, I must point out that even in the case of elections, there is also a cooling-off period: no canvassing is allowed on Sunday polling days. This is a measure that should be adopted. With this measure, we will not see scenes of a political party supported by the wealthy and powerful Communist Party bringing coaches of electors to the entrances of polling stations. Well, they will stop at nothing and may even do canvassing at the entrances of polling stations. They will not be arrested because they are so numerous.

Therefore, there should also be a cooling-off period for elections. No canvassing activities should be conducted on polling days, and people should be left to cast their votes without any disturbances. Well, why do they still need to do canvassing anyway? If an elector wants to vote for them, he will decide to do so well before the polling day, right? The old people who are transported by them to polling stations will vote them because they have eaten all the "snake soup, vegetarian food, rice dumplings and rice" given to them

PRESIDENT (in Cantonese): Mr WONG, you have strayed away from the topic under discussion.

MR WONG YUK-MAN (in Cantonese): I am discussing the introduction of a cooling-off period.

PRESIDENT (in Cantonese): The cooling-off period related to the Bill and the cooling-off period for elections are two different matters.

MR WONG YUK-MAN (in Cantonese): Chairman, I suppose more flexibility can be permitted during a Third Reading debate, and I have not contravened the Basic Law. There is still about one minute of speaking time, so please be a bit

more tolerant, will you? No one wants to speak again anyway. A quorum is not present.

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

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

PRESIDENT (in Cantonese): Mr WONG Yuk-man, please continue to speak.

MR WONG YUK-MAN (in Cantonese): Chairman, regarding online group purchase, there are organizations dedicated to the regulation of unfair trade practices in foreign countries. But we have not done enough in this respect. There are some relevant regulations, but they are by no means adequate.

Concerning the introduction a cooling-off period, I mentioned the conduct of elections just now. Actually, it will be best to introduce a seven-day cooling-off period following a polling day. The cooling-period on polling days is intended to avoid scuffles because people like set-tos so much these days. Therefore, I expect that I will be beaten up, even three times a day, probably because of those pro-establishment people. Thank you, Chairman. That is all.

DR MARGARET NG (in Cantonese): Chairman, the Civic Party supports the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (the Bill). However, through our participation in the discussions and having read the report of the Bills Committee, we realize that after the passage of the Bill, many more issues will still need follow-up, and these issues requiring follow-up may be even more significant than the passage of the legislative provisions concerned.

I have two main points to make. First, regarding the introduction of a mandatory cooling-off period mentioned by Mr WONG Yuk-man a moment ago, I understand that the Bureau actually supports the policy principle of introducing a cooling-off period, only that it did not have sufficient time during the scrutiny of the Bill to deal with the concerns of the commercial sector and industry bodies

about actual operational problems. Chairman, I can appreciate that industry bodies may have reasons for their concerns, but the Government has only concluded that more time is required for a careful study on how best to satisfactorily address such concerns in the Ordinance. The Government therefore thinks that those amendments which command the consensus of all sides should first be made for the very purpose of creating criminal offences in respect of common unfair trade practices. However, it is not enough to make efforts in this regard only. This is the first point.

Second, Chairman, during the debate on Mr Vincent FANG's amendments just now, I talked about the adoption of class action as a bridge. Chairman, I wish to inform the Secretary that at a meeting of the Panel on Administration of Justice and Legal Services, we already accepted a scheme proposed at that time by the Secretary for Justice on following up the recommendations of the Law Reform Commission (LRC). Since class action will be mainly in the form of litigation, the responsibility will fall mainly on the Department of Justice. And, since the first and foremost recommendation that the report wants to implement is the adoption of class action for promoting consumer rights and interests, I hope that the Secretary can render greater assistance to the Department of Justice in this regard. We observe that the various reports of the LRC are all marked by one major problem, one which we have discussed many times before, Chairman. The problem is that while the recommendations of the LRC are superb, there are no definite time frames for implementation. It is because the relevant departments are preoccupied with work, and just the need for attending to "emergencies" already keeps them extremely busy. As a result, when it comes to improvement recommendations, since there are no one to exert any pressure on departments, the relevant issues will usually be brushed aside all together. I hope that the recommendation on class action will not be brushed aside. In case the Department of Justice really wants to follow up the issue, the support from the Bureau will be very important.

Chairman, the availability of convenient means for consumers to claim compensation will be conducive to eradicating unfair trade practices. What is particularly worth noting is the question asked just now by Mr WONG Yuk-man and other Members concerning the measures against unfair service marketing practices. The main problem certainly does not lie with small and medium enterprises. As we frequently observe, unfair service marketing practices are mostly adopted by large companies or even large consortia, and large numbers of

people are thus affected. But no consumer suffering losses will have the courage to sue any large companies or large consortia because of the huge financial strength of the latter. As the saying goes, "Never try to rival the rich if you are poor." Speaking of lawsuits, I must say that large companies or large consortia possess huge financial resources, but consumers have very little money and do not even have any legal aid. In that case, how can they engage in any lawsuits against large companies or large consortia? As a result, the larger a consortium is, the more it will be able to adopt unfair sales practices without any worries. In this way, more people will be affected.

Hence, I believe that if we can work out a rectification measure that sets out some practicable procedures for everybody to follow in respect of the actual claiming of compensation, large consortia will not adopt any unfair trade practices so lightly. With the criminal offences set out in the Bill, large consortia will know on the one hand that they must adopt good operational practices if they are to sustain their businesses, and on the other hand, they will also realize that if they fail to adopt good practices, the authorities may institute criminal proceedings against them, and affected consumers who can satisfy the prerequisites may also consider the taking of class action.

Chairman, genuine improvement to the business environment and trade practices in Hong Kong will be possible only if we can adopt a two-pronged approach. I therefore call upon the Secretary to follow up all such issues immediately after the passage of the Bill. I hope the next Legislative Council can take immediate follow-up actions, and I also hope that we can hear the responses of the authorities very soon.

I support the Third Reading of the Bill. I so submit. Thank you, Chairman.

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

MR ALBERT CHAN (in Cantonese): Chairman, I support the Third Reading of the Bill. But despite my support, I must still express my regret and intense discontent with it. I also hope that after the passage of the Bill, the Government can conduct a fresh review of all its problems and defects.

The remarks of Mr WONG Yuk-man and Dr Margaret NG about the defects of the Bill just now already cover some of my views. Chairman, the six major categories of unfair trade practices covered by the Bill, including false trade descriptions, misleading omissions in advertising, aggressive commercial practices and bait advertising, can basically form quite a comprehensive and reasonable regulatory regime.

The Bill can be described as "targeting on gnats but avoiding tigers". As a result of the exemption under it, practically all the wealthiest industries affecting the most people and probably having the largest service provision volumes (in money terms) in Hong Kong are exempt. The exemption covers the products sold by many regulated persons in the insurance, financial, mandatory provident fund and banking industries, as well as the several dozen professions set out in the proposed Schedule 4, such as solicitors, barristers, medical practitioners, engineers, surveyors and planners. This will give rise to a situation under which these exempt industries can continue to bully consumers brazenly with their right of exemption.

Members all know clearly that the services provided by the various professions in Hong Kong are set for diversification. The point is that the new services resulting from such diversification will likely enjoy all sorts of special protection due to their connection with professional practice. I do not believe that this should be the original design and intent of the Bill, but I still think that the eventual materialization of such services will be marked by various privileges. This will in effect create a serious defect in consumer protection.

Initially, everybody hoped that the Bill could regulate the unfair practices leading to many complaints in the past. The impossibility of following up the vast majority of complaints received by Members, the Consumer Council as well as the police and also the impossibility of instituting any prosecutions are caused by the loopholes in the relevant laws of Hong Kong. Hong Kong's reputation has been smeared as a result of various marketing malpractices, employment traps targeting on young people (costing them losses of several hundred thousand dollars and even plunging them into debt), fraud cases related to loco London Gold, beauty and slimming contracts, sales tricks of shops selling Chinese medicine (for example, changing the pricing unit from catty to tael, or from tael to mace) and other misleading sales practices targeting on visitors. Besides, the

selling of many problematic electronic products and gold ornaments suspected to be counterfeits has also brought shame on Hong Kong.

Chairman, speaking of shame, I observe that usually, the Government will start taking gradual steps to tackle a problem only after the emergence of a scandal — even an international scandal, maybe. We have been discussing many problems in Hong Kong for decades in this legislature. The one that is freshest in our memory is the sale of first-hand residential properties — the relevant bill was eventually passed on the 30th of last month. As early as a decade or so ago, the Government already decided to regulate the sale of uncompleted properties, but the idea was subsequently shelved. Since properties in Hong Kong are purchased by more and more mainland people, such as tycoons, mogul's family members, or even moguls themselves, and state leaders' family members, I always suspect that the Government's hasty move to enact the bill on regulating the sale of first-hand residential properties may be due to the pressure exerted on the Hong Kong Government by state leaders' family members who have been cheated in property transactions in Hong Kong. In the end, the Property Development Party is beaten by the Communist Party, and the Government is compelled to take actions.

I think this may also be the case with the Bill. Maybe, many mainland visitors are cheated in Hong Kong, and many of the victims may well be the family members of moguls on the Mainland. They lodge complaints when they return home, and the Hong Kong Government is in turn forced to make rectification. I sometimes cannot help sighing. Hong Kong people have long been cheated and made to suffer various bitter consequences, but high-ranking government officials have so far turned a blind eye to the problem in order to protect the interests of plutocrats and moguls. And, they are now forced to take actions only due to the political pressure from elsewhere.

As mentioned earlier, the impact of the Bill on moguls and influential plutocrats is basically still on the mild side, but it is not entirely without any effect, it must be added. The reason is that such plutocrats also own certain integrated enterprises that run some supermarket and pharmacy chains. The sales practices within the scopes of such businesses will likewise be subject to regulation under the Bill. But, that again, the exemption set out in Schedule 3 will literally help them elude the dragnet of the law.

Chairman, my greatest concern is the regulation of telecommunication services. I would think that it will be a great pity if even the commencement of the Bill cannot offer any assistance to oppressed consumers in this regard. As Members all know, in many cases, business operators will resort to agreement terms as a means of evading responsibility. It is certain that consumers will not bother to read carefully all the detailed provisions of the agreements drawn up by plutocrats, such as the provisional agreements signed with the sales promoters of telecommunication service providers in the streets, or those relating to pay television and Internet services. I can even foretell with absolute certainty that after the commencement of the Bill, the provisions of all such agreements will be so altered as to enable service providers to completely avoid criminal prosecution under the law concerning the practices prescribed in the Bill: false trade descriptions of services, misleading omissions, aggressive commercial practices, and so on. In this way, in case of any disputes in the future, operators will be able to put up the excuse that everything is already set out clearly in the agreement, which has been signed by the consumer himself, and the only problem is that the consumer has not read the provisions carefully. For this reason, consumers will continue to be bullied and cheated in the end.

Besides, I also wish to point out that while some professionals are exempt, other categories of people are still subject to the regulation of the Ordinance. This will lead to class discrimination. One simple example is that while engineers are exempt, licensed plumbers and electricians are not. This is clearly a kind of class discrimination. Admittedly, engineers, surveyors or professional planners are all subject to the regulation of other ordinances, but The only difference lies with the types of licences held — some hold engineering licences and others are licensed plumbers and electricians. All the licences are likewise professional licences, but those licensees who are not subject to other ordinances regulating the so-called professionals are not exempt from the Ordinance.

Obviously, the ruling echelons of the Hong Kong Government are marked by the mentality that consortia engaged in professional practice and professionals should enjoy the privilege of exemption under the law, and others, such as technicians or those regarded as belonging to the lower social strata, should not be entitled to any such privilege. One unchanging feature of the Government's approach to governance is intra-class transfer of benefits and mutual harbouring in case of trouble. Grass-roots people are often the very group of people who are forgotten and ignored, or specially targeted on. In contrast, the rich and

powerful can continue to enjoy various privileges and elude the dragnet of the law. The scrutiny of all those bills in the past few days can show such a value and class bias aptly and entirely.

My last point is about the introduction of a cooling-off period. Despite Members' advice, the Government has decided not to introduce any cooling-off period after all. This clearly shows its bias towards the interest of some. Actually, from the perspective of consumers, many people think that a cooling-off period is necessary. Finally, I wish to point out unequivocally that the Government's eventual decision against the introduction of a cooling-off period is basically a move to transfer benefits to consortia, an act that will cause people to bear the associated legal responsibility due to their signing of agreements without careful consideration. Admittedly, one can ascribe the responsibility to people themselves, because once they have signed below the relevant legal provisions, they must bear the legal responsibility. However, in the case of many civilized places, societies and governments all over the world, especially governments with people's mandate and legitimacy It is indeed true that generally, not all the details of a service agreement are regulated by specific legislative provisions, but a reasonable cooling-off period of perhaps three days or seven days is nonetheless set down in most service agreements involving legal responsibility, so that both sides can have at least some time to re-consider or review the whole agreement. Particularly in the case of agreements spanning relatively long periods, such as slimming and beauty agreements with a term of 12 months, a cooling-off period should be introduced.

Therefore, the Government's decision against the introduction of a cooling-off period is a clear indication of its bias towards the interests of the industrial and commercial sector and its neglect of consumer rights and interests. I wish to put on record that I condemn the Government for its bias and partiality towards the interests of specific classes.

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

MR PAUL TSE (in Cantonese): Chairman, let me perhaps take this opportunity to point out that to a certain extent, I do agree to Mr Albert CHAN's earlier comment that the relevant provisions of the Bill are biased towards certain

privileged or professional people, but restrictions are imposed on those people whose trades may not be quite so professional. Before I put forward my comments on this viewpoint, please allow me to express my personal feelings first.

All along, Hong Kong has been the freest society in the whole world, whether in terms of political freedom or personal liberties. And, economically, it is definitely capitalist haven. A long, long time ago, in the very early days, Hong Kong's sovereign power (the United Kingdom) already established some principles under the common law. I can remember particularly well that one earliest principle I learnt as a student was "*caveat emptor*", also known as "buyer beware", meaning that buyers must themselves be very careful. This was of course a principle upheld in the earliest days of capitalism. Nowadays, after all the development, protection is already provided in many respects.

Ironically, however, despite the presence of more and more rules and protection in society, people seem to have become increasingly vulnerable to cheating. This is similar to parenting, in the sense that if children are given more exposure and taught more lessons, they will be better able to protect themselves. However, in our present-day society, precisely because children are given excessive attention in all respects, they have lost their self-protection ability and become more susceptible to deception instead. Of course, this is more a philosophical issue than a legal one.

In our present-day society, the trend has changed to the extent that in all respects, comprehensive laws are enacted as much as possible, with a view to protecting people or organizations that may be cheated or harmed. I have always maintained that in respect of legislative regulation, a fresh review should be conducted to ascertain whether the laws in our present-day society are so numerous that they have come to spoil people's self-protection ability, or whether it is true that as legislative provisions become increasingly numerous, people will turn more and more neglectful of the need for self-protection, to the extent that even a legal practitioner like me may right away sign the documents presented by banks or certain organizations without bothering to read them at all carefully. The reason for this is that everybody has already got used to the presence of so many legal provisions, and since they find it impossible to study them in detail, they tend to go to the other extreme, totally neglecting the need for carefully studying the provisions concerned. If there are only one or two provisions,

people may read them more carefully, but once the provisions are so numerous that no careful study is possible, people will start to think that it is no use reading the terms because no amendments can be possible anyway. I think this kind of attitude will make us more vulnerable to cheating.

Chairman, as I mentioned a moment ago, I agree with Mr Albert CHAN and one or two other Members that our legislation is marked by a certain degree of discrimination. While I do not agree to the formulation of too many laws, I also notice that when it comes to the enactment of new laws to regulate certain industries or transactions, the present system is not quite so proportionate in its treatment. I understand that it is necessary to put various competing interests under checks and balances and achieve a state of equilibrium, but in our society, some industries are honestly more powerful than others when it comes to negotiating or bargaining with the Government, as evidenced by the recent discussions on whether auditors should bear comparatively light criminal liability. What we discussed at that time did not even involve any prison sentence; we only discussed a maximum fine of \$150,000 as criminal liability, but we still had to argue for a very long time. In contrast, very severe liability is set out in the present Bill, and the targets may well be those ordinary citizens operating small businesses. These two cases really show a lack of proportionate treatment.

I still wish to highlight several points. First, the exempt industries this time around all involve relatively high professional skills and expertise, so it will be impossible for the average consumer to assess, on a relatively equal footing with the service provider, whether the relevant services are in line with his interests and whether there is any excessive promotion. I know that some famous barristers in the legal profession are very fond of saying "it is all 'sure win' for this case" or "it is all 'sure lose' for this case, so don't proceed". Honestly, professionals or Senior Counsels are not supposed to lightly use such expressions as "sure win" and "sure lose". But there really exists this kind of trade puff, or marketing practice, which over-simplifies certain types of services.

Even though the medical and legal professions are two of the oldest and most professional of all professions and they generally command the greatest respect, they however constituted the majority of complaints I received in the past. People often think that they are seriously misled by professionals such as medical practitioners and lawyers, and it is not uncommon to hear people complain about the professional advice on whether a surgical operation should be

conducted or whether any legal actions should be instituted in their cases. Very often, we must instead rely on the self-discipline and internal sanctions of the professions concerned as a means of handling such complaints. Such sanctions are marked by problems in several respects. First, the practice of "trial by fellow professionals" is a cause of frequent complaints. Second, all such sanctions are only civil sanctions. Even in the severest cases, the heaviest professional sanction possible is only licence revocation. In the case of medical practitioners' professional blunders, for example, I can observe that in recent years, a suspended sentence was handed down in most cases, even when the blunders concerned were most outrageous and apparently warranted licence revocation. As we all know, a suspended sentence is a penalty in name only. If one does not commit the same blunder during the duration of the suspended sentence, one will be able to walk free. Therefore, such a handling approach is really not quite so proportionate. These are problems in the professional respect.

Another thing is that when it comes to seeking professional assistance, the topics and issues involved are often connected in one way or another with people's special concerns or worries. Such issues may be about life and death, personal liberties or colossal financial losses. In any case, major and important decisions must be made. However, there will be no consumer protection in respect of these significant issues. It is true that beauty and fitness services may likewise lead to very serious consequences, but the bitterness and consequences associated with buying goods in the streets, whether the scent of a bar of soap can last and whether the colour of a commodity will run after two days are all comparatively mild. At least, the matter of life and death is not involved, nor are personal liberties. In that sense, the provisions and penalties in the Bill are a bit too harsh.

As for the third point, I would say it is only natural that the more serious a case is and the more professional the required services are, the more exorbitant the fees will be, often involving millions of dollars. And, the purchase of land on planets and the Moon, medical services and legal services will even cost dozens of or even hundreds of millions. It is of course true that those consumers who can afford such levels of fees may themselves be large corporations and organizations. But we must not forget that the legal fees and medical fees spent by many consumers nowadays are often over \$10,000 or even \$1,000,000. The cases of such consumers are, however, not accorded any protection under the Bill this time around, and they can only depend on the self-monitoring mechanisms of

individual industries for protection. The three points mentioned above lead me to think that the exemption this time around is not quite so proportionate in terms of logic and justice.

I hope that after re-examining the provisions of Part 1, the authorities can appropriately re-assess whether they should conduct fresh consultation on the exemption arrangements set out in Schedule 3 and Schedule 4. The fourth category is especially worth noting. For example, Members have referred to various acts that may inflict serious harm on society, such as the sales practices relating to Lehman Brothers products as well as banking and insurance services. In this regard, separate legislative provisions are no doubt in place for monitoring the relevant industries, but I must still say that due to the severity of their consequences and the penalties, they are very different from the sale of soap and toilet tissue that I mentioned just now.

Chairman, another issue of injustice I wish to raise is that the kind of consumer protection required in certain industries (especially the tourism industry) can well be described as unrivalled the world over. I am talking about the 180-day refund period. Many Hong Kong people have been to other places in the world. They should know that no place in the world — not even Paris, London and New York City — will allow a person to return a product and ask for refund at the slightest displeasure within 180 days from the date of purchase, perhaps after going to balls and wedding ceremonies or having a lot of fun. No place will offer such favourable treatment. But this has been in place in Hong Kong for several years as a regulatory measure. Although it can be argued that this measure can achieve a deterrent effect, it is in fact hardly tenable from the perspective of justice.

On the other hand, however, I do welcome the protection set out in the provisions this time around for visitors to Hong Kong, especially "Individual Visit Scheme" visitors who do not join any tour groups. Unlike tour group visitors, "Individual Visit Scheme" visitors are not eligible for the 180-day consumer protection period I have referred to. As a result, they are frequently cheated. I have heard of, received and handled many complaints relating to financial services and products, preserved seafood and, more seriously, purchase of goldware. I therefore hope that the provisions this time around can achieve some results and deterrent effect.

Chairman, regarding the introduction of a cooling-off period, I agree that it is necessary to conduct fresh and adequate consultation. As a matter of fact, requiring a cooling-off period can certainly further enhance consumer protection. Since Members have expressed many views on this, there is no need for me to say anything further.

All in all, I am in total support of the Bill. Although I said at the beginning of speech that my personal belief is for the avoidance of legislation as much as possible, for as few laws as possible, I must add that in present-day society, it is already not so easy to take the return path in many cases. It is perhaps because repeated errors have come to be accepted as correct, or perhaps because we have long since got used to legal protection, which now also covers many of the principles I personally support and uphold, such as the market economy and the setting of a minimum wage. In the present social context, although Article 5 of the Basic Law provides that the socialist system and policies shall not be practised in Hong Kong, many philosophies, policies and laws in Hong Kong are, I am afraid, already developing in this direction. Many Members frequently argue with me, saying that similar policies and rules are also found in the United States. But they must not forget that Hong Kong's capitalist system and practices are in fact very different from those practised in the United States, and this has been the case especially after the drastic transformation of the American system to a welfare and socialist society during the ROOSEVELT era.

In this connection, it is naturally necessary to strike a proper balance, and the road Hong Kong is going to take must of course depend on people's choice at the end of the day. However, I must point out that my humble personal opinion as a veteran legal practitioner is that unless there is a clear need under the law, unless the relevant provisions are very clear, and unless the extent of protection is very definite, every legislative exercise is bound to create more Pandora's Boxes, leading to more disputes, causing more controversies among people or just giving more business opportunities to legal practitioners. Honestly, this should not be the original intent of any legislative attempt. In the case of those provisions drawn up this time around, I am afraid that there are likewise many areas of injustice, imbalance and inequality. All this requires the Government to continue to conduct appropriate consultation and studies immediately after the passage of the Bill, so as to bring its provisions in line with the principle of fairness and equality as well as the requirement of justice in Hong Kong. Thank you, Chairman.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary, do you wish to speak?

(The Secretary for Commerce and Economic Development indicated that he did not wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 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)

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

CLERK (in Cantonese): Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): The Council now resumes its Second Reading debate on the Statute Law (Miscellaneous Provisions) Bill 2012.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012**Resumption of debate on Second Reading which was moved on 2 May 2012**

PRESIDENT (in Cantonese): Dr Margaret NG, Chairman of the Bills Committee on the abovementioned Bill, shall now address the Council on the deliberations of the Bills Committee.

DR MARGARET NG (in Cantonese): President, in my capacity as the Chairman of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2012 (the Bills Committee), I now report on the Bills Committee's deliberations on the Statute Law (Miscellaneous Provisions) Bill 2012.

The Bill is an omnibus bill which seeks to make miscellaneous amendments to various Ordinances. One of its major amendment proposals is to implement a recommendation of the Law Reform Commission (LRC) on abolishing an irrebuttable common law presumption of criminal law that a boy under 14 is incapable of sexual intercourse. Members generally support the policy objective of the proposal. Members note that stakeholders including the two legal professional bodies generally support the LRC's proposal, and organizations such as End Child Sexual Abuse Foundation have urged for its early implementation.

Members also note that individual organizations have expressed concerns about the minimum age of criminal liability. In this connection, the Administration has advised that the minimum age of criminal responsibility in Hong Kong has been raised from seven to 10 years in the light of the recommendation made in the LRC's report on "The Age of Criminal Responsibility in Hong Kong" published in 2000. Besides, under the common law, there is also a rebuttable presumption of *doli incapax* applicable to children aged from 10 to 14. The Administration considers that this presumption provides adequate protection for children under the age of 14, as the prosecution must prove beyond reasonable doubt that not only was there *actus reus* with *mens rea*, but also that the child knew that the particular act was seriously wrong.

Another major proposal considered by the Bills Committee concerns the amendments relating to legal practice entities in Part 8 of the Bill. The

amendments seek to implement the provisions of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 on enabling solicitors to incorporate their practices as solicitor corporations and the relevant rules made by The Law Society of Hong Kong (the Law Society).

Members note that in the draft Solicitor Corporation Rules (draft SCR) proposed by the Law Society, there is a provision providing that only a solicitor who is a member or employee of a solicitor corporation can be appointed as a proxy for the purpose of attending and voting at any meeting of the solicitor corporation, so as to achieve the policy intent that control of solicitor corporations must remain with solicitors. This proposed provision in the draft SCR is arguably in breach of the *ultra vires* doctrine in its purported restriction or qualification of section 114C(1) of the Companies Ordinance which provides that any person can be appointed as a proxy. To resolve the *ultra vires* issue, clause 31 of the Bill seeks to amend the new section 7L of the Legal Practitioners Ordinance to the effect that section 114C(1) of the Companies Ordinance does not apply to solicitor corporations.

Members of the Bills Committee also know that the Administration will introduce amendments relating to solicitor corporations to clause 33 of the Bill pursuant to the request of the Law Society, so as to provide that, insofar as solicitor corporations are concerned, only a director of a solicitor corporation can employ a trainee solicitor or act as his principal.

Besides, the Bill also contains minor and technical amendments to various Ordinances. Members of the Bills Committee have no objection to these amendment proposals.

President, apart from the amendments to clause 33 of the Bill which I have mentioned, the Government will also move amendments to clause 1, clause 72 and its Schedule, so as to repeal two items of subsidiary legislation that have ceased to be in force. Members of the Bills Committee agree to the Administration's amendments.

President, the above is my report on the Bills Committee's work. I shall now express my personal views on the Bill.

President, the Bill is a highly technical bill that seeks to amend the provisions of many ordinances. The provisions relating to legal practitioners, in particular, have been amended a number of times since 1997, but they have yet to come into force, and many changes have also been made. This can show the highly technical nature of the Bill. However, we still managed to handle all the contents of the Bill in two meetings. I also think we have handled it very appropriately because the Legislative Council is very familiar with the handling of bills on amending statute law and has already established an approach for the purpose. Besides, knowing that there was such a shortage of time, the authorities also made special efforts to raise the efficiency of drafting the Bill and prepare well for the issues to be raised by the Bills Committee.

President, we have handled all the relevant contents of the Bill in accordance with the established practices of the Council: holding discussions in the relevant Panel first and offering clear explanation in the course of discussions. Since Members have already followed up all these issues very seriously in the relevant Panel and are thus very familiar with the background and reasons for amendments, they now have greater confidence when discussing the Bill or considering whether they should support its passage.

President, I must call upon Members to continue to uphold this tradition. I will not participate in the work of the next Legislative Council because I have decided not to run for election. For this reason, I must also call upon Members to continue with the relevant work and support the legislative Council Secretariat. And, I also hope that the authorities can maintain this fine tradition.

President, once during my pupilage, my pupil-master and I were before the court for a complex trust fund case. The case was about the establishment of a trust fund. As early as the time before the war, some overseas Chinese organizations already set up some funds for providing assistance in running schools on the Mainland and in Hong Kong. With the passage of time, the trust fund underwent certain changes, and this led to litigation. The details of the litigation were extremely complicated, resulting in protracted arguments and involving large numbers of people. President, when we eventually appeared before court, the case was dealt with in about half an hour only, and all the problems were resolved. The presiding judge was Mr Justice Geoffrey MA, noted as a judge very difficult to deal with. That being the case, why did we still manage to cope? I asked my pupil-master — Anthony NEOH, S.C. — why the

problem could be resolved so quickly. I suppose the reason was that we had made a lot of preparation and many problems had been resolved one by one beforehand. That was why only very few key issues remained to be resolved in court, and practically all problems could be dealt with in five minutes.

President, the same is also true of all highly technical provisions. Therefore, I think that preparations are of extreme importance. We should first find out where the problems lie and seek to resolve them beforehand. In this way, we will be able to reach appropriate conclusions very quickly and receive the support of all.

President, I so submit. I hope that Members can support the Bill. Thank you.

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

MR ALBERT CHAN (in Cantonese): President, as pointed out by Dr Margaret NG, the Statute Law (Miscellaneous Provisions) Bill 2012 (the Bill) is basically a bill with many technical amendments. I understand this is an omnibus bill which seeks to make miscellaneous amendments to various ordinances. As mentioned by Dr Margaret NG, the Bill comprises 12 Parts and 72 clauses. That it could be completely dealt with in merely two meetings must be an indication of very high efficiency.

The quick completion of the scrutiny of the Bill is of course attributable to the contribution of the Legislative Council Secretariat. Apart from this, another reason I have come up with after reading the report is that the Government was basically very respectful of the two professional bodies — The Law Society of Hong Kong and the Hong Kong Bar Association — during the process of drafting the Bill and conducting the relevant studies. In the past, especially in the colonial era, professional bodies, especially The Law Society of Hong Kong and the Hong Kong Bar Association, were often consulted in the process of enacting any legislation. However, since the reunification in 1997, the Government has been forcibly rolling out various bills, particularly bills of great importance, despite the dissenting views expressed by The Law Society of Hong Kong and the Hong Kong Bar Association — such dissenting views have been rare, though.

The smooth scrutiny of the Bill and the ability to complete the handling of all the complex amendments within such a short time must be ascribed principally to the authorities' adherence to the conventional approach.

Naturally, credit must also go to Dr Margaret NG, Chairman of the Bills Committee. Under her leadership, members were able to complete the scrutiny with greater confidence. I believe this may be the last report that she puts forward as the chairman of a bills committee. It is hoped that after saying good-bye to the legislature, she can live a colourful and comfortable life.

President, I do not know too much about the various technical amendments in the Bill, and I will respect the views of the two professional bodies, that is, The Law Society of Hong Kong and the Hong Kong Bar Association. I only want to raise a point about one of the amendments proposed in the Bill, that is, abolishing a common law presumption of criminal law that a boy under 14 is incapable of sexual intercourse. President, there were in fact very few discussions on this amendment during the public consultation period and its scrutiny by the Council. Clause 12 proposes to add after section 118N of Cap. 200 a new section 118O for abolishing the presumption of law that a boy under the age of 18 is incapable of sexual intercourse, buggery or bestiality. I can appreciate that this amendment is based on various considerations relating to many past cases, studies and social development, but I still want to ask a question on the kinds of legal consequences that may result from this amendment. President, as I have mentioned, there were not too much public discussion and participation during the scrutiny of this amendment.

And, following the amendment of the relevant ordinance, will the Government make any adjustments to education, especially primary and secondary education? After amending the relevant ordinance, in the field of education, the authorities should seek to assist youngsters in understanding their physiological development and needs in the process of growth, and also help them get to know more about sexual intercourse. I think this is a kind of very important support. The authorities must not make changes to the law only; it should also provide support in the field of education. Sex knowledge should be imparted to youngsters in their formative years through both family education and school education. If the Government only makes changes to the law, a wrong message may be imparted, thus causing the deterioration of the problem and in turn the emergence of new ones. This is a situation no one wants to see.

President, overall, as mentioned by Dr Margaret NG, the Bill has basically received the acceptance of the Bills Committee and also the support of the two authoritative professional bodies. In view of this, President, we will likewise support the relevant amendments.

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

MR WONG YUK-MAN (in Cantonese): President, many of the amendments proposed in the Statute Law (Miscellaneous Provisions) Bill (the Bill) are technical in nature. Dr Margaret NG has offered a brief account of them, and the Bills Committee may have held many discussions already. We are neither lawyers nor legal professionals, but I still want to say a few words. If what I say is wrong, would Dr Margaret NG please correct me.

The first point I want to discuss concerns the three major amendments to the Legal Practitioners Ordinance (LPO) as set out in Part 2 of the Bill. The first amendment is about exempting an applicant for an employed barrister's certificate from the insurance requirement under section 30(3)(b) of the LPO. An employed barrister is different from a practising barrister in nature, in the sense that the former is just like the legal adviser to a private company, with the service target restricted to his employer (the company concerned). An employed barrister is different from a practising barrister, so there is no justification for requiring an employed barrister to take out professional indemnity insurance as a practising barrister does. In addition, there is an employer-employee relationship between an employed barrister and his employer, so the negligence of the employee (an employed barrister) should be dealt with according to the law of tort.

The amendment is made in response to the suggestion of the Hong Kong Bar Association. We agree to its suggestion because there is no policy reason to justify the insurance requirement for employed barristers who only provide legal services to their respective employers, and not to the general public. For example, many in the team of legal advisers to the Legislative Council may be employed barristers. They are of course as professional as practising barristers, but they should not be required to take out insurance.

Second, it is proposed to amend section 40M(1) of LPO to allow an appeal to the Court of Final Appeal (CFA) against any order made by a Notaries Public Disciplinary Tribunal, in the light of the CFA's ruling in a certain case. This amendment is in compliance with the Basic Law provisions on the power of final adjudication vested with the Court of Final Appeal.

The power of final adjudication did arouse some controversies in the past, and the bitterest argument arose in 1999. At that time, the Court of Final Appeal handed down its judgment on a case involving the right of abode in Hong Kong. In the end, it was overturned by an interpretation of the Basic Law by the National People's Congress (NPC). Even the now, the new Secretary for Justice refuses to guarantee that no interpretation of the Basic Law by the NPC will be sought.

Actually, under Article 158 of the Basic Law, there are already provisions on the power of final adjudication (that is, the power to interpret laws) in Hong Kong. During the drafting of the Basic Law, Article 158 was once the subject of many controversies. In Hong Kong, the power to interpret laws is vested with the Judiciary (the Court), but on the Mainland, such power is vested with the legislature. How should we strike a balance?

In common law jurisdictions, law-making bodies will never assume the responsibility of law interpretation at the same time. The practice of having the legislature to interpret laws can only be found in China. Worse still, the power to interpret laws is actually in the hands of the Communist Party. Why do people fear the NPC's interpretation of the Basic Law so much? It is because the whole thing is not only about the NPC's interpretation of the Basic Law. The NPC's interpretation of the Basic Law is already a contravention of the common law spirit upheld in Hong Kong, not to speak of the fact that in reality, the Basic Law is to be interpreted by the Communist Party. Therefore, we must not retreat on this last line of defence. Why are so many people in Hong Kong concerned about the power of final adjudication exercised by the Court of Final Appeal and also the power of law interpretation? The answer is obvious. As a matter of fact, some existing ordinances are still unable to comply with the Basic Law provisions that the Court of Final Appeal shall have the power of final adjudication.

We have recently passed an amendment to our electoral laws which provides that appeals regarding judgments on election petitions can be made to the Court of Final Appeal. I believe that some existing ordinances are still unable to comply with the requirements of the Basic Law. In this connection, I urge the Department of Justice to conduct a comprehensive review of all ordinances and make amendments where necessary, so as to uphold the power of final adjudication vested with the Court of Final Appeal.

Third, it is proposed to amend section 50B(4) of the LPO to clarify that a foreign lawyer or firm must not take into partnership a solicitor or barrister who holds a practising certificate. The reason is that local lawyers are regulated by a regime different from those regulating foreign lawyers and firms. Permitting a solicitor or barrister holding a practising certificate to join a foreign law firm may pose regulatory problems. If any solicitor or barrister wishes to join a foreign law firm, he must give up his local practising qualification. I think this is only reasonable.

Part 3 is for amending the Administration of Estates by Consular Officers Ordinance. Hong Kong is an economic and trade centre where foreigners may hold different types of assets. In case any foreigners pass away intestate, their estates can be dealt with under the Administration of Estates by Consular Officers Ordinance. The ordinance provides that the consul, vice-consul, or consular agent of such State within Hong Kong may take possession and have the custody of the property of such deceased person, and may apply the same in payment of his debts and funeral expenses, and may retain the surplus for the benefit of the persons entitled thereto. However, the Administration of Estates by Consular Officers Ordinance does not specify how a deceased person's estate should be dealt with if he is not a subject of any State mentioned in the Schedule. Will the authorities specify whether there are any arrangements in such cases? If there are no special arrangements, will the authorities continue to hold negotiations with States not listed in the Schedule on the relevant arrangements?

In addition, the Bill also proposes to streamline the procedures of varying the Schedule to the Administration of Estates by Consular Officers Ordinance, replacing "The Chief Executive may by order notified in the Gazette under the hand of the Chief Secretary for Administration" with "The Governor in Council may by order published in the Gazette". We are of the view that any variation of

the Schedule should be put before the Legislative Council in the form of a resolution for passage.

Part 4 seeks to amend the Crimes Ordinance. This is a belated amendment, but it is better late than never. The amendment abolishes the presumption that a boy under 14 is incapable of sexual intercourse. We naturally welcome this amendment. This issue has been discussed for years, and there has been lots of press coverage on molestation by boys aged 14 or even under. These boys actually had sexual intercourse with the victims, but due to the presumption that a boy under 14 is incapable of having sexual intercourse, the accused persons were only charged for indecent assault rather than rape.

The presumption that a boy under 14 is incapable of sexual intercourse is basically outdated. As we can observe, due to the rising living standards, nutrition improvement, decline in diseases and medical advances in our society, children nowadays are generally two to three years ahead of their counterparts a generation or two ago in terms of puberty and sexual maturity. Sexual precocity has rendered the present presumption outdated and unable to reflect the reality. In the past, owing to this peculiar presumption, charges were often unable to reflect the criminal liability which the accused deserved. Such a gap between liability and the crime committed should be sealed, and the abolition of the presumption is only natural.

Part 5 seeks to amend the Customs and Excise Ordinance. Clause 13 of the Bill proposes to repeal section 12(6) of the Customs and Excise Ordinance, which requires an officer under interdiction to seek the permission of the Commissioner of Customs and Excise before leaving Hong Kong. The Administration has explained that the provision is proposed to be repealed as it may not be compatible with Article 31 of the Basic Law and Article 8(2) of the Hong Kong Bill of Rights concerning freedom to travel.

We likewise agree to the abolition of the provision. But why was the provision included in the Customs and Excise Ordinance in the very first place? Are there any similar requirements for other disciplined services? If yes, why do the authorities single out the Customs and Excise Ordinance for amendment? Why is it that when proposing to repeal the provision, the authorities do not also propose to amend the relevant requirements applicable to other disciplined services? We are of the view that if it is indeed necessary for the law to forbid a

customs officer to leave Hong Kong, the officer must have committed certain offences. For this reason, any restriction on leaving Hong Kong should be applied through the Court in the form of bail.

Part 6 seeks to amend the Toys and Children's Products Safety Ordinance. Clauses 14 to 16 of the Bill seek to amend the Toys and Children's Products Safety Ordinance to simplify the definitions of "children's product standard" and "toy standard" and the format of Schedules 1 and 2 to the ordinance to facilitate the updating of applicable safety standards. Members of the Bills Committee have not raised any queries on these clauses.

We often hear that whole batches of toys exported by China are returned by American and European countries due to contravention of safety requirements. We agree that protecting the health of children is a very important matter, which is why we support the amendment of the Toys and Children's Products Safety Ordinance, so as to raise the relevant safety standards. It is believed that after the amendment, the relevant standards will become clearer and easier for the industry to comprehend. In the long run, both China's toy industry and Hong Kong as a re-export centre will benefit because of upgraded commercial reputation.

Part 7 is about amendments relating to editorial powers. We have no special views on providing a few additional editorial powers to the Secretary for Justice to facilitate the editorial work involved in preparing and updating the Laws of Hong Kong. However, I am of the view that the work of altering the titles of ordinances should be undertaken by the Legislative Council, and it is inappropriate to pass it to the Department of Justice for handling.

Practically all ordinances are drafted by the Department of Justice, and their titles are also decided by the Department of Justice. However, I am doubtful about empowering the Department of Justice to alter the title of ordinances. Unless the title of an ordinance has been successfully amended by Members, the title should be the one suggested by the Department of Justice itself. And, the title was also approved. Why should the Department of Justice be empowered to alter the title of an ordinance which has been successfully amended by Members?

Part 8 is about amendments relating to legal practice entities. To begin with, I must raise a query. Why is it that even today, a piece of legislation enacted in 1997 — the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 — has not yet come into force? The Government has explained that the relevant provisions relating to solicitor corporations in this ordinance have yet to come into operation, pending the making of the Solicitor Corporation Rules by The Law Society of Hong Kong. But why is it that the Solicitor Corporation Rules has not yet come into operation after the lapse of more than a decade? Is this the reason for the Government's delay in bringing the ordinance into operation?

All along, we have been very concerned about the commencement dates of bills. In this session, especially in the past one or two months, I invariably expressed lots of opinions whenever we discussed the commencement date of a bill. Whenever I notice that a bill passed by the Legislative Council a decade or even two decades ago has not yet come into operation, I will be very angry. Even the Companies Bill recently passed by the Legislative Council also specifies that it will not come into operation until two years later. Some bills are meant to answer needs in society, but they cannot come into operation immediately after passage. When they can come into operation at long last, circumstances may have changed, thus rendering them unable to keep abreast of the times. In this way, the Government must put forward other bills to amend the ordinances concerned, and we must wait while the Government makes preparations. This goes on and on endlessly. The function of the Legislative Council is thus curtailed.

And, what I oppose even more strongly is a comment made earlier by the President of the Legislative Council, Mr Jasper TSANG. The President advised that the Government should put forward the package of five Secretaries of Departments and 14 Bureaux to the Legislative Council as the very first item of discussion in the next legislative session, for in this way, we will be unable to resort to filibuster. Do you think that the abortive attempt to implement the package of five Secretaries of Departments and 14 Bureaux To be precise, I should not use the word "abortive" because the package was in fact knocked down by me. I guess this explains why you have come up with such an idea, asking the Government to put forward the package as the very first item of discussions. I can forewarn that if the Government does not conduct any

consultation, it must not even think about putting forward the package to the Legislative Council for discussions.

All these ordinances were enacted so many years ago, but the Government has done nothing to effect their operation. Now Honestly, there is absolutely no need to implement the framework of five Secretaries of Department and 14 Bureaux, but the Government has chosen to bring it forward forcibly. Luckily, though already 60 of age, we were still physically fit to fight a battle of filibuster against you all for two months and knock down this package My speaking time is running out.

These ordinances can reflect the power of The Law Society of Hong Kong. In the case of the Legal Practitioners (Amendment) Bill 2010, which was passed a couple of days ago, The Law Society of Hong Kong held negotiations with the Government on a clawback period. From these negotiations, we can notice that the power of The Law Society of Hong Kong cannot be underestimated.

I of course will not say that since we now have developer hegemony and media hegemony, such power should be described as lawyer hegemony. I dare not say so because there are 11 lawyers here. Most of their opinions are justified, and they do not work for their personal interests. I only want to warn those lawyers in The Law Society of Hong Kong that they must exercise their power very prudently because they have the ability and power to influence the enactment of legislation in Hong Kong.

Lawyers enjoy a very high status all over Asia, and politically, they can even exercise very great influence (*The buzzer sounded*) It is a pity that my speaking time is up, and I can speak only once. President, can I speak for 15 minutes more?

MR PAUL TSE (in Cantonese): President, the last part of Mr WONG Yuk-man's speech mentioned the power of the legal profession. He described it as "hegemony". Having personally experienced such "hegemony", I know how powerful it is and concur with Mr WONG Yuk-man's comment.

President, the Bill itself is very simple, but I have a few observations. First, the provisions of the Bill simply look like a big jumble; I already raised this

point at the stage of the Bills Committee. Why is it that the bulk of the amendments are restricted to some relatively trivial and purely technical issues concerning the two types of lawyers? Very often, we notice that there are loopholes in many existing ordinances and advise the Government to introduce amendments expeditiously, but the Government invariably replies that it is better to conduct a comprehensive amendment exercise instead.

If the approach is really to conduct an annual amendment exercise somewhat similar to the tradition of "cleansing around Chinese New Year eve" for the purpose of comprehensively handling all the major legislative provisions identified to be in need of amendment every year, then I am really puzzled as to why the Bill should seek mainly to amend just several legislative provisions relating to the legal profession and stop short of making good use of such amendment mechanism to amend other legislative provisions. Perhaps, the relevant authorities should study whether it is necessary under this approach for them to conduct a full review of the existing ordinances every year, so that those legislative provisions which can be amended can be amended promptly. This is my first observation.

Second, I agree with Dr Margaret NG that even though a lawsuit is very large in scale, if there is adequate preparation, both sides may only need to say very little in court, and the case can already be brought to a close, because the battle is not about what goes on in the courtroom, but about prior preparation and even pleadings. In the process of preparing for the trial, various tasks such as the handling of affidavits and forms of evidence can enable the two sides to know the strengths and weaknesses of each other. As a result, a quick settlement can be reached in court without the need for too many arguments.

I often stress that law and politics share the same root. I therefore think that the same theory can apply to politics. Most of the controversial issues should be handled outside this Council. With the aid of public consultation, matters should be settled between the Government and Members or between the Government and the public. The Administration should not try to force things through the Council on every occasion, or simply ignore everybody once it is confident that there will be majority votes in its support.

Such an approach, I am afraid, is exactly opposite to the approach described by Dr Margaret NG as highly efficient earlier. I hope this Council and

the Administration — the Administration in particular — can consider the approach of first tackling most issues through negotiations before turning to the Council. In this way, it will not be necessary for it to count the number of Members in support at the last minute.

Third, just now Mr WONG Yuk-man talked about the power of final adjudication conferred on the Court of Final Appeal (CFA) by the Basic Law. This is set out in Article 82 of the Basic Law. As we know very well, Article 82 confers the power of final adjudication on the CFA. Let me perhaps also mention one thing very quickly here. Article 82 provides: "the Court of Final Appeal may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal". This subject is not related to our present topic of discussion, but if the President does not mind, may I spend 30 seconds on discussing this subject

In fact, as I have pointed out a number of times before, the present composition of a court is not quite so consistent with Article 82 and fails completely to manifest its spirit. Even though one focuses only on the literal sense, one can already question whether the existing practice is in contravention of this provision, because there is actually a foreign judge on a court in every case. This seems to be contrary to the expression "as required" mentioned in Article 82. This is irrelevant to our present topic of discussion, though.

What is even more important is Article 158 of the Basic Law mentioned by Mr WONG Yuk-man just now. This provision concerns the issue of interpreting the Basic Law. Please allow me to say a few words on it. Paragraph 4 of Article 158 provides for the establishment of a mechanism under which the Committee for the Basic Law of the Hong Kong Special Administrative Region shall be consulted before any interpretation of the Basic Law is sought. In this connection, I do not think that we have fully utilized this mechanism to enhance the professional image and public recognition of the committee.

Hong Kong people are accustomed to and advocate the interpretation or application of laws by legally qualified persons, be they judges, barristers, solicitors or academics — all are people related to the legal profession anyway. However, I am afraid that the Committee for the Basic Law with its present composition will probably create an impression of being much too heavy in political overtone but deficient in academic input or legal credibility in the eyes

of the public. If we can take expeditious steps to rectify this problem and thus enhance the recognition of the committee, we will help allay the public anxieties over the interpretation of the Basic Law. This is highly conducive to the long-term development of Hong Kong.

President, just now Mr WONG Yuk-man referred to an amendment introduced in the light of the CFA's ruling in a certain case. This amendment involves the question of whether certain appeals should be permitted to reach the CFA to ensure that the people concerned are not deprived of their right to appeal to the CFA. On this question, I am afraid we must assess whether the CFA is already loaded with too many cases, and whether the proposal will thus result in an excessive workload for it.

At present, the prerequisite for filing an appeal to the CFA is that the matter in dispute must amount to or be worth \$1 million or more as a minimum. Many problems have emerged as a result. In this regard, we need to strike a proper balance. When considering the jurisdiction of the CFA (meaning the power of final adjudication), should we lay heavier emphasis on its capacity? If we do not do so, many civil cases not involving any money in dispute will surely..... There may be an endless submission of public law (judicial review) cases to the CFA.

Admittedly, some such cases may really need to be heard by the CFA for the reason that they are of importance and public concern in some ways. Yet, many other cases are actually not so important, and the threshold of \$1 million is also on the low side. In that case, should the Administration carry out an expeditious review to attain a balance, so that the CFA can really hear cases appropriate to its status as the authority of final adjudication? This is my third observation.

Lastly, President, please allow me to thank Dr Margaret NG. Actually, she and I hold vastly different political views, and we argue a lot and very often. But I must admit that she is truly diligent, meticulous and devoted as a Member frequently partaking in handling bills and serving as the Chairman of various bills committees.

Please permit me to say one more thing. Dr Margaret NG's performance can highlight the unique importance of functional constituencies (FCs) to a certain extent. In terms of experience and standing in the legal sector, Dr

Margaret NG may be far more junior than other members of her political party, but she can focus on many issues relating to the legal profession without having to spend too much time on front-line work, such as complaints from residents in various districts and tasks involving empty political slogans rather than rational analysis. This can give her more time to deal with those tasks that require more time for analysis and drafting.

Hence, I think when we consider the way forward for FCs, we should also take account of FC Members' quality. It is indeed true that many FC Members are dubbed "lazybones", but at the same time, there are also Members who are really very diligent and dutiful, even to the extent of being regarded as someone on whom the Council depends heavily. Whatever Dr Margaret NG chooses to do in the future, or even if she chooses to devote all her time to cookery, I still wish her a very happy life. Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, I too want to speak on the legislation, but after listening to Mr Paul TSE's speech, I cannot help saying a few other words first.

According to him, Dr Margaret NG has aptly shown the advantages of functional constituencies (FCs). I agree with him, and I respect Dr NG very much, but I do not think that this can be used as a justification for the existence of FCs. The first reason is that a certain sector having a genuine wish to express its view to the Government may not necessarily need to do so through one of the 60 Members. A simple example is the Secretary for Justice sitting over there now. He is also a lawyer, only that he works for the Government, and he thinks that he should devote himself to the Government and do something for Hong Kong. He can join the Government, and he can also choose teaching. Or, if Hong Kong comes up with a new system one day — a bicameral system, for example — some people will be sitting in another chamber.

I have talked about an upper house system before. An upper house is an assembly of high and aloof standing, but it does not have any power and is simply a venue for oration. What I am saying is true. I have been to Ireland before.

The Senate there is simply a venue for oration, and this is also the case with the House of Lords in the United Kingdom. Members must not try to confuse people, arguing that it is always necessary to appoint competent people to an assembly returned by "one person, one vote" for the purpose of expressing the views of any specific categories of people. This does not stand to unreason at all. Hence, I think there is something not quite so desirable in Mr TSE's argument because it will confuse children.

What are my views? Let me now get down to business. I know that nothing can be done by now. President, I only want to discuss the power of the Secretary for Justice to make editorial amendments to laws. By way of clause 18 of the Statute Law (Miscellaneous Provisions) Bill 2012 (the Bill), the Secretary for Justice proposes to amend the Legislation Publication Ordinance (Cap. 614), adding paragraph (ab) after section 12(a) and paragraph (ga) after section 12(g). I do not think that the Secretary for Justice has ever exercised the power in this respect, nor have I ever heard of that. Let me give an example. I notice from the enactment of legislation to implement Article 23 of the Basic Law that the power of Hong Kong's Secretary for Justice is extremely small. Elsie LEUNG, then the Secretary for Justice, did not say much at that time, but the then Secretary for Security Mrs Regina IP, who is a Member now, stirred up quite a din in contrast. So, I really do not think that it is such a big deal to let the Secretary for Justice add in paragraph (ab), which reads "insert, after a reference to the title, short title or citation of another Ordinance, the chapter number given to that other Ordinance under section 11(a) and, if another reference of any other kind to that other Ordinance appears after the reference to the title, short title or citation, omit that other reference". But I do not agree that such work should be performed by the Secretary for Justice.

This will honestly lead to a problem. In that case, will the Secretary for Justice choose any expressions at will and then insert what he deems to be their equivalents? What is meant by "equivalent"? It is entirely up to the Secretary for Justice to decide. If the Secretary for Justice finds it appropriate, even "death" can become the equivalent of "birth". Thus, if the Secretary for Justice is vested with excessive power, judicial independence may be completely eradicated.

President, action is bound to cause reaction. If the Secretary for Justice can alter one equivalent in the light of another, one problem will arise.

President, buddy, what should be the equivalent of "life", may I ask? Well, people may unanimously say that "death" should be the correct equivalent of "life"; or, people may also say that the equivalent of "life" should be "eradication", or even "cessation". Of course, in this society where we enjoy such a high degree of freedom in the dissemination of information, all will still be subject to the check of the fourth estate and legislative power.

Yet, in the final analysis, we will have a big headache if we must monitor the exercise of such a power held by the Secretary for Justice. I think such a power should merit more thinking on our part. Suppose the Secretary for Justice is really vested with such a power, which I consider to be additional or discretionary in nature Of course, there should be such a power in the colonial era because, frankly speaking, in the colonial era, both life and death were determined by the Attorney General. The then Attorney General should be vested with such a power because he represented a different political regime, an alien political regime which bore the traits and perspectives of an alien culture. At that time, while the locals could continue to believe in the power of the exorcising stone tablet, the aliens believed in Jesus Christ. In my view, such a power was actually the very root of colonial authority at that time. However, at the present time, is it still necessary to exercise such a power? I have read a book that touches upon the Lobo motion. The Legislative Council at that time was extremely tiny. A few people simply sat together like they were having a family meeting. Nowadays, so much public money has been spent on this Council, and its number of seats may be increased to 120. President, I wonder if I will have the chance to witness this. What I mean is that a bicameral system may be implemented.

Why should the Secretary for Justice bother with such trifles? Are there any advantages? So, in my opinion, since this provision has not yet commenced, why should we bother to implement it at all? If any amendment is to be made, it should be removed all together. Hence, on this issue, I do not think that it is necessary to introduce clause 18 of the Bill, which amends Cap. 614 by adding paragraph (ab) after section 12(a) and paragraph (ga) after section 12(g). Regarding the power of the Secretary for Justice to make editorial amendments, I do not think he should be given such a power. Instead, this Council should be involved because this Council is the legislature. Yet, regrettably, the problem lies with our political system. To a certain extent, the

present Legislative Council has not been attending to its proper business because our legislative power is very limited.

President, the lawsuit I instituted years back did not involve you. It involved Mrs FAN instead. The lawsuit was intended to ascertain whether Legislative Council Members have the power to revise the amendments, motions or bills proposed by the Government, meaning whether they have any power to make amendments on their own. While we do not have any legislative power, do we have any power to make amendments? The Court's answer has turned out to be negative, for the reason that the lack of legislative power logically precludes the power to make amendments. I am serious — this very, very big Council of ours does not even have any power to make amendments. Secretary for Justice, do we have any power to insert a comma or semi-colon, or add in the Chinese character "的" or "了"? In my view, as we do not even have such power, obviously, such bills on miscellaneous amendments are totally absurd.

Thus, my personal opinion is that when it comes to these miscellaneous amendments put forward by the Secretary for Justice I do not know whether there is any mission or self-imposed demand prompting him to expeditiously amend all the outdated laws in one way or another after his assumption of office, either through the Law Reform Commission of Hong Kong or other means. President, the crux of the problem is that basically, many Hong Kong laws have probably been contravening the Basic Law ever since its very implementation. I am referring to those laws that are basically in contravention of the Basic Law. This can be seen even by sightless persons. If we do not make any amendment, we and the Court alike will have a big headache having to deal with the consequences. This is not the first time, and there were other cases, such as whether prison inmates should have the right to vote, whether a person who has been given a sentence may stand for election, and even the issue of wiretapping.

Hence, I personally think that instead of doing something we are not supposed to do and taking up the thorny task of enacting legislation to implement Article 23 of the Basic Law (I dare not imagine what will happen when laws on implementing Article 23 of the Basic Law are enacted), it will be better to assess and evaluate all the laws of the present regime that may contravene the Basic Law. In this way, regular announcements can be made, and he will not have to act like LEUNG Chun-ying, who immediately hastened to hand out \$6 billion as soon as he found himself under pressure. Does the Secretary for Justice need

me to exert some pressure on him? Do I need to throw something at him to make him indicate that he will make amendments? Governance is never about silencing people with money when the Government runs out of justifications.

I do think that the Secretary for Justice is a person like this, so I hope he can put forward a blueprint of reform. Based on such considerations as Hong Kong's reunification with the Mainland, its autonomy, the presence of the Basic Law and the conventions on political and civil rights and other kinds of covenants set out in the Basic Law, the Secretary for Justice should study all the laws below such considerations, and if he detects that any such subordinate laws, including criminal law and civil law, are in conflict with the Basic Law, he may put them before the Legislative Council for prompt and decisive handling, in a way similar to how the McDonald's disposes of expired hamburgers in its daily production. This will do, right?

President, I am really well-intentioned. I hope the Secretary can tell his counterparts or superiors on the Mainland that no further attempts must be made to enact laws to implement Article 23 of the Basic Law, and that it is better to do the easier thing of realizing our core values on human rights, the rule of law and freedom in the subordinate laws. In any case, he must tell them that these core values must not be prevented from seeing their "mother", and that the "mother" must not be killed for the sake of the "father". As I have said many times before, it is not right to allow the subordinate laws to kill the "parent" law — the Basic Law — for the sake of "Grandpa".

President, the abolition of FCs has already become a pressing issue, as universal suffrage will be implemented in the next term. Even if FCs have indeed made any glorious accomplishments, we must still put them into a museum as a historical relic. Of course, I do not mean that Dr NG is a historical relic. Sorry, Dr NG. What I mean is that FCs are a historical relic. The value of FCs should be admitted. The contribution they once made to society will be remembered for thousands of years. Well, even today, the question of whether the constitutional monarchy in the United Kingdom is a good system is still under debate. However, frankly speaking, no one can "turn the clock back". I therefore think that FCs should be abolished. The Secretary for Justice should say so to his opposite numbers because LEUNG Chun-ying has remarked that the Mainland Government takes our views very seriously, so seriously that after hearing our opinions, they will even publish a report. I wonder if he will request

them to publish a report on the direction of reform for the Basic Law of Hong Kong.

To sum up, my view is very simple. Many people are a bit suspicious of the Secretary for Justice, and so am I. I hope he can take actual actions to win over Hong Kong people, particularly actions regarding Article 23 of the Basic Law. It makes no sense for him to say that changes can be possible for this or that a couple of days later. He must be guided by a set of principles. He is an "imperial official", or even the "Imperial Remonstrant" to a certain extent. Therefore, he should tell his view to the whole society, explaining to people the conditions under which laws will be enacted to implement Article 23 of the Basic Law. This can put my mind at rest, because I can thus know that we will be able to concentrate on concrete tasks in the next term of the Council, rather than wasting any time on a piece of legislation which should not be enacted in the first place, or which should not be enacted for the time being.

Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR JUSTICE (in Cantonese): President, since my predecessor presented the Statute Law (Miscellaneous Provisions) Bill 2012 (the Bill) to the Legislative Council in May this year, the Bills Committee has held two meetings. The Bills Committee chaired by Dr Margaret NG has meticulously scrutinized all the provisions and the problems involved. I must express my sincere thanks to Dr Margaret NG and members of the Bills Committee for their efforts and valuable advice.

As my predecessor said at the time of presenting the Bill to the Legislative Council, the Bill seeks to introduce basically technical and non-controversial

amendments to various ordinances, and such amendments are very important to updating and improving existing ordinances. The Bill covers two major legislative amendments. The first of them seeks to implement a recommendation made in the report released by the Law Reform Commission (LRC) in December 2010 on abolishing an irrebuttable common law presumption of criminal law that a boy under 14 is incapable of sexual intercourse. The second amendment puts forward various proposed changes for the purpose of introducing solicitor corporations as a form of legal practice entities.

Later on at this meeting, I am going to move several Committee Stage amendments. The amendments concerned, which have all received the approval of the Bills Committee, can be divided into two broad categories.

The first category of amendments concerns Division 4 of Part 12. This Division seeks to repeal various items of subsidiary legislation set out in the Schedule that have ceased to be in force. Since the submission of the Bill, the authorities have ascertained that it is necessary appeal two more items of subsidiary legislation, namely the Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg. A) and the Lifts and Escalators (Safety) (Fees) Regulations (Cap. 327 sub leg. A). The relevant amendments will specify that the latter will cease to be in force only upon the commencement of the Lifts and Escalators (Safety) Ordinance (Cap. 157).

The second category of amendments involves provisions on solicitor corporations. Having considered the request of The Law Society of Hong Kong, the authorities will propose amendments to clause 33 of the Bill, so as to:

- (a) clarify that a solicitor corporation may not act as principal to a trainee solicitor;
- (b) provide that, insofar as solicitor corporations are concerned, only a director of a solicitor corporation can employ a trainee solicitor or act as his principal; and
- (c) add the phrase "or the foreign lawyer"/"or a foreign lawyer" to section 67(3) of the Legal Practitioners Ordinance (Cap. 159) and section 67A (which has yet to come into force), so as to achieve consistency with section 67(1) that contains references to "foreign

lawyers"; and The Law Society of Hong Kong has confirmed that the application of the new section 67A should be extended to include the taxation of foreign lawyer's bill.

President, I so submit and urge Members to support the Second Reading of the Bill and pass the Committee Stage amendments to be moved by the authorities.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Statute Law (miscellaneous Provisions) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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): Please proceed to vote.

(Prof Patrick LAU raised his hand in indication)

PRESIDENT (in Cantonese): Prof Patrick LAU, do you mean that the operation of your button has not yet resumed normal and the light still cannot show?

PROF PATRICK LAU (in Cantonese): Right, the light still cannot show.

PRESIDENT (in Cantonese): Do you want to cast a positive vote?

PROF PATRICK LAU (in Cantonese): Yes, I do.

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, Dr Margaret NG, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Ms LI Fung-ying, Mr Tommy CHEUNG, Ms Audrey EU, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Cyd HO, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Mr WONG Kwok-kin, Mr IP Kwok-him, Mr Paul TSE, Dr Samson TAM, Miss Tanya CHAN and Mr Albert CHAN voted for the motion.

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

THE PRESIDENT announced that there were 32 Members present, 31 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

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

Council went into Committee.

Committee Stage

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Statute Law (Miscellaneous Provisions) Bill 2012.

CLERK (in Cantonese): Clauses 2 to 32 and 34 to 71.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the

(Dr Margaret NG raised her hand in indication)

DR MARGARET NG (in Cantonese): Chairman, my apology. I followed the rule and pressed the "Request to speak" button to indicate my wish to speak, but the light did not show.

CHAIRMAN (in Cantonese): Dr Margaret NG, please speak.

DR MARGARET NG (in Cantonese): Thank you, Chairman. Chairman, during the resumption of Second Reading debate on the Bill a moment ago, some Members cast doubts on the contents of these clauses. If their doubts are justified, the implication will be that the work of the Bills Committee is not entirely satisfactory. Chairman, since the clauses mentioned by Members have

come all the way to here without any amendment proposals, I would like to offer an explanation.

Before I start my explanation, let me first thank Members for their compliments of me, but I hope that such compliments will not be used to justify the existence of functional constituencies (FCs). Honestly, as a Member representing the legal sector who is responsible for scrutinizing such a bill which involves so many issues relating to the legal sector and contains clauses that may affect its interests, I have often thought that there may be potential conflict of interests — conflict of interest in the policy sense, not in the sense as defined by the Council, though. However, there are invariably several concerns: first, the possibility of bias and also the possibility of disproportionate concern for the sector due to close personal connection. Or, perhaps, Members may also think that as a legal practitioner, I should understand the clauses very well. As a result, they may think that all will be okay and thus lose their alertness. And, this may lead to omissions. As a matter of fact, whenever I scrutinize such bills, I will be very, every alert. And, every time I speak, I will express special thanks to those "non-lawyer" Members for participating in the discussions of Panels, subcommittees or bills committee, because they can offer fresh directions and perspectives in the course of scrutiny.

Chairman, when I read these technical provisions a moment ago, I myself also considered whether in the future Chairman, as you can see, not many Members have any interest in such technical bills, because while lots of time and energy are required, the return may be very small or even have no policy effect at all. Hence, not many Members can afford the time, or they just do not want to spend any time. I have also considered the possibility that rather than bothering Members with the scrutiny work, we may simply ask the Legislative Council Secretariat to sort things out with the technical personnel of the Department of Justice. However, after listening to Members' views during the Second Reading debate just now, I am convinced that there is such a need, and I hope that this Council can continue to scrutinize such bills, because "non-lawyer" Members scrutinizing the clauses of such bills will offer completely different viewpoints and ideas. Therefore, I think it is very important that such bills must be scrutinized and debated by this Council.

Mr Paul TSE earlier raised the point that this type of statute law often looks like a big jumble. Other Members share his view. Chairman, the clauses of the

Bill do indeed look like a big jumble. But there is a technical issue here: from the administrative perspective, if a separate legislative exercise is conducted for each of the relevant provisions of an ordinance, the authorities will have to put forward dozens of bills, and each bill must compete for a slot. This is no easy task, not to speak of the fact that since there are bound to be many omissions, amendments of this nature must often be made on an ongoing basis.

Chairman, the passage of every bill will invariably entail a number of consequential amendments. But in some cases, such amendments cannot be made globally by merely pressing a key on the computer keyboard. When I put forward the relevant clauses for discussion later on at this meeting, Members will themselves realize that there are likewise many omissions which must be handled through this kind of statute law. As such clauses are non-controversial, they can be passed easily as long as it can be clearly explained that they are technical in nature. Hence, sometimes, an over-diligent Department of Justice may put forward voluminous miscellaneous amendments to statute law. However, if it is discovered after careful examination that certain provisions originally deemed to be problem-free, non-controversial and purely technical in nature are in fact problematic, in the sense that they have policy implications, are inadvisable and must be considered carefully at the meetings of the relevant Panels before any further steps can be taken, the authorities will strike out such provisions.

This time around, we likewise thought that certain provisions should be struck out, one example being the provision concerning boys under 14 as mentioned by Mr WONG Yuk-man earlier No, it was Mr Albert CHAN who raised this point and commented that the provision did not arouse much public discussion. In fact, at the meetings of the Bills Committee, this provision was our first item of discussion. We noticed and pointed out at a meeting of the Panel that two organizations had Chairman, sorry that due to time constraint I actually should not rush along like this. Please let me speak slowly Regarding the presumption that a boy under 14 is incapable of sexual intercourse, we were told in a Panel meeting that this was a recommendation of the Law Reform Commission of Hong Kong (LRC).

Members all know that before the LRC makes any recommendations, it will always conduct several rounds of consultation. For this reason, we asked whether any people in society or organizations had put forward any different views in the course of consultation. We then found that two organizations had

expressed their concerns. However, the authorities did not give us any further details. Therefore, during the scrutiny of the Bill, we made it a point to tell the authorities that it was not enough to only inform us that these two organizations had expressed their concerns. We said that the authorities must tell us clearly what concerns they had put forward, whether Members should also pay attention to such concerns, whether the authorities had already addressed these concerns in such a way that would make it unnecessary for them to worry about the Bill to be put before this Council, or whether it was the view of the authorities that their concerns were caused by misunderstanding and should thus be dismissed. Soon afterwards, the authorities disclosed to us what their views and concerns were. Actually, they were not concerned so much about the abolition of the presumption. Rather, they were concerned about whether the abolition will affect the minimum age of criminal liability, because this involves the question of whether teenagers will lose protection in case they commit crimes due to their ignorance of the law. Clearly, there will be no change in this respect, because the abolition of the presumption is only meant to point out that in case a criminal charge, such as rape, has to be brought against a boy under 14, prosecution will not be rendered impossible for technical reasons. Prosecuting such a boy will continue to require the same onus of proof as before. As for the minimum age of criminal liability, there will be no change, and it will remain the same as before. The two organizations hope that the authorities can conduct a review as soon as possible on whether the minimum age of criminal liability can be raised further. We are thus relieved, as we can then conclude that this legislative amendment is not socially controversial.

Chairman, another issue put forward by Members concerns whether an employed barrister should be required to take out insurance. As a matter of fact, an employed solicitor is not required to take out professional indemnity insurance, and the relevant amendment proposed in the Bill precisely highlights one example of omissions. I would think that once a barrister becomes employed, it is only natural and reasonable to exempt him from the requirement of taking out this kind of professional insurance. The reason is very simple. Members should realize that professional insurance is actually a kind of third party insurance. If a client is harmed by his lawyer's negligence, what should the latter do if he cannot afford the compensation? This explains the need for professional indemnity insurance, and both solicitors and barristers must take out such insurance as an obligation under the law. However, in the case of an employed lawyer, his employer will be the only one affected. And, his

employer of course does not need any third party insurance compensation, because if the lawyer under his employment is guilty of negligence, he must likewise bear responsibility. Therefore, we are of the view that this is a technical omission, one which might have eluded notice at the very beginning. And, perhaps because of the effect of subsequent amendments to other laws, the present consequential amendment has to be made. Chairman, whatever the case may be, lawyers' responsibility will not be affected.

As for a notary's right to appeal, there is no disagreement among the Members who have spoken. However, they mentioned that in Article 158 of the Basic Law Chairman, this is surely not an appropriate occasion to discuss this Article As also mentioned by Mr Paul TSE, at present, the right to appeal is restricted to civil cases heard by the Court of Appeal where the matter in dispute amounts to \$1 million or more. In this connection, the Panel on Administration of Justice and Legal Services already expressed its hope for early reform, and I also approached the former Chief Secretary for Administration personally, urging him to do so. I hope that the authorities will continue to follow up the matter.

As for the administration of estates by consular officers, Chairman, a more secure practice involving the publication of a Gazette Notice has been adopted so far. But what is the basis of authority of such a Gazette Notice? If one argues that the authority comes from the gazettal decision of the Chief Executive in Council or the Governor in Council, then how can one prove that the decision has been so made? This leads to the question of evidence. For this reason, it was made a requirement under the law that any variation of the Schedule to the ordinance must need an order notified in the Gazette under the hand of the Colonial Secretary or the Chief Secretary for Administration. Today, they consider that it is no longer necessary to follow such formalities and have decided to simplify the wording of the requirement. And, after reading the amendment concerned, we agree that it only involves the deletion of several words and no one will suffer any harm.

As for the problem involving Customs and Excise officers' right to free entry and exit, it actually emanates from the time after the passage of the Hong Kong Bill of Rights Ordinance, when many police officers — it all started with police officers — were forbidden to leave Hong Kong for reasons of disciplinary actions and debts. The Court then ruled that this constituted an infringement of

the officers' right to free entry and exit. Henceforth, amendments have been made to various pieces of legislation, but the case of the Customs and Excise Department presently under discussion happens to be an omission. That is why the authorities have sought to make the necessary change in this round of statute law amendments.

As for the amendment on further enhancing the power of the Secretary for Justice to make editorial amendments, Members and the Bills Committee actually share the same views. We have likewise been scrutinizing such topics with utmost attention and prudence. Our question is: since a piece of legislation owes its existence to this Council's approval, why should we empower the Secretary for Justice to amend it lightly by exercising his editorial power? We agree that the Law Draftsman in the Law Drafting Division of the Department of Justice has the obligation to make our ordinances and statute law accessible to the public, to enable people to access them easily in case of need, and to make sure that our ordinances are not too difficult to comprehend.

Chairman, these few days, we have passed the Companies Bill and the Trade Descriptions (Unfair trade Practices) (Amendment) Bill 2012. These pieces of legislation may not be quite so comprehensible to laymen, so the Law Draftsman at the time, who has recently left office, showed very great concern in the process. On our part, despite our great concern for maintaining the solemnity of legislative provisions, we nonetheless agreed that there were policy justifications for his concern. But still, we immediately hastened to query why the Secretary for Justice should be empowered to alter the title of an enacted ordinance. Very patiently, the authorities explained to us that they did not mean to empower the Secretary for Justice to re-title an ordinance already passed by this Council, one example being changing a title passed today from unfair I cannot remember exactly how such sales practices are called. That was not their intention. Rather, they said, the whole point is that once an ordinance with a short title is passed, and in case the old title of this particular ordinance is mentioned in another ordinance, the old short title mentioned in the second ordinance would be replaced by the new short title (as it is already available). Therefore, the intention is not to empower the Secretary for Justice to provide a new title, but to empower him to replace the old short title of an ordinance as mentioned in another ordinance when he considers such a change necessary. To sum up, Members have been very strict on this point.

Chairman, my last point is about solicitor corporations. Some Members have queried why an ordinance passed in June 1997 has yet to come into force even today. The reason is that The Law Society of Hong Kong (Law Society) did not manage to finalize the Solicitor Corporation Rules despite the passage of a very long time. Moreover, amendments were proposed time and again during the process. The reason, as I explained when talking about limited liability partnership (LLP) in connection with the Legal Practitioners (Amendment) Bill 2010, is that the Law Society at that time did not consider solicitor corporations a feasible option and thus spent a lot of time on promoting LLP. But now, they want to proceed with the two options all at the same time.

Chairman, perhaps I should stop for the time being. Thank you, Chairman.

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

(No Member indicated a wish to speak)

SECRETARY FOR JUSTICE (in Cantonese): Chairman, please allow me to say a few words of response concerning the editorial powers prescribed under the Legislation Publication Ordinance. Dr Margaret NG has offered an explanation on short titles just now, and this aside, I would also like to give my reply to the question asked by Mr LEUNG. In respect of "equivalent", the intent is that if a word or expression is defined in the text of one official language, the Secretary for Justice shall have the power to insert a definition of that word or expression in the other official language. In other words, if a word or expression is defined in the English text, we shall have the power to insert its Chinese equivalent. The aim is to facilitate comprehension of the provisions by the general public when they read the law.

Thank you, Chairman.

(Dr Margaret NG raised her hand to indicate her wish to speak again)

CHAIRMAN (in Cantonese): Dr Margaret, this is your second time to speak.

DR MARGARET NG (in Cantonese): Chairman, I wish to take this opportunity to offer my response to Members on a point which is quite significant. Many Members, including Mr WONG Yuk-man, Mr Albert CHAN, Mr LEUNG Kwok-hung and Mr Paul TSE, have asked whether The Law Society of Hong Kong (Law Society) has become much too powerful, to the extent of being a bit defiant. In my opinion, there is a growing need for the Law Society to promote law reform for the purpose facilitating the business development of its members. This is only natural and reasonable. But why must the relevant issues require discussions in the Legislative Council, and why must the Legislative Council play the role of a gatekeeper? There are many such issues, such as those involving the various clauses meant for amending the Companies Ordinance which we discussed just now. Is it really true that while everybody else must comply with the Companies Ordinance, the Law Society should be allowed to assist on non-compliance and exemption? No, this is not the intent in reality.

Chairman, since solicitor corporations are It is of course true that any member of a corporation can always appoint another member as his or her proxy for the purpose of voting. However, a solicitor corporation as a practice entity must be run by solicitors, and solicitors must be bound by the code of professional conduct. Hence, if one such solicitor appoints another person to exercise the right of policy- or decision-making on his behalf, he will breach the code of professional conduct. For this reason, it is necessary to impose qualification restrictions on the proxy that the solicitor appoints. Therefore, given such qualification restrictions, if no amendments whatsoever are made to the existing Companies Ordinance, if the appointment of proxy by such a solicitor is to be handled strictly according to the existing Companies Ordinance, the objective of imposing such qualification restrictions in the very first place will be defeated. Policy-wise, any solicitors who engage in legal practice, whether in the form of solicitor corporation or partnership, must all be bound by the code of professional conduct, so in order to achieve this legitimate policy objective, amendments are justified. And, the vehicle should be the introduction of amendments to the Legal Practitioners Ordinance.

Chairman, we have also scrutinized the other clauses very meticulously, asking ourselves whether the amendments affecting the Companies Ordinance are

marked by any technical or policy problems, bias, unfair enforcement, and partiality. We have treated all these problems very strictly. Chairman, the reason is that if a piece of legislation we have passed is biased towards the interests of a particular group of people, then not only our own credibility but also that of the relevant organizations (particularly professional bodies) will come under challenge.

Chairman, the subjects of the debates in the past few days, such as the bill on unfair trade practices — I cannot quite remember the name of the bill — are highly contentious. The relevant provisions involve the controversy over a social policy, and this is in fact a policy dispute. Should a professional be bound by his code of professional conduct or subject to criminal liability like any other business operators? Regarding the controversy over this policy, both sides have their respective justifications. When did the controversy start? It actually started 17 years ago when I first became a Legislative Council Member.

In the past, the professions were largely left alone. Professionals enjoyed various privileges because it was thought that people must trust them for reasons of their extensive professional expertise. But it was also thought that their roles were very special, and for this reason, their conduct was subject to highly demanding codes of professional conduct. Despite the existence of the "erasure law" Chairman, under this law, a person with a minor criminal record is not required to state his criminal record in job applications after the passage of three years. However, there are exceptions. The legal profession is one profession that is an exception to this law. The rationale is that due to their special role and status, legal practitioners must be subject to extra responsibility. This was the practice in the past.

However, as the legal profession gradually evolves into a legal service provider, how is it different from traders of goods and other types of service providers? The distinction has indeed turned very blurred. That is why many foreign countries and places have started to consider whether changes should be introduced in respect of their adherence to self-regulation. As mentioned in our debate on unfair trade practices just now, should one argue that the professions should be exempt from criminal liability due to the presence of codes of professional conduct, so as not to upset their regimes of professional conduct?

Chairman, I did not speak on that bill just now because I did not think the subject could be explained clearly in just a few words at this stage. But I wish to put on record and tell Members that there are fundamentally different views on the subject which should require our further exploration.

Regarding professional conduct, many people will of course think that any sole emphasis on lawyers' breach of professional conduct will not help them seek compensation, meaning that in that case, they will not succeed when they ask for compensation from a lawyer. Hence, they will probably ask, "In that case, would you think that it is more appropriate to impose on lawyers some sort of civil and criminal liability?"

Chairman, we learn from the news that lawyers are not immune to prosecution. It is increasingly common to see professionals prosecuted by the Department of Justice. Many professionals have in fact been charged for various offences which they committed in the course of providing professional services, such as money laundering or other commercial misconduct or even criminal offences. Hence, I simply do not believe that a lawyer who has committed an offence can really enjoy any privilege that enables him to the face only the disciplinary actions of his profession and to elude criminal prosecution all together.

However, how should we go about the whole set of procedures involved? Chairman, this question, especially the very point under discussion now, really warrants discussion. Today is the last day in the term of this Legislative Council. And, as pointed out by the President at the start of the meeting just now, these are the last 10-odd hours. We can see that legal practice is set to undergo many changes in its mode of operation, such as limited liability and solicitor corporation. We have also discussed the competition law and other legislation, the expansion of the legal assistance regime, reforming legal aid lawyer's fees. And, there is also what we expect the Secretaries of Departments and Directors of Bureaux to consider in the future — class action. We also expect that in the coming decade, improvement can be made to our long-standing and only mode of operation, that is, the form of general partnership.

Chairman, when that time comes, we should pick an opportune time to recap our experience and evaluate whether the rights and interests of the general public have been properly protected; whether the code of professional conduct is

adequate, and if not, how it can be enhanced without depriving it of its original merits. Chairman, the criminal standard of proof is always high, so if lawyers are frequently acquitted on the ground that the criminal standard of proof cannot be attained, if this even becomes a common phenomenon, people in society will lose trust in the profession; worse still, they will perceive lawyers as villains. This is highly undesirable indeed.

I always think that codes of professional conduct should aim at higher standards, and professionals should attach more importance to professional conduct than to criminal liability. I always bear in mind the ancient Chinese saying "禮不下庶人" (The rules of ceremony do not go down to the common people). A modern version of it is that the code of conduct for a profession should aim at higher standards, and professionals should go for such standards and be more demanding towards themselves, rather than thinking that since a certain kind of conduct does not entail any criminal liability, they can evade the dragnet of the law or they will not be prosecuted.

Chairman, since this topic involves a very wide range of issues and it is inappropriate to discuss it in any great lengths here, I have only responded to the views or concerns about the provisions expressed by Members at the resumption of the Second Reading debate. 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 Justice, do you wish to speak again?

(The Secretary for Justice indicated that he did not wish to speak again)

CHAIRMAN (in Cantonese): I now put the question to you and that is: Clauses 2 to 32 and 34 to 71 stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(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.

(Prof Patrick LAU raised his hand in indication)

PROF PATRICK LAU (in Cantonese): Chairman, my voting light still does not work.

CHAIRMAN (in Cantonese): Do you want to vote in favour of the motion?

PROF PATRICK LAU (in Cantonese): Yes.

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

Dr Raymond HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin,

Mr IP Wai-ming, Mr IP Kwok-him, Mr Paul TSE, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

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

THE CHAIRMAN announced that there were 36 Members present, 35 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Clauses 1, 33 and 72.

SECRETARY FOR JUSTICE (in Cantonese): Chairman, I move that the clauses read out just now be amended. The amendments to the clauses concerned, as set out in the paper which has been circularized to Members, have been scrutinized by and secured the support of the Bills Committee. I urge for Members' support of the amendments. Thank you, Chairman.

Proposed amendments

Clause 1 (see Annex VI)

Clause 33 (see Annex VI)

Clause 72 (see Annex VI)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendments moved by the Secretary for Justice 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 Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

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

CHAIRMAN (in Cantonese): Prof Patrick LAU, are you voting in favour of the amendments?

PROF PATRICK LAU (in Cantonese): Yes, I am, but the voting button remains unlit.

CHAIRMAN (in Cantonese): Will other 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, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Ms Audrey EU, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mr Paul TSE, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendments.

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

THE CHAIRMAN announced that there were 36 Members present, 35 were in favour of the amendments. Since the question was agreed by a majority of the Members present, he therefore declared that the amendments were passed.

CLERK (in Cantonese): Clauses 1, 33 and 72 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clauses 1, 33 and 72 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule.

SECRETARY FOR JUSTICE (in Cantonese): Chairman, I move that the Schedule be amended. In my speech at the resumption of the Second Reading debate just now, I have already spoken on the amendment. I urge for Members' support of the amendment.

Proposed amendment

Schedule (see Annex VI)

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by the Secretary for Justice 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)

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

CLERK (in Cantonese): Schedule as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the Schedule 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)

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.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2012

SECRETARY FOR JUSTICE (in Cantonese): President, the

Statute Law (Miscellaneous Provisions) Bill 2012

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 Statute Law (Miscellaneous Provisions) Bill 2012 be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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.

(Prof Patrick LAU raised his hand in indication)

PRESIDENT (in Cantonese): Prof Patrick LAU, are you in favour of the motion?

PROF PATRICK LAU (in Cantonese): Yes.

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 LEE Cheuk-yan, Dr Margaret NG, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr WONG Kwok-hing, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mr Paul TSE, Mr LEUNG Kwok-hung, Miss Tanya CHAN, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

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

THE PRESIDENT announced that there were 38 Members present, 37 were in favour of the motion. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

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

PRESIDENT (in Cantonese): I now suspend the meeting until 1.30 pm.

12.30 pm

Meeting suspended.

1.30 pm

Council then resumed.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Supplementary Appropriation (2011-2012) Bill. Please refer to page 139, Part II of the speaking note.

SUPPLEMENTARY APPROPRIATION (2011-2012) BILL

Resumption of debate on Second Reading which was moved on 13 June 2012

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

MR ALBERT CHAN (in Cantonese): President, this is the last meeting in the current session of the Legislative Council. The Bill involves a supplementary appropriation of some \$54.1 billion, but only three Members are present in the

Chamber. This is certainly an unbecoming and ugly scene. In spite of this, I will not request a head count lest I may be accused of filibustering again. I only wish to take this opportunity to point out that Members of the Legislative Council should be made to serve on a full-time basis as early as possible, so that no Member will need to attend to any personal business or private affairs. This is a matter of public interest, involving a supplementary appropriation of some \$54.1 billion, but I want to inform all Hong Kong people that only three Members are present in the Chamber for scrutinizing such a huge expenditure. This can reflect the dark side of this Chamber.

President, this surely has nothing to do with you, but if the Rules of Procedure is to be amended later on, a rule should be added to require the automatic suspension of a meeting should the number of Members present is lower than a certain percentage. The continuation of such a situation must not be permitted.

PRESIDENT (in Cantonese): Mr CHAN, please confine your speech to the Bill.

MR ALBERT CHAN (in Cantonese): The Chamber was full of Members when the Chief Executive came to the Legislative Council yesterday. These Members wagged their tails to the rich and powerful begging for favours. How pitiable

PRESIDENT (in Cantonese): Mr CHAN, please confine your speech to the Bill.

MR ALBERT CHAN (in Cantonese): President, the sum of \$54.1 billion has basically been all spent and we are only handling the request for supplementary provision. Since there was not even any prior explanation regarding such a huge appropriation of funds, I really think that this is one area in the legislature's monitoring of the executive that requires improvement. Later, I will express my discontent and anger regarding individual items of this huge supplementary appropriation.

Regarding this request for supplementary appropriation, I believe that the funding for handing out \$6,000 to each eligible person from the Community Care Fund will command Members' support. Speaking of the handing out of \$6,000 from the Community Care Fund, I must point out that long before that, the People Power already proposed to give back \$8,000 to all Hong Kong people. According to our calculation, if \$8,000 is given back to each person, the total sum will be only \$50 billion or so, which is roughly the same as the present supplementary provision of \$54.1 billion. If all the 7 million people can be given back \$8,000, all will be very happy.

Nevertheless, the only thing our Government has done is just to funnel benefits to large consortia by manipulating the revenue and expenditure in annual budgets. The rates exemption for one single property developer already amounts to \$90 million, but people living in subdivided flats and all those "five no's" can get nothing at all. At long last, some people can each get \$6,000 from the Community Care Fund, but they must still submit applications like beggars. And, the Government seems to think that by applying for the present supplementary appropriation, it can already show its concern, love and care for people. Actually, if the Government has any fiscal surplus, it should make use of it fairly. In Macau, money has been handed out 10 times, but this very miser called the Hong Kong Government has instead devoted itself to exchanging benefits with tycoons, delighting in yacht rides, private jet journeys and all sorts of luxurious pleasures. On the other hand, the common people continue to suffer.

One item in the supplementary appropriation request is for meeting the expenditure on elite athletes. This is likewise an important item. As for the rest, Chairman, if possible, I will briefly comment on head Nos. 21, 53, 96, 121, 122 and 147 one by one later because they are all of public concern.

Expenditure head No. 21 is a supplementary appropriation for the Chief Executive's Office. Hong Kong people are very concerned about this, and *Oriental Daily News* and *The Sun*, in particular, have played their role as the fourth estate (the media) in uncovering many scandals. Other mass media have followed up these scandals, exposing not only the former Chief Executive's corrupt acts in accepting land, sea and air hospitality but also the upgrading of his hotel accommodation to deluxe presidential suites with sea view during his overseas visits. People are thus made to bear the extravagant expenses of the

greedy and corrupt former Chief Executive, thus necessitating this supplementary appropriation for the Chief Executive's Office.

Owing to the Chief Executive's extravagance and request for deluxe hotel accommodation with sea view, the overall expenditure of the Chief Executive's Office has increased, thus making it necessary for us to approve this supplementary appropriation request, which amounts to as much as \$4,937,739.14. This supplementary appropriation requested by the Chief Executive's Office is something that all Hong Kong people must take note of. Hong Kong people are robbed of their hard-earned money because the former Chief Executive was so corrupt that even on the eve of his leaving office, he still wanted to travel around the world, to live an extravagant life and to fly first-class to South America, refusing to miss any opportunity of lapping up every possible benefit, however small. Such were the corrupt acts of our former Chief Executive. In the end, of course, "Greedy TSANG's bill has to be foot by the public".

Yet, it seems to me that very few people really care about this. President, Members all look so forgiving by now. Perhaps, it is because everybody is about to pack up and leave. Well, some of them may be re-elected, and others will continue their efforts of making real money. Those who did not have the chance to make real money may do so by joining consultancy firms. Even those who intend to stand for election do not care too much about this.

Actually, this request for supplementary appropriation presents an excellent opportunity for the legislature to strengthen its power of monitoring the executive authorities. In order to expose the inappropriateness of the Government's expenditure or request for supplementary appropriation, we should express our views, pinpoint the person involved and set up an approval procedure under which if no approval is given, the person involved must pay the expenses concerned out of his own pocket.

The reality now is of course not quite like this, because the money has already been spent. Well, yes, this an arrangement on public expenditure and fiscal management between the Legislative Council and the Government, one which empowers the Government to make decisions on expenditure items up to a prescribed ceiling and later put forward a fiscal management motion on seeking supplementary appropriation. However, I really find it necessary to review this

mechanism. In particular, I think that a vetting mechanism should be introduced to deal with questionable expenditure items.

The Director of Audit will surely make efforts to rectify the situation in one way or another. However, the new Director of Audit is precisely the very person that causes the greatest concern on our part, for the reason that he himself is not such a dependable person. He has a record of violating the rule on professional responsibility, and because of his mistake, the accounting firm he worked for had to bear civil damages amounting to hundreds of million in a bid to reach a settlement. Later, the Director of Audit, then an accountant, was forced to leave the accounting firm. The Audit Commission has been scandalized by his mistake.

President, I do not think that the supplementary appropriation of some \$4.93 million should be approved, but unfortunately, we do not have the power to veto it today because as I pointed out just now, the expenditure concerned has already been made. Of course, it is impossible for us to ascertain the specific uses of this supplementary appropriation because it is in the form of a whole basket covering the overall expenditure of the Chief Executive's Office, and no breakdown is available. I think this is a totally inappropriate practice, and the series of scandals involving the Chief Executive only convince us that the request for supplementary appropriation is not justifiable.

President, expenditure head No. 53 is about a supplementary provision of as much as \$13.4 billion involving the Home Affairs Bureau. I believe that \$5 billion should be for the Community Care Fund, and \$7 billion out of the remaining \$8.4 billion should be for the Elite Athletes Development Fund. I definitely support the Elite Athletes Development Fund because I have been emphasizing for years that under Hong Kong's existing sports administration system, the bulk of the money is used for financing or funding administrative expenses, especially the remuneration for senior executives. Elite athletes representing Hong Kong in world-class sports events are usually paid very meager wages. A manager or an executive in charge of management duties, however, may receive a monthly salary of two hundred thousand to three hundred thousand dollars. In contrast, elite athletes who represent Hong Kong may earn only several thousand dollars a month despite all the toil and sweat and physical danger in their quest for glory. Their situation can be very miserable sometimes.

Hence, I totally support the idea of giving funding support to elite athletes. However, I must also point out that due to the problems with the administration system, management and financial control of the local sports sector, there have been many scandals over the years. And, athletes have even formed a "victims' alliance" among themselves. Athletes closely connected with the rich and powerful can easily be selected as representatives of Hong Kong, while others, even local champions, are not given any chance to represent Hong Kong in international sports events. Therefore, due to the control of the entire system by a coterie of insiders, the exchange of support and benefits among the rich and the powerful, and the absence of a fair, just and open selection mechanism, large sums of spending funded by the public coffers may have gone to the pockets of some people, or certain funding may have been manipulated by certain people in various names.

Therefore, I hope that information concerning how the sum of \$7 billion was spent can be disclosed in relevant reports or in the course of monitoring in the future. Society of course expects the Audit Commission to monitor the situation, but personally, I do not expect too much from the new Director of Audit. I only hope that the sports sector can keep strengthening itself, because I believe that not everyone is going to seek advantages through personal connections, or to look for benefits by organizing various activities. I guess you all know which persons I am referring to. In the sports sector, there are still many people who are prepared to contribute both money and their efforts. But, of course some of those prepared to contribute financial support may not be so competent in professional sports management. Anyway, such well-intentioned people still deserve our commendation.

The addition of the fund is definitely conducive to the development of elite athletes in Hong Kong. I hope that the fund can really bring new hopes, new development and prospects to the local sports sector. From the Olympic Games this year, one can detect certain signs indeed. But money is not the only factor contributing to success in sports. Rather, much more must depend on the sports administration system and culture. Local soccer is an example. We possess splendid soccer pitches, and we used to be called the King of Soccer in South East Asia. Yet, nowadays, we may not even be able to beat Vietnam. This is very saddening indeed. Also, the fund will be of help to the operation and other aspects of the Hong Kong Sports Institute.

Besides, regarding the Community Care Fund, as I mentioned before, I object to putting it under the management of the Home Affairs Bureau because it is not suitable for the Home Affairs Bureau to manage the Community Care fund which involves billions or even tens of billions of dollars. The fund should be managed by the Labour and Welfare Bureau instead. To my understanding, the Commission on Poverty held a meeting recently and announced yesterday that it would consider putting the Community Care Fund under its ambit. This may be the right direction, because putting the fund under the management of the Home Affairs Bureau is certainly a mismatch, something that must not be allowed to continue.

President, I have strong opinions on expenditure No. 96 as well. The supplementary appropriation in question is to cater for the expenses incurred by Overseas Economic and Trade Offices, and it amounts to \$2.81 million. This sum is certainly small when compared with the several items mentioned just now. The reason is that the total sum of supplementary appropriation is \$5.41 billion. The Chief Executive's Office accounts for \$5 million, and only the Chief Executive is involved. In contrast, Overseas Economic and Trade Offices involve heavier workload and more offices. Regarding the supplementary appropriation of \$281 million (*The buzzer sounded*) President, I will give additional comments in this regard later.

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

MR WONG YUK-MAN (in Cantonese): Who else except us will speak? It has been nearly two hours and the discussion of this Bill will have at least a few more hours to go.

I do not share the view of Mr Albert CHAN, who suggested that no more summoning bell should be rung to request a headcount. And yet, ringing the bell or not have nothing to do with us. Today, some reporters told me that I was blamed for requesting quorum counts and hence the ringing of the summoning bell. If this is the case, they should attend the meeting, right? In this Chamber, there are only one, two, three, four, five, six, seven, eight Members, who merely sit without speaking. And yet, this could at least save the need to ring the summoning bell. Who actually is wasting time then? Buddy, this is an

instance of "a thief calling on people to catch a thief". People who have not attended the class accused those who have attended the class. What kind of logic is this?

This Supplementary Appropriation (2011-2012) Bill seeks to provide for a supplementary provision in addition to the sum appropriated to pay for expenditure up to 31 March 2012. We certainly have views on some items. Regarding the Community Care Fund mentioned by Mr Albert CHAN earlier, the Government has not clearly stated the reasons for such injection. The approach of passing the hat around for donations from the rich people is destined to be a cocoon spun around ourselves, and it now ended up with insufficient funds. If we revisit the original proposal of the Community Care Fund, I can have a good discussion with you for at least an hour. The Secretary is not in the Chamber now and is having a nice chat with someone in the Ante-Chamber. From a quick glance of the original proposal of the Community Care Fund, one would see that it is too complicated and too much. Apparently, the rich people had turned a cold shoulder to the Government which will soon descend from power. Perhaps the situation may change after Mr LEUNG Chun-ying rises to power, but the road is pretty difficult. Will the rich people donate money to him? Members representing the rich people have all left, leaving the Government to foot the bill. Is it not better to give additional resources to social welfare?

Everyone sings praises to Mr LEUNG Chun-ying's proposal, but the relevant has actually been discussed for long time, am I right? It is actually no different from the CSSA, which also requires the applicants to go through a means test. The only difference is that the amount is slightly higher than that of the CSSA. Each elderly person will receive \$2,200. Although it is only \$400 more than \$1,800, the proposal has been portrayed as a move which upholds justice and righteousness.

Regarding Mr Albert CHAN's views on elite athletes expressed earlier on, I also have slight disagreement with him. But I am not going to elaborate on this to avoid dousing him with cold water. Elite athletes may not necessarily be miserable, only those penniless athletes are miserable.

Regarding the supplementary provision for the Community Care Fund, we noticed that the provision sought has far exceeded the original estimate and the difference is more than double. We can therefore see that the Community Care

Fund Scheme was doomed to fail right from the start, and this has been discussed time and again in the old Legislative Council Building. Take a look at the figure, the original estimate is some \$135 million Or, is it \$1.3 billion? What is the amount here? The figures are so dizzying and I have presbyopia. Anyway, the difference is more than 10 times, which really makes me feel very puzzled.

We certainly need to discuss the provisions item by item, which involves different areas. The item concerning the Chief Executive's Office is too unacceptable. Although the former Chief Executive has already packed his bag, we are now seeking supplementary provision for his expenditure, which involves millions of dollars. And yet, there is no way we can impeach him as he has left office. How many directors have served in the Chief Executive's Office so far? The former Director Prof Gabriel LEUNG was the most miserable, so he preferred to work again as a lecturer in the university. He performed outstandingly when he was the Deputy Secretary for Food and Health. He was ready to negotiate with Members and had done his best to help the hawkers or in other respects. Nonetheless, he was subsequently deployed to the Chief Executive's Office and had humbly accused himself of bringing bad luck. I nonetheless do not think so. Instead, the Chief Executive should be blamed. When the budget was discussed, we had proposed to scrap the estimate of the Chief Executive's Office. Without a doubt, the proposal was not endorsed. The only thing we can do is to air some empty words. Things get so difficult in this Chamber.

Let me say something more about the elite athletes, and I originally do not intend to speak on this topic. The Elite Athletes Development Fund has a deficit fund balance, but this is not unique to this fund. Other similar government funds also have deficit fund balances. Although this Community Care Fund, supposed to be brilliantly established, is intended to solicit donations from the rich people, it cannot escape from the fate of a deficit fund balance either. If not, why is it seeking an injection of fund?

Whenever there is a deficit, injection of funds is necessary. President, what matters is that we are using the taxpayers' money to supplement the deficit. Even if this is not a problem, but should the authorities at least review the reason for the deficit? The reason given is nonetheless very simple. There is only one sentence explaining the major reason for seeking supplementary provision.

Laughably, supplementary provision was sought for the Home Affairs Bureau of the Government Secretariat for an injection of funds into the Community Care Fund and the Elite Athletes Development Fund. However, there is no mention of the reason causing the fund deficit. How can we approve the relevant provisions? The authorities have failed to look into the cause of the fund deficit, but simply give a brief account using one sentence.

Our concern is who manages the Elite Athletes Development Fund, private fund managers or the Hong Kong Monetary Authority? How much are the management fees? If it is managed by private fund managers, what are the requirements of these managers? How are the fund charges determined? It was reported that these questions have been raised in the previous discussions of a certain panel, but no answer has been given and it turns out that the funds have deficit balances.

According to a newspaper report in May 2011, the investment return of the Elite Athletes Development Fund has failed to achieve the target. Why would this happen? Will this affect the assistance provided for the athletes? I also want to ask why this \$7 billion Elite Athletes Development Fund does not cover players of football, basketball and volleyball. Regarding the problem of retired athletes which Mr Albert CHAN has briefly touched on earlier, this is not addressed by the Elite Athletes Development Fund either. Will the Government explore other solutions to this problem? While the Elite Athletes Development Fund is dedicated for elite athletes, has the Government shown any care to the non-athletes?

For non-athletes, I mean the retired athletes whom I have just mentioned. It is not uncommon to hear news about retired athletes engaging in illegal activities to make ends meet. Worse still, the Elite Athletes Development Fund has classified athletes into elite and non-elite, though this has been widely criticized. Having said that, the fund can be used to train elite athletes, and promote sports for other athletes, the general public or young people so that the next generation can grow strong. This is also beneficial to society as a whole. Should the authorities do something to promote sports for all despite the need to classify elite and non-elite athletes? Is it more value for money to spend the public money in this way?

There are two problems: first, the Government has failed to look into the reason of the deficit; second, there are management problems with the funds. In other words, the supplementary provision of the Home Affairs Bureau has serious problems, adding that the amount of money involved is not small. Perhaps the controversial provision for the Elite Athletes Development Fund will be approved, but that for the Community Care Fund is really unacceptable as the authorities have refused to submit the relevant accounts for consideration.

Another provision which has aroused great dissatisfaction is concerned with the Hong Kong Police Force. Is supplementary provision sought to purchase the more expensive large-sized pepper spray, which will replace the medium-sized pepper spray? We have all seen what Police Commissioner Andy TSANG has done before 31 March 2012. He is now seeking approval of a supplementary provision of some \$500 million for additional expenses arising from the civil service pay adjustment. Even if this is true and there is no big deal for a department to seek supplementary provision for the purpose of maintaining law and order, but theoretically, it is a passive initiative to restore social order for the purpose of maintaining law and order. This is not a proactive authority or power, which must be clearly defined.

Members may notice from the past period of time that under the leadership of the incumbent Commissioner of Police, the Police Cadet Schools have added new information in the course materials and required the cadets to be hostile to the demonstrators and journalists. The recent controversy over national education was also triggered by the relevant course materials, and more problems have unearthed. It is found that the Hong Kong Federation of Trade Unions has daringly organized The Young Pioneers in Hong Kong. How daring! Worse still, it obtained its fund from the Government. Going back to the Hong Kong Police Force, it has been reported that the number of peaceful demonstrators arrested by the police over the past period of time was the largest.

I sometimes sleep on this question and emotionally, it really makes me furious. Of the 138 people arrested in Admiralty on 1 July 2011, 10 were prosecuted (and two of them are now present at the meeting), which is unlike the past when protesters participated in a sit-in protest were mostly not prosecuted. Owing to the need to attend the Council meetings, these two Members have twice failed to attend the pre-trial reviews and the relevant procedures have been rescheduled to 25 July. "Big Guy" and I have decided to defend ourselves in

court. The case will probably drag on for some time, and it is a waste of time and money. After calculating, the legal fees to be incurred by other defendants will exceed millions of dollars. Buddy, we had merely participated in a procession and sit-in protest, and had not run recklessly into the roads. We have not done anything but were convicted of three offences, namely participating and organizing an unlawful assembly, and knowingly joining an unlawful assembly. Some friends from legal sector told me, "Yuk-man, you should be prepared for a prison sentence".

Chairman, as far as personal feelings are concerned, we must oppose this proposed provision. Both "Big Guy" and I have been attacked by pepper sprays hid in the pockets of the policemen, who directed the sprays at us right at start. The pepper sprays currently used by the policemen are more powerful than before, which splashed like fountains. Chairman, I really feel scared and would like to tell the frontline officers not to pinpoint their operations at me. I may go blind by accident. Since you have undergone an eye operation, you should know that I will certainly go blind. What is even worse is that the policemen would take off your glasses with their left hand and fired the pepper spray at you with their right hand. Have you seen this before? What kind of police officers are they? If you wear glasses, they will take off your glasses with their left hand, and take out the pepper spray and fire at you with their right hand. The experience of "Long Hair" was even more exciting. Luckily, he was at a distance with the policemen when the pepper spray splashed like fountains at him. As his eyes are not big, he immediately closed them. It was fortunate that he was well prepared for that, otherwise it would be terrible.

How could these happen? Even though the Bill will certainly get passed and the seeking of supplementary provision is a mere formality on which no one would speak, I still have to make use of the opportunity provided by this Council to make a speech. Since there is a live broadcast of this meeting, someone may consider my speech plausible. Hence, Chairman, do not think that I am talking nonsense. Why should we provide an additional provision of \$500 million to the police for purchasing pepper spray? Why would water-filled barriers be erected for no reason? Mrs Carrie LAM has even put in good words for the police, saying that those water-filled barriers could be pulled down. I wonder if she has her brain changed after taking office as the Chief Secretary. Buddy, why is there a need to erect so many water-filled barriers? How can they be pulled down? This is completely nonsense. LEUNG Chun-ying went further

to say that the police have already shown great restraint. How can their behaviour be regarded as exercising great restraint? Have they shown great restraint by continuously splashing those large-sized pepper sprays at us? I was at the scene and had been hit by the pepper sprays twice. Of course, people who eat salted fish should be prepared to withstand the resultant thirst. Who asked me to go to the street? President, I will speak again later.

MR LEUNG KWOK-HUNG (in Cantonese): President, this Council is of course very political. I heard Secretary Carrie LAM's comment that the Chief Executive and herself were confronted with protests because some political parties wanted to make their views heard for the elections on 9 September. That comment is very undignified. Of course, what she said is probably true.

Coming back to this subject, that is, the appropriations made to the Government and the police, I want to discuss their supplementary provisions together. A ruler may have all sorts of personal feelings when being criticized But if she speculates on the motives of other people, isn't that the same as religious witch-hunting? That is an act of penalizing others on the basis of motive alone. Isn't that permissible under modern politics? If supplementary provisions are made to the Government

PRESIDENT (in Cantonese): Mr LEUNG, what is the relationship between the contents of your speech now and the Bill?

MR LEUNG KWOK-HUNG (in Cantonese): She is a member of the Government. The question of whether the Chief Secretary's comment is worth such a large sum of money alone is already a subject worthy of discussion. When the entire team met with dissenting views in a community visit, they blamed a small group of people for putting up those acts for the elections on 9 September. If I do not discuss this comment "mouth-to-mouth" and "face-to-face" today, should I do what my mother does and only say my views during the ritual of "beating the petty person" in the worship of gods? I am not that kind of person. That is a testimony of the Government's performance, the Government's

PRESIDENT (in Cantonese): Mr LEUNG, what is the relationship between this funding request and the recent activities of the Government?

MR LEUNG KWOK-HUNG (in Cantonese): There is only one Government. Funds allocated to the Government can be used by all departments together. From that person of the Home Affairs Department who refused to let me enter the venue where a function attended by LI Keqiang and Hu Jintao was held, to that person of the police force who sprayed pepper foam on me, the Chief Secretary who commented on the protests, as well as all civil and military officials present in the Chamber now, they all belong to the same Government. They use their allocated funds together. I have no idea how to separate their accounts. I only know that as a special state machinery, the police force is given special supplementary provisions, which illustrates clearly its nature as a state machinery.

Regarding the supplementary provisions I have never heard that a person who talks about the theory of philanthropy in a debate competition would be criticized for doing so merely for the sake of winning. Buddy, what are you talking about? What is your purpose when you visit the community? I am asking you, what is your purpose when you visit the community? If those people who oppose you have an ulterior motive, that is because something will happen on 9 September, the day MAO Zedong died President, the subject just comes up. Really, they do not even know about feng shui

PRESIDENT (in Cantonese): Mr LEUNG, you have digressed.

MR LEUNG KWOK-HUNG (in Cantonese): MAO Zedong died on 9 September, buddy

PRESIDENT (in Cantonese): Mr LEUNG, you have digressed. Please speak in relation to the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): If that is the case, it is alright. I know we are on the subject of funding allocation to the police. The sum of \$590 million is allocated for "attack by reasoning and defend by force". Having just talked about "attack by reasoning", I will talk about "defend by force" now. It is only through the defence by force that one can deliver powerful attack by reasoning. Without the police, how can the officials act so viciously? We cannot even come close to the officials.

President, what is the purpose of making \$590 million supplementary provisions to the police? I received little formal education. But I happened to read on the newspaper one day that the number of police officers per capita in Hong Kong is the highest among metropolitan cities in the world. Then, which aspects need strengthening? Pepper spray? Or what? Does the Government want to mobilize tanks?

President, I would like to seek your advice on one question. I would like to entrust you with a question for the officials sitting on the other side: Has the former Special Branch under the British-Hong Kong Administration ever been revived after ceasing operation for such a long time? If it has, which is this department in the police force? This question has been asked a long time ago. Mr James TO has long been asking the Government whether the Special Branch, or the *Einsatzgruppen* has been revived?

The present problem with the police is the large sums allocated for informer's fees and the undisclosed special services fees. I do not even know if they have bugged your office. Why do the police refuse to disclose these breakdowns? They say such information is confidential. What is so confidential about it? People with some general knowledge would know that the Special Branch under the British-Hong Kong Administration was established as the *Einsatzgruppen* to meet the need of the then colonial rulers, and its operation was known to no ordinary citizens. Perhaps the chief-of-staff to the Governor (that is, the Executive Council) could make it answerable; that I am not sure. On this account alone, I must find out whether it has revived or not. Has the revival of the Special Branch been hidden under the myriad of expenditure items in various government accounts? Is that the case? I must of course ask questions about it.

Secondly, the police is a machinery for suppressing riots — President, as you say I have digressed, I will illustrate my point with actual examples — during the visit made by LI Keqiang and Hu Jintao to Hong Kong, sounds and echoes were made by this thing Andy TSANG. He did not know how to speak; he only made sounds of echoes when others asked him a question. Somebody asked him, "Is it necessary to erect the water-filled barriers?" He then sent a person to reply, "The water-filled barriers are very important. Our aim is neither to obstruct the demonstrators, nor block the demonstrators' view of President HU or *vice versa*; instead, we want to protect the fleet from car attacks." Buddy, what was he talking about?

President, I am a worthless person. As the head of state of the People's Republic of China and Chairman of the Communist Party of China, President HU has travelled around the seven continents and five oceans in the world. He has visited London, New York and Paris — all high-risk places already subject to terrorist attacks. Was he given such vigilant protection during those visits? Had water-filled barriers been used by the host countries? When visiting those places, President HU would probably only need to say, "Our countries have diplomatic relationship. I am a VIP. I am a key figure in the international arena. I want to see neither 'Long Hair' nor Jasper TSANG." It would do with just a few words like these. There was no need to deploy water-filled barriers at all, so long as he was kept away from the persons he did not want to see

PRESIDENT (in Cantonese): Mr LEUNG, your point is already very clear. Please speak in relation to the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): the question is, there is really no need for you I have not finished yet. I am only half-way through my points. Even with your wit, you may be unable to guess what I have to say.

The police have abused their powers. They themselves even admitted that the threat of terrorist attack was only moderate, that is, lower than the high risk of terrorist attacks in Paris and New York, buddy! Why is it necessary to use water-filled barriers in Hong Kong while those places had no need for such to prevent the threat of *bona fide* car attacks? Had it not been the use of water-filled barriers by the police, why would the demonstrators — who should

rightfully be able to protest in that area after their appeal was upheld — still lose their right of demonstration? After the demonstrators lodged the appeal, the Appeal Board had clearly ruled that they could protest in that area. Yet the police had erected the water-filled barriers because even though the risk of terrorist attacks was only moderate, they still considered it necessary to use water-filled barriers apparently out of concern about the risk of car With the erection of water-filled barriers, no traffic could pass through. Such administration by the Government had aroused protests from members of the public. We only crashed the water-filled barriers and metal fences because we wanted President HU to see what happened. Buddy, you had abused your power first, and you knew very well that such abuse would definitely incite even more public discontent. Hence, you had prepared to treat me with super spicy pepper pork belly soup, that was a big serving indeed

PRESIDENT (in Cantonese): Mr LEUNG, your speech now has strayed too far from the subject. Please speak in relation to the Bill.

MR LEUNG KWOK-HUNG (in Cantonese): President, we see immediate result with what we do. On account of the police's reception for President HU alone, we can see clearly that the proposal to increase allocation to the police is not necessarily correct because they have expended too many resources on protecting the dignity of the rich and the powerful, rather than safeguarding public order. Too many resources have been expended such that ordinary members of the public are made to suffer when exercising their proper rights and freedom. Why should we continue to allocate resources to them? Can they give us an explanation? No, isn't that so?

Who is present in the Chamber now? We have with us Mrs Carrie LAM, the Chief Secretary for Administration; of course, presumably, she knows everything. Is Prof K C CHAN responsible for the Security Bureau? Where are the officials from the Security Bureau? Shouldn't all relevant officials be present here? If I were to ask a question about education, who would reply? Would that be the invincible Chief Secretary once again? Does she know everything about the 13 or 15 policy areas? They must absolutely not belittle this Council, even for miscellaneous They are now asking for money; they want \$590 million! We are now discussing the topic of fighting, yet no martial

arts champion is here. No other officials are here, and she is the only one holding on, is that alright? I have strayed from the subject, but they have strayed even farther. Nobody can answer my questions. It is up to you to make a ruling as to whether I have digressed or not, and there is no need for her to protest that I have digressed, President, isn't that right? We see immediate result with what we do. Firstly, does secret police exist in the force? We do not know. Secondly, the police are blatantly abusing their powers, yet we are powerless to deal with the problem. Then you even come to ask me approve the allocation of \$590 million to the police. How can I approve such a request? I really have my reasons. I dare not have such confidence in other issues, but I am really an expert in this matter.

There is another issue about the interception of communication. Justice WOO has expressed outrage over this matter time and again. Both the Independent Commission Against Corruption and the police are well aware that bugging is prohibited in certain places, yet they still do so. Let me give an example. For instance, although bugging was specifically prohibited in the office of lawyers — I am not talking about mobile phone of lawyers; it is still possible to change one's mobile phone number frequently — although bugging was specifically prohibited in the office of lawyers, they continued to do so until the report of Justice WOO was due to be released to provide that bugging was prohibited in the office of lawyers and they quickly destroyed the relevant papers. Buddy, do we need to teach this naughty child a lesson? Should we still give him \$5 for snacks? No way! That is how I was taught by my mother. When I was naughty, I would have nothing to eat for the day; when I was naughty, I would have no pocket money for the week.

President, I can easily cite those bad track records without even thinking. How can I approve the allocation of an additional \$590 million to the police? Why do the police not provide us with a proper account first? How can the funds be used properly? While the funds should not be left unused, they must be used properly. Given that the police have violated human rights, aided and abetted the evil-doer, and engaged in black-box operation, how can we approve the allocation of an additional \$590 million to them?

President, to be honest, I have really not strayed from the subject because there is a universal, or a common characteristic. To the rich and the powerful, they flatter; to the commoners, they batter. How can I give them money? The

Commissioner of Police should have the responsibility of maintaining law and order in Hong Kong, that is, law and order in the long term, so as to let the people feel that this is the place where they belong. When the security forces only maintain law and order in the short term with the aim of suppressing the people's rights and prying into the people's privacy, how can I give them money?

On the question of what functions do police officers serve, the answer is of course maintaining public order. Then, I want to seek your views on this question: Tapping the conversations of a lawyer is like tapping your conversations, do you think whether it should be done? As your status is on par with that of a lawyer, I consider that bugging should also be prohibited in your office. I do not know whether that is already the case. If one day our conversations were leaked to the newspapers by the police, would you feel angry? If you were speaking in the floor today, would you approve the allocation of \$590 million to the police? You would not, right? The privilege between a lawyer and his client is absolute, yet they still keep on tapping.

I now speak to Chief Secretary Mrs Carrie LAM. Perhaps she has not really listened to what I have said because that is something she does not understand. Simply put, Andy TSANG and the new Secretary for Security, is that Mr LO or what I have forgotten the surname of the new Secretary for Security. Anyway, he is the person after Ambrose LEE. The successor of Mr Ambrose LEE is not here today. How can I give him the money? When I was small and asked my mother for money, I must wait 10 minutes while holding my ears and said, "I know I am wrong. I will never do it again. Please give me some money for an ink box." Has a similar procedure been provided here? That is all I have to say.

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

(Mr Albert CHAN stood up)

PRESIDENT (in Cantonese): Mr Albert CHAN, what is your point? You have already spoken.

MR ALBERT CHAN (in Cantonese): I know. But according to my understanding, the Budget Do I have to wait until the discussion on individual items later when I can speak again?

PRESIDENT (in Cantonese): Yes. We are now having the resumed Second Reading debate of the Bill.

MR ALBERT CHAN (in Cantonese): OK. Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, at the close of account for the financial year 2011-2012, the actual expenditures under 38 heads of expenditure exceed the sums originally appropriated to these heads under the Appropriation Ordinance 2011. The reasons why there are additional expenses under these heads are set out in detail in Annex B of the Legislative Council Brief. The Finance Committee has approved or authorized approval of the additional expenses under various heads. In accordance with section 8(8) of the Public Finance Ordinance, I have reported to the Finance Committee and tabled in the Legislative Council the approved supplementary appropriation within the quarter.

The actual expenses under various heads are facts that cannot be changed. The purpose of this Bill is to complete the established procedures as legally required in relation to the supplementary appropriation of around \$54 billion under 38 heads of expenditure. Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Supplementary Appropriation (2011-2012) Bill be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr Albert CHAN rose to claim a division.

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

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

(Prof Patrick LAU raised his hand to indicate his intention to speak)

PRESIDENT (in Cantonese): Prof Patrick LAU, are you going to vote for the motion?

PROF PATRICK LAU (in Cantonese): Yes.

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

Mr Albert HO, Mr LEE Cheuk-yan, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Ms Miriam LAU, Ms Emily LAU, Mr TAM Yiu-chung, 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 Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou and Mr Paul TSE voted for the motion.

Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

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

THE PRESIDENT announced that there were 36 Members present, 32 were in favour of the motion and three against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

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

Council went into Committee.

Committee Stage

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

SUPPLEMENTARY APPROPRIATION (2011-2012) BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Supplementary Appropriation (2011-2012) Bill.

CLERK (in Cantonese): Clauses 1 and 2.

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

MR ALBERT CHAN (in Cantonese): Chairman, since my papers are somehow in a muddle, may I ask Your Honourable whether clauses 1 and 2 are provisions relating the overseas offices of the Hong Kong Economic and Trade Office (HKETO)?

CHAIRMAN (in Cantonese): For clauses 1 and 2, the former clause is about "Short title" and the latter is about the approval of the appropriation of \$54.1 billion. Since the latter also covers the Schedule, which may have set out the content you intend to discuss later, you may talk about the content of the Schedule when you speak on clauses 1 and 2.

MR ALBERT CHAN (in Cantonese): Alright. Thank you, Chairman. Clauses 1 and 2 involve the "Short title" and the provision of a sum of about \$54.1 billion.

In my view, when the Legislative Council resumes in October, it should conduct a comprehensive review on the entire system and examine better approaches for handling provisions. If Members remember, a very stringent mechanism covering every detail has been put in place for approving provisions. First, the policy bureau concerned should give a detailed account of individual provisions or the overall content of the provision at meetings of the Panels concerned, and discuss with Members and listen to their views. Second, Members will raise questions about the appropriation arrangement, for Members all have thousands of questions about individual items, and Members may put forth follow-up questions.

However, the mechanism for approving supplementary provisions is slipshod and loose, and no arrangement for scrutiny, monitoring or accountability is put in place. Thus, I think that the entire procedure is first Certainly, I understand that this situation has existed for a long time. But if my memory has

not failed me, the supplementary provisions for this time amount to \$50-odd billion, which was uncommon in the past. In view of the significant change and the large amount involved, it is important for the Legislative Council to scrutinize the Bill and monitor the Government.

Surely, I understand that many of the expenses involved, say expenses on the Community Care Fund and the Elite Athletes Development Fund, have undergone the scrutiny of the Finance Committee previously, and that the application for supplementary provisions of several individual items is only made after discussions and completion of the relevant work. However, there is a problem of mixing fish eyes with pearls among the items applying for supplementary provisions, where some of the items but not all have been scrutinized by Members. We have passed the items we consider worthy of support, such as the provision for expenses of two months' rent payment for public housing tenants, an extra allowance of Comprehensive Social Security Assistance (CSSA) and "fruit grant" for the elderly, and the \$6,000 grant under the Community Care Fund, and so on. Moreover, the provision under the Number of Vote 147 under the Financial Services and Treasury Bureau headed by Secretary Prof KC CHAN involves a significant increase in expenses arising from the implementation of Scheme \$6,000. The supplementary provision for the Bureau alone reaches \$29.8 billion.

If Members understand that item and know the arrangement of the provisions, Members would have grasped briefly the justifications and principles involved. Basically, I think Members will have no objection to the supplementary provisions for a great majority of items. However, in my individual capacity, I have strong views about the supplementary provisions for a number of items.

As I said earlier, it is unreasonable that we should pay for the luxurious arrangement made by the Office of the Chief Executive (Chief Executive's Office) for "Greedy TSANG". It makes me extremely angry that the Government on the one hand makes us to pay for the arrangement but on the other hand does not allow us to make further queries. His greed for marine, land and aviation enjoyment has been satisfied, he has had braised shark's fin with chicken and enjoyed the accommodation of a sea-view President Suite, yet we cannot demand accountability from him or express our discontent. The only way for me to vent my discontent was to vote against the Bill during the Second

reading earlier. However, it is unfair to do so for the provisions for many other items, such as the implementation of Scheme \$6,000, the Community Care Fund, the waiving of two-month rent and the provision of an extra one-month CSSA payment.

However, the Government has not set up a mechanism in handling these arrangements. As a Member of the Legislature or the representative of public opinion, I do not have any opportunity to express my support or opposition to individual items. At present, the greatest problem is that Members cannot vote on individual items of the provisions. This practice differs from that for handling other Bills, where we may request for putting individual items to vote at the Committee stage and the Chairman may make such arrangements.

Nonetheless, the provisions are for expenses which have already been made. Even so, a motion of condemnation should at least be proposed on the expenses so arisen. I do not know if it is possible for us to put forth a motion to condemn Chief Executive "Greedy TSANG" for his extravagant style, which we have to grant supplementary provisions to meet the expenses incurred.

Since the Legislative Council is an institute responsible for the examination and approval of provisions, I think that the procedures and the handling of supplementary provisions should be reviewed. After the review, and if practicable, the time arrangement, procedures and disclosure of information should be made clearer and more accurate, and the legislative, monitoring and administrative arrangements in this respect should be enhanced. I think the review is necessary.

Among the items of provisions, as I mentioned earlier, is the supplementary provision for overseas offices of the HKETO. The amount incurred is not great relatively speaking, for the supplementary provision for "Greedy TSANG" is \$4.93 million, but that for the overseas offices of the HKETO is only \$2.81 million. Yet, the greatest concern is that I do not know whether the supplementary provision of \$2.81 million should be attributed to the expenses arising from the behaviour of "Greedy TSANG". Had not Donald TSANG made so many overseas visits and put forth so many special requests though we do not know whether special arrangements had been made for him to visit his son. The large discrepancy between the budget and the actual expenses incurred may be attributed to his various behaviour and requests made

to the overseas offices of the HKETO, which now requires to be made up with the supplementary provision. These overseas offices of the HKETO have not budgeted for the many overseas visits made by the Chief Executive during the pre-termination period, and in terms of manpower, they have not budgeted for the expenses incurred for sending HKETO staff to certain places to prepare for the visits. For certain additional expenses incurred by certain overseas offices of the HKETO, I suspect that they must be related to the extravagant tours of "Greedy TSANG".

As such, the total expense arising from these extravagant tours of "Greedy TSANG" does not only include the \$4.93 million under the Chief Executive's Office, but also this \$2.81 million. In other words, the personal extravagant tours made by "Greedy TSANG" during his pre-termination period have incurred a supplementary provision amounting to \$7.74 million. Tomorrow, the newspapers should run bold-type headlines about the extravagant tours made by "Greedy TSANG". Since we are only talking about supplementary provision here, we may not be able to know the whole truth, and this amount may not be the total expense incurred. Regarding the total expense as a whole, there are many hidden expenses which may never be found out.

Therefore, I have to let the people of Hong Kong know clearly that given the extravagant behaviour of the former Chief Executive, there may be abuse regarding the supplementary provisions this time — I am only saying that there is such a possibility for I have not verified this carefully. However, according to logical speculation and the observation and assessment basing on facts, as well as the experience of the legislature in monitoring the Government, it is estimated that the people of Hong Kong are made to pay the \$7.74 million of expense incurred by "Greedy TSANG" for his repeated extravagant overseas visits. We will definitely grasp every chance, if any, to oppose this. Yet, the most distressing thing is that we have no opportunity to oppose it now. Certainly, when it comes to Third Reading, we will continue to stage our opposition. Yet he has made a successful escape and he has enjoyed all kinds of riches and luxury. However, upon his retirement, he can no longer take first class seats for overseas flights, and even the size of his residence will shrink to less than 1 000 sq ft.

Chairman, another item, Number of Vote 121, is the supplementary appropriation of \$850,000 for the Independent Complaints Police Council

(ICPC). Recently, the ICPC has made improvement in its work and stepped up its surveillance of the conduct of the Police, so I have to express my commendation. During the march on 1 July, members of the ICPC went among participants to monitor the conduct of the Police at various checkpoints. As such, there was significant difference between the situations of the 1 July March this year and that in the past. In the presence of members of the ICPC, the Police were more restrained. But when members of the ICPC were not at the scene, pepper sprays were used sparingly like sprinklers.

Mr WONG Yuk-man has described the scenes about the use of pepper spray, yet his experience is not as painful as mine. A man pulled him with the left hand and then sprayed at him with the right hand. In my case, I was treated by three policemen. One of them hold me, another one sprayed pepper spray on me and the last one gave me a punch. Chairman, the three policemen shared the work of treating me.

I now turn to the \$592 million supplementary provision for the Hong Kong Police Force (Police Force). I strongly oppose the provision under this item. Since it is my personal experience, I must declare my interest. I have to point out that "Longhair" mainly talked about the water-filled crowd control barriers, which had been brought when the conference of the World Trade Organization was held here last time, so the amount incurred should be merely for management and the manpower for transport — I do not know whether additional barriers had been procured, it is possible that additional barriers had been procured. This Great Wall of Water-filled barrier is a unique scene in Hong Kong. I compare this to the Great Wall of China. During the era of Emperor Qin, the Great Wall of China could not safeguard his power to rule. By the same token, the Wall of Water-filled barrier cannot safeguard the dictatorial rule adopting power abuse. The shameless ruling authority under "Wolf Ying" is a big liar. Sooner or later, it will surely be overturned under the opposition of the people.

Why do I oppose the \$500 million appropriation for the Police Force? The application for additional provision proves that there is serious wastage in manpower deployment and handling on the part of the Police. We have to tell the people of Hong Kong that when they appreciate the Wall of Water-filled barrier and when they appreciate the deployment of thousands of policemen along main accesses, they have to pay for it. Hong Kong will become a police society and a police state, the violent conduct and power abuse of policemen have

affected our freedom of speech and our freedom of movement, as well as the order and peace of society. It is the Police who have disturbed the peace. But we have to pay \$590 million for the additional expense incurred. The people of Hong Kong must know it clearly. Some people hate us, so they say that it is right for the policemen to spray us. Yet, they have to pay for it. Am I right? The Commissioner of Police (C of P), Andy TSANG, wants to show his authority, yet it is the people of Hong Kong who foot the bill. The show of authority by the C of P in front of State leaders was paid by the people of Hong Kong. Hong Kong people have to pay \$590 million for this.

Therefore, if Members are to agree to pay this sum, please ask their conscience: Why the money is not granted to the elderly? Why the money is not granted to hospitals? Why the money is not used to improve our living environment? Why the money is not used to provide concessions and exemptions on MTR fares or to prevent fare increases by the MTR? Why the money is not used to alleviate the housing problem? So, this sum of \$590 million is wasted. Why do I say so? I have to explain it. Since we do not have the breakdowns of the supplementary appropriation, I suspect that the expenditure incurred is related to manpower, for I have never seen the deployment of so many policemen, the ratio is significantly out of proportion.

In the past, at demonstrations or protests or specific places, we would see a row of policemen on duty. However, at the series of protests I took part recently, the situation changed. I think the ICPC should review this in future. It should examine whether the so-called establishment and arrangement of policemen have involved some improper, abnormal and unprofessional practices, or a waste of manpower of the Police and public money. In a number of events, we had only 100 participants or so, yet nearly 300 policemen were posted in the surrounding area. Besides, we had not taken any action to charge towards anything. It was thus a waste of manpower and a waste of public money to station several hundreds of policemen there for long hours. Additional deployment of policemen A large number of policemen were deployed from different districts to Central, some were from Sha Tau Kok, some were from Sheung Shui, and some were even from Ping Chau and Cheung Chau. Additional spending of public money was incurred in the frequent deployment, which has given rise to the need for the supplementary appropriation of \$590 million. Due to the abuse of power of the Police, the intention to show its authority and these improper practices of the C of P, Hong Kong people have to

bear addition expenses. As such, we strongly oppose the application for the supplementary provision of \$590 million submitted by the Police Force.

CHAIRMAN (in Cantonese): The Bill covers applications for supplementary provisions for additional expenses arising from the provision of government services in the previous financial year ending 31 March this year.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, you really said very well. You mean that Mr Albert CHAN's speech has digressed from the topic as the money has already been spent.

If we do not take this opportunity to chide the Government today, it will seek supplementary provision again for another round of supplementary provision can be sought next year. This Council can actually approve supplementary appropriation bills one after another. I wonder if you have children. If you often give them money, they will ask for more. We are smart enough to know that the money has been spent, and the Government is now seeking supplementary provision to recover the money spent. To prevent recurrences, the Bill proposed today seeks to prevent future requests for supplementary provision

CHAIRMAN (in Cantonese): Members should not digress from the topic when they speak.

MR LEUNG KWOK-HUNG (in Cantonese): I did not, buddy. I am smart.

Regarding the police officers, first of all, I must state that I respect all police officers but not the police. Thus, after listening to my speech, police officers should not be hostile to me because you all joined the Police Force with a determination to maintain law and order. What I am saying is that under inappropriate leadership, the Police Force has failed to help police officers achieve their goal.

Let me use the appropriate planning of the Police Force as an example. Yesterday, Mr LEUNG Chun-ying told us here that he cared much about the elderly people and would increase the amount of elderly healthcare voucher to \$500 with an additional spending of about \$300 million only. However, the police are now seeking a supplementary provision of \$590 million. The Police Force has been a spendthrift which does not only incur unnecessary expenditure, but also fearlessly spend in advance for special operations. If they are not convinced that the Legislative Council — be it out of good intention or lack of time for supervision — will approve the provisions, will they dare to do so? Perhaps Members should try to persuade Andy TSANG to donate \$5,900. He will definitely be reluctant to do so if he has no money.

It is therefore our obligation to exercise control over government expenditures. Our failure to supervise the Police Force has enabled it to embezzle the money and spend in advance. What is wrong for this Council to pursue the truth here? Can they provide the details? Why is the amount \$590 million but not \$570 million? Chairman, perhaps I have digressed from the topic, but I am a Member and just imagine

CHAIRMAN (in Cantonese): Mr LEUNG, you are repeating your points. You have already given an extensive speech on the Police Force and the supplementary provision sought by the Police Force, so please do not repeat.

MR LEUNG KWOK-HUNG (in Cantonese): Which part have I repeated? Is the citing of examples repetitious? We have a phrase called "examples abound"

CHAIRMAN (in Cantonese): It is precisely because examples abound that the Rules of Procedures have not prohibited Members from citing examples, but merely stated that they should not repeat their arguments. It would be repetitive if a Member cites 100 examples to substantiate just one argument.

MR LEUNG KWOK-HUNG (in Cantonese): I get it. Chairman, we are operating from a strategically advantageous position

CHAIRMAN (in Cantonese): Please do not repeat.

MR LEUNG KWOK-HUNG (in Cantonese): How can we use commas for all sentences throughout the whole passage? Exclamation marks, question marks, dashes or open quotation marks can also be used from time to time.

Chairman, now that the Police Force seeks a supplementary provision of \$590 million, but I consider it unacceptable from the administrative point of view. I opine that the relevant public funds should instead be spent on healthcare vouchers, such that each elderly person will receive at least — according to my calculation, it should be around \$800 but not more. This would penalize Andy TSANG for spending in advance. Chairman, I really do not see any problem in bogging down the funding request. I have no idea at all. Nonetheless, Chairman, just imagine if the legislature always approves supplementary provision, this would eventually become a formality.

My argument is very simple. Since the \$50 billion injected to provide healthcare insurance for the elderly people is not readily available, we owe the elderly people a favour. These \$500 vouchers are barely enough to pay for two medical consultations. The Government should therefore exercise tight control over departments that spend in advance and incur unnecessary expenditures, and require them to submit special reports. Operations undertaken by the Police Force on behalf of the Government, in particular, might have aroused serious controversy, whereas insufficient healthcare services for the elderly has not. In other words, this Council Just as I have told LEUNG Chun-ying time and again, if he can give us the "shopping basket", I will surely kneel down.

Honestly speaking — the Chief Secretary is also present — I agree to exercise certain control over the state apparatus. This is because state apparatus, in its essence, is a necessary evil. It is an evil to control people. I hope that all colleagues would agree with me. The present request for a supplementary provision of \$590 million must be thoroughly investigated. The funding request will not be approved if no details are provided. Why? Because thorough investigation may reveal that the required supplementary provision is only \$180 million whereas the remaining \$400-odd million is unnecessary. This is how we should work. And yet, this is not the case. Rather, it is like black

Africans shooting crows at night — black against black. Everything is in the dark.

Next, I will talk about the Chief Executive. The Chief Executive has not provided any details of the supplementary provision either. Why would the Chief Executive overspend? Chairman, we have no choice but to make inference according to the known information. A government which operates in a blackbox will naturally draw wild gossips. While it would draw wild gossips in the ancient world, the mass media nowadays will report in the headline at great length. And yet, the Chief Executive's Office has not made any response, which is tantamount to a tacit admission. Chairman, do you agree? Therefore, my guess is indeed grounded.

I had once thrown an egg at Donald TSANG and it fell right in front of him. He then complained to you that he was horrified. His reaction was really adorable. I just threw an egg. And in spite of the rumours, he refused to clarify which is true and which is not. Nor was he as smart as LEUNG Chun-ying, who replied that as the judicial review proceedings of the case has commenced, there would be a chance of so and so Since I had reported the case to the police and requested an investigation on him, he did not use this as an excuse. Chairman, do you agree that this solemn legislature is obliged to make inference according to guesses, reasonable assumptions and the tacit admission which the Chief Executive has made by running a serious risk?

No one knows whether the supplementary provision sought is related to the hotel accommodation expenses incurred by him. Although we believe there must be some causal relations, we have no idea of what the truth is. There is nonetheless unanimous public opinion on this question. Even though the amount involved is just \$4-odd million So little? \$4-odd million \$4.89 million, but this small sum of money does have great significance and many people are pointing their fingers at him. If the Chief Executive dares not say anything about it, how can we know how the \$4.89 million is spent to satisfy his own greed? Should we still pay him if we find out that any single penny out of that \$4.89 million was used to satisfy his own greed? Or, should we ask him for refund?

On this question, we suspect that the overspending of the Chief Executive's Office or the Chief Executive himself is justified. According to my inference,

that \$4-odd million is not only related to his luxury dining, accommodation and trip, but must also have something to do with his no regret and shameless attitude. Chairman, I do not like to settle old scores, but unfortunately, I am now obliged to pay for his old scores. Buddy, I am not a narrow-minded and I am just doing my job — I should have forgotten him.

So far, there is no report on how he spent the money. Furthermore, Chairman, according to the law, all retired Chief Executives are entitled to have an office, a secretary and a chauffeur, and may even call on security officers when necessary. Buddy, the story has not ended and this is only the first part. As the issue relating to his luxury dining, accommodation and trips during his office has yet to be settled, what can we do about the money at his disposal in the future establishment? If he has actually wasted that \$4.89 million, should we deduct this sum of money from his future establishment?

You may find what I said ridiculous, Chairman, but it is like playing a cooking game. If you lend me a piece of wax, I will have to return a piece of wax to you. What is most disappointing is that even kids playing the cooking game are aware that the wax borrowed from others has to be returned, but he did not. This is precisely the relationship between this Council and the Government, which does not have the slightest sense of fairness. He simply walked away freely. While the Hong Kong Independent Commission Against Corruption is tasked to follow up on criminal responsibilities, there is no way we can take civil action in the absence of evidence. Neither can we stop pursuing the matter in this Council but seek judicial review with the information provided by the Government, and request compensation from him in case he loses the case. Chairman, can you see that I am forced to mumble in front of you, like uttering the Lord's Prayer, "Thy kingdom come, Thy will be done"? Or else, the Government should refrain from tabling the bill at this Council. So long as it is submitted for our approval, we cannot help expressing our views.

Honestly speaking, Chairman, all writers copy and all officials are avaricious. I cannot help repeating whenever the word "greedy" is mentioned. Although bribery may take different forms, they all boil down to one word, and that is "greedy". So do allow me to repeat. Apart from cases which I have read from the news reports, how many have yet to be dug out and are still unknown to us. Apart from investigating cases with evidence, is there any other case which does not fall within the scope of the Director of Audit and thus cannot be

investigated? There is no way we can find out. The mass media — the so-called "fourth estate" — has actually reported some dubious cases. And yet, as there is only the media's version while the Chief Executive has remained silent, the truth is therefore never known. In the story of Rashomon, there are only four characters, including the ghost. However, the Chief Executive's bribery case has spanned across the Mainland, Hong Kong and Macao, involving more than four persons. In the story of Rashomon, even the female ghost lied because she knew that whatever is favourable to her The part on the female ghost is concerned with virtue.

Chairman, after speaking for so long, you may think that I have digressed from the topic. In fact, I did. What I mean is that the Government should consider spending more money, but not to offset the expenditure of \$4.89 million. If Donald TSANG is asked to foot the bill of \$4.89 million himself, the Government can then deploy \$4.89 million to set up an investigation committee to probe into Donald TSANG's case. If Donald TSANG is innocent, that \$4.89 million will be refunded, which is fair enough. This is very simple for he pays to repair his own reputation. If "Long Hair" has actually wronged him, "Long Hair" would apologize and refund that \$4.89 million to him. In that case, the supplementary provision will seem beneficial.

And yet, like the stories written by ANDERSON, in the adult's world which is complicated, ugly and hypocritical In order to uphold the fairness demonstrated in the children's cooking game mentioned by me earlier on, you should return a piece of wax to me after you borrowed one from me. As I have spoken so frankly, some people may not consider it music to their ears but think that reason is the key. They may say "people must be reasonable and should not seize the wax borrowed from me. Rather, the wax should be returned to me." It is as simple as this. A popular remark made in this Council is "to stand up again at where one falls off".

Today, Donald TSANG owes the Government \$4.89 million. In my humble opinion — I wonder if the Chief Secretary and the Secretary will agree with me, so I call on them to make a response later on — we should not grant him \$4.89 million, but use the sum of money to set up an independent committee to investigate bribery cases. If he is proved innocent later on, supplementary provisions may subsequently be provided. If a future meeting is held for this

cause — although I may not be able to return to this Council, I swear that the \$4.89 million will be refunded so long as he is proved innocent.

That is all I have to say (*The buzzer sounded*) I have no idea if what I said is right.

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

MR WONG YUK-MAN (in Cantonese): Chairman, I have to talk about the provision for the Community Care Fund (CCF). The supplementary provision for that item includes the injection of funds to the Elite Athletes Development Fund amounting to some \$10 billion. We recall that in 2010 Policy Address, Donald TSANG suddenly came up with this bizarre idea — certainly, we should not adopt the conspiracy theory but a positive attitude to give recognition to the proposal. He reckoned that the welfare provision in society was really inadequate, so he tried to find a solution to let the rich to undertake the burden of assisting the underprivileged and the needy, hoping this would allay the sense of hatred towards the rich in society.

He might think so at the time. Then, the Government and the business sector each injected \$5 billion to establish the CCF, which holds \$10 billion. Now, the Secretary of Department is discharging her duties according to the targets laid down by her predecessor. Since she is now the Secretary of Department, it means she is in charge of this. May I ask about the amount the rich have injected to the CCF up to date? How much have they given to the CCF so far?

In the year before last year, the Chief Executive introduced the CCF and tried to raise \$5 billion from the rich with a view to encouraging them to do good deeds in their abundance, just like a teaching from Confucius that they, though rich, love the rules of propriety. It is an ideal society when people, though rich, love the rules of propriety, and it will be a society than the one where the rich are proud and the poor flatter. Yet, this is rightly the case in Hong Kong where the "the rich are proud and the poor flatter". If the rich can love the rules of propriety, the sense of hatred towards the rich would not have intensified among the public. It is a matter of \$5 billion.

I recall that back then, they had been saying that they had committed to donate a certain sum, which added up to \$1-odd billion. Up to date, it seems these are only commitments on the paper, which involve a donation of \$1.8 billion. Has the sum of \$1.8 billion been received? How much donation has been received up to now? Are there \$1 billion? According to the original plan of the Government, there should be \$10 billion, and that is why we were forced to approve the \$5 billion provision.

As I remember, the Finance Committee discussed the provision application in May 2011, and I voted against it at that time. The application for provision was passed with 27 Members voted for it, 12 abstained and six voted against it, and the operation of the CCF started in 2011. I think the Secretary of Department should know this clearly. The CCF has been established, yet does it still have \$10 billion now? The CCF needs to operate and it needs to use the money to alleviate poverty LEUNG Chun-ying says that the money in the CCF will be transferred to the Commission on Poverty for poverty alleviation.

Indeed, the Government has a lot of money. Men should have integrity, so do the Government. Since they fail to give the \$1 billion donation up to date, they should "wind up". Really, the CCF should be "wound up". Could the CCF be so shameless to continue its operation, particularly when it is running on public money? The Government should actually set up a Poverty Alleviation Fund to provide assistance to the elderly and the disadvantaged. Perhaps it may be called the Assistance Fund for the Disadvantaged and the Needy, as I mentioned earlier, so that all deprived people will be covered. The disadvantaged, the poor and the elderly will all be covered. So, it should be called the Assistance Fund for the Disadvantaged and the Needy, where the Government will allocate \$10 billion for the Fund. After all, the Government is not short of money now.

Yet it is impracticable, for it involves the issue of double-benefits, and the need to invent all kinds of pretexts. The Government knows full-well about the disparity between the rich and the poor in Hong Kong, and the problem of elderly poverty is extremely serious. Now, the offer of an additional \$1,200 for "fruit grant" requires the applicants to undergo means test. It is only a small amount, what a big deal? Why does it not simply increase the payment amount for the Comprehensive Social Security Assistance (CCSA)? After all, recipients of CCSA cannot apply for "fruit grant". When I heard Secretary Matthew

CHEUNG speaking on the radio this morning, my anger boiled up. He has been putting on that face throughout his career as a government official. He simply repeats the scripts and utter vague remarks. I do not think that he would have come up with this idea when he was the Director of Bureau. Basically, the CCF should be "wound up" and another fund should be set up.

Against this background, additional expenses were incurred, making it necessary to apply for supplementary provision. Never mind, the money is after all spent on fixing dentures for the elderly, and the granting of several thousand dollars to people who have resided in Hong Kong for less than seven years, for they are not entitled to benefit from Scheme \$6,000. These grants are provided under the CCF, yet the applicants have to undergo means tests. All these assistances are paid out from the provision of the CCF.

The money had already been spent and that is the case. However, we have to review it. Chairman, you reminded Mr Albert CHAN earlier that we are now discussing supplementary provisions, and I definitely know that. This is an opportunity for us to continue to express our discontent on this occasion. Some people think that these issues had been discussed at the Finance Committee. Yet, why issues discussed cannot be discussed again? Why the issues cannot be discussed again on this occasion? A large number of Members have been very polite in giving us the opportunity to speak. It seems that they have all been muted by certain medication. Since they willfully give us the opportunity to speak, we should definitely do so. We certainly want to set a historical record as Members making the greatest number of speeches and speaking for the longest hours. If so, we will not be criticized as "lazy-bone" by the newspapers.

Then, I come to the small sum involving the supplementary provision for The Legislative Council Commission (LCC). Regarding this point, I notice that recently of course, this is not related that sum, for the sum is only a supplementary provision. Recently, the Government has increased the salaries of civil servants and that of Directors of Bureaux under the accountability system. Chairman, you are the Chairman of the LCC, so you know that some Members have requested that their pay be doubled, so that their salaries will be commensurate with that of Directors of Bureaux.

During the interviews with some reporters, I pointed out that it was shameless. "Shameless behaviour of government officials is the shame of the

nation", and I tell you all, this is shameless. Given the present state of affairs in the legislature, how would Members still have the face to ask that their salaries be doubled? How many Members are on part-time? Every time the summoning bell rings, we have to wait for about 10 minutes for Members to return to this Chamber. How many Members are on part-time and how many Members are on full-time? How dare they want their salaries be doubled? Indeed, I find the remark of Mr CHIM Pui-chung the most appropriate, Members should be paid according to the actual hours worked. This is the best approach.

No matter how, I think that Members should not get a pay rise under the existing composition. Some people may be of this mindset: "I am a Member of the Legislative Council. I am an Honourable Member of the Legislative Council. In some countries, the salaries of parliament members are commensurate with that of the ministers. My salary represents my status, so it is unreasonable that I am only getting \$70,000-odd now." As for officials attending the meetings of the Legislative Council, even the one with the lowest salary is getting higher pay than a Member. As such, they consider it embarrassing.

But they are not value-for-money, are they? We have been urging for an increase of the operating allowance all along, yet the authorities refuses to offer significant increase but only supports meagre increase. I have done the calculation. For the coming term of the Legislative Council, the operating allowance of each Member will be increased by \$20,000 a month

CHAIRMAN (in Cantonese): Mr WONG, in what way is the content of your present speech related to the Bill?

MR WONG YUK-MAN (in Cantonese): Chairman, I just want to express my feeling. Since we are now discussing the supplementary provision for the LCC, the unsuccessful request for a pay rise from Members thus comes to my mind, and seeing their hope for a pay rise for Members' assistants had subsequently been dashed, I have a feeling that Members are like beggars.

CHAIRMAN (in Cantonese): Please do not say too much about issues not related to the Bill.

MR WONG YUK-MAN (in Cantonese): I just speak a few words about it. Chairman, thank you, I surely have to grasp the opportunity to express myself when we discuss this sum. I will now speak on issues relating to the Bill. On 16 December 2011, the Finance Committee approved a supplementary provision of \$86.61 million for meeting the anticipated expenditure on court costs for the remainder of the year 2011. At that time, the Department of Justice (D of J) had provided many papers to support the application. But now, the Government only proposes the Supplementary Appropriation (2011-2012) Bill to request Members to approve the provisions. Chairman, if we look at Number of Vote 92 on the D of J, this Council has to approve a provision of \$76,671,058.21 merely for meeting the expected higher-than-normal payment in court costs. What does it reflect? The Government is arbitrary. If we look at Annex B to the discussion paper in 2011, we would know from the content of the paper that the court costs incurred for criminal cases seem to be increasing. Does it imply that there is some problem with the D of J in initiating prosecution? Has the D of J initiated prosecution on cases which prosecution is unnecessary?

I recall that in the past few years, when participants of the 1 July March arrived at the former Government Secretariat, some of them would certainly stay behind. Eventually, in the early hours around two to three o'clock, these participants would be removed from the scene. Usually, they would not be charged for unlawful assembly, even though they had stayed beyond the scheduled time specified in the assembly application. However, after Andy TSANG assumed the office of the Commissioner of Police (C of P), the number of prosecutions initiated against peaceful demonstration is 10 times of that in the past. The number of cases involving the prosecution of the arrested persons has increased 10 times. Is it a waste of manpower of the D of J, which gives rise to the need to apply for supplementary provision? Please ask him to show us the breakdowns. For cases involving marches, demonstrations, protests and assemblies, the conviction rate was on the low side most of the time in the past. We used to think that we were in luck, yet the case was that the Court disagreed with such prosecutions. However, I notice that it is no longer the case now. This has prompted us to have another kind of worry, for when the Judiciary has become the tool for political prosecution, Hong Kong will be over.

Truly, we are worried about that. For instance, in the case of charging towards the Hong Kong Science Museum at East Tsim Sha Tsui, "Longhair" was sentenced for two-month imprisonment. During the discussion on disqualifying Longhair as a Member at the Legislative Council, some Members said that he deserved the punishment. They criticized him for making repeated violations, and that given his criminal record, it was only natural that he was sentenced for imprisonment. However, the other two students and another social movement activist, who do not have any criminal record, were also sentenced for imprisonment. Now, heavy penalty is handed down for the charges on unlawful assembly. This scares me. However, I will not dwell on this point, for this is only my fear and I do not have adequate evidence to prove that the Judiciary has already become a political tool.

However, do the increasing court costs of the D of J have any relationship with the increase in this type of prosecutions? Some people will say that it is reasonable that people violating the law should be prosecuted. It is right to say so. However, as a Chinese saying goes, "Law is not for punishing the majority". When the majority in society is violating certain laws, it means that there is problem with those laws. Certainly, the D of J should not necessarily take the blame for all these problems, yet the legal basis of some of the policies of the Government is feeble, and this is one of the reasons.

Moreover, from the information in Annex C, which indicates the actual expenditure for briefing out payments for criminal and civil cases in the past 10 years, we notice that the increase and decrease in payment for civil cases are within a reasonable range, with the exception of the payment of over \$80,000 in 2003. However, we do not know the number of solicitors involved, the number of cases they handled and the number of days they had to attend courts. When we keep receiving applications from the D of J for supplementary provisions for meeting unexpected court costs, we have to note whether solicitors' fees had been increased significantly and whether this is related to the briefing-out arrangement.

However, according to the papers we have received, I can only come to the conclusion that "it is beyond understanding". Fortunately, it is not stating that "it is beyond discussion", and so I am now discussing this. Chairman, we can speak about this, so I am not deviating from the subject. The relevant information, figures and facts are not provided in the papers, they are simply omitted. We consider this "beyond understanding" but not "beyond discussion",

and we thus grasp this opportunity to speak. Good, we can continue to speak. Since no one wants to speak, we are given the opportunity to speak.

Thank you, Chairman.

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

(Mr Albert CHAN rose to indicate his wish to speak)

CHAIRMAN (in Cantonese): Mr Albert CHAN, this is the second time you speak.

MR ALBERT CHAN (in Cantonese): Chairman, thank you for helping me clarify the point about appropriation just now — I was too excited when I gave my remarks a while ago. From the Reunification Day on 1 July last year to the Reunification Day on 1 July this year, the logics and justifications have remained the same.

Since last year, consistent manpower arrangements have been made by the Hong Kong Police Force (Police Force) during the visits by Central leaders to Hong Kong around the Reunification Day. People think that there may be an abuse of the police force as a relatively large number of policemen have been deployed, leading to a significant increase in public funds. I believe supplementary appropriation may be needed in the coming year and there may be even higher rates of increase. Let us wait and see.

Chairman, I would like to express my views on the supplementary appropriation for a few items. First, as I have just mentioned, we definitely support supplementary appropriation for a few items including expenditure head 62 on the Housing Department, and I believe the supplementary appropriation of \$1.9 billion is associated with the rent relief. I also support expenditure head 147 on the Treasury Branch of the Financial Services and the Treasury Bureau with supplementary appropriation of \$29.8 billion. I believe this is the result of the \$6,000 cash handout to the public.

Moreover, I support expenditure head 170 on the supplementary appropriation of \$923 million for the Social Welfare Department, and I believe this involves the additional expenses on CSSA and the Old Age Allowance. While the new Chief Executive continues to give out candies in the coming year, I believe the supplementary appropriation amounts in the next year will be more astonishing. The supplementary appropriation amounts will constantly increase as we may encounter more problems; so, this mechanism calls for a review indeed.

I would like to simply make two points. Firstly, expenditure head 28 is about the appropriation of more than \$8 million for the Civil Aviation Department (CAD). Although I have made criticisms about aircraft noise for many years, the whole regulatory mechanism has not been improved. In particular, the arrangement for the CAD to regulate aircraft noise is downright erroneous. The CAD is responsible for regulating aircrafts but there is not any reason why it should concurrently be responsible for noise control. The machine noise and road noise in Hong Kong are regulated by the Environmental Protection Department (EPD) and we think that aircraft noise should also be regulated by the EPD as we have repeatedly suggested. Considering the overall performance of the EPD, we will find that the noise problems have constantly aggravated. Noise exceeding 70 dB(A) was recorded and 9 162 complaints were received last year; hence, there are serious impacts on the residents in Ma Wan, North Lantau, Tsuen Wan and Kwai Tsing.

I would also like to discuss expenditure head 49 on the Food and Environmental Hygiene Department (FEHD) with supplementary appropriation of \$96 million, and I believe these are expenses on manpower adjustment. Chairman, we can see that unauthorized food establishments have rampantly been operating in various districts, and the situation has become unacceptable. Many areas in such districts as Tuen Mun, Yuen Long, Tsuen Wan, Kwai Tsing and New Territories West will be turned into the paradise for unauthorized food establishments after 8 pm or 9 pm — Mr LAU Wong-fat should be very clear about that — these unauthorized food establishments sometimes operate until 2 am, causing trouble to the residents upstairs. These unauthorized food establishments are often controlled by triad members who collect protection money from the operators.

I wonder if the Police Force needs supplementary appropriation of \$590 million because of the legislation or the manning scale. Although there is little difference between the manning scale of the FEHD and that of the Police Force, the manpower of the FEHD has gradually been reduced earlier on, leading to the deterioration of the problems in the districts.

Furthermore, I would like to talk about expenditure head 140 on the Government Secretariat: Food and Health Bureau (Health Branch) with supplementary appropriation of \$1.6 billion. According to my understanding, under this expenditure head, the estimated actual expenditure in the year 2011-2012 is \$38.2 billion, \$1.8 billion more than the original estimate. The major increase comes from the increase in the estimates of the Hospital Authority (HA) from the original \$36.1 billion to \$37.8 billion.

For many years, we have expressed concern about the appropriation for the HA, especially about the fact that the appropriation for New Territories West has been on the low side. The Legislative Council Panel concerned has repeatedly discussed this issue. On the basis of population and patient numbers, the HA's average subsidy amount for each person in New Territories West is less than that for each person in five other districts, including New Territories East, New Territories West, East Kowloon, West Kowloon and the Hong Kong Island. The amount of average subsidy for each person in Tuen Mun and Yuen Long is also the smallest as compared with other HA clusters.

We have repeatedly expressed dissatisfaction. This is absolutely unfair to the residents in New Territories West, especially those in Tuen Mun and Yuen Long. We are all taxpayers and we all need healthcare services but those living on the Hong Kong Island are given the largest amounts of appropriation; this may be because there are more dignitaries on the Hong Kong Island. The size of appropriation is frequently connected with the number of dignitaries among the recipients of services. Certainly, there are larger amounts of appropriation if there are more dignitaries in certain places, and the grassroots are always exploited and bullied.

Hence, I would like to take this opportunity of our discussions on supplementary appropriation to express my dissatisfaction with the unfairness of the appropriation for these services.

DR MARGARET NG (in Cantonese): Chairman, I would like to respond briefly to Mr WONG Yuk-man's remarks just now. He remarked that the request of Department of Justice (DoJ) for supplementary appropriation was necessitated by the need for meeting court costs, and he asked two questions. First, is the request related to the briefing out of cases by the DoJ? Second, can the request be taken to mean that the DoJ has instituted unnecessary prosecution in some of the cases? Chairman, the Panel on Administration of Justice and the Finance Committee both discussed such court costs at their meetings.

First of all, I have to explain that there are two types of cases which may be briefed out. The first type covers those cases which will otherwise be handled by the Court Prosecutors in Magistrates' Courts. Over the years, we have been advising the DoJ that rather than passing all such cases to its internal staff for handling, it should brief out more cases to barristers and solicitors in private practice. The reason is not only about lawyers' livelihood, but also about the inadvisability of maintaining any huge manpower in the DoJ for handling such cases and the need for having exchanges with lawyers in private practice to offer them chances of representing both the prosecution and defendants in lawsuits. Chairman, the cost of briefing out such cases is minimal. Even though it has been on the rise over the years, the rate of increase is very small.

Apart from these cases, the DoJ will also brief out cases of great significance. The Government will invite highly experienced solicitors or barristers to take up such important cases. Sometimes, it may even hire Queen's Counsels from overseas, and we have reviewed if the cost involved is too high. Chairman, I think you should remember that many years ago, the Government briefed out a case to a Senior Counsel and the litigation cost involved was very high. As far as I can remember, this case was related to the Carrion. At that time, the Legislative Council also queried if the cost was too high. This time, we have similarly enquired if the court costs involved in the supplementary appropriation are too high, but we do not think that the costs of hiring experienced solicitors or barristers for such big cases are disproportionately high. Taking into account the difficulties and dimensions involved, we do not think there was any obvious problem.

Then, has there been any unnecessary prosecution? Chairman, the Member's question is very explicit. In our view, the matter is not only about costs but also about the possibility of misusing the prosecution procedure. The

DoJ's reply to our enquiry, as can be expected, is that all the cases were handled according to the prosecution policy, and that in many such cases, the Government actually won in the first trials held in the Courts of First Instance or District Courts, only that the defendants' appeals were subsequently allowed. Chairman, we do not think that this reply can fully explain the situation concerned. In the judgments relating to certain cases that created quite a stir in society, the Court of Final Appeal, while allowing the appeals of the defendants, also expressed strong doubts and criticisms on the pressing of prosecution in the very first place.

Chairman, I have sought advice from some veteran legal practitioners, especially those who are highly experienced in handling the prosecution cases of the Independent Commission Against Corruption (ICAC). In their view — their personal view, of course — prosecution was justified in some serious cases in recent years because there was clear evidence, and the success or failure of prosecution should be a separate matter. Yet, with respect to some other cases, they do not think that the ICAC should have pressed any prosecution because there was no sufficient evidence and the prosecution was doomed to failure. When there are too many such unsuccessful cases, wastage of money on court costs will result and not only this, defendants will also suffer. Public confidence in the prosecution authorities and enforcement agencies, such as the ICAC, will in turn dwindle, and the public may even query the judgments of the Court. In their opinion, the authorities must conduct objective and prudent analyses before making any decisions on pressing prosecution, rather than insisting on prosecution due to all the efforts already spent on investigation efforts. We have discussed these views with the DoJ many times and sought their response repeatedly. As Mr WONG Yuk-man has asked this question today, I hope the authorities can look at the issue once again.

Of course, it is hard to tell which side will win in a lawsuit. Sometimes, witnesses' eleventh-hour change of testimonies may lead to the Government's eventual defeat. This is also one possible result of the presumption of innocence. However, when it comes to court costs, I think that as long as the prosecution policy was adhered to and prosecution was pressed with sufficient justifications, the Legislative Council should still approve the relevant supplementary appropriation even if the Government was defeated in the cases concerned. Cases not warranting prosecution also involve judicial justice, not just the question of appropriation. Thank you.

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

MR PAUL TSE (in Cantonese): Chairman, after listening to the speeches given by Mr Albert CHAN and Mr WONG Yuk-man just now, I think I should make some clarification, particularly when I think of the possibility that television viewers may thus query whether the supplementary appropriation for the Department of Justice (DoJ) implies any abuse of prosecution power.

I think it should be around October last year that the Panel on Administration of Justice and Legal Services discussed the expenditure of the DoJ. At that time, the authorities sought a supplementary provision of some \$86 million. This time around, the amount may have been slightly adjusted, and the appropriation sought under Head 92 is some \$76 million. As far as I remember, a large proportion of this appropriation is related to only several cases. I can remember particular well that the Government had to bear a cost of \$46 million for the case versus solicitor LAM Ping Cheung. Another case that also created a stir was a murder case involving Nancy KISSEL, and this similarly involved quite a big compensation.

However, I want to highlight two points. Firstly, for the sake of justice, the DoJ, being the prosecuting authority, will have no choice but to make a prosecution when it has got sufficient evidence for a particular case. Dr Margaret NG has already explained this point and I totally agree with her.

Nowadays, it seems that many defendants are willing to pay for their legal battles. If they find the costs affordable, of course, they should do so. Under our system, an acquitted defendant is entitled to be compensated of his costs, save in exceptional circumstances. No ceiling is set for the costs. If the defendant is unhappy with the amount of costs awarded, he may ask for a cost assessment through a court procedure called "taxation". In the past, this amount used to be assessed loosely and the DoJ was therefore comparatively passive in its cost control. The amount of costs depends on who the defendants are and how much money they are willing to pay. They might have hired Senior Counsels dubbed as "cannon" or even a whole team which included not only one but a dozen barristers. The costs would then be very enormous.

I am afraid that the DoJ will have to face the same situation for quite some time to come. There is after all a limit to taxpayers' money which the Hong Kong Government relies on, but the litigation risks it faces are limitless. When it comes to litigation, I hope Members will not think that only one or two prosecutions against protestors or demonstrators will lead to such serious over-spending on meeting court costs. On the contrary, my observation is that the costs incurred by these cases are comparatively low since they can either be settled quickly or are handled by the lower courts, such as the Magistrates' Court. Even if the Government loses these cases, the costs involved will not be significant.

Another point is that, in many such cases, defendants may justify themselves in court. Many solicitors and barristers may also provide free legal services to defendants voluntarily. These services are called *pro bono* services, and these lawyers are commendable. If the services are really *pro bono*, the defendants will not be allowed to claim court costs from the other party.

Therefore, I think the supplementary appropriation sought by the DoJ has little, if not nothing, to do with the recent prosecutions. Even if the authorities have really stepped up its prosecution against demonstrators, this should not be the main reason for seeking supplementary appropriation. I do not want the public to have a misconception that the Government, who seeks this huge sum of supplementary appropriation, must have made a lot of prosecutions. It will be misleading to say so.

Chairman, just now, Dr Margaret NG raised another point, that is, while the DoJ has to bear the responsibility for making prosecution, any solicitor or barrister should know that the DoJ can only rely on the evidence provided by the persons involved and witnesses before trial to decide whether to institute a prosecution. However, anything can happen after the case has been submitted to the Court. For example, the client may suddenly overturn all of his testimonies, or the client or witnesses may quit if they cannot withstand the interrogation in court. In that case, due to the presence of reasonable doubt, the Government may lose.

This is another reason which explains why costs budgeting is so difficult. Dr Margaret NG has already explained this point, and I only want to add a few words, lest any misunderstanding may arise. Thank you, Chairman.

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

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I am going to discuss expenditure head 156 about the appropriation for the Education Bureau. Regarding the supplementary appropriation this time, the Education Bureau has the largest or second largest appropriation amount though its appropriation amount is less than that of the policy bureau with the largest supplementary appropriation amount.

We do not know when the supplementary appropriation amounts will be used if there is no detailed accounts. I am concerned about the national education issue about which many people are echoing the views of others. I am not sure if national education has been introduced when the supplementary appropriation is sought this time. Has the supplementary appropriation amounts been used at the planning stage?

I think the appropriation should not be approved. I have discussed this point again and again. There is a "take it or leave it" practice at present and that always happens. We cannot have a separate debate for a special reason given to the Chairman, as in the case of other bills. We are "forced to accept" this Bill. With the Government's favour, it may allow this Bill to be split up if it thinks that "forcing us to accept" it may affect the whole situation, but I do not know whether it will do that.

Members may be forced to take a certain part for the whole. I think the officials from the Education Bureau are not present today and I cannot see Eddie NG. Why do I have worries about national education? When it was alleged or suspected that national education would be introduced, Mr NG was not yet the Secretary.

There is nothing we can do now; we cannot ask Michael SUEN to be accountable as we can only find him at the racecourse now. How do I know that? One day, when I was going to attend a demonstration

CHAIRMAN (in Cantonese): Mr LEUNG, I am not going to stop you from speaking, but, as some Members have just said, the Panels concerned and the

Finance Committee have already discussed these items. Since the supplementary appropriation under the Bill involves many government departments, it is inappropriate for a Member to discuss various government policies and measures in-depth in this debate. Please focus on discussing the Bill and try your best to be concise.

MR LEUNG KWOK-HUNG (in Cantonese): I understand that. Returning to the subject, I will talk about Eddie NG but not Michael SUEN. Chairman, you have reasonably said that these matters might have been discussed by the Panels concerned and the Finance Committee.

Many Members are present today and I can ask other Members if these issues have been discussed by the Panel on Education. I dare not talk too much about the number of Members present, and I can just say that many Members are present. However, the Secretary is not present, so, I suspect — Chairman may correct me — I may support the supplementary appropriation if it does not cover national education; I believe the supplementary appropriation should not be approved if it covers the expenses on the preliminary work on the start-up of national education or the follow-up expenses.

Nevertheless, this item cannot be separated from the Bill. I believe the supplementary appropriation should not be approved because I have referred to the answer made by the incumbent accountability Secretary Eddie NG. His answer was simple enough; let us consider his financial management philosophy — Chairman, you will certainly live till you are 100 years old if this would not make you laugh to death. He has said that we need academic freedom and we cannot ask people to modify something they have written. This is perfectly correct. If a person has written a book, we cannot ask him to modify it through the use of public rights and might. While a very large number of people think that an idea is correct and only one person thinks that it is incorrect and he has written a book to express his views, his book cannot be modified. That is definitely right.

The situation will be different when public money is involved. According to the provisions of the government department concerned, the goal to be achieved should be measured in terms of the effects rather than the output, and the effects should be measurable. If national education as we have heard of is a

China model national education, should appropriation be approved by the Government if the goal and the effects cannot be achieved? This is another issue. When public money is used for academic freedom and the Government's governance and when some people are entrusted to take actions; is there an objective standard and mechanism to examine if public money used on the Government's governance has been well-spent? Can this mechanism be used to enable the Government to achieve better governance effects or deterring effects on incompetent persons? For example, if a person's book is not well written, it can simply be

CHAIRMAN (in Cantonese): Mr LEUNG, it would be better for this point to be discussed at a Panel meeting.

MR LEUNG KWOK-HUNG (in Cantonese): I am not a member of the Panel on Education.

CHAIRMAN (in Cantonese): I still hope that Members would not discuss in depth each and every government policy and measure during our discussion on supplementary appropriation.

MR LEUNG KWOK-HUNG (in Cantonese): That's alright and I will make a shallow discussion rather than an in-depth discussion.

I will simply take one minute. There is no problem for me to make a shallow discussion as you requested.

Concerning the ruling and governance ability of Secretary Eddie NG, I am worried that he may mix up the freedom of creation and the freedom of expression. We are not asking the Secretary to conduct a review as he should have maximum freedom. Nonetheless, should the Education Bureau have some guidelines to allow the departments and organizations concerned to complete their tasks? It should not be implemented if it is ineffective.

Since I am not allowed to make an in-depth discussion, I would like to ask what would happen if the head of the Bureau is an imperial official. Buddy, I am really afraid and I naturally suspect if money has been wasted before. Now that I cannot make an in-depth discussion, I am not going to discuss this issue in-depth. I am going to sit down now.

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

(Mr WONG Yuk-man stood up)

CHAIRMAN (in Cantonese): Mr WONG Yuk-man, do you wish to speak?

MR WONG YUK-MAN (in Cantonese): Chairman, sorry, I am looking for a document. Chairman, just now you have already intended to stop me when I mentioned The Legislative Council Commission. So, I will speak on something else.

Regarding the \$6,000 and electricity charges subsidies Mr Albert CHAN has actually raised one point on this earlier, and that is, the Government is now seeking supplementary provisions by means of a bill. I have no choice. How should I vote if I do not support some of the provisions therein? Some provisions, such as the scheme implemented by the Financial Services and the Treasury Bureau to distribute \$6,000, are actually the cash payment measures which we have all along advocated. Such measures will certainly incur additional expenditure and thus warrant supplementary provision. As we have already received the money and actually benefited, there is no reason for us to oppose, which is impossible. Yet, I can tell Members that the sum of money has been donated, though I have received it after all. It is your own business as to how the money will be disposed of. The fact is that the \$6,000 has been received. There is no way we can shirk from supporting the supplementary provisions.

So are the provisions for the Student Financial Assistance Agency. Basically, the actual expenditures incurred in relaxing the means test mechanism, increasing the amount of academic expenses grant to post-secondary students and

implementing the enhancement measures for the Kindergarten and Child Care Fee Remission Scheme are actually different from the original estimates. And yet, so long as the provisions are properly used, we will certainly support it. However, in the course of our discussion, we had stated that even if the means test mechanism would be relaxed, the authorities should not provide the information on defaulters to credit reference agencies. What is more, they should allow the date of calculating interest accrual under the Non-means-tested Loan Scheme to commence after the students graduated or are employed. We have put forward these proposals time and again. If the authorities do not take heed of our advice but seek our approval of supplementary provision when additional expenditure is incurred, we will suggest them to constantly review the relevant scheme upon approval of the relevant provisions.

Furthermore, the supplementary provision sought by the University Grants Committee (UGC) was made as a result of the additional operating expenses arising from the civil service pay adjustment. We have all along suggested that the existing funding mechanism — under which the Government provides provisions for post-secondary education providers through the UGC — should be abolished. At the meetings of the Panel on Education and on other occasions, we have proposed that this mechanism should be replaced by a university funding body which is independent of the Government, transparent and open, widely represented and comprises the education authorities or organizations.

At present, post-secondary education — especially the so-called self-financed private tertiary institutions — is beset by a problem, and that is, government-financed public universities have been transformed into private universities. This is a serious problem as they will compete with the private sector for profits, and private universities like the Hong Kong Shue Yan University, Chu Hai College of Higher Education, Hang Seng School of Commerce will really get into big trouble. Public universities do not only receive government funds, but can also tap on their facilities, teacher quality, as well as reputation and status. Are they not competing with private universities? This is why we raise query on the funding mechanism. Given that higher education allows private education In the past, higher education was provided by the Government alone, which had sole responsibility. Very often, inequality rather than scarcity is the cause for concern. The figures on higher education which the authorities considered acceptable are actually "inflated" as they included a large number of holders of sub-degree or similar qualifications.

However, in practice, the percentage of people receiving higher education provided by normal universities financed by the Government is still low compared with those of advanced countries in the world. The Government has promoted the so-called self-financed post-secondary education by providing land to school sponsoring bodies and interest-free loans. Yet, this kind of financial assistance — it is not financial assistance in the strict sense because only land has been provided for the building of school campus, together with some loans — the Government has now further proposed the establishment of various kinds of scholarships and research funds, and provides funding for those school sponsoring bodies. Nonetheless, this does not help resolve the problem.

In Taiwan, when the Democratic Progressive Party was in power a few years ago, it had introduced the so-called education reform, which ended up in a fiasco. Nowadays, nearly 100% of Taiwan people have received higher education and we can always choose at random a university graduate in the street. Many "pheasant universities" have emerged. This is one scenario. Another extreme is over-correction.

Therefore, given that we are discussing the supplementary provisions, we can actually take this opportunity to review the public spending of the Government as many public funds have been wasted. For example, in respect of the supplementary provision sought by the Audit Commission — we will certainly not drag David SUN Tak-kei into our discussion for he took office as the Director of Audit only recently, so the present request for supplementary provision has nothing to do with him — we are most willing to grant the supplementary provision to the Audit Commission as it is one of the political institutions that prevent corruption.

Although there is no elected government in Hong Kong, the human rights, law and order, and freedom enjoyed by Hong Kong people are even much superior to those of other Southeast Asian countries which have democratic elections, especially Singapore. This is because we do not only have an independent judicial system, but also enjoy free flow of information and freedom of speech of a certain degree — except for the case of self-censorship — as well as a mechanism that prevents corruption.

Our corruption-preventing mechanism includes the Independent Commission Against Corruption, the Office of The Ombudsman and the Audit

Commission. Since this is a corruption-preventing mechanism, it must be overriding and independent of the executive authorities. Although this mechanism uses public funds, and can even be regarded as part of the Government, it serves the function of preventing corruption. The Audit Commission is responsible for auditing government accounts to see if public money has been properly spent. The reports of the results of value for money audits, which were published twice a year, have revealed that many government departments are wasting public funds. Noting that the additional expenses and operational expenses arising from the 2011 civil service pay adjustment on the part of the Audit Commission was so small, we will definitely agree with the relevant provision. However, the new Director of Audit really scares the wits out of us. So, in case there is a need to seek supplementary provision next year, we may oppose it on this ground. Of course, we should still wait and observe what his future actions would be after taking his words. Perhaps we will approve the relevant provisions if Mr SUN performs up to 80% of his predecessor Benjamin TANG.

In conclusion, we are supportive of the supplementary provisions sought by the Audit Commission and others. Nonetheless, we have a great deal of resentment against certain requests for supplementary provisions, which have previously been discussed. We hope that the Government will do better in the coming budgets, so that when we meet to discuss requests for supplementary provisions on the same occasion next year, the voices of opposition or divergent views will be lessened.

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, please speak.

(Secretary for Financial Services and the Treasury indicated that he did not wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: Clauses 1 and 2 stand part of the Bill. Will those in favour please raise their hands?

(Members raised hands)

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

(Members raised hands)

Mr WONG Yuk-man rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Yuk-man has claimed a division. The division bell will ring for five minutes.

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

(Prof Patrick LAU raised his hand in indication)

CHAIRMAN (in Cantonese): Prof Patrick LAU, what is your vote?

PROF PATRICK LAU (in Cantonese): I voted for it.

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 LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG,

Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr CHAN Kin-por, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM and Mr Alan LEONG voted for the motion.

Mr LEUNG Kwok-hung and Mr WONG Yuk-man voted against the motion.

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

THE CHAIRMAN announced that there were 38 Members present, 35 were in favour of the motion and two against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

CLERK (in Cantonese): Schedule.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): I now put the question to you and that is: The schedule stands part of the bill. Will those in favour please raise their hands?

(Members raised hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

SUPPLEMENTARY APPROPRIATION (2011-2012) BILL

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

the Supplementary Appropriation (2011-2012) Bill

has passed through Committee stage without amendment. 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 Supplementary Appropriation (2011-2012) Bill be read the Third time and do pass.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(Members raised their hands)

Mr LEUNG Kwok-hung rose to claim a division.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung has claimed a division. The division bell will ring for five minutes.

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

(Prof Patrick LAU raised his hand to indicate his intention to speak)

PROF PATRICK LAU (in Cantonese): President, I voted for the motion.

PRESIDENT (in Cantonese): Prof Patrick LAU voted for the motion.

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 LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Emily LAU, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, 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 Paul TSE, Dr Samson TAM and Mr Alan LEONG voted for the motion.

Mr WONG Yuk-man voted against the motion.

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

THE PRESIDENT announced that there were 39 Members present, 37 were in favour of the motion and one against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

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

MOTIONS

PRESIDENT (in Cantonese): Motions. Please refer to the first page of Part III of the Script. Proposed Resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic Of China and Section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

I now call upon the Chief Secretary for Administration to speak and move the motion.

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

PROPOSED RESOLUTION UNDER ARTICLE 73(7) OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND SECTION 7A OF THE HONG KONG COURT OF FINAL APPEAL ORDINANCE (CAP. 484)

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I move that the motion, as printed in the Agenda, be passed, that this Council endorses the appointments of the Honourable Mr Justice Robert TANG Ching as a permanent judge, the Honourable Mr Justice Syed Kemal Shah BOKHARY as a non-permanent Hong Kong judge, and the Right Honourable The Lord

PHILLIPS of Worth Matravers as a judge from another common law jurisdiction to the Hong Kong Court of Final Appeal (CFA).

The CFA is the final appellate court in Hong Kong, hearing both civil and criminal appeals. It consists of the Chief Justice and the permanent judges. Non-permanent judges may be invited to sit and they may come from Hong Kong or from other common law jurisdictions. When hearing and determining appeals, the CFA is constituted by five judges, comprising the Chief Justice, three permanent judges, and one non-permanent Hong Kong judge or one non-permanent common law judge.

Pursuant to Article 88 of the Basic Law and the Judicial Officers Recommendation Commission Ordinance, judges of the courts of the Hong Kong Special Administrative Region shall be appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission (JORC). In addition, Article 90 of the Basic Law provides that in the case of the appointment of judges of the CFA, the Chief Executive shall obtain the endorsement of the Legislative Council.

With regard to the current appointment exercise, Mr Justice BOKHARY, a Permanent Judge of the CFA, will retire in 25 October 2012, after having served as a Permanent Judge in the CFA for over 15 years. To fill this anticipated vacancy, the JORC has recommended to the Chief Executive the appointment of Mr Justice Robert TANG Ching, Vice-President and Justice of Appeal of the Court of Appeal of the High Court. Mr Justice TANG is a judge of eminent standing and reputation, and has considerable experience in handling criminal and civil cases. The appointment will be for a term of three years with effect from 25 October 2012, when Mr Justice BOKHARY vacates his judicial office upon retirement.

As for non-permanent judges, at present, there are 19 non-permanent judges, comprising six non-permanent Hong Kong judges and 13 non-permanent judges from other common law jurisdictions. Considering the heavy caseload of the CFA and in order to provide more flexibility in judicial deployment, there is merit in increasing the number of both non-permanent Hong Kong judges and non-permanent judges from other common law jurisdictions.

The JORC noted that Mr Justice BOKHARY will become eligible for appointment as a non-permanent Hong Kong judge upon his retirement as a Permanent Judge. As a founding member of the CFA, Mr Justice BOKHARY has considerable experience in the CFA and would be an invaluable addition to the list of non-permanent Hong Kong judges. Accordingly, the JORC has recommended to the Chief Executive his appointment as a non-permanent Hong Kong judge for a term of three years with effect from 25 October 2012.

At the same time, the JORC has recommended the appointment of the Right Honourable The Lord PHILLIPS, President of the Supreme Court of the United Kingdom, as a non-permanent common law judge with effect from October 2012 after his retirement. As the most senior judge in the United Kingdom, the appointment of Lord PHILLIPS will be a great asset to the CFA.

The three judges have eminent standing and reputation in the legal sector. The Chief Executive is pleased to accept the recommendations of the JORC on their appointments as judges to the Court of Final Appeal.

In accordance with the procedures previously endorsed by the House Committee, the Administration issued a paper on 28 March 2012 to inform the House Committee that the Chief Executive had accepted the recommendations of the JORC on these appointments. The curriculum vitae of the three judges were also set out in the paper. Representatives from the Administration and the Secretary to JORC attended the meeting of the Subcommittee on Proposed Senior Judicial Appointments on 7 May and answered Members' questions. I would like to thank Dr Honourable Margaret NG, Chairman of the Subcommittee, and other Members of the Subcommittee for their support of the proposed appointments.

I invite Members to endorse the appointments.

The Chief Secretary for Administration moved the following motion:

"RESOLVED that the following appointments be endorsed —

- (a) the appointment of the Honourable Mr. Justice Robert Tang Ching as a permanent judge of the Hong Kong Court of Final

Appeal pursuant to section 7 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (the Ordinance);

- (b) the appointment of the Honourable Mr. Justice Syed Kemal Shah Bokhary as a non-permanent Hong Kong judge of the Hong Kong Court of Final Appeal pursuant to section 8 of the Ordinance; and
- (c) the appointment of the Right Honourable The Lord Phillips of Worth Matravers as a judge of the Hong Kong Court of Final Appeal from another common law jurisdiction pursuant to section 9 of the Ordinance."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Chief Secretary for Administration be passed.

DR MARGARET NG (in Cantonese): President, in my capacity as Chairman of the Subcommittee on Proposed Senior Judicial Appointments (the Subcommittee), I report the major deliberations of the Subcommittee.

In the course of deliberations, Members are concerned whether the Judiciary has difficulties in filling judicial vacancies in the appellate courts. As the Secretary to JORC has explained, in 2002, the Judiciary and the JORC conducted a review of the JORC's operation concerning the appointment of judges. Having considered the practices in other common law jurisdictions at that time and the circumstances in Hong Kong, the review concluded that it would be appropriate for the appointment of judges at CFI level through open recruitment (as was already the case for the District Court and below) and the appointment of judges of the Court of Appeal and PJs and HKNPJs of CFA through internal elevation. The major considerations were that, for appointments to the appellate courts, the appointees should normally have previous judicial experience at the appropriate courts. At the request of members, the Judiciary Administration has provided updated information on the practices for appointment to the highest appellate courts in other overseas jurisdictions.

Members have noted public concern that, while Mr Justice BOKHARY's term of office as PJ of CFA is not extended when he reaches the normal retirement age of 65 in October 2012, Mr Justice TANG who is nine months older than Mr Justice BOKHARY is appointed as a PJ of CFA. At the request of members, the Judiciary Administration has provided further information on the policy of the JORC in considering the extension of the term of judicial office beyond the statutory normal retirement age and the JORC's proposal on the appointment of Mr Justice TANG as a PJ of CFA.

The Subcommittee has considered the curriculum vitae provided by the Administration in respect of the appointment of Mr Justice TANG, Mr Justice BOKHARY and Lord PHILLIPS. The Subcommittee supports the proposed appointments of Mr Justice TANG as a PJ of CFA, Mr Justice BOKHARY as a HKNPJ of CFA and Lord PHILLIPS as a CLNPJ of CFA.

President, I am going to express my personal views.

The case concerning the tragic death of LI Wangyang in Hunan aroused the grave concern of the Hong Kong community and reminded us that, even the most ordinary coroner procedures are precious and important. According to the laws of Hong Kong, reportable deaths include any death of a person where there is a suspicion the death was caused by suicide, and any death of a person where the death occurred whilst the person was in official custody. The coroner has the power to order investigations into deaths and an autopsy to be performed on the dead body concerned, summon witnesses and hold a public inquest where the jury would draw a conclusion as to the death. The family of the deceased is entitled to be represented by a lawyer; and they may apply for legal aid when necessary. Under this system, the cause of death will not be unclear and public surveillance cannot be circumvented.

President, judicial independence is the cornerstone of the rule of law, and the most significant and decisive difference between the legal systems of Hong Kong and Mainland China; judicial independence is our most precious asset. The executive authorities have the heaviest responsibility of maintaining the sound system of the rule of law. The Administration should attach importance to judicial independence, set an example and respect the Court. If the Administration ignores and even tramples on judicial independence, and blatantly or privately be disrespectful to judicial officers, the rule of law will be like

hovering candlelight in a storm which may be blown out at any time. Once the candlelight has been blown out, we will have to live in darkness.

I have repeatedly stressed that a danger of judicial independence is that the Judiciary may have fear and weakness, and it may have to yield or compromise in any form before those in power. By making a judicial oath, every judge must be faithful to the law. The oath must not be forgotten when the rule of law is threatened, and I believe all righteous people will come forward to defend the independence of our judges.

President, judicial independence that most Hong Kong people are accustomed to and the court system under which the executive authorities must abide by the law are facing serious challenges.

Four years ago when Vice-President XI Jinping visited Hong Kong, he reprimanded the governance team of the SAR that they should be understanding and sensible, united and efficient, and sincerely co-operative while there ought to be mutual understanding and support between the executive authorities, the legislature and the Judiciary. This argument about the co-operation between the three powers has aroused public concern, and the Bar Association has issued a statement to restate that, the Judiciary must be independent of the executive and legislative framework under the Basic Law, and it cannot be regarded as part of the "governance team". There should be independent judicial judgments on whether the Government's actions are lawful, which is at the heart of the rule of law.

President, state leaders never give joking remarks and the remark made by XI Jinping is not his personal opinion but represents the national policy line. Therefore, I have remained vigilant throughout the past four years. If we pay a little attention, we will see that the past four years were filled with uncertainties, and there were attacks on the Court from all sides, including government officials and Members of this Council. LEUNG Chun-ying's behaviours show that he advocates that power is greater the law, so, it is anticipated that he will more explicitly exert greater pressure in the days to come.

President, our first concern is to ensure that the mechanism would enable the election of judicial officers who meet all the required conditions. First of all, we have to maintain an independent selection system and institution, free from

any intervention, especially political intervention such as intervention by this Council. A function of this Council is to come forward when the normal and independent procedures have been upset.

President, what are the public's standards for judging judicial appointments? I believe a competent judicial officer should meet the following requirements:

- (a) be fearless and impartial, free from intervention by any outside force; have personal beliefs but can set aside personal prejudices and likes and dislikes in the conduct of trials and adjudications according to the law;
- (b) have strong legal accomplishment and commitment to the rule of law; this is particularly important for the higher level courts which are responsible for clarifying legal principles, establishing precedents, and developing legal principles; and
- (c) must meet the public's expectation of judicial officers in terms of personal conduct, and he must be self-restraint in order to maintain the credibility of the administration of justice.

President, I disagree with the use of such labels as being "liberal" or "conservative". The course of justice does not depend upon whether a judge tends to be "liberal" or "conservative". It is important for each judgment to set out clearly the rationale so that the parties and the public are well aware of the facts and legal principles that the Court based upon to make a reasonable judgment.

The judiciary must inherit the culture of the rule of law and maintain public court sessions so that the public can go to court. It must ensure fair procedures so that everyone can have a fair trial, rather than always succumbing to economic benefits. Furthermore, belated justice is often hollow justice; thus, the Court should avoid having litigants waiting too long for trial or sentencing. This Council should try its best to support any proposed increase in the staffing of Justice, the Council should try to support any increase in the number of judicial officers.

President, the public has high expectations of judges but it is not easy to identify judicial officers with integrity and ability. The Judiciary should not narrow the scope of recruitment such as restricting the scope to internal promotion, local recruitment or persons proficient in the Chinese language as it should consider candidates of different backgrounds.

I would like to take this opportunity to pay my respects to Mr Justice BOKHARY, PJ of CFA, who is going to retire in October. Mr Justice BOKHARY is farsighted and very knowledgeable. He emphasizes human rights, he is upright and fearless, and he has won the respect of the public. The public have deep impressions of his "dissenting judgments". The development of the common law is often propelled by "dissenting judgments". The "dissenting views" today is only the precursor of the mainstream in the future. This unique model of the development from dissenting views to general acceptability inspired discussions and provided the basis and predictability of the direction of the development of law. Meanwhile, the "the dissenting judgment" tradition precisely demonstrates the qualities of judicial independence, which also proves that all judges must give independent judgments. I am looking forward to Mr Justice BOKHARY's continuing to serve Hong Kong as a non-permanent judge.

With these remarks, President, I support the resolution.

MS AUDREY EU (in Cantonese): President, the motion today is about three Judges of the Court of Final Appeal (CFA). The first is Mr Justice TANG appointed as a Permanent Judge (PJ) of CFA; the second is Mr Justice BOKHARY who has been PJ of CFA since 1 July 1997, and he will be a non-permanent judge of CFA upon retirement in October this year. The third is a judge from another common law jurisdiction who is appointed as a PJ of CFA.

Under the Rules of Procedure, a Member shall only declare a matter in which he has a pecuniary interest, whether direct or indirect. I do not have any direct or indirect pecuniary interest in this resolution but I wish to make it clear that I know two of the persons to be appointed very well and it is my great honour that we have been good friends for years.

President, TANG Ching (all of us call him TANG Kwok-ching) and I have worked at the same barrister's office for many years, and he is a very senior member of the legal profession. He has been promoted a few times after he has joined the Judiciary in recent years and he will soon become a PJ of CFA. As Dr Margaret NG has just mentioned, he is a few months older than BOKHARY though they were born in the same year. The strange thing is that BOKHARY has to retire because of his age while TANG Ching is appointed as a PJ of the CFA.

BOKHARY has expressed that he earnestly wishes to continue to serve as a PJ of CFA. According to the relevant provision, a person aged over 65 can continue to be appointed; and TANG Ching who is older than BOKHARY can be a PJ of CFA. Irrespective of the reasons, BOKHARY cannot continue to serve as a PJ of CFA and he can just serve as a non-permanent judge. The biggest difference is that, a PJ can hear and determine all cases, including some major, constitutional and human rights cases while a non-permanent judge can only be the hearing judge when invited.

We can see from all reports that, since the Reunification Day on 1 July 1997, BOKHARY has been a very diligent PJ of CFA; he heard a larger number of cases than other PJs of CFA. He also has a very famous Chinese pseudonym, that is, "包拗頸" (meaning he is always refuting). As Dr Margaret NG has just said, he delivered the largest number of dissenting judgments and he very often represents the minority views. As we all know, there are five PJs of CFA and he is often the only one of these five judges who has differing views. Sometimes, he is one of the two judges having minority views among the five judges.

President, I would like to share with Members his minority views. If there is a very outstanding person or judge in the legal profession at a lofty position, the legal profession will arrange for him the Bar Mess special dinner when he retires or at an appropriate time, and a souvenir will be presented to him at the occasion. What is the most suitable gift for BOKHARY if the Hong Kong Bar Association is going to host a farewell dinner for him? We can send him a permanent memento by compiling his minority judgments into one or more hardcover books.

While Honourable colleagues are filibustering or speaking, I have taken some time to read some of BOKHARY's minority judgments. This pile of

judgments on my desk is thicker than a telephone directory but this is only part of BOKHARY's minority judgments, and there are many other such judgments. I found that his first case I am talking about his first case because the cases are arranged in the order of number and year. For example, the first criminal appeal case heard by the CFA in 1997 is referred to as FACC No.1 of 1997. BOKHARY has expressed his minority views on the case. It can be imagined that he has actually heard many such cases since then.

I am going to talk about some special cases that I have chosen. President, as you may recall, there was a NG Ka-ling case in 1999. Many children of Hong Kong parents born in the Mainland queued up at the Immigration Department on the Reunification Day in 1997, claiming that the Basic Law had come into effect and Article 24 of the Basic Law specified that the children born outside Hong Kong of the residents of the Hong Kong Special Administrative Region should have the right of abode in Hong Kong. Thus, all of them queued up at the Immigration Department and they later initiated legal proceedings. When their cases were heard by the CFA in 1999, all PJs of CFA unanimously judged that the adult or minor children of these Hong Kong residents born in the Mainland would automatically have the right of abode. We may recall that, the SAR Government subsequently indicated that this might lead to the subsidence of Hong Kong because 1.67 million people would come to Hong Kong. Hence, the National People's Congress (NPC) interpreted the relevant provision of the Basic Law on the grounds that these people could not just come to Hong Kong. In accordance with Article 22 of the Basic Law, they could only come to Hong Kong with one-way permits issued in the Mainland. In other words, this overturned the judgment of the CFA.

Nevertheless, around 5 000 appellants were then waiting for the judgment on the NG Ka-ling case. They believed that they would automatically have the right of abode when the NG Ka-ling case was successful. Following the NPC's interpretation of the law, there was a question as to whether the NG Ka-ling case included these 5 000 people. According to Article 158 of the Basic Law, when the Standing Committee makes an interpretation of the provisions concerned, the judgments previously rendered shall not be affected. Thus, these 5 000 children of Hong Kong residents born in the Mainland are now waiting in Hong Kong for the judgment on the NG Ka-ling case, hoping that they will not be affected by the interpretation of the provisions, and they can then be included in the NG Ka-ling case.

While the CFA was handling these 5 000 cases, the mainstream view was that these people were not included in the judgment. In other words, the interpretation of the provisions would keep them outside the door. Nonetheless, BOKHARY expressed a different opinion and he considered that all these people should be included in the NG Ka-ling case and they should have the right of abode.

I think Honourable colleagues should also remember the TAM Nga-yin case. She was an adopted child and her case heard by the CFA was about adopted children were also children of Hong Kong permanent residents as stated in Article 24 of the Basic Law. The mainstream view of PJs of CFA was that, adopted children such as TAM Nga-yin were not included as natural children of Hong Kong permanent residents. But, BOKHARY expressed a minority opinion. As Dr Margaret NG has just stated, these views are often the precursors of the mainstream in the future. At that time, TAM Nga-yin won support from the public and the media, and the Immigration Department finally permitted her to stay in Hong Kong. TAM Nga Yin is now grown up, and I vaguely remember that she is engaged in law-related work; undoubtedly, BOKHARY is highly respected by her.

There is another case about many public housing tenants in Hong Kong. Owing to the recent increase in public housing rents, many people have started discussing many former problems. In the past, the Housing Ordinance specified a cap on public housing rents, that is, not more than 10% of the median income. This also involved a case heard by the CFA where the appellant was Ho Choi-wan. She was a public housing tenant and she indicated that the Housing Authority should regularly review rents according to the Housing Ordinance, and that the increased rents should not be over the median rent-to-income rate of 10%. The Housing Authority froze the rents because the rents were over that level at the time; therefore, these public housing tenants applied for a judicial review in the Court and they challenged that the Housing Authority's decision violated the Housing Ordinance.

The mainstream opinion also considered that the Ordinance only specified that the increased rents could not exceed the level of the cap, but, there was no alternative if there was not a rent increase but just a rent freeze. BOKHARY similarly had a different view, and I would like to read out a few sentences: "Affordable housing is what this case is about Today nearly a third of the

population lives in public housing, that is, in the Authority's estates at subsidized rent. Many others are in the queue. What they are queuing up for is affordable housing. So defending that concept is in their interests, too. Section 4(1) of the Housing Ordinance provides that '[t]he Authority shall exercise its powers and discharge its duties under this Ordinance so as to secure the provision of housing for such kinds or classes of persons as the Authority may, subject to the approval of the Chief Executive, determine.' Although not as often as in daily life, even the law sometimes forbears to state the obvious. Here is an instance of that. The statute does not state in terms that it means housing for persons who cannot afford private sector housing. But what else can it sensibly mean? I see that meaning as a necessary implication of the statute's provisions purposively read as a whole and in context Providing affordable housing is obviously the Authority's *raison d'être*. Governance under the rule of law is a matter of enforceable duty, not mere grace and favour. And the statute would be bereft of sense and reason if it did not oblige the Authority to provide affordable housing." °

President, we can see from these sentences the essence of BOKHARY's judgment. His view is that "although not as often as in daily life, even the law sometimes forbears to state the obvious". The Housing Ordinance would be bereft of sense and reason if it did not oblige the Authority to provide affordable housing. Therefore, he thought that even though it was not clearly specified that the Housing Authority should reduce rents to the level of the cap, this meaning should be included in the provisions. He had the minority view among the five judges, and he thought that the Housing Authority was not right for it should reduce rents. President, the Legislative Council subsequently amended the Housing Ordinance on the basis of the relevant judgment; as a result, many public housing tenants are very unhappy about rent increases nowadays.

Our Honourable colleague Mr LEUNG Kwok-hung is present and I believe he also has strong feelings about BOKHARY because BOKHARY delivered minority judgments on a few cases involving him. I think he should remember that one of the cases was about him, FUNG Ka-keung and Christopher LO. At that time, 40 of them gathered and held a demonstration but they declined the Police's invitation to notify the Police; so, they were convicted. They lodged an appeal on the grounds that the mechanisms requiring prior notification were unconstitutional and restricted the right of assembly. BOKHARY agreed with them and trusted that the judgment against them should be cancelled and their

convictions should be overturned; unfortunately, BOKHARY's view was also just the minority view.

President, there is also another famous case about Congo. I cannot go over all the cases I would like to mention but he also had the minority view in the Congo case. We all know that the Congo case was the only case for which the CFA requested for the interpretation of the provisions by the NPC. I would like to read out a paragraph from the judgment written by Mr Justice BOKHARY: "It has always been known that the day would come when the Court has to give a decision on judicial independence. That day has come. Judicial independence is not to be found in what the courts merely say. It is to be found in what the courts actually do. In other words, it is to be found in what the courts decide." For the sake of judicial independence, he refused to seek the interpretation of the Basic Law by the NPC; unfortunately, this was also one of his minority views.

President, I really think that 15 minutes are not enough for me to give my regards to BOKHARY. Thank you, President.

MR RONNY TONG (in Cantonese): President, ever since the moment I decided to become a barrister, I have been dreaming that I can eventually become a judge and even a judge of the High Court or the Court of Final Appeal (CFA). In 1991, I had an opportunity to become a judge but as we are sometimes fooled by fate, I declined the opportunity back then because of the crisis of confidence over the future of Hong Kong.

President, I must state clearly that I have no regrets so far for making the decision. Even though a Legislative Council Member may have negligible responsibilities or strength, the number of people affected by me — I feel relieved in saying so — may far exceed the number of people affected by a judge. In any case, I have mixed feelings whenever I heard that a person I knew would become a judge or move up the career ladder and become a judge of the Court of Appeal of the High Court or the CFA.

I have known these three persons for a very long time and I greatly admired them. I must take this opportunity today to praise them, and I am really lucky that I am going to vote today in support of their appointment.

President, Mr Justice TANG Ching — I do not know why the word "Kwok" is missing from his name, and his Chinese name has changed from "鄧國楨" (TANG Kwok-ching) to "鄧楨" (TANG Ching). Does the removal of the Chinese word "國" (meaning nation) from his Chinese name mean that he will become more neutral? I really have no idea. Are there other reasons? His name was "鄧國楨" (TANG Kwok-ching) when I got to know him. He was almost the first barrister I knew after my return to Hong Kong after the completion of studies. He gave me a unique impression as he had a low-key sense of humour which so markedly differentiated him from ordinary people or lawyers, particularly many young barristers who liked to use rotten gags.

He also gave me a deep impression as a very down-to-earth barrister with common wisdom. President, many may think that everybody has common wisdom and it is nothing special; a barrister should be learned and versatile and he should be well versed in legal principles. I do not think so. I think that the most successful lawyer is not a barrister that knows legal principles well but a down-to-earth barrister with common wisdom. The law grows out of society and it cannot be separated from society. The law is a new branch of knowledge and we cannot just stick to bookish study.

For this reason, a barrister who is only familiar with a lot of cases and is able to memorize many legal principles may in the end be blinded and impervious to reason, and he can hardly become a man of great talent. On the contrary, I think that a person who is not very familiar with the case books but has a thorough understanding of society and people's sentiments is a better barrister or judge. I do not dare to give my own example, which seems too frivolous; thus, I believe Lord DENNING in the United Kingdom is a good example.

President, it appears that TANG Kwok-ching is such a barrister and he has eventually been promoted as a judge and then the Justice of Appeal of the Court of Appeal of the High Court. It seems a bit late for him to be promoted as a PJ of CFA now but it is better late than never. It is my great pleasure to wish him a successful career in the CFA.

President, I have known Mr Justice BOKHARY and TANG Kwok-ching for almost the same length of time. If I have got it right, BOKHARY is a proud disciple of barrister Charles CHING who is probably the most successful barrister in Hong Kong. When I was young, I was involved in handling many lawsuits as

a pupil of Charles CHING, and I really appreciated his unique style, especially his unique style in the courtroom. He frequently praised BOKHARY in front of me, and he said that he was also a down-to-earth lawyer with common wisdom. Thus, BOKHARY has the same qualities as TANG Kwok-ching for becoming a good judge.

My Honourable colleagues, Dr Margaret NG and Ms Audrey EU, have just touched upon the outstanding court precedents set by Mr Justice BOKHARY. It is a pity that, Mr Justice BOKHARY's unique insights and opinions have never changed the progress of human rights laws in Hong Kong. In other words, he is always a minority judge; his remarks may give a ray of hope to many people who are or would become desperate; yet, he eventually fails to affect the outcome of any judgment. To a certain extent, this is also the sadness of our legal profession. President, a lot of people (including the two Honourable colleagues sitting next to me) think that it is after all better to have a judge who can have alternative views or different minority views on the cases, commending human rights, freedom and the rule of law. Yet, that is not enough. I hope that there would be more judges like BOKHARY, and I even hope that all judges are like Mr Justice BOKHARY. While this may be a luxurious wish, this is a goal for me.

There is another judge called Nick PHILLIPS (his Chinese name is 范理申) and I think I have known him for nearly 30 years. I recall that we were at loggerheads when he handled the first case in Hong Kong, and when we subsequently handled many cases together. When I initially got to know him, many people told me that he was the youngest and most promising Queen's Counsel in the United Kingdom. My impression at that time was that he was really young and he had very unique vision and analytical power. Soon afterwards, he became the Lord Chief Justice of England and Wales, and he moved up the career ladder and was promoted as the President of the Supreme Court. He delivered very accurate judgments in a large number of cases that met the needs of the modern society.

President, having talked for so long, I just wish to say that these three judges obviously deserve being appointed as the PJs of CFA and the non-permanent judge of the CFA. I may also say that all judges in Hong Kong deserve being appointed. Does it mean that our system lives up to its name?

Do we consider this system as satisfactory? I must take this opportunity to state that I definitely disagree.

Although the appointment system in Hong Kong has been implemented for many years and it seems that a satisfactory candidate is appointed as a judge every time, the procedures are not transparent and people's impression is that there are backroom deals. People will easily think that the person's stance or political ideal may not be consistent with the core values of Hong Kong, and he may make use of this system to erode the independence of the judicial system. He may not deliberately do so and he may think that his appointment is in line with his political ideal. However, there is a lack of checks and balances under this system and there is no self-rectification or self-protection mechanism to prevent the Chief Executive from affecting the appointment of judges through the normal procedures, thereby affecting the strength and weakness of our judicial system.

President, I have always considered that we need a comprehensive review of the appointment system. If we would have universal suffrage one day, it may not be too pressing to review the appointment system because a democratic government can sufficiently protect the rule of law in Hong Kong while the rule of law in Hong Kong relies upon a sound system for the appointment of judges so as to defend our fundamental core values.

President, I do not know if I should hope for an elected government and an elected Chief Executive earlier or a more desirable system for the appointment of judges earlier; perhaps both are essential. Yet, it is after all safer for us to have earlier elections of the Legislative Council and the Chief Executive by universal suffrage.

MR ALAN LEONG (in Cantonese): President, today, I am honoured to have the opportunity to speak, in the capacity of a Member of the Legislative Council, on the proposed resolution under Article 73(7) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and section 7A of the Hong Kong Court of Final Appeal Ordinance (Cap. 484).

The resolution today is about the appointment of the Honourable Mr Justice Robert TANG Ching as a permanent judge of and the appointment of the

Honourable Mr Justice Syed Kemal Shah BOKHARY as a non-permanent Hong Kong judge of the Hong Kong Court of Final Appeal. I know the two Justices, and I am profoundly influenced by them in my professional practice career. Today, by coincidence, I am able to support the appointment of them in the capacity of a member of the legislature. This is my honour.

Other Members from the Civic Party have paid tribute to Mr Justice Kemal BOKHARY. I am glad that I have the opportunity to take part in the 44th Anniversary Gala Dinner of the Hong Kong Journalists Association held on 18 May recently. Mr Justice Kemal BOKHARY was the Guest of Honour of the dinner, and he was accompanied by his wife. He gave an unexpectedly short speech on that night, which came as a surprise to many participants, particularly those sitting at the head table. The wisdom of Mr Justice Kemal Bokhary was once again shown. He conveyed an extremely important message in a concise speech, which best suited the occasion.

President, on that night, Mr Justice Kemal BOKHARY said that the freedom of expression was the lifeline of the media, as judicial independence was to the Court, so self-censorship was the greatest threat to the media, as judges should not seek the interpretation of the Basic Law in advance in making the verdict of a case out of the fear that interpretation of the Basic Law would be sought. He went on to say that the judiciary and the media were interdependent and they should protect each other. The speech on that day, though short, is inspiring and offers remarkable insight, reflecting the wisdom of Mr Justice Kemal BOKHARY.

President, the rule of law is the most precious asset and system of Hong Kong. Without the rule of law, Hong Kong will no longer be the same. What is the rule of law indeed? Does it mean that there is the rule of law when the Government enacts laws and the public comply with the laws? If that is the case, laws will easily become a means for the ruler to control the people. President, the rule of law is a set of standards of practice and values. We rely on the justices at the Court of Final Appeal to uphold the rule of law. Despite the pressures from all fronts and the various challenges ahead, they remain undaunted, and they act fearlessly and selflessly to continue to play their gate-keeping role in upholding the rule of law of Hong Kong and defending the values and principles of the rule of law.

Today, given the time constraint, I will only give a brief account of the important principles and objectives of the rule of law. Law is made to protect people-oriented rights and freedom and to monitor the exercise of public power. The system of the rule of law also requires that our system must be established by laws, so as to ensure the check and balance among the three powers, namely the executive, the legislature and the judiciary. Among the many values and principles of the rule of law, I think this is the most important one. However, President, you may have noticed that at the Ceremonial Opening of the Legal Year, Andrew LI, the former Chief Justice, mentioned that the number of judicial reviews kept increasing after the reunification. Why? For under the system of check and balance of the three powers, it seems that slowly, the executive has failed to get justice done. The Legislative Council, though being the legislature, fails to do justice most of the time too. Hence, among the three powers, the judiciary is the only power in which the public have confidence.

President, basing on the understanding in this perspective and connotation, Mr Justice Robert TANG and Mr Justice Kemal BOKHARY are to shoulder important and heavy responsibility under the appointment. I must state what we see now. Originally, according to the design of the Basic Law, the Legislative Council, being the legislature, should share the role of monitoring the executive with the judiciary. In the event of violent practices or when justice is not done, this Council should be able to share the role and responsibility of the judiciary in monitoring the executive, regrettably, this Council fails to do so. We may refer to two recent cases still fresh in the memory of the people of Hong Kong, where we see that the judiciary has still been able to have justice done and brought its power of monitoring the executive to full play. Unfortunately, this Council has disappointed the public.

We should still remember the case about Ms LO Siu-lan challenging the listing of the Link REIT by applying for a judicial review according to section 4 of the Housing Ordinance. When her cases was submitted to the Court of Final Appeal, Mr TUNG Chi-hwa, the incumbent Chief Executive, and Henry TANG, the incumbent Financial Secretary, had asked the Chief Justice Andrew LI to hand down the verdict of the cases hastily so as not to affect the scheduled listing of the Link REIT. The incumbent Chief Justice Andrew LI gave a definite no to the executive, for he applied the law to ensure that Ms LO Siu-lan was given adequate time to prepare for the appeal. This may be seen as traitorous by XI Jing-ping, the Vice-President of the State, for the action has failed to facilitate the

co-operation of the three powers and achieved the "harmony" asserted by Vice-President XI. However, from the perspective of protecting the rights of the people of Hong Kong, Chief Justice Andrew LI is tough to take the tremendous pressure exerted by the executive, which is worthy of commendation.

The case regarding the reorganization proposal on five Secretaries of Departments and 14 Directors of Bureaux recently is just the opposite. At that time, the Chief Secretary for Administration, Mr Stephen LAM, intended to arrange for the resolution to jump the queue without any notice. Actually, this Council could have said no to the executive as the former Chief Justice Andrew LI did. A debate had been held in this Council, but since LEUNG Chun-ying did not have many friends, the resolution was eventually negated by one vote, and it could not jump the queue. The executive should be checked by this Council and the judiciary, yet when this Council fails to discharge its duties, it is evident that the judiciary will be the only place for seeking justice done. Hence, it is natural that the number of judicial reviews has scaled new heights since the reunification. The importance of the two justices of the Court of Final Appeal who are appointed under today's resolution is revealed by objective facts.

President, I said earlier that the two justices are people having great influence on me in my professional career. Mr Justice Robert TANG invited me to the Bar Council of the Hong Kong Bar Association (HKBA) in 1987. At that time, I had only been practising for two years. Looking back, I somehow feel the predicament of "entering a rich man's house". Certainly, during those days, I had played different roles at different times. Eventually, I had the honour and luck to be the Chairman of the HKBA. The timing was a coincidence that when the SAR Government attempted to push through the legislation on Article 23 of the Basic Law in 2002, during which I was the Chairman of the HKBA. In retrospect, I should pay tribute to Mr Justice Robert TANG for giving me the opportunity to join the Bar Council.

In the days to come, it is an honour for me to be at the forefront to safeguard the rule of law in Hong Kong. Now, I wish that the two justices will understand the challenges now faced by Hong Kong in their new positions. This is particularly so when many people are eyeing the system of rule of law in Hong Kong, thinking that this system of rule of law is a hurdle causing great inconvenience to them, who may even aim at achieving the "harmony" so stated by Vice-President XI. Regarding the new appointment of the two justices, I

would like to send my blessing to them. Yet, to the executive, represented by the Chief Secretary for Administration in listening to the debate today, I hope that it can understand the maintenance, the continuation and the succession of the system of rule of law, which offers continual protection to the rights and freedom of Hong Kong people, cannot be achieved merely by the efforts of the two justices. It is extremely important that the executive should act properly, reckoning the oughts and ought-nots.

With these remarks, I support the resolution.

MR LEUNG KWOK-HUNG (in Cantonese): First of all, President, I would like to express my dissatisfaction with the judicial sector. Under the separation of powers, the judicial sector should certainly be independent of the executive and the legislature. Neither can it submit to these two organs. But the point is, since the judicial sector must remain independent, a paradox must be resolved, that is, not only must justice be upheld, it must also be done — I consider this Chinese translated version of mine even more convincing.

At present, the Courts in Hong Kong are empowered by the Government to make their own decision in recommending and selecting candidates for promotion, operation, and reward or punishment. Nevertheless, this system is not entirely satisfactory. It is not our wish to see the Government formulate a set of rules or make direct intervention on behalf of the people. Instead, the Courts should fulfil their own obligations and manifest the four principles I mentioned just now for compliance by members and non-members of the legal procession as well as enabling the rules and systems established on the basis of these principles to be implemented fully in the process. If this cannot be achieved, it will be futile no matter how those judges are held in high esteem because, under a bad system, a good person may do something bad, and a bad person will do even more bad deeds, thus making the system even worse. Today, Members who are also Senior Counsels give approval to the appointed judges from their perspective as insiders. This I respect. Nevertheless, for the people in Hong Kong, the principles I mentioned just now are even more significant. The judicial sector should also put them into implementation.

Second, I would like to say a few words about retirement. Mr Geoffrey MA, who is more or less the same age as me, is not yet up to par. Is his

achievement remarkable? Not yet known. Does he have outstanding talent and wisdom? I dare not say so. According to Andrew LI, who retired abruptly because of his age, people who are more or less the same age as him were unsuitable for his post. As a result, people by his side were excluded. Geoffrey MA and I are nearly of the same age. There is a mere gap of 10 years I find this phenomenon very strange indeed: as pointed out by a colleague just now, the newly appointed Robert TANG is said to be approaching retirement, but Syed Kemal Shah BOKHARY, a dissident judge several months his junior, is supposed to retire. It is absolutely unreasonable. This is the first point.

Next, why are there so many judicial reviews or why are there so many people seeking assistance from the Court with a view to imposing checks and balances on the Government's unconstitutional acts, abuse of power and failure to exercise its power? Naturally, the collapse of the political system is to blame. A collapsing political system is like virus or bacteria. When someone is infected with virus or bacteria, he must consult a doctor for diagnosis or surgery.

A number of colleagues in this Council have said that some scoundrel politicians — they have another name even more unpleasant to the ears — are disrupting Hong Kong through seeking assistance by way of judicial reviews. I have never heard any Members who proclaim themselves to be national representatives dare to make such remarks. Do they know they are actually insulting themselves as well as people who are even more helpless and seeking judicial assistance? The target of their attack is not so-called scoundrel politicians and rogue lawyers, but the rights of civilians. Such nonsense is attributed to a lack of understanding among our colleagues of this system. As they can gain benefit in the process, there is no need for judicial assistance.

President, come to think about this. If the Court offering assistance ruled that the Government was unconstitutional in the legal battle involving public housing tenants, then colleagues in this Chamber today, or those who were also Legislative Council Members at that time, would have been unable to vote in favour of abolishing the relevant Ordinance. Neither would the so-called rent adjustment mechanism have come into being, thereby leading to present drastic rent increases. Do those people who supported the Government in abolishing the Ordinance enacted of their own accord not feel ashamed in this election year? Is it not the case that people who sought judicial assistance at that time, given their helplessness, hoped to impose checks and balances on the Government

through the separation of powers to compel it to comply with its own laws? Here I am not even referring to the Constitution.

The appeal lodged by The Link REIT to the Court of Final Appeal impressed me deeply that the Government's representatives were talking nonsense when proposing four conditions to those judges — I do not have great respect for the judges because they are sometimes quite stupid — they said that it did not matter because, in the event of non-compliance, permission would be given for a couple of bean curd and bean sprout stalls to be operated to serve the people living in public housing estates. Those judges had even believed in all this nonsense. Today, none of the four conditions has been fulfilled. Furthermore, the circumstances are worsening. The original operators have been driven out by The Link REIT, thus causing inconvenience to the public housing estate tenants. However, the Government has done nothing to assist

PRESIDENT (in Cantonese): Mr LEUNG, the content of your speech is unrelated to the resolution.

MR LEUNG KWOK-HUNG (in Cantonese): How come they are unrelated? This is what they say. They as insiders are allowed to say so, but we outsiders are not? How can I know which judge he was? I am now talking about the court system praises are alright?

PRESIDENT (in Cantonese): Please confine your speech to the content of the resolution.

MR LEUNG KWOK-HUNG (in Cantonese): There are times when judges will really be cheated by the Government. Hence, my question even for grass-roots or vulgar people. As in the legal battle over the minimum wage, I criticized the authorities for failing to discharge their duty but they said they had already done so. The minimum wage did not take effect until a couple of years later when the legal battle came to an end.

President, since you said that I had strayed from the subject, let me say a few words about Syed Kemal Shah BOKHARY, a dissident judge. Of course, he deserves our praise. However, it was because a dissident approached the Court for assistance that a dissident judge was able to express his opinion. Could he have held a press conference to state his legal opinion? I certainly respect him and will nod to him if I come across him on the streets. A legal battle must have been launched by a dissident before he can be called a dissident judge — someone has either violated the law, gone bankrupt or sought legal assistance. Anyhow, there must be a case for him before he can express his opinion, right?

The conflict encountered by a judge in a courtroom actually reflects a social conflict, be it called a conflict between classes or between a corrupt system and the people's power, as I mentioned in a farewell banquet held the other day. This is a dialectical process. The Court is where the two sides meet. Hence, although Mr BOKHARY is a good judge, for he might have given people seeking judicial assistance a reasonable share in the process, we still have to ask this question: Why should we rely on a judge rather than improving the procedure? Under the separation of powers, the executive power is manipulated by a minority of people; the Legislative Council is gripped by a distorted system, with the collaboration between functional constituency Members and the Government suppressing the views of Members returned by universal suffrage, thus contributing to the present situation.

President, a judge must hear cases according to the law, but a large number of the laws in Hong Kong have become obsolete it is like I am given one vote by BOKHARY but four from other judges. According to him, that particular piece of law is law; even a draconian law is still law. As a judge, he is capable of pointing out that a draconian law is still law. A draconian law should exist because it can be opposed. This is better than having no law to observe and far more better than the case involving some lawless public security officers in Hunan — someone standing on the ground could be described as committing suicide by hanging himself. Furthermore, there was no death inquiry. Instead, an investigation was carried out by the public security officers on their peers. According to BOKHARY, a draconian law can be opposed. Nevertheless, when other judges treat a draconian law as the law, a person who does not abide by the law will be regarded as violating the law.

President, when the Court is driven by the judgment made by a minority, this reflects that our political system as a whole is driven by a minority of people. Why is a minority judge being praised, but minority Members are not being praised? Why are people described as "minority people" or "dissidents" considered to be doing something wrong for criticizing in this "imperial court", on which the Basic Law is founded, that it is corrupt?

President, what is the rule of law? In fact, it is simply the ultimate concern in society about how it and its situation should be like. There is a tool to achieve ultimate concern in society, and that is, the Chief Executive and Legislative Council Members should be returned in a one-person-one-vote manner. In the judicial sense, legislation should be enacted for the people, so that rule of law, not rule by law, can really be achieved, rather than adhering to the law, even though it is draconian.

President, the death of YUE Fei is a case in point. When YUE Fei was jailed in Dalisi, a treacherous court official, who was unable to find any evidence against him to justify a death sentence, pressed a fabricated charge. Subsequently, YUE Fei was given a death sentence, and his son was killed, too.

The system today emphasizes "the hand of cards", and so there is no need for a fabricated charge. President, since I have often been prosecuted by the Government, I have to seek assistance from the Court. Perhaps it is not my own wish to seek assistance from the Court, but the police or the Government requires me to stand trial. What am I fighting for? This is what I am fighting for — everyone should have their own dignity; everyone should enjoy equal political rights; and everyone should have suitable room for survival and development after paying the price.

I do not expect judges to achieve this. Neither do I believe this can be achieved under the existing system. I respect judges, but I am also aware of their limit. Under a corrupt political system, judges can only do their best.

MR WONG YUK-MAN (in Cantonese): President, this resolution is proposed pursuant to three different provisions in the Hong Kong Court of Final Appeal Ordinance (the Ordinance).

While the appointment of Robert TANG Ching is made pursuant to section 7 of the Ordinance, namely "Appointment of permanent judges", the appointment of Syed Kemal Shah BOKHARY is made pursuant to section 8 of the Ordinance, namely "List of non-permanent Hong Kong judges", and the appointment of Lord Phillips of Worth Matravers is made pursuant to section 9 of the Ordinance, namely "List of judges from other common law jurisdictions". It is specified in these three provisions that appointments by the Chief Executive should be made in accordance with the recommendation of the Judicial Officers Recommendation Commission (JORC). Section 7A even specifies that the Chief Executive should "obtain the endorsement of the Legislative Council for the appointment or removal of judges of the Court, the non-permanent judges and judges from other common law jurisdictions". This is how this resolution has come into being today.

In the past, appointments in the relevant resolutions were made pursuant to different provisions. In other words, a stand-alone resolution is tabled before the Legislative Council for endorsement. Let me cite a resolution in 2010 as an example. The appointment of Justice Geoffrey MA as the Chief Justice of the Court of Final Appeal (CFA) was made pursuant to section 6 of the Ordinance, whereas the appointments of Justice Robert TANG Ching, Justice Frank STOCK and Justice Michael John HARTMANN as non-permanent Hong Kong judges of the Hong Kong CFA were made pursuant to section 8 of the Ordinance. Of these three judges, Justice Robert TANG Ching was most remarkable, for he was appointed as a non-permanent judge only last year but already appointed as a permanent judge of the CFA this year.

In the past, resolutions were tabled separately to the Legislative Council to be dealt with separately. However, a single resolution is tabled this time around to deal with the appointments of the three judges, and the Legislative Council is requested to endorse the appointments pursuant to three different provisions. Today, President, Members treat it as a routine for this legislature to endorse the appointments of these judges, and so the resolution will definitely be passed. But why should Members be allowed to speak?

In a democratic country, there is separation of powers. While the legislature has the power to enact laws, it also has the right of consent, which means that it can exercise the right of consent in respect of the appointment of officials and judges in the Judiciary according to the procedure. Besides the

right of consent, the legislature also has the so-called budgetary and questioning rights. In this legislature, however, all these powers are fragmented.

Let me begin with the legislative power. Do Legislative Council Members enjoy such power? Yes, they do. However, the tabling of private Bills by Members is restrained by Article 74 of the Basic Law and subject to separate voting. Hence, our legislative power serves no real purpose at all.

The legislative power exercised by the Hong Kong legislature can be compared to the power of a rubber stamp — the legislature is now pressing the button rather than acting like a rubber stamp. Hence, Prof Patrick LAU is nearly deprived of such power, for the voting button on his desk is not working properly.

Next, let us examine the right of consent. We do not have the right of consent in respect of the appointment of principal officials. In the United States, is there a need for the Congress to give consent to the appointment of the Attorney General of the Department of Justice? Our right of consent is fragmented. Although we can exercise the right of consent in respect of the appointment of judges, we have to give our consent as a routine by raising our hands or pressing the button for endorsement.

As regards the budgetary power, besides the President, there are 36 pro-government Members in this Council. Hence, the probability of all motions proposed by the Government being passed is 100%. So, where is our budgetary power?

We still have the power to put questions. At last, Members have the power to question the administration of the Government. This is why there are such people, like us, who are loud and ferocious, to humiliate these officials whose power is not restrained, so as to vent some grievances of the public.

Let me come back to the appointments of these three judges. First of all, the use of a single resolution, which is a bundling approach, requires Members to make a so-called "all or nothing" decision in respect of these three motions on the appointment of judges, though they are different in nature. Members here will definitely do so as they will exercise their right of consent as a routine in respect of the appointments of these judges.

Since these appointments are considered to be similar, the Government intends to deal with them expeditiously and smoothly. Insofar as these three appointments are concerned, if the right of consent is not treated as a routine, Members can actually have different considerations, as each appointee has a different background. When it comes to judicial appointments in particular, such backgrounds will affect the judgment made by the Legislative Council regarding whether a certain person is suitable for appointment as a judge of the CFA.

Given the small number of permanent judges in the CFA, every permanent judge has a decisive impact on the constitutional relationship as a whole, and their performance and background is of great importance. In this Council, bundled voting is only applicable to items which are similar in principle or in nature to ensure that the method of voting will not make it impossible for Members to reflect their stance and aspirations.

Hence, we should not indiscreetly deviate from the past practice of dealing with judicial appointments by way of different resolutions.

Secondly, the three judges will have different degrees of participation in the work of the CFA. Pursuant to section 5(1) of the Ordinance, permanent judges are considered as judges of the CFA throughout their tenure, whereas non-permanent judges and common law judges are considered as members of the CFA only when they are invited to sit on the CFA. As permanent judges have a higher authority than non-permanent judges and common law judges, we have to be more serious in considering the appointment of permanent judges in a way different from the appointment of non-permanent judges and common law judges, if we do not wish to discharge our duty as a matter of formality.

Thirdly, the conditions of appointment of the three judges are different. To be appointed as a permanent judge, one must be either the Chief Judge of the High Court, a Justice of Appeal or a judge of the Court of First Instance. To be appointed as a non-permanent Hong Kong judge, one must be a retired judge. Finally, to be a common law judge, one must be a person who has never been a judge of the High Court, a person who is ordinarily resident outside Hong Kong, and a judge or retired judge in another common law jurisdiction. Due to these different requirements, the Legislative Council should consider the three appointments separately in determining whether or not endorsement should be

given. President, if the matter is not a routine, Members might not oppose or endorse all the appointments.

Fourthly, if our endorsement is to be given in a bundled manner, will the rule of "obtaining the endorsement of the Legislative Council" be breached? Just as the amendments to Bills will not be voted upon in a bundled manner, or else the genuine wishes of the Legislative Council can hardly be reflected. Despite the remarks by some Members that this is a routine procedure and the appointment of judges should not be politicized, is the right of consent held by the Legislative Council not supposed to be the ultimate right of gatekeeping, given the separation of powers and the principle of checks and balances? If we have the authority to oppose highly controversial appointments, then we can simply not discharge this function if we have to give consent in a bundled manner, or else Members will only become a hand-raising machine or a rubber stamp.

We agree with the remarks made by the Civic Party during the debate on a resolution moved in 2009 pursuant to the Ordinance that the Legislative Council has the actual power to examine the appointments of judges, and such power should be exercised. Rather than politicizing the appointments, it is an essential step to achieve the separation of powers in practical terms. The Government should not presume that the candidates recommended by the JORC must be perfect and free from political considerations, whereas the Legislative Council will definitely examine such appointments from the political perspective. On the contrary, the JORC, including the Secretary for Justice and non-judicial members appointed by the Chief Executive, can be described as serving the purpose of political interference with the Judiciary.

Next, President, I would like to say a few words about my stance towards these three appointments and my knowledge of these three judges.

It is certainly a pity to many people if BOKHARY, nicknamed "dissenting Pao" (a transliteration of his Chinese name), is not re-appointed as a permanent judge after his retirement. BOKHARY's efforts in upholding the rule of law during his years in office are evident to all.

After the first interpretation of the Basic Law by the National People's Congress in 1999, five CFA judges, including BOKHARY, had reportedly

considered resignation to express their dissatisfaction, though they finally gave up the idea for fear that their successors might not be independent enough or impact the judicial system.

According to a CFA ruling in July 2001, children born to Hong Kong residents, but not adopted children, are entitled to the right of abode in Hong Kong. BOKHARY, a believer in humanitarianism on the side of the underprivileged, rejected the repatriation order issued by the SAR Government. The four-against-one court ruling was in favour of the Government, and BOKHARY was the only dissenting judge. In yet another CFA ruling, BOKHARY considered that the right to family union under the Constitution should be interpreted to cover adopted children as well. Similarly, the ruling was one against four. BOKHARY had ruled in favour of a girl adopted by a Hong Kong resident on the Mainland.

In September 2011, BOKHARY ruled that it was unnecessary to seek an interpretation of the Basic Law by the National People's Congress in order to resolve a case involving a United States fund recovering debt from Congo. In addition, he reiterated in his judgment his own opinion that Hong Kong's judicial independence must be upheld.

When asked recently by a reporter about Hong Kong's core value, he said, "..... the most important core value of Hong Kong is respect for human dignity. Such respect lies at the heart of human rights These are the things which enable each and every one of us to be ourselves and live with human dignity — in how we treat others and how we are treated by them."

As regards Justice Robert TANG Ching, also known as the king of public offices, he is highly reputable in the judicial sector. One of the incidents that impress us is a complaint involving the handcuffing of reporters during a clearance operation carried out by the police at Chater Garden in 2002. After inquiry, the police concluded that there was insufficient evidence. Being a member of the Independent Police Complaints Council at that time, Robert TANG Ching referred the report back and the complaint was eventually substantiated after renewed inquiry. This incident demonstrates not only his independence, impartiality and determination to uphold justice as a judge, but also his compatibility with the criteria required of a judge.

The next judge I wish to mention is Lord Phillips of Worth Matravers, who is quite unfamiliar to Hong Kong people. After taking office as Lord Chief Justice, he had made preparations for the establishment of a brand new Supreme Court. In his opinion, the House of Lords as a legislature was not supposed to hold judicial power in addition to legislative power, though its power of final adjudication was still vested in Law Lords. Nevertheless, this structure not only confused people unfamiliar with the British constitutional system, it was also in breach of the fundamental principles of separation of powers and judicial independence. In his opinion, if the United Kingdom was to be brought on a par with major democratic countries in the world, it should go with the tide with the establishment of a Supreme Court and the abolition of the judicial functions of the House of Lords.

1 October 2009 saw not only the end of the judicial functions of the House of Lords, but also the establishment of the Supreme Court of the United Kingdom, with Lord Phillips of Worth Matravers becoming its first President. Of course, his introduction of new dress rules for judicial officers is also known to many.

Actually, I still have much to say about the three judges, but time is running out because of the tedious remarks I made in some areas. The speech I have prepared demonstrates that I have expectations for all of them.

President, I support these three appointments.

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

MR PAUL TSE (in Cantonese): President, I support this motion.

Earlier on, I heard Mr Ronny TONG talking about the various stages of life and destiny in a slightly sentimental manner, and this arouses some feeling inside me. I also had some association with TANG Ching, whom we also called Justice TANG Kwok-ching or Justice Robert, for some time in the past. Back then, I was a junior barrister, and I worked with him on a number of cases. By 1991, I chose another path in my life. After all the twists and turns and ups and

downs, I have the opportunity to take part in the discussion in person about the appointment of Mr Justice Robert TANG today.

President, just now, Mr LEUNG Kwok-hung seemed to be a bit upset for we had given too much emphasis on certain dissident judges but failed to give proper commendation to dissidents. So allow me to take this opportunity to give commendation to dissents in society. Truly, as Mr LEUNG Kwok-hung says, if there are only dissent judges but no dissidents, they probably will not have the opportunity to show their strengths. In fact, I think Mr LEUNG Kwok-hung has been practicing what he preaches in this respect. He has been spending efforts and time to challenge many issues, even putting his freedom at stake. In this connection, he is better than many people in the judiciary or the legal sector who do not walk the talk.

President, I would like to add my opinions regarding the several incidents I heard today. First, we have been actively promoting today the dissenting views held by Mr Justice Kemal BOKHARY and his efforts in defending freedom and human rights. However, I have also checked some past cases, including the several cases mentioned by Ms Audrey EU earlier. I notice from these cases that when Kemal BOKHARY was a dissent judge, other judges handing down verdicts during the same period had also won the respect of society, including Mr Justice Andrew LI, only that the verdicts they gave agreed with the majority views. It cannot be the case that we are considering one side correct and implying the other incorrect, which reflects that we are merely talking about a matter of degree. In other words, some people may be at the forefront, some others may be in the middle, while some may be relatively conservative. By the same token, I hope the public would understand that the five justices of the Court of Final Appeal, though at different points, are all upholding the rule of law and freedom in Hong Kong. Therefore, we should not be under the illusion that the departure of one justice will be the end of the rule of law. This is absolutely not the case. Hence, we should not over-emphasize this incident.

Actually, we may look at the system and situation in the United Kingdom. Most often, some outstanding and humanized judges, such as Lord DENNING mentioned by Members earlier, may be at the forefront and they are more creative and daring. Yet, by the same token, other judges are handling cases in a reasonable manner in the spectrum. In this connection, I think we should still put considerable trust in the rule of law in Hong Kong. In fact, according to the

past record, there had been many rational judges with lofty goals. We need not be over-pessimistic, thinking that the rule of law in Hong Kong has now come to an end, unless this involves certain political agenda.

President, earlier on, Mr Ronny TONG kept emphasizing how much he appreciated Mr Justice Robert TANG, and he also mentioned judges like Charles CHING, whom I am familiar with. He stressed that they had common sense. In fact, to be a really good judge, legal knowledge, professionalism and integrity are definitely important, but what should be stressed is their common sense. I totally agree to this point; otherwise we will be taking issues to the extreme.

Honestly, if I am asked whether proceedings violating the Basic Law should be carried out to challenge certain political stances, I may cite two examples to illustrate this. The first one is about the implementation of the policy on minimum wage. It is stated unequivocally in Article 5 of the Basic Law that the socialist system shall not be practiced in Hong Kong, and it is obvious that the implementation of minimum wage is heading towards this direction. If anyone wants to challenge this system, it is obviously possible for him to put forth such a case according to law, and this may need a new "Longhair" to come forward to do so. However, in reality, it is the overall consensus of society and the overwhelming majority of colleagues that the implementation of minimum wage is a change in direction of Hong Kong. Since this is the request of Members and direction followed by the public, I think no one will arbitrarily present a challenge against this direction. We should discern which issues are legal-based and which issues are political-based. This is common sense, and this is wisdom.

By the same token, I believe that on issues like doubly non-permanent resident pregnant women, the right of abode and the Hong Kong-Zhuhai-Macao Bridge, we are all talking about the rule of law. The question is when the issue should be put in a legal context and when it should be dealt with politically. To put it in the opposite perspective, if we often exaggerate the rule of law, as if it were the only living entity on earth, this may result in the loss of balance, which may be the point judges with common sense have reservation.

President, regarding the appointment system, Mr Ronny TONG criticized earlier that the system lacked high transparency, whereas Mr LEUNG Kwok-hung queried whether there was centralization of power in the judicial

sector. This is true to some extent. Given the good tradition in the rule of law, Hong Kong still had an extremely good system of rule of law under the British-Hong Kong era, yet we did not have a good political system. We had no democratic system, either. Hence, we have been hundred-odd years ahead in terms of the rule of law. Actually, we should take pride in the fact that the rule of law in Hong Kong is among the best in Chinese societies in general, though our social condition is not the best.

In comparison, we have to understand that Hong Kong is still in its infancy politically at present. We are still exploring, stumbling and making mistakes. However, it does not mean that we should hold fast to one and only one thing, and keep emphasizing that the rule of law is the only saviour of ours. I think this idea is too pessimistic. On the contrary, we should treasure the good system of rule of law in Hong Kong while giving an opportunity to democratic progress. This is a positive and progressive approach to take. Otherwise, we will be belittling our politics and over-praising our rule of law, which, to some extent, will lead to hegemony of the rule of law.

President, regarding the appointment system, if my memory has not failed me, the system of Judicial Officers Recommendation Commission (JORC) has been implemented since 1976. Members know clearly the composition of the JORC, which has a membership of persons from relatively different background. They include the Chief Justice, two judges, two persons recommended by The Law Society of Hong Kong and The Hong Kong Bar Association respectively, and three persons from non-judicial sector. According to past record, the JORC had seldom been criticized for being subject to political interference. Given the system and structure, as well as the past record, worry is unworthy. Hence, I do not quite agree with the criticism from some colleagues earlier that certain Chief Executives had been trying to cover the sky with their hands, attempting to destroy the rule of law in Hong Kong via this appointment approach.

In fact, the appointment of judges is inevitably a political issue. Why? When we look at the situation in western countries, including the United States which we particularly admire, the appointment of justices is often a political agenda. Changes may take places upon the assumption of office of the President, depending on the position the President takes in the political spectrum, whether he is on the conservative or the liberal side. It is only natural. Indeed, the most important concern is that the judges appointed are considerably capable

in legal profession and have reached the benchmark of integrity test, and that they are worthy of our trust on the basis of their past record, and they will uphold the rule of law. However, as I mentioned in the beginning of my speech, this issue is a matter of degree. It is a matter of how far the judge has gone and whether the judge belongs to the group going ahead of others, like the dissidents so called by Mr LEUNG Kwok-hung. I myself am a dissident in some measure. I am a dissident in the legal sector, so I may have to put up with some unnecessarily pressure quite often, or I may encounter lots of setbacks throughout the course of life. Yet this is my choice and I am prepared to take it.

President, I notice that Dr Margaret NG has been emphasizing the importance of the rule of law earlier, as she always does. This point is indisputable and Mr Alan LEONG has stressed repeatedly relevant cases of the past. However, I have to get off my chest my disagreement with one of the point he mentioned earlier. When he mentioned a motion about seeking priority for handling a certain resolution in this Council, he did not take it from the perspective of "due credit", admitting that this Council had considerable power to negative a motion. But instead, he said the motion seeking to jump the queue was voted down "probably because Mr LEUNG Chun-ying does not have many friends".

I think this remark has shown or revealed that Mr Alan LEONG has been dwarfing this Council, and he is simply too mean to give recognition to this Council. It is regrettable. The passage of any motion by this Council is definitely not an issue of having how many friends, for it is the result of the exercise of individual will of all Members. In this connection, I hope that certain colleagues can be more rational, more willing to accept opposing views, share sincerely and adopt an open-mind in debates. Nonetheless, Members have reduced this practice to a matter of having enough friends or not, and thus refusing to accept certain political stances proposed or agreed by friends whom they do not quite agree with all along. Such attitude may not be of any good for the progress of this Council.

President, regarding the age of retirement, I have seen many reports querying why Mr Justice Kemal BOHARY is forced to retire at the age 65 whereas Mr Justice Robert TANG, who is of the same age of 65, gets the appointment. First, I have already declared my relationship earlier. More importantly, I believe no one in the legal sector will doubt the capability of Mr

Justice Robert TANG. He is definitely a judge or a member of the legal sector with top ranking and outstanding achievement, and he is the most experienced and the most capable, so this is not a surprise that he has been promoted to the highest position. Had there not been the consideration of age, the availability of opportunity or his personal preference, I think he should have joined the judicial sector much earlier and might even have the chance to be the Chief Justice. Therefore, in my view, there is no doubt prompting me to consider that the appointment is a mere political or personnel compromise. It is merely a matter of comparison, as in the case of comparing goods and persons, that Mr Justice Robert TANG is well-deserved for the appointment.

Regarding the retirement time of Kemal BOHARY, why can we not postpone it till the completion of two additional three-year terms according to law? Upon reaching the age of 65, Mr Justice Robert TANG may be appointed for one three-year term plus another three-year term, which means six years in total. Yet for the appointment of non-permanent judges, I notice that there is no age limit. They can be appointed for three years and then N times of the three-year term upon reaching the age of 65. What does that mean? That means if the judges are in good health, theoretically speaking, their appointments may be extended every three years. In that case, people missing or recognizing Mr Justice Kemal BOHARY do not have to be worried, for if Mr Justice Kemal BOHARY is in good health, theoretically he will continue to play an extremely important role. We will see him handling cases according to the three-year term one after another.

I would like to add one final point about the Basic Law. I have mentioned repeatedly that we often appoint some non-local judges or judges with non-common law background. However, it is the intent of the Basic Law that such appointment should only be made when necessary. Yet, according to the practices in the past, one judge from non-common law country or with non-common law background was appointed every time. In my view, the arrangement was made initially out of the concern of continuity, seeking to maintain the ties with other common law countries overseas. However, under the arrangement, the initial intent in formulating the Basic Law may not have been realized totally. I think this should be reviewed at suitable time and occasion.

Thank you, President.

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

(No Member indicated a wish to speak)

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

CHIEF SECRETARY FOR ADMINISTRATION (in Cantonese): President, I am very grateful to the Subcommittee on Proposed Senior Judicial Appointments (the Subcommittee) for its support to the proposed appointments. I have also listened very carefully to the speeches delivered by several Members.

In fact, during discussions held by the Subcommittee, the Administration and the Secretary to Judicial Officers Recommendation Commission (JORC) already responded to the questions and concerns raised by some Members, as mentioned by Dr Margaret NG just now. Having regard to the large number of livelihood items to be dealt with by the Legislative Council, particularly before the conclusion of this meeting, I am not supposed to repeat them. But since four Members have incidentally mentioned the age of Mr Justice Robert TANG Ching and Mr Justice Syed Kemal Shah BOKHARY, if I have not heard it wrong that even Ms Audrey EU indicated she had no idea why the term of office of Mr Justice BOKHARY, who was younger, was not extended, I must repeat the response already given to the Subcommittee for the comprehensiveness of Hansard.

This is the policy of JORC. An extension of the term of judicial office beyond the statutory normal retirement age should not be automatic. An extension should be regarded as exceptional and, generally speaking, the following two requirements should be met before approval is granted: (i) the Judiciary has operational needs, including the need for continuity; and (ii) the extension will not hinder the advancement of junior officers who are suitable for elevation. In fact, the aforesaid policy was formulated as early as September 1998 and has been applied to all judicial appointments since then in a consistent manner.

In considering the extension of the term of office of a Permanent Judge of the Court of Final Appeal (CFA), the Chief Justice of the CFA had also applied the JORC's policy as I mentioned just now. Mr Justice BOKHARY will reach the normal statutory retirement age of 65 in October 2012, after having served as a Permanent Judge in the CFA for over 15 years. The Chief Justice is of the view that there is no exceptional operational need for continuity in the case of Mr Justice BOKHARY. The Chief Justice also considers that there would be judges in the High Court who are suitable for elevation as Permanent Judge.

Therefore, the question of extending Mr Justice BOKHARY's term of office did not arise, having regard to the Chief Justice's views and the consistent application of the JORC's extension policy. As a Permanent Judge vacancy will arise following the departure of Mr Justice BOKHARY when he attains the age of 65 on 25 October 2012, the matter of filling the Permanent Judge vacancy was already put to the JORC some time ago.

As Article 92 of the Basic Law provides that judges of the Hong Kong Special Administrative Region (SAR) shall be chosen on the basis of their judicial and professional qualities, the JORC's recommendations for all judicial appointments must be made in strict compliance with this provision.

The JORC noted that all the Judges of the High Court, including Mr Justice TANG, were eligible for consideration. It also agreed that three Judges of the High Court, including Mr Justice TANG, should be short-listed. Having regard to the suitability of these Judges for elevation, the JORC considered that Mr Justice TANG was eminently suitable for filling the Permanent Judge vacancy.

Under section 14(2)(b) of the Court of Final Appeal Ordinance, a person who has attained the age of 65 years may be appointed as a Permanent Judge for a term of three years. In the light of this, the JORC resolved to recommend to the Chief Executive the appointment of Mr Justice TANG as a Permanent Judge of the CFA for a term of three years.

President, Justice TANG, Justice BOKHARY and The Lord Phillips of Worth Matravers are all outstanding judges. Their appointments will help the CFA to continue to play its key role in upholding the rule of law. In fact, upholding the rule of law is not only the responsibility of the Judiciary or CFA judges, but also a joint responsibility of the executive, legislature and Judiciary.

Judicial independence is protected under the Basic Law. Since the reunification, each term of the executive has been acting in accordance with the Basic Law in fully implementing the policies of "one country, two systems", "Hong Kong people ruling Hong Kong" and "a high degree of autonomy".

Upon the establishment of the fourth term of the SAR Government on 1 July, each member of my accountability team and I will make a solemn declaration that we will definitely uphold the Basic Law of the Hong Kong SAR of the People's Republic of China, abide by the law, and serve the Hong Kong SAR. Hence, our determination in upholding the rule of law is beyond question.

President, I implore Honourable Members to endorse the relevant appointments. 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.

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Legal Aid Ordinance.

I now call upon the Secretary for Home Affairs to speak and move the motion.

PROPOSED RESOLUTION UNDER THE LEGAL AID ORDINANCE

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I move the motion standing in my name.

Section 7(b) of the Legal Aid Ordinance (Cap. 91) (the Ordinance) provides that the Legislative Council may by resolution amend Schedules 2 and 3 to the Ordinance, which specify proceedings for which legal aid may be given under the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) respectively. With the proposed Resolution, the Administration proposes to:

- (a) expand the scope of the OLAS to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved in respect of the sale;
- (b) expand the scope of the SLAS to cover claims of the following categories with claim amounts exceeding \$60,000:
 - (i) professional negligence claims against certified public accountants (practicing), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, estate agents, and registered landscape architects;
 - (ii) negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products; and
 - (iii) monetary claims against the vendors in the sale of first-hand completed or uncompleted residential properties; and
- (c) expand the scope of the SLAS to cover representation for employees in appeals brought by either the employer or the employee against awards made by the Labour Tribunal, regardless of the amount in dispute.

In the 2010-2011 Policy Address, the Chief Executive announced that to complement the SLAS review to be completed by the Legal Aid Services Council (LASC), and to benefit more middle-class people, the Government would earmark \$100 million for injection into the SLAS Fund when necessary to expand the scheme to cover more types of cases.

Having carefully examined the recommendations of the LASC on the SLAS review, and considered the views of the Legislative Council Panel on Administration of Justice and Legal Services and relevant stakeholders (including the two legal professional bodies), we propose to expand the scope of the SLAS as set out above. In the meantime, noting that structured financial products are increasingly common in Hong Kong, the Administration has conducted a study and recommended that the scope of the OLAS be expanded as mentioned above.

We also propose that an increased application fee and enhanced rates of contribution be applicable to most types of new cases to be covered under the expanded SLAS to observe the self-financing principle of the SLAS Fund. Subject to the passage of the Resolution at the Legislative Council, amendment regulations will be made to implement the revised application fee and rates of contribution. Subject to the Legislative Council's passage of the Resolution and the tabling of the amendment regulations at this Council for negative vetting, we will seek approval from the Legislative Council Finance Committee on the proposed injection of \$100 million in one go into the SLAS Fund.

We briefed the Legislative Council Panel on Administration of Justice and Legal Services on the Administration's proposals and the proposed legislative amendments in March and December 2011 respectively, and obtained the Panel's support. To implement the expansion of the scope of the OLAS and SLAS, the proposed Resolution needs to be passed by this Council.

A Legislative Council Subcommittee was formed earlier and has completed scrutiny of the Resolution. In view of the suggestions of the legal adviser of the Subcommittee, we have incorporated amendments in the Resolution to refine the aforesaid legislative proposal. I am also grateful to Dr Margaret NG, Chairman of the Subcommittee, and other Subcommittee members for their efforts and valuable comments, which facilitated the smooth completion of the Subcommittee's work.

I invite Members to support the motion. Thank you, President.

The Secretary for Home Affairs moved the following motion:

"RESOLVED that —

- (a) the Legal Aid Ordinance (Cap. 91) be amended as set out in the Schedule; and
- (b) this Resolution is to come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.

Schedule

Amendments to Legal Aid Ordinance (Cap. 91)

1. Schedule 2 amended (proceedings for which legal aid may be given under section 5)
 - (1) Schedule 2, Part II, paragraph 11 —
Repeal
"Proceedings"
Substitute
"Any of the following proceedings".
 - (2) Schedule 2, English text, Part II, paragraph 11(a), before "involving" —
Add
"proceedings".
 - (3) Schedule 2, Part II, paragraph 11(a), after "futures contracts" —
Add
", unless the claims are made by the person seeking legal aid on the basis that the person was induced to deal in the derivatives of securities, currency futures or other futures contracts by fraud, deception or misrepresentation".
 - (4) Schedule 2, English text, Part II, paragraph 11(b), before "for" —
Add
"proceedings".

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- (5) Schedule 2, English text, Part II, paragraph 11(c), before "involving" —
Add
"proceedings".
 - (6) Schedule 2, English text, Part II, paragraph 11(d), before "arising" —
Add
"proceedings".
 - (7) Schedule 2, English text, Part II, paragraph 11(e), before "for the taxation" —
Add
"proceedings".
 - (8) Schedule 2, English text, Part II, paragraph 11(e), after "the person" —
Add
"seeking legal aid".
2. Schedule 3 amended (proceedings for which legal aid may be given under section 5A)
- (1) Schedule 3, Part I, paragraph 1 —
Repeal
"by the aided person"
Substitute
", by the person seeking legal aid (*claimant*)".
 - (2) Schedule 3, Part I, paragraph 1 —
Repeal
everything after "any person"
Substitute
"(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim."
 - (3) Schedule 3, Part I, paragraph 2 —
Repeal
"by the aided person"
Substitute
", by the person seeking legal aid (*claimant*)".

- (4) Schedule 3, Part I, paragraph 2 —
Repeal
"where the claim exceeds \$60,000 or".
- (5) Schedule 3, Part I, paragraph 2 —
Repeal
everything after "exceed \$60,000"
Substitute
"(including proceedings for the defence to a counterclaim against the claimant and other proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim."
- (6) Schedule 3, English text, Part I, paragraph 3, before "proceedings" —
Add
"civil".
- (7) Schedule 3, Part I, paragraph 3 —
Repeal
"by the aided person".
- (8) Schedule 3, Part I, paragraph 3 —
Repeal
"(Cap. 282)."
Substitute
"(Cap. 282) by the person seeking legal aid, in the capacity as an employee (including proceedings incidental to the civil proceedings); and in a higher court, proceedings that are related to the civil proceedings."
- (9) Schedule 3, Part I, paragraph 4 —
Repeal
"by the aided person"
Substitute
", by the person seeking legal aid,".
- (10) Schedule 3, Part I, paragraph 4 —
Repeal
everything after "exceed \$60,000"
Substitute
"(including proceedings for the defence to a counterclaim against the person and other proceedings

incidental to the civil proceedings); and in a higher court, proceedings that are related to the claim."

(11) Schedule 3, Part I, after paragraph 4 —

Add

"5. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim —

(a) the claim is made by the person in respect of the professional negligence of any of the following persons —

- (i) a certified public accountant (practising) as defined by section 2 of the Professional Accountants Ordinance (Cap. 50);
- (ii) a person registered as a registered architect under the Architects Registration Ordinance (Cap. 408);
- (iii) a registered professional engineer as defined by section 2 of the Engineers Registration Ordinance (Cap. 409);
- (iv) a registered professional surveyor as defined by section 2 of the Surveyors Registration Ordinance (Cap. 417);

- (v) a registered professional planner as defined by section 2 of the Planners Registration Ordinance (Cap. 418);
 - (vi) an authorized land surveyor as defined by section 2 of the Land Survey Ordinance (Cap. 473);
 - (vii) an estate agent as defined by section 2 of the Estate Agents Ordinance (Cap. 511);
 - (viii) a person registered as a registered landscape architect under the Landscape Architects Registration Ordinance (Cap. 516); and
- (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.
6. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim —
- (a) the claim is made by the person in respect of the negligence of an insurer, appointed insurance agent or authorized insurance broker, as defined by section 2 of the Insurance Companies Ordinance (Cap. 41), in the performance of their functions for the taking out of the personal insurance that is the subject of the claim; and

- (b) the claim is, in the opinion of the Director, likely to exceed \$60,000.
- 7. Civil proceedings in the Court of First Instance, Court of Appeal or District Court that are brought, by the person seeking legal aid, in respect of a claim for damages that falls within the following descriptions (including proceedings for the defence to a counterclaim against the person and other proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the claim —
 - (a) the claim is made by the person against the legal or beneficial owner of a residential property that is a first-hand property;
 - (b) the claim arises from —
 - (i) an agreement for sale and purchase of the property, not being an agreement which, because of paragraph 5, 6 or 7 of Part III of this Schedule, is not regarded as having been entered into in respect of the property; or
 - (ii) a sale under the agreement described in sub-subparagraph (i); and
 - (c) the claim is, in the opinion of the Director, likely to exceed \$60,000.
- 8. Civil proceedings in the Court of First Instance or Court of Appeal that are brought in respect of an appeal under the Labour Tribunal Ordinance (Cap. 25) relating to a claim to which the person seeking legal aid is a party in the capacity as an employee (including proceedings incidental to the civil proceedings), and proceedings in a higher court that are related to the appeal."

(12) Schedule 3, after Part II —

Add

"Part III

Interpretation Provisions

1. In this Schedule —

associate corporation (有聯繫法團), in relation to a company or specified body, means —

- (a) a subsidiary of the company or specified body; or
- (b) a subsidiary of a holding company of the company or specified body;

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 32);

holding company (控權公司) means a holding company within the meaning of the Companies Ordinance (Cap. 32);

personal insurance (個人保險) means an insurance that is taken out by an individual and under which an individual is the insured person, but does not include any such insurance the sole or predominant purpose of which is for any one or more of the following —

- (a) business or commercial insurance;
- (b) industrial insurance;
- (c) investment;

residential property (住宅物業) means an immovable property (whether completed or uncompleted) constituting a separate unit constructed or intended to be constructed for residential use;

specified body (指明團體) means a body corporate incorporated or established under an Ordinance;

subsidiary (附屬公司) means a subsidiary within the meaning of the Companies Ordinance (Cap. 32).

2. For the purposes of paragraph 7(a) of Part I of this Schedule, a residential property is a first-hand property if no agreement for sale and purchase has ever been entered into in respect of the property.
3. For the purposes of paragraph 2 of this Part, in determining whether an agreement for sale and purchase has been entered into in respect of a residential property, paragraphs 4, 5, 6 and 7 of this Part apply.
4. If an agreement for sale and purchase has been entered into in respect of a residential property and the agreement has been terminated or has been declared void by a court in relation to that property, the agreement is not to be regarded as having been entered into in respect of that property.
5. If an agreement for sale and purchase is entered into, in respect of a residential property, between —
 - (a) a company or specified body (whether or not together with any other person); and
 - (b) an associate corporation, or a holding company, of the company or specified body (whether or not together with any other person),the agreement is not to be regarded as having been entered into in respect of that property.
6. If —
 - (a) a development, housing estate or phase of a development or housing estate has more than one residential property (whether or not the development, housing estate or phase is completed); and

- (b) all the residential properties in that development, housing estate or phase are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,
the agreement is not to be regarded as having been entered into in respect of any of those properties in that development, housing estate or phase (as the case requires).
- 7. If —
 - (a) a building has more than one residential property (whether or not the building is completed); and
 - (b) all the residential properties of the building are sold, or agreed to be sold, to any person under a single agreement for sale and purchase,
the agreement is not to be regarded as having been entered into in respect of any of those properties.
- 8. To avoid doubt, in determining whether a residential property is a first-hand property, the agreement for sale and purchase that is the subject of the claim or that relates to the sale giving rise to the claim is not to be taken into account."."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Home Affairs be passed.

DR MARGARET NG (in Cantonese): President, in my capacity as the chairman of the Subcommittee on Proposed Resolution under Section 7(b) of the Legal Aid Ordinance (Cap. 91), I now report the deliberations of the Subcommittee.

The aim of the Resolution is to expand the scope of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS). The Subcommittee supports the expeditious implementation of the relevant proposal.

However, Members are concerned that given the relatively small amount of money involved in awards made by the Labour Tribunal (LT) and the relatively larger amount of interim contribution (\$65,000) payable by an employee under the SLAS in lodging an appeal, it is doubtful whether the proposed expansion of SLAS can assist employees in need. The Legal Aid Department (LAD) has agreed to consider Members' suggestion that the LAD should provide employees with relevant information to assist the applicants in making an informed decision as to whether it is in their best interest to apply for legal aid under the SLAS.

Given that legal representation is not allowed in the LT and appeals against LT awards are made on a point of law, Members consider it unfair that employees have to bear the litigation costs for such appeals. They have requested the Administration to consider taking advantage of funds such as the Protection of Wages on Insolvency Fund and the Occupational Deafness Compensation Fund, or setting up a fund along those lines, to provide financial assistance to employees seeking representation in LT appeal cases. Members have suggested that the issue be followed up by the relevant Panels as appropriate.

Moreover, the Resolution proposes to expand the scope of the SLAS to cover monetary claims against professional negligence of vendors in the sale of first-hand completed or uncompleted residential properties. The Administration has agreed to take on board the suggestion of the legal adviser to the Subcommittee to include additional provisions to plug the possible loopholes lest monetary claims in the sale of first-hand residential properties may be excluded from the purview of the expanded SLAS.

In the course of deliberations made by the Subcommittee, Members have discussed the issue of whether, the term "提出" or "提起" in the proposed amended Chinese text should be used to render "brought by" in the phrase "civil proceedings brought by". The Administration has advised the Subcommittee that it has proposed the term "提起" when referring to the institution or bringing of legal proceedings with a view to achieving consistency with other existing legislation. However, Members consider the term "提出" is more generally accepted. Members also note that examples of both terms are found in existing legislation. Members suggest that the Law Drafting Division of the Department of Justice and the Legal Services Division of the Legislative Council Secretariat should study whether it is more appropriate to use "提起" or "提出" to match

with "訴訟" or "法律程序" and report the outcome of the study to the Panel on Administration of Justice and Legal Services.

Members also note that subject to the passage of the Resolution, the Administration will amend the relevant subsidiary legislation to revise the application fees and rates of contribution under the expanded SLAS. The Administration has provided Members with papers on how the relevant Regulations are to be amended. Members have not raised any queries and they agree that the Subcommittee should recommend to the House Committee that it is not necessary to form a subcommittee to study the amendment Regulations when they are tabled for negative vetting by the Council, subject to the amendments in the amendment Regulations being materially the same as those in the papers provided to the Subcommittee, so that the proposed expansion of the scope of legal aid can take effect as soon as possible.

President, the above is my report on work done by the Subcommittee. Now I would like to talk about my personal views.

President, when speaking earlier in my capacity as the chairman of the Subcommittee, I mentioned in the last paragraph that we had in fact speeded up the pace of our deliberations as requested by the Department and as we deliberated on the Resolution, we also examined the relevant subsidiary legislation. In line with normal practice, the Subcommittee gave an account to the House Committee on the deliberations it had made with respect to the above subject. Then when the Government introduced these pieces of subsidiary legislation for amendment later, we need not form any subcommittee to study these pieces of subsidiary legislation and hence the expansion of the scope of legal aid could take effect sooner. The pace for deliberations was speeded up mainly to enable an application of a funding to the amount of \$100 million from the Finance Committee within this session, that is, the present term of the Council. This would enable the expansion of the scope of legal aid to take effect during this summer.

It is unfortunate that although a notice for tabling this Resolution has been made well in advance and as scheduled, it should have been tabled in the Council on 2 May for passage. The row concerning the five Secretaries of Departments and 14 Directors of Bureaux has affected the Bills and motions and they all have to be postponed. Now although we can pass this Resolution, the relevant

subsidiary legislation has to be left to the next term of the Council. The Council of the next term will have to decide on matters like whether there is a need to handle the relevant pieces of subsidiary legislation or that these pieces of subsidiary legislation have already been considered by the Council of the previous term and therefore they need not be studied again.

In any case, the whole process, and even the commencement date, has to be postponed for a few months and even half a year. I know that the Secretary is very concerned about this matter. I hope that the Council of the next term can bring the matter up again as soon as possible so that ordinary members of the public can benefit from this Resolution soon.

President, on expanding the scope of legal aid, the Panel on Administration of Justice and Legal Services has discussed the issue on many occasions and we have been very active in promoting the reform in legal aid so that it can better meet the needs of society. Legal aid should not be seen as a kind of social welfare. Instead, it is an important part in upholding the rule of law. If we want to achieve "equality for all in front of the law", we must do our best to prevent situations where one cannot take his case to the Court because of a lack of financial means.

We have to know that legal aid is not for free and especially under the SLAS, the applicant has to pay an application fee, an interim contribution as well as another contribution when the case concludes. The real advantage of legal aid to these applicants is that they can set a ceiling to the solicitor fees and litigation costs. This prevents them from having to pay a large sum of costs for the other party to litigation should they lose their case, which may worry them so much that they would not initiate legal action even if they have the grounds or that they dare not make a defence when someone institutes legal proceedings against them for no justifiable grounds.

Owing to the above reasons, the financial threshold for applying for legal aid is unreasonable and not practical. This has barred many people, especially those from the middle class, from applying for legal aid. These people are not eligible for applying legal aid and they cannot afford to pay for the money to commence a lawsuit. The Government has always put up the excuse that public money should be put into best use and refused to expand the scope of legal aid.

However, for a place as economically advanced as Hong Kong, the per capita funding on legal aid is only some \$60 and this can be said to be a disgrace.

The Resolution today is a small achievement as a result of the fight put up by the legal profession, the civilian groups and Members of this Council, regardless of their political stands. In fact, the expansion of the scope of legal aid and the injection of \$100 million for the purpose are only a very small step forward. Members of the public may not know that this amount of \$100 million is not set aside as expenses for legal aid but only for cash flow purpose. This is because the SLAS has to be self-financing, and so the application fee and the contributions are much higher than those paid by applicants under the OLAS, that is, standard legal aid.

Despite this small step forward, there are still many suggestions that we have made which are not accepted by the Administration and for which we still have to strive. These include the following:

First, the scope of the SLAS has not yet expanded to include the minority shareholders in properties for compulsory sale for redevelopment as well as litigations concerning the sale of products and provision of service. President, we have strong views against the Home Affairs Bureau for not agreeing to expand the scope of legal aid to include court proceedings concerning the sale of products and the provision of service. This is because the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 has not been passed until earlier today. And when we were discussing this Resolution, we had also said that after the passage of the above Bill which outlawed certain trade practices, the Government should make legal aid available to members of the public involved in such proceedings. This would enable the aims of the Bill to be achieved easier. It is unfortunate that the Department concerned considers that the money involved may be too small in amount and so it has reservations for this suggestion. In addition, when employees appeal against an award made by the LT, the fees they have to pay and the rights and benefits they can recover are still disproportionate. This makes legal aid unattractive to them and they cannot get any assistance in a practical sense.

Second, the new upper financial eligibility limit set at \$1.3 million is still unreasonable. The upper limit suggested by the Bar Association, that is, \$3 million, should be accepted. Raising the financial eligibility limit does not

mean that the number of court cases with legal aid provided will increase greatly. The result is just that more people are eligible for applying legal aid and whether or not their applications are successful will depend on the outcome of the merits test. The applicants must have a reasonable chance of success before they are granted legal aid, and when they have a good prospect of success, it means that there is a reasonable chance that most of the expenses they pay do not have to be met by public money.

Third, legal aid is confined to cases in which legal proceedings have commenced or about to commence. For many people, however, what they need more is legal service beforehand. This includes, for example, finding out the facts of the case and studying the points of law at stake. These will help the party concerned decide whether to take the case to Court or adopt other methods of dispute resolution. President, in the past couple of weeks we passed the Mediation Bill. Mediation is a kind of alternative dispute resolution but the parties concerned may not know which method is the best for settling disputes. And if this kind of legal service is available at the initial stages, the people may know that they should not have commenced legal proceedings in the first place, and instead, they should resort to mediation. When advance legal service is adequately provided, expensive litigation costs can be reduced. The Government should therefore consider this public demand to revamp the legal aid system.

The fourth point is about the level of criminal legal aid fees. It is only after repeated negotiations that a change is made to the much outdated criminal legal aid fees. I would like to thank the Administration for the sincerity it has shown in this matter. However, solicitors' fees have not been adjusted to a reasonable level. The fees charged by barristers have not been adjusted at all. I raise this point because I think professional service rendered should be reasonably rewarded. If the remuneration is always on the low side, this will certainly have an adverse impact on lawyers and they will not take legal aid as part of their normal practice. The result is that legal aid applicants will be affected and they will be barred from getting equitable legal service.

Lastly, President, I would like to raise two points. First, we have recently raised the issue of collective litigation. The Law Reform Commission also recommends that legal aid should also be available to collective litigation cases. Therefore, I hope that the Secretary can consider this recommendation regarding

collective litigation. In this case, although it is the Department of Justice which is to take the lead, the Commerce and Economic Development Bureau and the Home Affairs Bureau should pay attention to this matter, too. If they can do that, I am sure the recommendation can be put into effect very soon.

The last issue is about the independence of legal aid. President, when 1997 approached, this Council passed a motion to support the idea that legal aid should be provided by an independent body because many people thought that legal aid should not come under any form of government control. Despite our confidence in the staff of the Legal Aid Department, and we notice that when they come to this Council to discuss various issues with us, we can sense their zeal for legal aid, but there is still a big difference between an independent body and a government department. For example, whenever there is any change in the Government, especially one related to the Chief Executive — on this occasion, many people fear that China is asserting its grips on Hong Kong through its office in the Western District. If legal aid is provided by an independent body, people can see with their own eyes that legal aid is independent. President, this has an important bearing on people's confidence in the rule of law. At present, as legal aid still comes under the purview of the Secretary during this term of the Council, if the Secretary can work for a smooth transfer of legal aid work to an independent body, then it would be a real blessing for the people. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, as pointed out by Dr Margaret NG just now in her speech, the Resolution was scheduled to be examined by this Council on 2 May and the revision of the relevant regulations and arrangements for seeking funding approval from the Finance Committee were expected to be completed in June for the Resolution to take full effect in July.

But unfortunately, as Members are aware, due to the staging of filibusters over the past two months in this Council, the Resolution was unable to be tabled to this Council for discussion and voting until now when the current term of the Legislative Council will soon come to an end in six hours. Certainly, it is impossible for the revision of the relevant regulations to be completed and funding approval obtained from the Finance Committee within the current term of the Legislative Council. The relevant procedures are expected to be completed by the end of this year at the soonest to benefit the people. Evidently, the People

Power and the League of Social Democrats are to be blamed entirely for the present situation because of their indifference to the well-being of the general public, merely for their own political gains. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) strongly condemns their acts and calls on the next term of the Legislative Council to overhaul the Rules of Procedure to avoid the recurrence of filibusters.

Insofar as the content of the Resolution is concerned, the DAB considers that the expansion of the scope of the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) to enable more people to receive legal aid to seek legal justice warrants recognition and support. Among others, the expansion of the OLAS to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception is involved in respect of the sale will enable victims of cases similar to the Lehman Brothers incident as well as Loco London gold fraud cases to receive legal aid and recover their pecuniary loss. For this reason, the DAB supports and affirms the Resolution.

Nevertheless, it has always been our view that contributions under the OLAS and SLAS are too high, and to a certain extent, people in genuine need are faced with the situation of "getting caned for thirty beatings before seeing the magistrate", a saying in the ancient society to describe such a dilemma.

For instance, according to the proposal of the Resolution, the scope of the SLAS will be expanded to cover employees in appeals against awards made by the Labour Tribunal. Under this Scheme, an applicant has to pay an application fee of \$1,000 initially and an interim contribution of \$65,000. For successful cases, although the compensation recovered together with the application fee and interim contribution will be paid back to the applicant subject to the deduction of the Common Fund costs and the ratio of the final contribution calculated on the basis of the compensation recovered, the applicant may face a situation in which the compensation received is inadequate to meet the Common Fund costs and the final contribution, assuming that the compensation awarded is relatively small, thereby necessitating the applicant to pay extra money to meet the application fee and interim contribution. This has deterred quite a number of applicants.

Meanwhile, many people who cannot afford the contributions have given up applying for the OLAS and SLAS because of their exceeding high

contributions. Hence, a growing number of people are applying to defend themselves in court at various levels in recent years. Not only are these people unable to express their own cases effectively in court at various levels, the hidden legal points of view involved have also severely lowered their chance of winning in legal proceedings. As these people are not well versed in the complicated legal proceedings involved in litigations, the Courts are faced with greater difficulty in hearing and increased workload.

Despite the provision of some measures to assist people who opt to defend for themselves in court, such as the implementation of a pilot scheme whereby legal advice is offered to unrepresented litigants, the establishment of a resources centre for them, and so on, the relevant measures merely advise them on the relevant legal proceedings without giving any case-specific advice. Hence, the effect on fully addressing the various hardships encountered by unrepresented litigants in proceedings is insignificant.

In view of this, the DAB has requested that the application fees and contributions payable under the OLAS and SLAS be lowered. Nevertheless, the authorities concerned has refused to accede to our request for lowering the relevant fees on the pretext that legal aid resources are limited and that the SLAS has to be self-financing.

In this regard, some people hold the view that given the existing limited legal aid resources, further steps should be taken to prevent abuse of such resources by people with ulterior motives. For instance, last year, an elderly person was manipulated by members of a political party to adopt a "no win, no fee" tactic to apply for a judicial review of the Hong Kong-Zhuhai-Macao Bridge (HZMB). Not only has the relevant case led to abuse of the legal system, a solicitor having a cordial relationship with these people has been given a substantial litigation fee. It is most heartrending that the delay in the HZMB works has led to an increase of construction costs by \$15.3 billion. With this sum of money, 26 000 public housing units could have been built for nearly 100 000 people.

This explains why, during the scrutiny of this year's Budget, I called on the Legal Aid Department to review the existing mechanism to avoid the recurrence of champerty. According to the Director of Legal Aid at that time, the proposed introduction of a declaration system was under study to ensure that the

appointment of a certain solicitor by an aided person would not be influenced by the his "no win, no fee" undertaking or other misconducts. In this respect, the DAB hopes that the study can be completed expeditiously and the relevant system can be implemented to plug the loophole of champerty.

With these remarks, I support the Resolution.

MS CYD HO (in Cantonese): President, I have joined the Subcommittee which studies this piece of subsidiary legislation. As usual and in a very focused and effective manner, Dr Margaret NG has been able to draw our attention to such issues as whether or not legal aid should be independent and whether or not the scope of the expanded Supplementary Legal Aid Scheme (SLAS) is appropriate, and so on. But I regret to say that it was because of people like me who are used to management and mindful of figures in the accounts that the pace of deliberation has been slowed down. This is because I was working out the sums with the Government and the chairman of the Subcommittee. What are the figures I have worked on? They are about the possibility that for employees who have been awarded compensation by the Labour Tribunal, if their employers want to lodge an appeal and if these cases are included in the SLAS, would the employees be able to get a sufficient amount of compensation? Or under some circumstances, even if the employees win an appeal case, they may have to make some payment before the legal proceedings can complete.

From this it can be seen that it would be helpful to have people of different kinds of background in a Bills Committee or a subcommittee as they can work together to deliberate on certain policies or laws. The Subcommittee has held about two meetings to discuss this sum and the result is that the Government is forced to submit some actual figures and examples for our consideration and officials will not just talk in an abstract way about principles that do not exist in real life.

Take a look at these authentic examples and we can find that we are not letting our imagination run wild in this matter. There are really people who are assisted by the SLAS in coping with the appeal from their employers but in the end they cannot get anything. Why? It is because they have to pay a substantial amount of money before they take their cases to the Court. First,

they have to pay an application fee of \$1,000. Second, they have to pay a contribution of \$65,000 to the Legal Aid Department.

The amount of money involved in these cases about pursuing arrears in wages is usually not very large. This is because no one will make a claim for arrears in wages after a whole year has lapsed. When they are owed wages for two months, they know that they have to find the Labour Tribunal. But things are linked together; there is an income limit for applicants to the SLAS and that is between \$260,000 and \$1.3 million. For a wage earner making some \$20,000 a month, it would not be too much if he has savings equivalent to one year of his wages. The amount of savings can even be said to be quite small.

Suppose that wage earner has more than \$260,000 of savings and he only makes a claim of arrears in wages to the amount of two to three months of his salary, the amount of money involved is only \$60,000. But if he applies for the SLAS, he has to take out \$66,000 at once. Then this sum of money is more than the amount of compensation he wants.

So if the employees can get a favourable award from the LT, they will be in a very miserable situation if they have an employer who is rich and unscrupulous and who wants to pay the money to start a court battle. If the employers lose the case, they will get nothing. They will lose the application fee. They will also lose the money they use to hire a lawyer. And they will not be able to get the amount of arrears in wages awarded by the LT. Even if they win the case, the amount of money they can claim is only some \$50,000. But they still have to pay for the lawyer's fees. And according to actual examples given by the Government, the fees can be as high as some \$20,000 to \$30,000 under normal circumstances.

When these wage earners have spent the money, time and efforts, what they can claim is about \$30,000. This will definitely put them off and they will not dare to apply for the SLAS. For those unscrupulous employers who are rich enough to take legal actions, this will give them a chance to avoid having to pay the wage in arrears even if they lose their cases in the LT. This is because by lodging an appeal, these employers can deter the wage earners from following up their cases by commencing the appeal proceedings.

So the idea of collective litigation mentioned by Dr Margaret NG is desirable because quite often not just one employee but a group of them are involved in arrears in wages. If there is collective litigation, these employees can be helped and things will not be too bad for them.

As we talked about these labour disputes, Dr Margaret NG also made a good suggestion. My suggestion is that the Government should exempt the lawyer's fees payable by the employees. In this way, the wage earners can get all the money they claim from payment of arrears in wages and all they have to pay is the application fee of \$1,000. I am sure Dr Margaret NG has handled many cases in labour disputes and she knows the situation very well. She has suggested that a fund for claiming arrears in wages should be set up.

I have checked some information and I find that the Pneumoconiosis Compensation Fund and the Occupational Deafness Compensation Fund all have great amounts of surplus and they can afford to charge less from employers and adjust the levy lower. When these funds which are aimed at protecting the workers have a surplus, we can consider expanding the scope of the applications of these funds to help wage earners claim their wages in arrears. Apart from the SLAS, this can give them an additional kind of financial assistance and they can set their mind on claiming their wages in arrears. They do not have to worry that after claiming a sum of some tens of thousand dollars, what they get will not be enough to pay for the various expenses.

President, I hope that in the Council of the next term, Members representing the grassroots and the labour sector will work hard to discuss with the authorities on expanding the scope of application for funds which are aimed at protecting the workers and which have got a surplus, so that there can be another protection for the wage earners. Thank you, President.

(Mr LEUNG Kwok-hung is sitting in the seat of another Member)

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, please go back to your own seat.

MR ALBERT HO (in Cantonese): President, the Democratic Party supports the Secretary for proposing this Resolution to expand the scope of legal aid. This Resolution will assist many people who need legal aid service but cannot pass the means test. They can then be in a better position to fight for justice by resorting to litigation.

We all know that under our system of law, people can initiate legal proceedings to ask that justice be done. This is a very important and basic right of the citizens and it is a right expressly guaranteed by the Basic Law. I have to point out that while progress was made last year with the raising of the financial eligibility limit for the new Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS), we consider it insufficient yet. This deficiency is also pointed out by the two lawyers' groups. Many people in need cannot get the assistance they want. I know of course that the Government always says that resources are limited and so a line has to be drawn. And it is the view of the Government that this line drawn is reasonable.

However, we have pointed out in the relevant Subcommittee of this Council that the number of people who engage in court proceedings without legal representation is quite considerable. This is especially the case in proceedings in the District Courts. Such unrepresented cases take up almost 40% of the total number of cases heard. The number of such unrepresented cases in the Court of First Instance is also sizable and it is 30% of the total according to statistics on annual basis. In some years the percentage can even be as high as 40%. When a party is unrepresented and the opposite party is represented by a lawyer, the adversarial system used in our Courts will be tainted with injustice. Second, the unrepresented party will put up grounds to fight for his case, and the Judge will adopt a humanistic approach, spending a lot of time explaining the case to the person so as to make up for his lack of legal knowledge and help him to proceed with his case. This greatly increases the workload of the Courts and it will incur public expenses.

With respect to this situation, we would think that on the one hand, justice cannot be seen to be done for the fact that those with money can hire a lawyer to represent them and they are placed in a more advantageous position. For those without money, even though they have meritorious grounds, they can only take the proceedings by relying on their common sense. This is not equitable. On top of this, this will pose a big obstacle to the Courts. To be frank, with the

insufficient number of Judges we have and the huge workload of the Courts, the Government should consider increasing the financial eligibility limit for legal aid to a more reasonable level. Then the aim as I have mentioned can be achieved, that is, more people can take their cases to the Courts and justice can be done. Moreover, the necessary workload for the Judges can be reduced.

It is often said that the Legal Advice Centres in the Courts can be of help. But in reality, their use is very limited because the staff of the Centres will only provide information on the procedural matters. As to drafting of the papers concerned and the kinds of information to be included in the papers to be submitted to the Courts and so on, I believe no advice can be obtained from these Centres. The litigants will not be told what to do and it would also be difficult for the Judges to offer any help. So the problem will remain unsolved. I therefore hope very much that the Secretary can pay attention to that. In the meetings of the Subcommittee, Members are advised that there are regular reviews to the financial eligibility limit. In the past, it was conducted once every five years. I would think that the time span should be reduced for such regular reviews in order to meet public aspirations.

Likewise, the expansion of the scope of legal aid on this occasion is a reform that is long overdue. We consider that some concrete steps have been taken to improve the system on this occasion. I must point out that with the leadership of the Secretary, some positive steps are taken. Even though The Law Society of Hong Kong and The Hong Kong Bar Association still think that there is still room for further reform and that there should be more proposals put forward for further reform, I would leave this for discussion later. I would think that many of the proposals made are very reasonable and I do not see why they should be excluded from the legal aid system under the existing legislation.

At first, I wish to talk about the expanded scope proposed by this Resolution. The eligibility limit under the OLAS was raised to \$260,000 last year. It is the hope of the profession that this can be adjusted to a reasonable level. Actually, the limit proposed is not too much, which is only \$350,000, that is, raised from the original \$175,000 to \$350,000. This is the first point. Second, the scope is expanded to included claims in investment on derivatives of securities and futures contracts when fraud, misrepresentation or deception is involved. All these are necessary because as we know, victims of the Lehman Brothers incident are deprived of their right to apply for legal aid because of the

unreasonable nature of the existing law and they are unable to claim damages by taking their cases to the Court. Many people are forced to accept the reconciliation plan offered. In many such cases, despite their meritorious grounds, the parties concerned do not have the money to initiate legal proceedings and they are also unable to apply for legal aid. So they are forced to accept an offer of reconciliation with a lower percentage of compensation on damages. For many people, they do not have the money to take legal action.

Therefore, the changes made this time are good. I believe there some cases may be brought up before the Courts in time as a result. However, I do not really understand why such changes only apply to the OLAS and cannot be expanded to include the SLAS. We just fail to see why. We know that in such cases, it is difficult for ordinary members of the public to take legal action against the large financial institutions. We also know that any of cases has to undergo a merits test and there must a reasonable chance of success before legal aid is granted. We also know that for many kinds of financial products, they can easily go beyond the Many of these victims are from the middle class and if the financial eligibility limit is set at \$260,000, many of them will be barred. This is very unreasonable. The result is that only those who are very poor and do not go beyond the financial eligibility limit of \$260,000 can apply for legal aid.

I therefore hope that the Secretary can take this down in his record that, first, when a review is to be conducted next time, cases concerning financial products should be included in the SLAS. Second, although we have been discussing the issue for such a long time, it seems that defamation cases and disputes between partners and shareholders are still excluded from the scope of legal aid. Such exclusion is unreasonable, too. We will certainly follow up these issues. Even under the OLAS, such cases are expressly excluded. In defamation cases, many of the parties are oppressed by those rich and powerful by legal means. Actually, these aggrieved parties do have good grounds of defence. Why should they be denied the chance to hire lawyers through legal aid and speak on their behalf? This is an important point we should note.

Well, as for the SLAS, I think that the new categories of cases included in the expanded scope are very important. I am sure many people from the middle class would have a chance to see justice done by taking legal action. However, we fail to see why the scope is so narrow. For example, in cases concerning

claims of first-hand residential properties, why can the scope not be extended to cover second-hand residential properties? For completed or uncompleted first-hand residential properties, legal aid can be applied within one year, but legal aid cannot be applied for other cases. Why? There is no rationale behind such a classification.

Second, Dr Margaret NG has said earlier that the commencement of the law on compulsory sale of properties would place many small property owners under the pressure from developers as the latter apply for compulsory sale. Many small property owners may have a good defence. But why are they not allowed to obtain legal aid under the law on compulsory sale of properties? This is also very unreasonable. In the Subcommittee, we have listed many other kinds of cases and we are very unhappy when the Government still refuses to include such cases in the SLAS. This also applies to many cases where small shareholders are bullied and oppressed.

Similarly, in the sale of goods and services, we know that we have just passed a law to regulate unfair trade practices. Many people are victims of these unfair trade practices. They belong to the middle class and cannot initiate legal proceedings unless they have legal aid. Then why can the scope for legal aid not be expanded? This is also a serious problem.

Lastly, I wish to talk about the point that legal proceedings involving the Bill of Rights should be exempted from undergoing a means test. The Hong Kong Bar Association proposes that cases involving public interest should be included. Our opinion is that this idea should be expanded to include cases involving the Bill of Rights and public interest, and all such cases should be exempted from a means test. However, the person initiating the legal proceedings may have to pay a greater sum of contribution. But we would think that this is acceptable.

As for labour issues, I am sure many Honourable colleagues would speak on these later. As time is short, I do not think I can go into great details. On the problem of wage earners being oppressed by the bosses who make appeals, I think this is a problem we have to address. This involves not only the Legal Aid Ordinance. I am sure the Protection of Wages on Insolvency Fund and the principles behind the sharing of legal costs (*The buzzer sounded*) may also have to come under a review in law with a review to changing it.

MR IP WAI-MING (in Cantonese): President, the Federation of Trade Unions (FTU) supports this Resolution proposed under the Legal Aid Ordinance. However, I wish to take this opportunity to express our views on the legal aid system. President, the FTU is a labour organization whose members are workers. Many of them would need legal aid from time to time. As many Honourable colleagues have said, the expenses in legal proceedings are too high. Without legal aid, they cannot afford various kinds of expenses incurred during the legal proceedings. This poses a great obstacle on their attempt to recover the employee rights and benefits that they deserve.

With respect to our use of legal aid, we can say that it is used mainly on two kinds of matters, one being the appeals in the Labour Tribunal (LT) and the other in situations where legal aid may be needed to enforce an award made by the LT to wind up a company. Even if an application has been made to wind up a company, workers may not be able to recover their rights and benefits. This is because the existing legislation provides that if employees want to obtain any assistance from the Protection of Wages on Insolvency Fund (Fund) or to apply for *ex gratia* payments, they must hire a lawyer and apply to the Court for winding up the company concerned before they can get any assistance from the Fund.

However, in many cases a large sum of money has been spent before the case can be brought up before a court of law. On this occasion the Government proposes to expand the scope of the Supplementary Legal Aid Scheme (SLAS) to cover cases concerning awards made by the LT, but the employees still have to pay for an application fee and contribution. The application fee is \$1,000 and the interim contribution can be as high as \$65,000. According to figures released by the Legal Aid Department (LAD), the mean in these money claims in labour dispute cases often amounts less than \$40,000. It is really like "being caned for thirty counts before seeing the magistrate" if the employees are required to pay for a contribution of \$65,000 and an application fee of \$1,000.

The Home Affairs Bureau and the LAD have pointed out that the above sums can be reimbursed after the applicant for legal aid has won his case. But can the person get a full reimbursement? We find that this is not necessarily the case. President, we need to know that the scope of application of the Employment Ordinance is very wide. Now the working population in Hong Kong numbers some 3.6 million. Excluding cases of suspected fake

self-employment, there are some 3.3 million people in Hong Kong who are in a genuine employment relationship. In other words, the question of how the Employment Ordinance is to be construed or enforced will have a great impact on the rights of many people.

But the question is: Even if an employee is awarded the case by the LT, does it mean that he will definitely recover his rights and benefits? This is not always the case because his employer may file an appeal. As the appeal proceedings go on, some employers may coerce the employees to come to a settlement or renounce some of their rights and benefits because the LAD has set a really low financial eligibility limit. As some Honourable colleagues have pointed out, although this limit was raised last year, it is still unable to meet the needs of our society. This results in situations where employees who want to recover their rights and benefits are often hampered because they do not have any legal representation. Hence they are denied access to justice.

There are in fact many grey areas in the existing Employment Ordinance and these have to be clarified in a court of law. But why can these cases not be brought up before a Court? It is precisely because the money claimed is too small in amount. So we hope that the Home Affairs Bureau and the LAD can find out more about this situation.

I have once handled a case in which only 19 persons were involved. Their employer wound up his business and claimed that he was insolvent and could not pay their wages. Hence their wages were in arrears. In such circumstances, in theory what these workers should do is to apply to a Court for liquidation of that company so that the wages arrears could be recovered through the Fund. But the Fund told these 19 persons that their asset worth exceeded the asset limit prescribed by the LAD, hence they could not be provided with legal representation. So they could not obtain any legal aid to apply for a court order to declare his employer bankrupt.

We made an enquiry to the Fund and the Fund also hoped that the LAD could give a proof to show that even if legal aid were granted, the costs incurred would still be greater than the financial benefits obtained. But such a letter of proof would not come so easily from the LAD. So there was nothing these workers could do. The case took place about seven or eight years ago and at that time, we had once inquired after the legal costs for declaring a company

bankrupt. We were told that the fees charged by lawyers would be some \$70,000 to \$80,000. This was not a small amount for the workers even if they were to share it. In the end these workers waited for eight full months and they could only make an application to the Fund when other creditors applied for the liquidation of that company.

We would also like to point out that sometimes the employers would rather spend money to make an appeal than paying for the damages. In another case I have followed up, the money claimed was an attendance bonus and the total sum of money involved was only \$5,000. The LT awarded the case to the worker, but his employer made an appeal. We agree that employers have a right to lodge an appeal. That is all right because they may think that a point of law is in contention. But why at times we feel that we are so helpless? It is because that employer hired a senior counsel to handle this appeal case. And we hear that this senior counsel charged that employer \$260,000 in the first hearing. In the eyes of that employer, the sum of \$260,000 might not be substantial at all, but the amount in dispute was only \$5,000. He would rather pay a senior counsel \$260,000 than \$5,000 to his employee. If this employee wanted to take the proceedings, he had to put up a defence himself or hire a lawyer. Suppose the lawyer he hired were not a senior counsel but an ordinary lawyer, this would not be a fair match in which the contenders were equal. And just imagine how much money he had to spend.

President, I just want to show by citing these examples that our demands are not excessive at all and these are just meant to pursue the cause of justice. I hope that the Secretary can really listen carefully to these demands from the FTU, which we have been pressing for years. Under the present mode of operation of the LT, which is quite unique, neither party is allowed to have legal representation. What the workers say in the LT is only what has happened to them and the Adjudicator will award the case according to the facts presented to him. In this regard, the invoking of points of law and how these points are applied may not necessarily be related to these employees as they have not hired any lawyers to represent them. What they do is just presenting the facts. It is the duty of the Adjudicator in a LT to make a judgment of the facts and apply the relevant points of law.

Therefore, we have always thought that the LAD should amend the relevant laws and waive the means test for those employees who have been

awarded a case by the LT but are facing an appeal from their employers. This will enable the employees to obtain legal aid. Or the LAD can apply a more lenient standard so that these employees can apply for legal aid. In this way, we think that employees can have access to justice which they deserve under the Employment Ordinance.

Next, we think that section 5AA of the Legal Aid Ordinance should be further amended. The section provides that the Director of the LAD may waive the limit of financial resources of an applicant, but this is confined to proceedings in which a breach of the Hong Kong Bill of Rights Ordinance or an inconsistency with the International Covenant on Civil and Political Rights as applied to Hong Kong is at issue. We think that the scope of section 5AA should be expanded to include cases that I have just mentioned. When an employee wins his case in the LT but the employer lodges an appeal, the Director of the LAD should be given that discretion. We hope that the bureau can consider accepting these two suggestions or it can choose either one of them.

Lastly, with respect to company winding-up and liquidation, the Council of this term has amended the Employment Ordinance and it is an offence for an employer who does not comply with the award made by the LT without any reasonable excuse. But we still find some employers delaying in complying with the awards made by the LT and paying the sum of money specified. Or these employers may just disappear, resulting in the problems I have just mentioned when an application is made to declare a company bankrupt. In this regard, I hope that the LAD can waive the relevant requirements or enhance its links with the Fund. At present, if the number of claimants is less than 20, the Fund may exercise its discretion and pay the money claimed by the employees in the absence of an order of bankruptcy. However, in many cases, the Fund would like to have some proof from the LAD showing that even if legal aid is granted, it is not cost-effective. We hope that there can be stronger links between the LAD and the Fund in this respect and if it is genuinely thought that it is not cost-effective even when legal aid is granted, these two agencies can work together and help employees by waiving the relevant requirements for them. This will facilitate their application for *ex gratia* payment from the Fund. I would think that this is the best option to take.

President, I so submit.

DR PRISCILLA LEUNG (in Cantonese): President, before I joined the Legislative Council, I always came across cases in which assistance was sought. The assistance seekers often came to me in person. They came to the university where I teach and asked me to give them legal advice because they were not eligible to apply for legal aid. I remember very well that an old man who claimed that his son was arrested knelt down in front of my office on the day of the Mid-Autumn Festival. That was an old case of about seven years ago.

Besides, I always received letters from Hong Kong people who encountered legal problems in the Mainland but did not know how to seek assistance because this type of people are unable to apply for legal assistance in Hong Kong. This is why I was strongly motivated to fight for these people after I joined the Legislative Council. Some colleagues of the Legislative Council have also fought for legal justice for people in different social strata, and this is what we should do. Therefore, I have hoped to dedicate some of my time to serving a group of people to whom I always feel very much attached. These people deserve to be called the backbone of Hong Kong. They have the duty to pay tax and yet, they do not have the right to enjoy welfare and as a result, they have become the most pitiable sandwiched class.

This is not a view expressed just today or in the wake of the Lehman Brothers incident. Instead, there had already been many similar cases before the Lehman Brothers incident. Some of those people seeking assistance were even university professors. When they ran into legal problems and wished to seek legal justice for themselves by resorting to the Court, they often refrained from taking the first step when they really understood the legal proceedings in Hong Kong. Why? Even if they considered that their cases were supported by very strong reasons and that they could win at the first hearing, the unsuccessful party to the proceedings with greater financial resources may lodge an appeal. Even if the Court will rule in favour of them in the appeal hearing, they still have to face proceedings for final appeal. This is really beyond the affordability of many people, and there are even cases in which the people concerned have made detailed calculation to find that even if all their savings and assets are spent on the lawsuit, they may still fail to seek the legal justice which is due to them.

Such being the case, what is most ironic about the Legal Aid Scheme in Hong Kong is that it always takes the wealthiest or the poorest to enjoy the best legal services. This is, of course, the case for the wealthiest, including the major

consortiums, public sector bodies and even owners' corporations (OCs). OCs are, after all, financially stronger than individual owners. For example, I had come across a case in which an owner of a Home Ownership Scheme flat had dispute with the OC and engaged in a lawsuit against the OC. As a result, he ignorantly got himself in debt from head to toe and had to sell his property eventually, thus losing the status as an owner of that building. His wife was unable to cope with the pressure and divorced him, and he himself was even out of job. These cases are just common.

Since I became a Member of the Legislative Council and a District Council member, the assistance requests received by my district office have been made mostly by middle-class people who are not eligible to apply for legal aid. The definition of middle-class people is very broad indeed. People who make a monthly income of some \$20,000 may already be considered members of the middle-class. However, they do not have the means to afford the expenses incurred in a lawsuit at all. Therefore, the first motion debate that I moved after I joined the Legislative Council was to propose the relaxation of the eligibility criteria for legal aid to enable more people in the sandwiched class to have a chance to access legal aid, so that they will not feel separated far from legal justice.

In the first Chief Executive Question and Answer Session held after I joined the Legislative Council, I also asked a question on the Lehman Brothers incident that had already broken out then. Many victims in the Lehman Brothers incident were, in fact, middle-class people. Faced with huge financial pressure and the financial strength of the banks, they did not dare to take their cases to the Court even though they were businessmen who owned a business as they were just proprietors of small and medium enterprises and worse still, they had bought the Lehman Brothers minibonds. I have assisted in bringing about settlement for many Lehman Brothers cases, thus putting the disputes to an end.

However, the settlement of so many cases has made it possible for banks to evade their responsibility because even though there were evidence and even tape recordings to prove that the marketing practices of banks might be highly misleading, or the products were primarily not suitable for these people and the buyers might even be illiterate or they made the investment with their pensions, once the settlement agreement was signed, the banks would engage a large group of lawyers to submit a request for confidentiality of the evidence. It means that

after the settlement agreement was reached, the buyer would not be able to come forth to give evidence. This is why it was impossible for the Subcommittee set up to investigate into the Lehman Brothers incident to obtain sufficient evidence to express condemnation of some irresponsible banks. This is precisely proof that when it comes to the so-called legal justice, it actually depends on the financial capabilities of the litigants, and in the court, it was not difficult to see disparity in the quality of lawyers. If a party to the proceedings has the means to meet astronomical legal costs and employ a team of lawyers to represent him, and if the other party to the proceedings is an average member of the public who cannot apply for legal aid, can he not be deterred from seeking legal justice?

The proposal put forward by the Government today can be considered a slight encouragement for the efforts that we have made over the years in fighting for the relaxation of the asset limit for legal aid applicants. In the process, the Government has adopted a positive attitude and this does command our praises, but insofar as the objective is concerned, there is still a long way from what we have been striving for. The previous asset limits are certainly not worth mentioning because under the Ordinary Legal Aid Scheme (OLAS), the asset limit used to be \$165,000, and a person would not be eligible to apply for legal aid once his assets exceeded this limit. As for the Supplementary Legal Aid Scheme (SLAS), the asset limit was \$460,000, and it is basically impossible for an ordinary family to meet this requirement. Now that these limits are finally adjusted after we have fought for years, and this can be said to be a breakthrough. The asset limit under the OLAS is adjusted upward to \$260,000 and that under the SLAS is increased to \$1.3 million. But frankly speaking, even to people in the lower segment of the middle class, it is still likely that their assets exceed this limit.

The objective that we have been fighting for is to increase the asset limits under the OLAS and the SLAS to \$1 million and \$3 million respectively and applicants who win the case are required to share the costs with the Legal Aid Department. We have discussed this with the Government and the Legal Aid Services Council for many times. We appreciate that they are concerned about possible bankruptcy of the fund if provisions have to be made continuously. We understand that the use of government resources must be stringent and this is why we think that more stringent criteria should be adopted for approving applications but the eligibility threshold may perhaps be slightly relaxed.

According to the Government's response today, the scope of applications will be expanded so that in addition to dentists and lawyers, accountants, architects, estate agents, and so on, will have the opportunity to apply for legal aid for their professional negligence. Regarding compulsory auction, however, some elderly people who do not wish to accept the auction arrangements have not been given a positive response by the Government when they wish to know the basic legal rights that they can enjoy.

Moreover, I wonder if the Government can consider employing lawyers who take up these cases on a full-time basis through the distribution of resources. As far as I know, a lot of resources have indeed been spent on legal aid services, as even a case relating to the right of abode can involve tens of million dollars. On the one hand, the Department of Justice must be paying out of public coffers while the cost incurred by legal aid applicants is also met by public coffers on the other, thus adding up to tens of million dollars. Can this be done in a less expensive way? Through the distribution of resources, lawyers who specialize in legal aid cases can be employed, and they would not charge fees at sky-high rates in the market. I believe this will be more reasonable to government resources and to the applicants.

Over the past two decades, I have provided assistance to many cases involving laws in the Mainland and Hong Kong. In the third point of the first motion that I moved for debate in this Council, I did strongly propose that the scope of legal aid services be extended, in order to provide assistance to Hong Kong people who encountered legal problems in the Mainland. I understand that this proposal may involve political issues, but I have come across many cases which were not in the least related to politics. The families of Hong Kong people who ran into problems in the Mainland do feel very helpless indeed, because when the breadwinner of the family is arrested, they do not even know what they should do as the first step. The wives whose husbands are arrested in the Mainland dare not go to the Mainland, fearing that they would also be arrested, in which case nobody would take care of their children. They are unable to get in touch with their family members; nor do they know what they should do to seek assistance. Worse still, when it comes to how they can hire a lawyer, they do not know where to start because it involves a place that is totally unknown to them.

In this connection, in respect of the scope of legal aid services, can the authorities consider enabling full-time legal practitioners with knowledge of the laws of China to provide practical legal assistance to these Hong Kong families in need of legal advice at the outset? In many of the cases in which I have provided assistance, when the assistance seekers approached the SAR's Beijing Office, they would only be given a list of lawyers in the Mainland and they were told to contact the lawyers on the list by themselves. They were only treated as if they were "human balls". If these families or family members are not provided with assistance sincerely and they are being kicked around as if they were "human balls", it would do no good to the problem at all. Should we also be genuinely committed to taking care of this group of Hong Kong people?

Since the Government has been encouraging Hong Kong people and Hong Kong families to develop in the Mainland and as these people are actually Hong Kong permanent residents, they should be provided with basic legal assistance. The Government can even make reference to the existing practices of The Hong Kong Bar Association and The Law Society of Hong Kong and provide these people with a list of voluntary lawyers. This is a way to start providing legal assistance to these people, and we are not asking the authorities to provide unlimited support or requiring the authorities to help these people with their lawsuits until the end of the proceedings. I do not fantasize that the Government would do this, but at least they can be provided with reasonable assistance, and like other Hong Kong residents, they can obtain legal assistance in the first stage. I hope that the next Government can give a positive response to this proposal.

President, legal aid has enabled many Hong Kong residents or Hong Kong people to seek legal justice but in reality, we can see even more disputes involving OCs. While a mediation mechanism is currently put in place, I wish to tell the Secretary that mediation is not ultimately binding. Therefore, I hope that the Government can consider introducing in the next stage a system of arbitration in areas where legal disputes often arise. It is because arbitration is a one-off arrangement. This would obviate the need for a "three-step approach" and the costs incurred would be less expensive. For example, if, in respect of compulsory auction, an arbitration system can be introduced outside the mediation mechanism, all the disputes can be dealt with in one go and the parties concerned would not have to be shackled by endless legal disputes.

President, I speak in support of this resolution, and I thank the Government for actively responding at least in the first stage to the aspirations that we have put forward over the years. President, I so submit.

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

MR LEUNG KWOK-HUNG (in Cantonese): Firstly, I have to thank Dr Margaret NG for her effort. I am rather lazy, but she has made so much effort in this reform on legal aid. Secondly, the legal aid system is actually a very simple one. On the premise that all men are equal before the law, legal aid should be provided with government assistance to people without means for them to pursue justice and equality.

Although Hong Kong society is quite affluent, it is rather complex and its law is seriously fragmentary. Certainly, I do not wish to go too far, or else the President will say that I have strayed from the question again. If the law itself is fragmentary, it will be quite difficult for assistance to be provided to the disadvantaged. My advice is very simple, and I hope the Secretary can listen to me. I have always been against the Legal Aid Department (LAD) coming under the jurisdiction of the Secretary, though I am aware that he is merely practising "*laissez-faire*" rather than doing anything to manage it. As the Government has thrown this bomb of legal aid to him, he is simply watching it. In fact, it is a serious and knotty problem. Given that legal aid is now under his ambit, I will definitely doubt his partiality. The key to the reform of the legal system actually lies in whether or not legal aid is managed by an independent organ and ceases to be managed by a Bureau Director.

My advice is very simple: The birth of reform must rely on punishing people of great wealth and power who bully people during legal proceedings, so that their money is used to help the disadvantaged. Otherwise, I cannot see how the Government, given its limited resources, can continue to expand its legal aid services and raise the asset and income ceilings for applying for legal aid.

What I mean is that the only way to continue to expand the scope of legal aid and raise the ceilings is to impose heavy punishment on people abusing judicial proceedings. I do not know if doing so is tantamount to upholding the

rule of law. Let me cite a very simple example. I have handled many labour cases. In most of the lawsuits involving labour disputes, the compensation received simply had nothing left. Some people even had to pay extra money. They would even lose all their money should they refuse to accept the Court's arbitration — since most wage earners would like to fight for more compensation. Furthermore, some lawsuits seeking to fight for justice could not be initiated because the persons involved were ineligible for applying for legal aid, unless the Hong Kong Bill of Rights Ordinance (BORO) was invoked. I fought this kind of legal battle once, and I was ultimately made to pay \$660,000. Moreover, the fine was already considered to have been meted out on exceptional compassionate grounds because of the BORO invoked by me. Anyhow, the fine amounted to \$660,000, and I even had to say "thank you" for it.

Firstly, President, we have to set aside a sum of money in advance. Many people have this question in mind: Will solicitors be benefited from the costly provision of legal aid in society? The answer is in the affirmative, because solicitors are responsible for initiating lawsuits. Is it impracticable if this sum of money is offered under a surveillance system? Some Members, such as Mr TAM Yiu-chung, have mentioned that some lawsuits can be described as "touting for proceedings", if not "champerty", which means that a solicitor colludes with his client to apply for legal aid to stage a legal battle. Nevertheless, I believe we must let people in genuine need of legal aid obtain legal aid services. If you ask me, "'Long Hair', are you dreaming?" I will tell you I am not dreaming because legal aid is crucial to the birth and development of the common law. As the common law has always relied on precedents to enrich the entire legal system, and even the interpretation of laws, there will be deficiencies in precedents if a respondent cannot stage a legal battle because of a lack of means.

Secondly, if some people in society cannot seek legal aid because of a lack of means, then justice cannot be done. President, I hope the Secretary can seriously consider appealing to LEUNG Chun-ying for funds to carry out a more comprehensive reform. I would like to reiterate my opinion that the Court and the Government must demonstrate the will to imposing a higher fine on major consortia or people of great wealth and power should they be punished to meet litigation costs in lawsuits. Even if they will not become bankrupt as a result, they should at least be discouraged from proceeding with their lawsuits.

In my opinion, there is no way to solve the problem if we do not think from this perspective. Another more abstruse issue is whether or not the "blind goddess" in the Court is really so blind that she cannot see anything at all. If justice is to be done, I think people relying on their wealth and influence to abuse judicial proceedings must be punished heavily, because it is these people who deter the disadvantaged from seeking justice through legal aid. Alternatively, they should face a heavier punishment of paying higher litigation fees, in order to reduce the expenditure of the LAD. Such being the case, the LAD will have more money to help legal aid applicants. Moreover, the chances of winning, which has been a matter of concern to the LAD for a long time, and the problem with cost-effectiveness, can also be addressed. I hope the Secretary can consider this point of view. Thank you, President.

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

MR WONG YUK-MAN (in Cantonese): President, the Resolution proposed under the Legal Aid Ordinance aims to seek the approval of the Legislative Council for Schedules 2 and 3 of the Legal Aid Ordinance to be amended to serve three purposes.

The first purpose is to expand the scope of the Ordinary Legal Aid Scheme (OLAS) to cover monetary claims in derivatives of securities, currency futures or other futures contracts when fraud, misrepresentation or deception was involved in respect of the sale.

The Lehman Brothers incident proves that the aggrieved parties are in need of assistance under these circumstances. As these cases might not be covered by the previous legal aid scheme, the aggrieved parties could not obtain legal assistance. They could only feel helpless unless they were financially capable of meeting the exorbitant legal costs.

Schedule 2 is amended to provide exemption under Part II (Excepted proceedings), specifying that legal aid may not be provided "unless the claims are made by the person seeking legal aid on the basis that the person was induced to deal in the derivatives of securities, currency futures or other futures contracts by fraud, deception or misrepresentation".

The Financial Dispute Resolution Centre is a non-profit-making organization which provides mediation services to resolve disputes between financial institutions and their individual customers. The claim amount involved must be no more than \$500,000, and the claimant is required to pay a fee of no less than \$1,200. If the mediation time takes more than four hours, an additional fee of \$750 per hour is payable by the claimant and this does not even include the arbitration fee. Will legal aid be provided to help claimants who have chosen the option of mediation?

The second purpose is to expand the scope of the Supplementary Legal Aid Scheme (SLAS) to cover professional negligence claims against certain types of professionals, negligence claims against insurers or their intermediaries in respect of the taking out of personal insurance products, and claims against the vendors in the sale of first-hand completed or uncompleted residential properties.

This is a very important point because many middle-class people may not meet the eligibility criteria of the OLAS. If they are not eligible to apply for legal assistance under the OLAS and if they cannot afford the legal costs, they would have to give up their claims, which is indeed against the spirit of the rule of law. The Government may contravene international human rights conventions in not providing legal assistance to them. What strikes us as strange is that the Legal Aid Ordinance is extended to cover professional negligence claims only now. This is because professionals know best how to protect themselves, and it is difficult for average members of the public to make claims against them.

Besides, despite the expansion of the SLAS, the coverage of professional negligence by professional sectors is still inadequate because it only covers certified public accountants (practicing), registered architects, registered professional engineers, registered professional surveyors, registered professional planners, authorized land surveyors, estate agents, and registered landscape Architects.

Yesterday, we discussed the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012, in which midwives, nurses, dentists and Chinese medical practitioners are mentioned, but these professionals are not covered in this Resolution. We hope that the Administration will further propose legislative amendments to expand the coverage of professionals in future.

LEUNG Chun-ying came from the surveying industry, and I wonder if estate surveyors are included in this Resolution. If so, that would certainly be the best, as I cannot tell for how many times there is negligence on his part.

Moreover, many people have suffered losses as a result of negligence by insurers or intermediaries. Even though there are stringent requirements in the insurance contracts, the insurers or intermediaries have often failed to comply with these requirements stringently for various reasons. Under such circumstances, the insured often suffer losses because the validity of their insurance policies is challenged. They thought at first that they were under protection but only to find that their policies have actually ceased to be effective. This has denied them of the protection to which they are entitled, while the intermediaries can evade their responsibilities. The marketing of insurance products is very easy nowadays, as a deal can already be made on phone or on line, thus making it even easier for cases of negligence to occur. The expansion of the SLAS to cover these claims merits our support.

With regard to the Residential Properties (First-hand Sales) Bill just passed, we also encountered many problems when the legislation was being mooted, did we not?

The third purpose is to expand the scope of SLAS to cover cases brought against awards made by the Labour Tribunal (LT), regardless of the amount in dispute.

The LT deals with labour disputes in a summary way. As the LT adopts non-formal procedures which do not allow legal representation for the litigants, the Judge can, therefore, conduct hearings in a more active manner. This will enable both the claimant and the defendant to be treated fairly without legal representation, and the interests of both parties will not be affected by the absence of lawyers.

However, some companies may lodge an appeal against the awards made by the LT. These cases will be heard in a higher court, thus allowing the companies to hire a lawyer. It will be unfair if no legal assistance is provided at the same time to the workers who won their cases. The Legal Aid Department has also provided assistance to some successful claimants in the appeal proceedings before.

With the expansion of the SLAS, the coverage of the scheme will become broader. While these appeal cases were covered only under the OLAS in the past, they are now covered under the SLAS, too. Having said that, despite the expanded coverage of the SLAS, I think the scheme still fails to practically protect the interests of the claimants, because the aided persons under the SLAS are required to pay an interim contribution of \$65,000, which is set to deter middle-class people from using this mechanism. It is only when the financial resources limit under the OLAS is adopted for assessing the interim contribution that protection can truly be provided to claimants in the middle class.

President, I support this Resolution.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): President, I thank Members for their views. Like Members, the Government earnestly wishes that this Resolution can be passed early, in order that the scope of legal aid services will be expanded to benefit more people as early as possible. This Resolution, which was originally scheduled to be moved on 2 May, cannot be tabled for discussion until today.

I would like to respond to the issues raised by Members earlier on. Legal aid is funded by the public coffer and we must ensure that publicly-funded legal aid services are provided to those with financial needs. It follows that an aided person should make a contribution towards the cost of legal representation in an amount proportionate to his means if he has the means to do so. The Supplementary Legal Aid Scheme (SLAS) is a self-financing scheme funded by contributions payable by the aided persons and damages recovered in proceedings.

I understand that Members are concerned about whether the SLAS can help employees who have applied for legal aid for appeal cases in the Labour Tribunal (LT). They are also concerned that employees who wish to recover their wages would find it difficult to meet the payment of the \$65,000 interim contribution. In fact, the majority of the applicants for legal aid in LT appeals are eligible for assistance under the Ordinary Legal Aid Scheme (OLAS) by meeting the financial resources limit of \$260,000. Over the past five years, 84% of applicants for legal aid in LT appeals have passed the means test under the OLAS. Under the OLAS, aided persons with financial resources not exceeding \$20,000 are not required to pay any fee, whereas those with financial resources above \$20,000 are required to pay an interim contribution between \$2,000 and \$65,000, depending on their financial resources. For successful cases, the compensation recovered together with the interim contribution will be paid back to the aided person subject to the deduction of the basic litigation costs.

We propose to expand the coverage of the SLAS to cover LT appeals in order to provide assistance to middle-class employees whose financial resources are above \$260,000 but do not exceed \$1.3 million. In drawing up the proposal on the expansion of the SLAS, we have considered the difficulties faced by employees in LT appeals. In this connection, we propose to exempt this type of cases from the increased rates of application fee and contribution proposed to be applied to other new types of cases under the expanded SLAS. However, under the self-financing principle of the SLAS, and as the use of public coffer is involved in providing assistance to individual aided persons in legal proceedings, we consider that while assistance is provided to the legally aided applicants, the aided persons should also be required to contribute towards the amount of litigation costs and expenses incurred on their behalf, depending on their financial resources. For successful cases, the compensation recovered together with the application fee and interim contribution will be paid back to the aided person subject to the deduction of the basic litigation costs and the final contribution.

Some Members have proposed to provide financial assistance to employees in LT appeals through the Protection of Wages on Insolvency Fund (PWIF) or the Occupational Deafness Compensation Fund (ODCF). The PWIF, which is mainly financed by levies on business registration certificates, aims to provide a safety net in the form of *ex gratia* payment to employees to insolvent employers at the closure of companies. Therefore, the pre-condition for the payment of *ex gratia* payment from the PWIF is that a bankruptcy or winding-up petition has

been presented against the employer. The ODCF is set up to provide compensation to persons employed in specified noisy occupations who suffer hearing loss as a result of prolonged exposure to excessive noise at work. The ODCF is currently financed by a levy on the employees' compensation insurance premium paid by employers.

I think Members will understand that these two funds are set up for specific purposes after detailed discussions in society and between employers and employees, and they are governed by the respective ordinances. Therefore, they cannot be used to provide financial assistance to employees in appeal proceedings. We understand that this proposal will be followed up by the relevant Panel of the Legislative Council in the next term. We will do our best to provide support to the discussion.

In consideration of the difficulties faced by employees in LT appeals, we have proposed to exempt this type of cases from the increased rates of application fee and contribution proposed to be applied to other new types of cases under the expanded SLAS.

We have studied the question of whether the claims involving the sale of derivatives should also be covered by the SLAS apart from its inclusion into the scope of the OLAS.

Under the self-financing principle of the SLAS, we consider that the claims involving the sale of derivatives should not be incorporated into the scope of the SLAS for the time being. We will review whether these claims should be included in the SLAS after giving effect to the proposed expansion of the SLAS in this stage and in the light of the actual cases involving the relevant proceedings after their incorporation into the OLAS. In the course of the review, we will continue to maintain communication with the Legislative Council Panel on Administration of Justice and Legal Services and the stakeholders, including the two legal professional bodies.

As to the provision of legal aid for compulsory auction of flats in buildings, we consider that these claims should not be included into the coverage of the SLAS at this stage, for these claims are against the principle that the SLAS is confined to monetary claims. Minority owners of a building who attend LT hearings object to the application for compulsory sale by majority owners mainly

in respect of the conditions of sale. In other words, the point at issue is mostly related to property valuation, not legal issues. Compensation in monetary terms is not involved. We have reported this consideration to the Panel, and the Panel has also agreed to exclude these claims in this stage.

As I said in my opening remarks, we will proceed to draw up the relevant amendment regulations after this proposed Resolution is passed today, in order to seek approval from the Finance Committee of the Legislative Council in the coming term as early as possible for a one-off injection of \$100 million into the SLAS Fund. We hope that the Resolution can formally take effect this year to expand the scope of legal aid services.

President, I appeal to Members to support the motion, in order to expand the scope of services under the OLAS and the SLAS.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): I think many Members have already taken dinner by themselves, but since I have decided to suspend the meeting for Members to take a rest, I now suspend the meeting until 8.30 pm.

7.36 pm

Meeting suspended.

8.30 pm

Council then resumed.

PRESIDENT (in Cantonese): Proposed resolution under the Eastern Harbour Crossing Ordinance and the Interpretation and General Clauses Ordinance to approve the Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 2012.

I now call upon the Secretary for Transport and Housing to speak and move the motion.

PROPOSED RESOLUTION UNDER THE EASTERN HARBOUR CROSSING ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I move that the first motion standing in my name on the Agenda be passed.

By virtue of their respective governing Ordinances of the four Build-Operate-Transfer (BOT) tunnels, namely Eastern Harbour Crossing (EHC), Tate's Cairn Tunnel (TCT), Western Harbour Crossing (WHC), and Tai Lam Tunnel and Yuen Long Approach Road (also known as "Route 3"), the tunnel franchisees may amend their bylaws to provide for matters relating to the control and operation of the tunnel areas. The making of such bylaws is subject to the approval of the Legislative Council. Today, I will move four motions to be put to vote in succession, to amend the bylaws of the above four BOT tunnels. The key proposed amendments include providing for the adoption of standardized autotoll signage at the four tunnels, allowing the franchisees to regulate vehicular traffic and pedestrians by using light signals, providing for the liability of a vehicle owner to pay toll, specifying more clearly the speed limit for certain

vehicles inside the tunnels, and the use of lanes inside the tunnels. These amendments are technical in nature, and aim to align the relevant bylaws with the government tunnel regulations or with the bylaws made by other BOT tunnel franchisees. Since some of the bylaw amendments proposed by the four tunnel franchisees are identical or similar, I shall first give an overall introduction of the key amendments, and then explain the contents of the first motion. I shall introduce the amendments of the remaining three motions when I move each of them later.

First, standardized autotoll signage. In May 2009, we introduced into the Legislative Council amendments to the government tunnel regulations to provide for the adoption of standardized autotoll signage at all government tolled tunnels, roads and control areas. It was planned that after the standardized autotoll signage was adopted at all government tolled tunnels, roads and control areas, the four BOT tunnel franchisees would follow suit. The four BOT tunnel franchisees have now put forward such amendment.

Second, regulating traffic by illuminated traffic signs. At present, illuminated traffic signs or Light Emitting Diode traffic signs are used at all government tolled tunnels, control areas and Route 3 to regulate traffic. The franchisees of EHC, TCT and WHC have proposed amendments to their bylaws to empower them to regulate traffic in the tunnel areas by using such illuminated traffic signs.

Third, liability to pay tolls. The bylaws of the WHC and Route 3 provide that both the owner and the driver of a vehicle using the tunnels are liable to pay toll, whereas the bylaws of EHC and TCT only provide that the driver of a vehicle is liable to pay toll. The franchisees of EHC and TCT have proposed amendments to their bylaws to provide that the owner of a vehicle is also liable to pay toll, to reduce instances of toll evasion.

Fourth, speed limit for WHC and Route 3. Under section 40 of the Road Traffic Ordinance (Cap. 374), the maximum speed limit on any road for certain vehicles, namely, buses, medium goods vehicles and heavy goods vehicles, and vehicles driven by a person holding a probationary driving licence is 70 km per hour, even if a higher speed limit is allowed on the relevant roads.

The maximum speed limit for the tunnels of WHC and the Tai Lam Tunnel of Route 3 is 80 km per hour. As the existing bylaws of WHC and Route 3 have not specified that the speed of the abovementioned vehicles driven in the relevant tunnels cannot exceed 70 km per hour, the franchisees of WHC and Route 3 have proposed to amend their bylaws to clearly specify that the maximum speed limit for such types of vehicles is 70 km per hour. As for EHC and TCT, similar amendments to their bylaws are not necessary as the maximum speed limit for the two tunnels is 70 km per hour.

Fifth, allowing medium and heavy goods vehicles to use nearside and middle lanes of WHC. At present, all dual-three lane tunnels in Hong Kong allow medium and heavy goods vehicles to use the nearside lane and middle lane of the tunnels, but the bylaws of WHC only allow medium and heavy goods vehicles to use the nearside lane. The WHC franchisee has proposed amendments to its bylaws to allow medium and heavy goods vehicles to use the middle lane of the tunnel. This amendment will improve the traffic flow at WHC as such vehicles will be able to use two lanes instead of one.

I have given an overall introduction of the four amendment bylaws. President, I will now move on to the details of the first motion. This motion covers amendments made by the franchisee of EHC, the New Hong Kong Tunnel Company Limited, under the Eastern Harbour Crossing Ordinance to amend the Eastern Harbour Crossing Road Tunnel Bylaw (the EHC Bylaw).

Three key amendments have been mentioned in my overall introduction earlier: first, providing for standardized autotoll signage in the EHC Bylaw; second, enabling the franchisee to control vehicular traffic and pedestrians by using light signals; and third, making the owner in addition to the driver of a vehicle liable to pay toll.

The EHC franchisee has also proposed other minor technical amendments, which include requiring all persons in the tunnel area as well as the drivers of vehicles to comply with any order or instruction given by a tunnel officer, updating the "Use dipped headlights" sign, and removing the obsolete prohibition on motor cycles from using the "exact payment" toll booths.

The amendment bylaws proposed by the four tunnel franchisees have been vetted by the Administration. Upon their implementation, motorists will benefit

from the standardized autotoll signage, improved traffic flow and road safety at the tunnel areas. I appeal to Members to support this motion.

Subject to the approval of the motion by the Legislative Council, all the amendment bylaws will come into operation on 20 July 2012.

President, I move the motion.

The Secretary for Transport and Housing moved the following motion:

"RESOLVED that the Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 2012, made by the New Hong Kong Tunnel Company Limited on 30 March 2012, be approved, subject to the amendment as set out in the Schedule.

Schedule

Amendment to Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 2012

1. Section 1 amended (commencement)
Section 1 —
Delete
"18 May"
Substitute
"20 July"."

(The Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 2012 is set out in Appendix A)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Transport and Housing be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Tate's Cairn Tunnel Ordinance and the Interpretation and General Clauses Ordinance to approve the Tate's Cairn Tunnel (Amendment) Bylaw 2012.

I now call upon the Secretary for Transport and Housing to speak and move the motion.

PROPOSED RESOLUTION UNDER THE TATE'S CAIRN TUNNEL ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I move that the second motion standing in my name on the Agenda be passed.

The motion that I now move covers amendments made by the franchisee of the Tate's Cairn Tunnel, the Tate's Cairn Tunnel Company Limited, under the Tate's Cairn Tunnel Ordinance, to amend the Tate's Cairn Tunnel Bylaw.

Three of the key amendments have been mentioned in the overall introduction that I gave when I moved the motion on the Eastern Harbour

Crossing Road Tunnel (Amendment) Bylaw 2012 earlier: first, providing for standardized autotoll signage; second, enabling the franchisee to control vehicular traffic and pedestrians by using light signals; and third, making the owner in addition to the driver of a vehicle liable to pay toll.

Subject to the approval of the motion by the Legislative Council, the amendment bylaws will commence on 20 July 2012.

President, I move the motion.

The Secretary for Transport and Housing moved the following motion:

"RESOLVED that the Tate's Cairn Tunnel (Amendment) Bylaw 2012, made by the Tate's Cairn Tunnel Company Limited on 30 March 2012, be approved, subject to the amendment as set out in the Schedule.

Schedule

Amendment to Tate's Cairn Tunnel (Amendment) Bylaw 2012

1. Section 1 amended (commencement)
Section 1 —
Delete
"18 May"
Substitute
"20 July"."

(The Tate's Cairn Tunnel (Amendment) Bylaw 2012 is set out in Appendix B)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Transport and Housing be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Western Harbour Crossing Ordinance and the Interpretation and General Clauses Ordinance to approve the Western Harbour Crossing (Amendment) Bylaw 2012.

I now call upon the Secretary for Transport and Housing to speak and move the motion.

PROPOSED RESOLUTION UNDER THE WESTERN HARBOUR CROSSING ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I move that the third motion standing in my name on the Agenda be passed.

The motion that I now move covers amendments made by the franchisee of the Western Harbour Crossing (WHC), the Western Harbour Tunnel Company Limited under the Western Harbour Crossing Ordinance, to amend the Western Harbour Crossing Bylaw.

These amendments have been mentioned in my overall introduction when I moved the motion on the Eastern Harbour Crossing Road Tunnel (Amendment)

Bylaw 2012 earlier. They are: first, providing for standardized autotoll signage; second, enabling the franchisee to control vehicular traffic and pedestrians by using light signals; third, providing that the maximum speed limit inside the tunnel for buses, medium goods vehicles and heavy goods vehicles, as well as vehicles driven by a person holding a probationary driving licence is 70 km per hour, even if the speed limit inside the tunnel is higher than 70 km per hour; and fourth, allowing medium and heavy goods vehicles to use the middle lane of the tunnel in addition to the nearside lane, so as to align the arrangement with that of all other dual-three lane tunnels in Hong Kong. The last amendment will improve the traffic flow at WHC as medium and heavy goods vehicles will be able to use two lanes instead of one.

Subject to the approval of the motion by the Legislative Council, the amendment by-laws will commence on 20 July 2012.

President, I move the motion.

The Secretary for Transport and Housing moved the following motion:

"RESOLVED that the Western Harbour Crossing (Amendment) Bylaw 2012, made by the Western Harbour Tunnel Company Limited on 30 March 2012, be approved, subject to the amendment as set out in the Schedule.

Schedule

Amendment to Western Harbour Crossing
(Amendment) Bylaw 2012

1. Section 1 amended (commencement)
Section 1 —
Delete
"18 May"
Substitute
"20 July"."

(The Western Harbour Crossing (Amendment) Bylaw 2012 is set out in Appendix C)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Transport and Housing be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Tai Lam Tunnel and Yuen Long Approach Road Ordinance and the Interpretation and General Clauses Ordinance to approve the Tai Lam Tunnel and Yuen Long Approach Road (Amendment) Bylaw 2012.

I now call upon the Secretary for Transport and Housing to speak and move the motion.

PROPOSED RESOLUTION UNDER THE TAI LAM TUNNEL AND YUEN LONG APPROACH ROAD ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, I move that the fourth motion standing in my name on the Agenda be passed.

The motion that I now move covers amendments made by franchisee of Route 3, the Route 3 (CPS) Company Limited under the Tai Lam Tunnel and

Yuen Long Approach Road Ordinance, to amend the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Route 3 Bylaw).

The two key amendments proposed by the Route 3 franchisee are: first, providing for standardized autotoll signage; and second, providing that the maximum speed limit inside the tunnel for vehicles driven by a person holding a probationary driving licence is 70 km per hour, even if the speed limit for the tunnel is higher than 70 km per hour. In addition, the Route 3 Bylaw already allows the tunnel franchisee to control vehicular traffic and pedestrians by using light signals. The franchisee has proposed to update the relevant provisions to align them with the newly added provisions in the by-laws of the other three Build-Operate-Transfer tunnels.

Subject to the approval of the motion by the Legislative Council, the amendment by-laws will commence on 20 July 2012.

President, I move the motion.

The Secretary for Transport and Housing moved the following motion:

"RESOLVED that the Tai Lam Tunnel and Yuen Long Approach Road (Amendment) Bylaw 2012, made by the Route 3 (CPS) Company Limited on 3 April 2012, be approved, subject to the amendment as set out in the Schedule.

Schedule

Amendment to Tai Lam Tunnel and Yuen Long Approach Road (Amendment) Bylaw 2012

1. Section 1 amended (commencement)
Section 1 —
Delete
"18 May"
Substitute
"20 July"."

(The Tai Lam Tunnel and Yuen Long Approach Road (Amendment) Bylaw 2012 is set out in Appendix D)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Transport and Housing be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Mandatory Provident Fund Schemes Ordinance to approve the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012.

I now call upon the Secretary for Financial Services and the Treasury to speak and move the motion.

PROPOSED RESOLUTION UNDER THE MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The motion seeks to amend the Mandatory Provident Fund Schemes (General) Regulation (the General Regulation) to introduce the proposed mechanism for suspension and resumption of the levy for the Mandatory Provident Fund (MPF) Schemes Compensation Fund (the Compensation Fund).

The Compensation Fund was set up under section 17(1) of the Mandatory Provident Fund Schemes Ordinance (MPFSO) in 1999. The purpose is to compensate scheme members for losses of their accrued benefits that are attributable to misfeasance or illegal conduct committed by the approved trustees or other persons concerned with the administration of those schemes in the event of their inability to pay the compensation.

The Compensation Fund was set up with a one-off grant of \$600 million by the Government. Since the inception of the MPF System in 2000, the Mandatory Provident Fund Schemes Authority (MPFA) has been collecting an annual levy at the rate of 0.03% of the net asset value (NAV) of MPF assets from trustees. To date, the Compensation Fund has accumulated over \$1.6 billion.

Taking into account the regulatory regime and stringent requirements under the MPFSO, the MPFA considers that the chance of claims against the Compensation Fund should be remote. As a matter of fact, no claim has ever been received since the inception of the MPF system. On this basis, we consider it prudent to suspend accumulation of the Compensation Fund when it reaches a reasonable level and resume collection of the levy when it drops below a pre-set level. Such an approach can obviate the need for scheme members to pay the levy continuously and necessarily. It is also consistent with the approach for the Investor Compensation Fund (ICF) in the securities sector.

Due to the lack of past local and overseas claims history to serve as parameters in actuarial modelling, the MPFA has reviewed the more likely risks which may occur in the MPF System and which may result in claims on the Compensation Fund as basis for determining the optimal level for the Compensation Fund. Under the MPFSO, the maximum exposure of a MPF fund to a single investment issuer is 10% in general. Taking into account the possible impact brought by a trustee's non-compliance with this diversification requirement on a constituent fund or a MPF scheme, the MPFA proposes to set the floor and maximum levels at \$1 billion and \$1.4 billion respectively. The

MPFA will keep under review the optimal reserve levels to ensure their continued effectiveness.

In order to ensure that the MPFA can make timely response to changing market situation, we propose to establish a mechanism for future resumption and suspension of the Compensation Fund levy, as in the case for the ICF in the securities sector. We therefore propose that the MPFA be empowered to order suspension and resumption of the levy if the audited NAV of the Compensation Fund as at a financial year end reaches above the maximum level of \$1.4 billion and drops below the floor level of \$1 billion respectively. To cater for possible special circumstances, we also propose that the MPFA should be allowed not to order suspension or resumption of the levy, mainly in the event of relatively large fluctuations in the level of Compensation Fund due to foreseeable circumstances, subject to prior consultation with the Financial Secretary.

President, the current rate of levy for the Compensation Fund is 0.03%, and the levy is deducted from the benefits of the scheme members. Subject to the approval of the proposal, the Compensation Fund levy can be suspended with effect from the third quarter of 2012. As at the end of December 2011, the total value of MPF assets amounted to some \$356 billion. Calculated on that basis, the suspension of levy will bring an annual saving of \$100 million for scheme members, which means more MPF contributions will go directly towards their retirement protection.

I implore Members to support and pass the motion, so as to give effect to the introduction of the proposed mechanism for suspension and resumption of the levy for the Compensation Fund.

The Secretary for Financial Services and the Treasury moved the following motion:

"RESOLVED that the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012, made by the Chief Executive in Council on 8 May 2012, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury be passed.

Does any Member wish to speak?

MR KAM NAI-WAI (in Cantonese): President, I think wage earners generally welcome the arrangement for the suspension of levy on the funds under the Mandatory Provident Fund (MPF) Scheme. As we all know, Hong Kong people are very unhappy with the administration or management fees and other fees charged by fund companies under the MPF system.

The proposed amendment seeks to freeze the 0.03% levy for the Compensation Fund, which is well-intentioned. The Compensation Fund and the MPF were set up at the same time, and as the Secretary has just said, the Compensation Fund has accumulated over \$1.6 billion. As Members can see, no claim has ever been made. For this reason, we consider it reasonable to suspend the levy for the Compensation Fund.

I have made some simple calculations. If a wage earner makes an income that exceeds the maximum income level of the MPF and if his MPF contributions have neither increased nor decreased, the accumulated levies paid for the Compensation Fund over a period of 10 years is around \$495. I do not know if I have got it wrong or not, but the Secretary has pointed out that I am wrong. Yet, it is only a matter of a few hundred dollars in aggregate over a period of 10 years.

According to the information provided by the Mandatory Provident Fund Schemes Authority (MPF Authority), the average MPF management fee — which means the fee charged by fund administrators and MPF companies — is 1.73%. Based on the criterion that I used for calculation just now, a wage earner pays a management fee of \$519 to financial institutions annually. In other words, over a period of 10 years, only some \$400 are collected for the Compensation Fund but the fund companies charge over \$500 from each wage earner per year. In comparison, even though the levy for the Compensation Fund is a very small amount, the suspension of levy is still a reasonable arrangement in view of the huge surplus.

As Members may recall, when "MPF semi-portability" was discussed some time ago, we said that wage earners would be able to make investment through an MPF company of their choice. Some time ago I took a look at the webpage of the MPF Authority in order to find out what substantive protection wage earners are provided with under the MPF system.

On the webpage it is pointed out that wage earners are provided with four-tier protection: Firstly, stringent approval and registration criteria; secondly, ongoing monitoring — in other words, the MPF Authority will exercise monitoring on trustees' compliance with the guidelines and against their breach of regulations; thirdly, professional indemnity insurance, whereby compensation claims can be made for losses of scheme assets caused by misconduct of the trustees or their service providers, and Members, who are also wage earners, may not know that its administrative fee has taken up 0.1% to 0.15%. In other words, the administrative fee of MPF schemes also includes the administrative fee of professional indemnity insurance; and lastly, the Compensation Fund. These are the four tiers of protection provided to employees.

It is now proposed that the levy for the Compensation Fund be suspended. Such being the case, are the other three tiers of protection adequate? With regard to stringent approval and registration criteria and ongoing monitoring, as Members may recall, when the "MPF semi-portability" was discussed some time ago, I moved an amendment on behalf of the Democratic Party in the hope that the MPF Authority would target at defaulting financial institutions and if there is proof of their non-compliance in their sales practices, the MPF Authority should be empowered to mandatorily require these financial institutions to make compensation to the victims. Much to our regret, this amendment on "MPF semi-portability" proposed some time ago was ultimately negated in the Legislative Council.

Certainly, we all argue with reasons in this Council. Nevertheless, even though our arguments are well-justified, this amendment was still negated in this Council. Why do I say that our arguments are well-justified? Let me again cite the report of the Subcommittee on the Lehman Brothers incident as an example Regrettably, I guess we will not have a chance to debate this report in the Legislative Council in this term.

Some people think that the parliamentary culture of the Legislative Council has been under challenge, with concerns about filibustering and so on. This Council is supposed to endorse a point mentioned in the Subcommittee's report. Although we do not have a chance to debate it, the Subcommittee does mention that the Administration should make it mandatory for defaulting financial institutions to make compensation to the investors and victims affected. The Subcommittee does mention this point in its report.

Regrettably, while this Council endorsed the Subcommittee's report on the one hand, it did not pass an amendment to provide more protection to employees during the discussion on MPF semi-portability on the other. When we actually had the power to do so, we nevertheless chose not to. So, it is very difficult for us in this Council to explain to the public why we have compiled such a detailed report on the one hand but refused to provide protection to wage earners on the other.

What we are discussing today is the arrangement for suspension and resumption of the levy mechanism for the Compensation Fund, which forms one part of the four-tier protection under the MPF system. Although the levy mechanism may be reactivated when the asset value of the Compensation Fund is below a certain level in future, as pointed out by the Secretary earlier on, we certainly do not wish to see a need to use this Fund in future, and we hope that no levy will be collected ever again after this suspension, or that this Fund will not be put to use in future.

Having said that, I think it is indeed more important to ensure that financial institutions are monitored more effectively and vigorously. If we cannot exercise monitoring effectively, it would be like telling the wage earners that we have in place four-tier protection for them but such protection is virtually useless. I think this is not what we would like to see.

Please do not misunderstand that we are opposed to the proposal on the suspension of the annual levy of 0.03%. It is only that we would like to draw the attention of the Government to the exorbitant fees charged by MPF companies. Even if the collection of a levy for the Compensation Fund is suspended, it may not greatly benefit the wage earners financially.

Will the implementation of "MPF semi-portability" truly bring down the administrative fees charged by MPF companies? Will the four-tier protection claimed by the MPF Authority be brought into play after the proposed suspension of levy is implemented? If the four-tier protection will continue, I hope that the Government can reconsider the proposal of the Democratic Party in the next term of the Legislative Council and see whether it should, in the event of non-compliance by financial institutions, mandatorily require financial institutions to make compensation to the victims.

With these remarks, President, I support the passage of the proposal on the suspension of the 0.03% levy for the Compensation Fund. Thank you, President.

MR WONG TING-KWONG (in Cantonese): President, first of all, I have to declare that I was a former non-executive director of the Mandatory Provident Fund Schemes Authority (MPFA), as well as the incumbent Chairman of the Mandatory Provident Fund (MPF) Industry Schemes Committee.

The resolution seeks to enact the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012 to introduce an automatic levy suspension and resumption mechanism for the MPF Schemes Compensation Fund (the Compensation Fund). The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports this resolution.

The Compensation Fund is one element under the four-tier protection under the MPF system. The purpose of setting up the Compensation Fund is to compensate scheme members for losses of their accrued benefits that are attributable to misfeasance or illegal conduct committed by the approved trustees or other persons concerned with the administration of those schemes. Since the inception of the MPF System, the Mandatory Provident Fund Schemes Authority (MPFA) has been collecting an annual levy at the rate of 0.03% of the net asset value (NAV) of MPF assets from trustees. However, no claim has ever been received and the Compensation Fund has accumulated to over \$1.6 billion.

In fact, when the Compensation Fund was established, the Government envisaged that the MPFA could suspend the collection of levy once the level of the accumulated reserve of the Compensation Fund reached \$900 million. On

reaching the reserve level of \$900 million in 2006, the MPFA reviewed the Compensation Fund in 2006 and 2009 respectively. However, due to the absence of local and overseas claims experience that could be used for modelling purpose at that time, and having regard to the uncertain economic and financial environment amid the global financial tsunami in 2009, decision was made to maintain the levy rate as it was not the right time to suspend the levy. Another review was conducted by the MPFA in late 2010. Given that all MPF trustees must satisfy various kinds of stringent requirements, and all MPF schemes must comply with all statutory standards and have indemnity insurance as a safety net for compensation for losses of scheme assets due to misfeasance or illegal conduct of trustees and service providers, the chance of claims against the Compensation Fund should be remote. The payment of compensation from the Compensation Fund is only a fallback. Hence, the MPFA proposes to adopt a hybrid funding approach under which the floor and maximum reserve levels are set at \$1 billion and \$1.4 billion respectively. When the audited NAV of the Compensation Fund as at a financial year end reaches above the maximum level of \$1.4 billion or drops below the floor level of \$1 billion, the MPFA can order suspension or resumption of the levy correspondingly.

As the MPF system has become more mature after more than 10 years in operation with good progress made for its development, and the Compensation Fund has already built up a substantial reserve, the DAB agrees that it is the right time to improve the funding approach of the Compensation Fund. The proposed funding approach has made reference to the current Investor Compensation Fund. When determining the optimal level for the Compensation Fund, reference has been made to the more likely risks which may occur in the MPF system and which may result in claims on the Compensation Fund. In addition, it is proposed that the MPFA should be allowed not to order suspension or resumption of the levy in special circumstances, subject to prior consultation with the Financial Secretary. Hence, the DAB considers it a prudent and flexible approach which provides the Administration with flexibility to determine the reserve levels. As scheme members are no longer required to pay levy to the Compensation Fund continuously, it will help reduce the average ratio of scheme expenses as well as depletion of MPF benefits. As a result, more MPF contributions will go directly towards retirement protection to the benefit of scheme members.

Nonetheless, the DAB also urges the Government to closely monitor the situation after implementation of the proposal. In particular, the Government should keep in view whether some trustees may run into financial difficulty after implementation of MPF Semi-portability if a large number of employees transfer their accrued benefits and hence, resulting in a substantial increase of claims on the Compensation Fund. In addition, the authorities should also monitor whether the global economy will become unstable again if the Euro debt crisis is intensified by a possible Greek exit from the Euro Zone, which could impact on the trustees' business and increase the number of claims on the Compensation Fund. The authorities should prudently examine and closely monitor the situation, conduct reviews periodically and make timely improvements.

President, the legislation on MPF Semi-portability has already been enacted. I think it will be implemented within this year. I hope the authorities will also monitor the situation in order to ensure that the retirement living of wage earners is protected.

President, I so submit and support the motion.

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

MR WONG YUK-MAN (in Cantonese): President, in fact, when Mr TAM Yiu-chung proposed the motion on "Comprehensively reforming the Mandatory Provident Fund Scheme" on 2 November 2011, I have already pointed out that given the increasing call for abolishing the Mandatory Provident Fund (MPF) System, any piece-meal amendments proposed to the system would fail to win the support of the general public, and Members who made these proposals were clearly out of touch with public opinion. The debate on reforming the MPF system at that time was merely a soliloquy done by Members, or the quip of "a clown's play" would not be entirely inappropriate. Today, Secretary Prof K C CHAN proposes piece-meal amendments to the MPF policy once again. In other words, Secretary Prof K C CHAN has staged the clown's play in the Council once again.

Today, the Government proposes these amendments to the MPF System only for the purpose of covering up the numerous shortcomings of the MPF

System. Would the people believe that when they are no longer required to pay the levy of 0.03% to the Compensation Fund from their MPF benefits, such contributions will really give them retirement protection in future, as claimed by Secretary Prof K C CHAN? I think we all know the answer very well if we consider the following data.

Since July last year to June this year, MPF contributions made by the people of Hong Kong recorded a negative return of over 7% on average. Even if members of the public have not made any investment in the past year, each of them still incurs a loss exceeding \$10,000. Although a positive return was recorded for the month of June, the rate was still under the benchmarks. In the past year, MPF investments on stocks recorded a negative return of 12.41%, with stocks in China and Greater China being the worst performers, respectively recording a negative return as high as 20% and 18%, while investments on Hong Kong stocks recorded a loss of 15%. Simply put, regardless of the choice and combination of investments, the MPF benefits of all Hong Kong people invariably incur a loss. It is therefore hardly surprising that as recently reported in newspapers, members of the public are inclined to believe that their retirement living will be protected if they are lucky enough to win the Mark Six, rather than by the MPF.

When the MPF system was introduced by the Government at that time, the objective was to give retirement protection to the people of Hong Kong. But insofar as the results today are concerned, MPF cannot give retirement protection to the people of Hong Kong. As shown by the data in the Fidelity Retirement Survey 2012 published by Fidelity Worldwide Investment, there is a widening gap between the retirement amount needed and that to be achieved by Hong Kong people, from a shortfall of \$1 million in 2010 to \$1.4 million in 2012, translating to a decrease of Retirement Readiness Index from 54.2% to 50.2%. In order to meet the savings shortfall, 32% of Hong Kong people will choose to work after retirement. Given these statistics, can we still hope that the MPF will give retirement protection to the people of Hong Kong?

In fact, I think Hong Kong people absolutely dislike gambling with their hard-earned savings. Why do I liken the MPF to gambling? That is because most funds are high-risk investments. Even if investing on some low-risk funds such as bonds, there is no guarantee that no loss would be incurred because as shown in the above example, even if members of the public have not made any

investment in the past year, each of them still incurs a loss exceeding \$10,000. That is because we will be outrun by inflation. As a colloquial Chinese saying goes, "Unlike the case of rape, there is no non-consenting party in gambling." Yet the SAR Government gambles with our hard-earned savings.

The MPF System is exactly a case of "Caned thirty beatings before seeing the Magistrate" because all people of Hong Kong must make 100% effort to get 95% in return. Moreover, we have to pay a certain percentage to the trustees, commonly known as "fund managers", as handling fees regardless of whether the investment makes a profit or loss. Simply put, members of the public cannot seek compensation from the trustees even for loss incurred as a result of their mistakes as they do not have any responsibility. It is the same as robbing the wage earners with a knife to pay the rich.

Sometimes, I really do not understand why the Government refuses to admit and correct its mistakes even when it knows very well that the majority of public opinion demands the abolition of the MPF system. Must it perpetuate this mistake to the very end merely for the sake of saving face? The SAR Government has already tried to defend the MPF System time and again with such "wise plans" as implementing the MPF Semi-portability, injecting \$6,000 into the MPF accounts, and so on. Sometimes we will take the side of the Government to consider why it must defend the MPF System so staunchly.

Successive officials in charge of finance and economic matters have right-wing thoughts, that is, the so-called genes of Neoliberalism. Hence, they were naturally drawn towards the golden rule of "big market, small government". According to right-wing thoughts, everything is decided by the market. Persons and organizations without any competitive edge in the market must be eliminated one by one. The Government does not have the responsibility of looking after those persons who cannot survive in the market. The Government invariably considers that a member of the public who cannot enjoy a comfortable retirement life must bear the responsibility himself because he has neither worked hard nor built any savings when he was young. To obviate the need for the Government to succumb to pressures of public opinion and shoulder the burden of these people whom they consider to be unable to survive in the market, the MPF System must be established in order to minimize the burden on Hong Kong's economy. However, God knows whether it can actually help the people or not.

Another reason was that they wanted to transfer benefits under the cover of the sugar-coated MPF. For instance, large fund houses and big consortia can profit from the hard-earned savings of wage earners through various fees and charges, regardless of whether the investment makes a profit or loss. As a result of the MPF System, these consortia have a large amount of capital for their own investment. If the investment makes a loss, these fund houses may just say to the scheme members, "It has nothing to do with me!" As every wage earner is mandatorily required to make MPF contributions, and there is only a handful of qualified trustees which are reputable, these big consortia are basically operating a sure-win business. If this is not transfer of benefits, what is it then?

Furthermore, the Government refuses to either endorse the implementation of universal retirement protection or increase welfare expenditure. According to right-wing thoughts, social welfare expenditure must be kept to a minimum. While the implementation of universal retirement protection involves an up-front grant of \$50 billion, it is a minimal sum when compared with the funding of \$66.9 billion for the construction of the Express Rail Link, over \$100 billion for the construction of a third runway at the Airport, or even the additional annual funding of \$100 million for the proposal of five Secretaries of Departments and 14 Directors of Bureaux — but that is immaterial now — given the hefty reserve in the public coffers. LEUNG Chun-ying has handed out billions of dollars in order to boost his popularity rating, has he not? Under its obsolete concepts of financial management, the Government refuses to make commitments on funding, yet it does not want to bear the infamy of neglecting the elderly. Therefore, they try to deceive the people of Hong Kong by devising the MPF System which is neither fish, flesh, fowl nor good herring, but an obstacle in the implementation of universal retirement protection.

In fact, the Government is not alone in defending the MPF System. Some Members and political parties in the Legislative Council are also responsible. Moreover, we can see clearly the evil face of these political parties through the MPF issue.

Members from the Hong Kong Federation of Trade Unions (FTU) say that they fully support the implementation of universal retirement protection. But in the meantime, President, they propose to "refine" the MPF System. I am most offended by the term "refine". What is meant by "refine"? I am clueless. Does it mean to improve? Mr WONG Kwok-kin of the FTU moved a motion

on "Comprehensively Reviewing the Mandatory Provident Fund Scheme" on 1 December 2010 with requests for lowering MPF management fees and administration fees, implementing totally unrestricted choices for employees under the MPF Scheme, strengthening the regulation of intermediaries, stepping up law enforcement to combat the situation of default in contributions, and so on. But his stance on abolishing the MPF System was evasive. As a self-proclaimed political party fighting for labour interests, the FTU must never be evasive on the issue of MPF. Instead, it should adopt a clear stance on the abolition of the MPF System as this is a strong demand from the grassroots. Otherwise, the FTU will just be giving a big helping hand to the Government under the pretext of mild condemnation.

As the royalist party, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) has been playing the role of defender for the MPF System consistently. As a cross-sectoral political party facing the masses and participating in direct elections, has the DAB not heard the voices from the grassroots as well as the middle-class in the districts calling for the abolition of the MPF System? Whenever a Member proposes to replace the MPF with universal retirement protection, the DAB will always be the first political party taking the lead of opposition. I would like to ask Members from the DAB this question: Do you not say you always conduct community visits and reflect public opinion? Or are you busy planning for the amendments to be made to the Rules of Procedure (RoP) in the next term of the Legislative Council so as to annihilate the minorities like us and deprive our right to speak in the Council in accordance with the RoP? If you tell your supporters that you support the implementation of a universal retirement protection plan, do you think they will believe you?

The Democratic Party must be the most deplorable of them all. Apart from giving a big helping hand to the MPF under the pretext of mild condemnation just like the DAB, you cheat the people by adopting an evasive stance on universal retirement protection. Although the Democratic Party loudly proclaims support for universal retirement protection, your Deputy Chairman SIN Chung-kai wrote an article in *Wen Wei Po* last year, saying that universal retirement protection was undesirable. That is an attempt to adopt a two-faced strategy. Let me draw an analogy. It is not enough to have only one betting game of "Sic Bo" in a casino, other games should also be available, such as Baccarat, Texas Hold'em, Roulette, "Pai Gow", and so on. That is the current

situation with the MPF. Some Members have proposed amendments to increase the choice of funds. That is like telling the people to gamble more.

The deadlock of MPF can only be resolved by the immediate implementation of universal retirement protection. As we have repeatedly stated in the Legislative Council, and as shown by the data obtained in many studies conducted by civil organizations, the implementation of universal retirement protection only incurs a minimal amount of financial resources from the public coffers, yet it can resolve the deadlock of MPF and reduce the wealth gap in Hong Kong immediately. At the same time, it can achieve the ultimate objective of the MPF established by the Government in 2000 to bring a genuinely comfortable retirement life to Hong Kong people.

Last but not least, I reiterate that all members of the People's Power unanimously demand that the SAR Government abolish the MPF immediately and replace it with universal retirement protection. Any further piece-meal amendments made to the MPF System, including the suspension of a levy of 0.03% from the MPF benefits of scheme members to the Compensation Fund, would only be inadequate as a drop in the bucket.

I so submit and oppose the motion.

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

MR IP WAI-MING (in Cantonese): President, in fact, a lot of discussion has been held in the society over the past decade or so on how to resolve the problem of retirement protection in Hong Kong. Many different directions have been proposed.

Given our current situation, I think the greatest responsibility falls on the Government. As the problem of an ageing population in Hong Kong will continue to worsen in future, we consider that the Government should make the best out of the present moment as this is the last golden five-year period for resolving the problem of universal retirement protection or retirement protection for Hong Kong people. We hope the Government can make the best use of the time available. Now that Secretary Matthew CHEUNG and Secretary Prof K C

CHAN are present in the Chamber, we hope the Administration will not procrastinate further.

President, the Mandatory Provident Fund (MPF) System was formulated in the last century, that is, in 1995. In as early as 1991, the Hong Kong Federation of Trade Unions (FTU) already proposed a universal retirement protection system for ensuring secured old age for the elderly. When the matter was discussed in the former Legislative Council in 1995, there was a common aspiration that instead of marking time, a first step of some sort had to be taken in order to proceed forward. Hence, the MPF System came into being. Is the MPF an ideal system? The FTU will definitely say that it is not. On the 10th anniversary of the implementation of the MPF System, the Rights and Benefits Committee of the FTU also set out its seven sins. We have pointed out that if the operational problems of the MPF System are still left unresolved, is it really possible to offer retirement protection to the workers? Perhaps what they finally get is just a tangerine², just like the logo of the Mandatory Provident Fund Schemes Authority.

But no matter one likes it or now, the MPF System has been implemented for almost 11 years since 2001. If we hastily decide to abolish the system, which may sound easy in words, is it really beneficial to the workers as well as the general working class in practice? Hence, we all along consider that the MPF is a stepping stone towards the implementation of a universal retirement protection system. We never consider the MPF our destination; it is just a pit stop.

President, I am only expressing the FTU's view on this matter. I once again call on the Government to stop procrastinating. If the matter is delayed further, it will affect not only the retirement life of the workers in general, but also social stability.

I so submit. Thank you, President.

² The Chinese word for "tangerine" is "桔", which sounds the same in Cantonese as the word "吉", which means nothing.

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

DR PAN PEY-CHYOU (in Cantonese): President, originally, I did not intend to speak on this item. But I have a strong feeling after hearing the speech delivered by Mr WONG Yuk-man of the People's Power just now.

There is no denying that under the existing Mandatory Provident Fund (MPF) System, our society has yet to offer comprehensive and reasonable retirement protection to the majority of wage earners in Hong Kong. That is something we all agree on. The existing MPF System is far from the ideal retirement system or retirement protection system envisaged by the Hong Kong Federation of Trade Unions (FTU). Nonetheless, in our discussion about the abolition of the MPF System or otherwise, we must take into consideration the fact that the Hong Kong society is formed by many different classes and interest groups. No matter we like it or not, this is reality. In Hong Kong, there are the wage earners, the grassroots, the middle class, the self-employed, the employers, the big bosses and the big businessmen. It would be most important for us to learn to live together in Hong Kong so that this vessel can take us to where we want while giving every citizen a stable journey.

Over the past six decades or so, the FTU has all along stand in the forefront to fight for the rights and benefits of the labour sector. At the same time, we are also aware that other classes in our society have their own voices. Hence, ultimately, the labour sector may not always get the best outcome they desire. By the same token, the employers or other relatively well-off classes in society must also make some concessions. Looking back, we can say that the MPF is a compromise reached by the Hong Kong society as a whole. As representatives of the labour sector, we of course consider it unsatisfactory and hope that improvements can be made continuously. But at the same time, we must ask ourselves whether we prefer to have a less-than-perfect MPF System with improvements made gradually, or we want indiscriminate destruction with nothing left?

This reminds me of a well-known *Bible* story about King Solomon. One day, King Solomon was faced with a difficult decision as two women fought over a baby. Both women claimed to be the mother and accused each other of stealing the baby. Under the circumstances, King Solomon made his verdict,

"As both of you say this baby is yours, I have no way to decide to whom it actually belongs. Let's cut the baby in half. In that way, each of you can have half of it." Then one woman said, "That is the fairest verdict. I can have half of the baby." But the other woman was crying and said, "I'd rather you give the baby to her. At least it can live." King Solomon then knew who was the real mother of the baby because only its real mother would be most concerned about its life and well-being.

What I want to say is that one can talk about indiscriminate destruction easily, but it may only do harm to wage earners and the working class in Hong Kong because they will have no social protection at all. Should there be nothing before the formulation of a better retirement protection system, it is indiscriminate destruction, tantamount to the so-called approach of justice by killing the baby and cutting it into halves. We must take into account the reality and people's livelihood. The starting point of our work is always our genuine concern for people's livelihood. Under the circumstances, we prefer to brace those unreasonable criticisms and insults while holding steadfastly onto our stance. We will seek improvements as far as possible, inch by inch or foot by foot. We will never give up and we will always put the people first.

I so submit.

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

MR ALBERT CHAN (in Cantonese): President, I think Mr TAM Yiu-chung will speak again when I have finished my speech.

President, originally I did not intend to speak. But after hearing the speech of Dr PAN Pey-chyou, my anger grows from my heart. Che GUEVARA was a doctor and you are a doctor. Che GUEVARA gave up his life, fame and wealth for the proletariat's interests. But you have climbed up the social ladder, earning fame and wealth, at the expense of the people and workers. But in this Chamber, you have betrayed the interests of the working class, am I right?

Some time ago, I had chitchatted with you. In view of the fact that you are a member of the Hong Kong Federation of Trade Unions (FTU), I asked

whether you had read the *Communist Manifesto* written by Karl MARX. According to my understanding, you said you had not, or at least, you had not read it that year, right? Thus, you cited the story of King Solomon from the *Bible*. What you said just now is a total violation of the FTU's basic stance as a left-wing trade union organization. Even the fundamental class analysis and class theory, and the analysis of capitalist society it illustrates your ignorance, right? So in future, if the FTU wants to support some people to be Legislative Council Members, it should provide training courses to them on some basic knowledge, or the ABC of social democracy so that the candidates will have some knowledge before discussing these theories.

From the position of trade union, you say that we are in the same boat, in which there are employers, the middle class — as a doctor, you certainly belong to the middle class — you just take care of your own interests and you just consider the issue from the perspective of your own interest, instead of from the class position of the working class or the role of trade unions. As a result, the FTU has continuously betrayed the interests of the working class in this Chamber. It is precisely those, like Dr PAN Pey-chyou, who are holding the red flag high only to oppose the cause of the red flag. They say that they represent the interests of the working class, but in fact, they have betrayed the interests of the working class whenever they cast their votes. It is terrifying that the FTU has such a representative

(Mr TAM Yiu-chung stood up)

MR TAM YIU-CHUNG (in Cantonese): President, a point of order. The Member who spoke just now is insulting Dr PAN Pey-chyou. Please make a ruling.

MR ALBERT CHAN (in Cantonese): Which word I said has insulted Dr PAN Pey-chyou?

MR TAM YIU-CHUNG (in Cantonese): The words "betraying the interests of the working class".

PRESIDENT (in Cantonese): Mr Albert CHAN, Dr PAN Pey-chyou is a representative of trade unions and Legislative Council Member of the labour constituency. You name the Member and say that he has betrayed the interests of the workers. This is insulting.

MR ALBERT CHAN (in Cantonese): President, this is only an objective judgment and analysis. President, on one occasion, you evicted me because I said that TAM Yiu-chung was shameless, it was acceptable — I forgot whether it was you or President Andrew WONG who drove me out. On that occasion, the order was acceptable to me because my remark was a reprimand. But this time around, I am just doing an analysis. He said earlier that we were in the same boat and had to take care of the interests of the people as a whole. President, this is an analysis

PRESIDENT (in Cantonese): Mr CHAN, you may say that some kind of remark or conduct has violated the interests of the workers. But you have named the Member and this is a breach of the Rules of Procedure.

MR ALBERT CHAN (in Cantonese): No, President, I think you misheard what I said. I said his remark of us being in the same boat had betrayed the interests of the working class. I said these words in a very cautious manner. After discussing my analysis of his remark about being in the same boat, I pointed out that he had betrayed the interests of the working class, which is an analysis of the relevant class. You can take a look at how I develop my speech. You may listen to the tape in your office. I remember my remark very clearly.

PRESIDENT (in Cantonese): I need not listen to the tape. Now, you have to repeat your point clearly. Do you mean that Dr PAN Pey-chyou has betrayed the interests of the workers?

MR ALBERT CHAN (in Cantonese): No. President, I said that his remark concerning people in the same boat has betrayed the interests of the working class. This is very clear.

PRESIDENT (in Cantonese): You may continue with your speech.

MR ALBERT CHAN (in Cantonese): Yes.

MR TAM YIU-CHUNG (in Cantonese): President, your ruling is not fair, because he has very clearly said that Dr PAN Pey-chyou

(Some people clapped their hands in the public gallery)

PRESIDENT (in Cantonese): The persons on the public gallery keep quiet. Otherwise, I have to ask you to leave the Chamber.

Mr TAM Yiu-chung, Mr Albert CHAN has clarified his remarks. He did not say that Dr PAN Pey-chyou had betrayed the interests of the workers.

Mr Albert CHAN, please continue.

MR ALBERT CHAN (in Cantonese): Thank you for your wisdom, President. This is the internal affairs of the FTU. Mr TAM Yiu-chung is also a member of the FTU. The class stance and public statements of the FTU are your internal affairs. In fact, I should not

PRESIDENT (in Cantonese): Mr CHAN, we have only two and a half hours to deal with the remaining resolutions.

MR ALBERT CHAN (in Cantonese): President, I would like to come back to the issue of Mandatory Provident Fund (MPF). If some people say that our support to the universal retirement protection scheme as a measure to replace the MPF will lead to the destruction of good and bad alike, such a hypothesis is absolutely ridiculous — a remark by the Commissioner of Police. This is the basic request and stance of many organizations, including almost all labour groups, over the years. In fact, a tripartite contribution scheme and universal

retirement protection were proposed 20 years ago. Thus, if a person says that it will lead to the destruction of good and bad alike by abolishing the MPF, such a remark can be described as holding the red flag high only to oppose the cause of the red flag. On the one hand, such person says that the interests of employees should be protected, while on the other hand, he continues to tolerate and support the deprivation of the rights and interests of workers so that big bosses can make handsome profits. The problems of MPF have been discussed for many years. The profits, administrative fees and the interests and charges received by the so-called insurance companies, management companies and managers in the past decade are precisely the blood sucked from the workers, as Karl MARX said in the *Communist Manifesto*. The conclusion is that people have to overthrow the capitalists' manipulation and

PRESIDENT (in Cantonese): Mr CHAN, this is the first time I heard that there was an MPF scheme in the times of Karl MARX.

MR ALBERT CHAN (in Cantonese): President, I said that the blood of workers was sucked. I did not mention the MPF scheme, President. I know that you are wise and well-versed with the *Communist Manifesto*

PRESIDENT (in Cantonese): You know that I am very attentive to the speeches of Members. Please continue.

MR ALBERT CHAN (in Cantonese): unlike those in the FTU

PRESIDENT (in Cantonese): Please do not digress from the question and speak on MPF.

MR ALBERT CHAN (in Cantonese): who do not know even the basic theory.

PRESIDENT (in Cantonese): We are now discussing MPF.

MR ALBERT CHAN (in Cantonese): President, there are many problems relating to MPF. President, it is good to have the opportunity to discuss with you the Marxism-Leninism as I have not seriously discussed it for nearly 20 years, except when I was studying at university

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

MR ALBERT CHAN (in Cantonese): Just now you aroused my interest in it. President, we all know how the Mandatory Provident Fund Schemes Ordinance operates after its enactment and relevant issues, apart from the fact that the Government has set up a seed fund with more than \$600 million in a lump sum. After its establishment, an annual levy of 0.03% of the net asset value of MPF assets was collected from trustees. Now, the Compensation Fund has accumulated over \$1.6 billion. In view of the regulation of the Ordinance, the Mandatory Provident Fund Schemes Authority's assessment is that the chance of having claims made against the Compensation Fund should be remote. This is a fact and also the actual situation, but it does not mean that the arrangement is reasonable.

President, on the whole, I have vented my anger and expressed my criticism. But I wish to point out that MPF was set up on the high-sounding pretext of protecting the interests of workers. But in fact, as we all know, the one who made every effort to promote MPF, if I remember it correctly, was Rafael HUI, who was the main advocator. We know very well who are the ultimate beneficiaries of MPF. The ideal way is, as I said just now, to abolish the MPF scheme and implement a universal retirement protection scheme.

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

MR TAM YIU-CHUNG (in Cantonese): Mr Albert CHAN expects that I will speak later. I find that owing to his frequent involvement in filibustering over

these two months or so, he has been speaking nonsense and he forgets what he has just said. Earlier on we can all see that he has insulted Dr PAN Pey-chyou and after the President has questioned his behaviour, he starts to offer excuses. But actually he has said something incorrectly.

Now we have less than two and a half hours and how many resolutions do we still have? There are still items 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 remaining, not to mention the motion on the reorganization of the Government Secretariat. Many of these items are related to labour rights. Members can just take a look: our time is being squeezed into less than two and a half hours and we have to handle so many items. We have got a lot of things to say. This includes how to urge the Government to pay more attention to labour rights. But we are prevented from saying this for lack of time because of these three persons. They are doing this for their own political interest and care nothing about this Council and Members' right to speak. It is unfortunate. Perhaps the Democratic Party has also had enough. But they do not dare to speak out. Let me speak out on their behalf. In such circumstances, he still attacks other people, saying all the time about things like betraying the interests of the workers

(Mr WONG Yuk-man stood up)

MR WONG YUK-MAN (in Cantonese): Now it is time to discuss the Resolution! A point of order. This is the time to discuss the Resolution. Please make a ruling.

PRESIDENT (in Cantonese): Mr Albert CHAN has just spoken to criticize the FTU. Mr TAM Yiu-chung is a member of the DAB and also a member of the FTU. So I cannot stop him from speaking.

Mr TAM Yiu-chung, please go on.

MR TAM YIU-CHUNG (in Cantonese): Thank you, President. I am only voicing out my discontent out of a sense of righteousness. I do not necessarily speak because of the organization to which I belong.

I think with respect to the MPF, the system has been running for 11 years and there is certainly a need to make improvements. We have always been voicing our views on that. I have put forward many of my ideas in this Council and I have also raised questions and urged the Government to address the problems. These problems include the fees charged by the MPF funds. During this period when the MPF system is in operation, it has been making constant improvements and this is beneficial to the people. Of course, if we are to rely on the MPF alone and given that the rate of contributions is so low, it will not be able to solve the retirement problems faced by the working class. This is something we are all clear. Just think about this: when the employer and employee each makes a contribution of 5%, how can this solve the problem of retirement protection for the people? This is something very obvious. So the Government must come up with a solution to this problem.

As for the universal retirement protection which they have always been emphasizing, there are in fact many kinds of retirement protection in the world and Members know well enough that every form has its own advantages and disadvantages and we should take into account the actual conditions in society, the economic situation, the acceptability of the working class and that of the wage earners. All these should be given comprehensive consideration. We cannot try to reject a certain form or urge for the adoption of another form just by shouting slogans. We should not do that. Of course, with respect to various forms, if we have the chance, the Government should engage in extensive consultation and listen to what the people have to say. This is because any plan related to retirement protection or universal retirement protection should be able to get the support of the people before it can be successful. Otherwise, it would not help things should people shout slogans only.

We would lend our support to the passage of this Resolution and we hope that in the future, the Government can undertake extensive consultation on the issue of retirement protection and come up with different proposals and the views of the people should be heard. For the existing MPF system, it should be improved.

In addition, the Government has done one thing and it is on the old-age living allowance. This is also a kind of supplement. In my opinion, there can be various proposals and combinations to a retirement protection scheme. The Secretary has always been talking about the three lynchpins or the four lynchpins

and this is what they are about. It is because we cannot hope to solve the problem simply by relying on one lynchpin.

I have spoken briefly on this issue because I know I only have limited speaking time and there are many issues to follow which are on people's livelihood and labour issues and we wish to voice our views on these later. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, concerning the speeches of Mr Albert CHAN and Mr WONG Yuk-man of the People Power, I will fall into their trap if I rebut them in these 15 minutes. However, I have to speak out because I have to get it out of my chest. So, I will be brief.

First of all, I would like to thank Mr TAM Yiu-chung for speaking out boldly to uphold justice. He spoke well and hit the nail on the head. Secondly, over the past 60 years, the Hong Kong Federation of Trade Unions (FTU) has fought for the rights of Hong Kong people and the wage earners as well as the establishment of a retirement protection scheme. In the last century, we proposed to the then Government that a universal retirement protection scheme be set up to address medical, unemployment and retirement problems. Although the People Power has vilified the FTU, I believe such slander will not do us any harm. The FTU has all along been providing services to the workers and grassroots. This is an indisputable fact. So, I do not want to be sacrificed any more as we have to continue to fight for more opportunities to express our views on the remaining issues. It is midnight now and the current-term Legislative Council will soon come to an end. I so submit. Thank you, President.

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

MR ANDREW CHENG (in Cantonese): President, there are around nine resolutions pending passage before midnight. For the remaining resolutions, I am sure that Honourable colleagues will pass them one by one in a most sensible manner when it is approaching 12 o'clock. As a member of the pan-democratic camp, I have to speak out after listening to the famous story of King Solomon from the *Bible* quoted by Dr PAN Pey-chyou and Mr Albert CHAN's criticism of

the Hong Kong Federation of Trade Unions (FTU) even though I have not taken my meal yet.

As a Member of the Legislative Council for 17 years, I believe this is my last few times to speak here. President, there will be no Valedictory Motion today, but I will try to relate my remarks with the resolution under the Mandatory Provident Fund Schemes Ordinance. Whenever resolutions or bills are debated in this Council, the most intense debates are those between the rightist and leftist camps, which are the pro-democratic and the pro-establishment camps. For example, concerning the Mandatory Provident Fund (MPF), the two camps share the common goal of protecting the workers' interests, but their stances are polarized in respect of conditions, backgrounds, conducts and voting.

In the discussion of other labour-related bills, such as legislation on collective bargaining and the abolition of the two Municipal Councils, which resulted in the unemployment of a large number of staff of the two Municipal Councils, President, I criticized CHAN Yuen-han, who was then a Legislative Council Member representing the FTU, of having betrayed the interests of workers. Here I would like to reiterate this point loudly, but today's issue is the Mandatory Provident Fund Schemes Ordinance

(Some people clapped their hands in the public gallery)

PRESIDENT (in Cantonese): Mr CHENG, please hold on for a moment. I have warned those in the public gallery that I will order you to leave if you make any noise. This is the final warning.

MR ANDREW CHENG (in Cantonese): President, I understand that all political groups and trade unions have justifications for their own practices. But the FTU should bear in mind that one of its leaders works as a Member of the Executive Council. So, it is in fact an arm of the Government. If it considers that the MPF scheme is full of pitfalls or problems, it should, without any hesitation, urge the Government that improvement be made by all means. It should uphold its position steadfastly rather than pursuing a piecemeal approach.

Thus, let us look at the existing MPF scheme. The FTU, apart from doing soul searching, should also ask the labour sector and individual workers whether MPF can genuinely provide them with better retirement protection. If the answer is in the negative, we should do our best to improve it rather than gladly accepting what is offered by the Government. We should not give up our efforts just because minor improvement has been made since the FTU's representative is a member of the highest echelon of the Government. If the FTU do not make any effort and prefer to accept the Government's offer, many people outside the Government — including the pan-democrats and I — may query whether the FTU genuinely fights for the workers' rights. I believe this criticism is reasonable as the FTU has let us down time and again in the past. Just like the Democratic Party, which claims to strive for democracy, when some of its approaches are subject to public criticism, they have to accept it.

Therefore, when the representatives of labour sector say that they have been fighting for their cause for 60 years, I acknowledge and respect what they said. But in our opinion, if they have really done so, the wage earners in the labour sector would place higher expectations on them because they are holding up the banner of fighting for workers' rights. But in the face of voting, they tend to accept petty favours and minor amendments. President, this is the biggest difference among us. Unfortunately, this Council has always been besieged by these problems.

President, the current term of the Legislative Council will come to a close in two hours. Some Honourable colleagues said just now that they had tolerated the two of them for a long time and blamed them for standing in the way of dealing with the subsequent livelihood-related motions. This is in fact due to different strategies and different duties. I dare say that the subsequent resolutions will definitely be passed tonight. I do not think that the two of them will speak on the Import and Export Ordinance after 11.30 pm tonight. I dare say that this will be so because their purpose is to hinder the resolution relating to the five Secretaries of Departments and 14 Directors of Bureaux from being dealt with by the current-term Legislative Council.

Unfortunately, the seventh resolution relating to the Mandatory Provident Fund Schemes Ordinance is related to people's livelihood and workers' rights on which we are having a heated debate. In the past, the democratic camp supported more than 90% or the majority of the Government's motions or bills.

So, Members should not always mention that we oppose for the sake of opposing. However, for those principles that we will uphold, such as the MPF, we think that we should not adopt a piecemeal approach. We should strive for universal retirement protection which will offer major and genuine protection for the rights of the workers.

Thus, resolutions on ordinances relating to MPF submitted to the Legislative Council are bound to be controversial. The FTU will certainly be criticized because its performance in the past was disappointing. Regarding the collective bargaining rights and the abolition of two Municipal Councils I mentioned earlier, we consider that the FTU colluded with the Government because a Member of Executive Council in the Government

PRESIDENT (in Cantonese): Mr CHENG, you are repeating points which are irrelevant to the resolution.

MR ANDREW CHENG (in Cantonese): President, certainly I will not use up all 15 minutes. But I would like to reiterate that I am not sure whether I have any speaking time in respect of other resolutions today. But at least, I can speak in response to the motion debate on MPF which is an issue concerning the people's livelihoods. I would also like to give a piece of advice to Members of the FTU, the DAB or the pro-establishment camp again. I believe the people have a discerning eye — and certainly they have their own supporters. But when facing their supporters, they should have a clear conscience. If they really fight for the workers' rights, I hope they can valiantly say "No" to the Government for the sake of people's livelihood and workers' interests without any hesitation in the Executive Council and the Legislative Council. They should force the Government to make genuine improvement rather than making minor amendments. Nor should they appear to be critical but are in fact helping the Government to find a way out.

President, there are just two hours to go before midnight. If I still have the opportunity to speak later on, I will certainly make the best use of it. However, if I do not have the time, I would like to say something to the Government officials, the President, and all Honourable colleagues. Although we have diverse political views, I believe our criticisms target at issues, not

individuals. We all hope that we can strive for a better future for Hong Kong. Nevertheless, we hope that they can respect the others, make their stance clear and respect themselves when casting their votes so that they will also be respected by the others.

President, I so submit.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Members for their speeches.

I would like to make a brief response to Members' remarks which are directly related to the Mandatory Provident Fund (MPF) charges. The Government believes that there is room for fee reduction. In fact, the Government and the Mandatory Provident Fund Schemes Authority (MPFA) have been seeking to drive down MPF fees through market forces under various measures to increase market transparency and promote competition in the market. The main initiatives are very familiar to us, including the passage of Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 for regulating MPF intermediaries in June. The new statutory regulatory regime for MPF intermediaries and the MPF Semi-portability, that is, the Employee Choice Arrangement (ECA) policy, will come into operation from 1 November 2012. It is estimated that the size of transferable MPF assets will be substantially increased from 41% of the total to 67% of the total, thereby promoting market competition. The Government and the MPFA noticed that some trustees had indicated in public that the implementation of ECA would increase the pressure for fee reduction and they have introduced new MPF schemes gradually at lower fees.

The MPFA has commissioned a consultancy study on the administrative costs of MPF trustees. It is hoped that through the analysis on the operation procedures, cost items and cost level, the procedures can be further streamlined, thereby offering more room for fee reductions. The MPFA will put forward recommendations to the Government based on the results of the consultancy study.

President, this subsidiary legislation seeks to introduce an adjustment mechanism for suspension and resumption of levy for MPF Schemes Compensation Fund. If it is passed in this Council, the MPFA will launch the relevant statutory procedures. It is estimated that the Compensation Fund should be able to suspend the collection of fund levy at 0.03% per annum starting from September this year. Based on the MPF scheme assets level at the end of 2011, it can save about \$100 million for the benefit of MPF scheme members.

I implore Members to support the motion.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by the Secretary for Financial Services and the Treasury 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 CHAN rose to claim a division.

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

MR ANDREW LEUNG (in Cantonese): President, I would like to declare that I am a non-executive director of the MPFA.

MR IP KWOK-HIM (in Cantonese): I also have to declare that I am a non-executive director of the MPFA.

PRESIDENT (in Cantonese): I do not see any conflict of interests between this resolution and the official duties of two Members.

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

(Prof Patrick LAU raised his hand in indication)

PRESIDENT (in Cantonese): Prof Patrick LAU, what is your vote?

PROF PATRICK LAU (in Cantonese): I vote for the motion.

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 LEE Cheuk-yan, Mr Fred LI, Dr Margaret NG, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr WONG Yung-kan, Mr LAU Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr WONG Kwok-hing, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Kwok-kin, Mr IP Wai-ming, Mr IP Kwok-him, Mrs Regina IP, Dr PAN Pey-chyou, Mr Paul TSE, Dr Samson TAM, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr Albert CHAN and Mr WONG Yuk-man voted against the motion.

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

THE PRESIDENT announced that there were 49 Members present, 46 were in favour of the motion and two against it. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

PRESIDENT (in Cantonese): Proposed Resolution under the Pharmacy and Poisons Ordinance to approve the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2012 and the Poisons List (Amendment) (No. 2) Regulation 2012.

I now call upon the Secretary for Food and Health to speak and move the motion.

PROPOSED RESOLUTION UNDER THE PHARMACY AND POISONS ORDINANCE

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I move that the motion under my name, as printed on the Agenda, be passed.

Currently, we regulate the sale and supply of pharmaceutical products through a registration and monitoring system set up in accordance with the Pharmacy and Poisons Ordinance (the Ordinance). The Ordinance maintains a Poisons List under the Poisons List Regulations and several Schedules under the Pharmacy and Poisons Regulations. Pharmaceutical products put under different parts of the Poisons List and different Schedules are subject to different levels of control in regard to the conditions of sale and keeping of records.

For the protection of public health, some pharmaceutical products can only be sold in pharmacies under the supervision of registered pharmacists and in their presence. For certain pharmaceutical products, proper records of the particulars of the sale must be kept, including the date of sale, the name and address of the purchaser, the name and quantity of the medicine and the purpose for which it is

required. The sale of some pharmaceutical products must be authorized by prescription from a registered medical practitioner, dentist or veterinary surgeon.

Arising from an application for registration of 11 pharmaceutical products, the Pharmacy and Poisons Board proposes to add the following 11 substances to Part I of the Poisons List and the Schedules 1 and 3 to the Pharmacy and Poisons Regulations:

- (a) Abiraterone; its salts;
- (b) Apixaban; its salts;
- (c) Asenapine; its salts; its isomers;
- (d) Belimumab;
- (e) Dexlansoprazole; its salts;
- (f) Gimeracil; its salts;
- (g) Linagliptin; its salts;
- (h) Oteracil; its salts;
- (i) Panitumumab;
- (j) Retigabine; its salts;
- (k) Rilpivirine; its salts.

Pharmaceutical products containing the above substances must then be sold in pharmacies under the supervision of registered pharmacists and in their presence, with the support of prescriptions.

In addition, the Board proposes to add "Domperidone; its salts" to Part I of the Poisons List. Pharmaceutical products containing the above substance must also be sold in pharmacies under the supervision of registered pharmacists and in their presence.

For amendment regulations concerning the adding of 11 substances to Part I of the Poisons List and the Schedules 1 and 3 to the Pharmacy and Poisons Regulations, we propose them to take immediate effect upon gazettal on 20 July 2012, to allow early control and sale of the relevant medicine. For amendment regulation concerning the adding of "Domperidone; its salts" to Part I of the Poisons List, we propose it to take effect on the expiry of two months beginning on the day on which such Regulation is gazetted.

The two Amendment Regulations are made by the Pharmacy and Poisons Board, which is a statutory authority established under the Ordinance to regulate pharmaceutical products. The Board comprises members engaged in the pharmacy, medical and academic professions. The Board considers the proposed amendments necessary in view of the potency, toxicity and potential side effects of the medicine concerned.

With these remarks, President, I move the motion and hope that Members will support it.

The Secretary for Food and Health moved the following motion:

"RESOLVED that the following Regulations, made by the Pharmacy and Poisons Board on 22 May 2012, be approved —

- (a) the Pharmacy and Poisons (Amendment) (No. 2) Regulation 2012; and
- (b) the Poisons List (Amendment) (No. 2) Regulation 2012."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Food and Health be passed.

DR PAN PEY-CHYOU (in Cantonese): President, in the past when the Secretary read out a series of names which are difficult to pronounce, it was usual that we would not speak on them. However, I have something to say today.

We can allow the Secretary to read out the motion today at this point of time, which is less than two hours from the end of this session of the Council, while Members also hope that this motion can be passed tonight. What is the meaning therein? Most of the 12 kinds of medicine listed in the motion are "life-saving medicine", including those for cancer treatment, for serious diseases such as Systemic Lupus Erythematosus, which can be fatal, for diabetes mellitus, which can also be fatal, for mental illnesses and a lot more. All the 12 kinds of medicine belong to "life-saving medicine". If they are not incorporated in the Poisons List and the Schedules of the Pharmacy and Poisons Regulations, they cannot be used, nor sold, in Hong Kong under normal circumstances. Nor can doctors make prescriptions in their usual practice.

Therefore, if we can pass the motion one day earlier, the Regulations concerned can be gazetted one day earlier and certain lives can be saved one day earlier. Why has this been procrastinated to date? This motion was originally submitted to this Council in June and has now been procrastinated for a month. If we miss the opportunity today, the motion concerned can only be passed a few months later by this Council. Hence, this will sometimes remind me of the story of King Solomon mentioned earlier.

This motion has the opportunity to be passed is because the Government has arranged the resolution on government restructuring as the last agenda item. This can convince a few colleagues in this Council to slightly relax their filibustering and allow us to pass a series of resolutions, including this one, which are closely related to people's livelihood, well being and health within this one-odd last hour of the session.

Therefore, I would like to point out here that even Members may have different views and will have incisive arguments in this Council, we still have to consider people's livelihood at the end. The Government's giving way this time is worth our commendation. It is because the Government is really enduring humiliation for an important mission, so that the motion can be passed here today.

I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): I listened to the speech of Dr PAN Pey-chyou in which he commended the Government for enduring humiliation for

an important mission. However, is the Government really enduring humiliation for an important mission? I am not so sure. When we asked the Government in a Finance Committee meeting whether it has to proceed with the motion concerning five Secretaries of Departments and 14 Directors of Bureaux, the official representing the Government said that it has to be proceeded with, that it has to be dealt with even late tonight.

President, it is right to help the distressed and succour those in peril. President, I tell you the truth. I have told Mr LEUNG Chun-ying many times that if he brought a "vegetable basket" here, I would kneel down. He finally brought the "vegetable basket" here No, President, you should not restrict me, as he actually has sidetracked, "buddy"

PRESIDENT (in Cantonese): Mr LEUNG, please focus on the poisons that we are now discussing.

MR LEUNG KWOK-HUNG (in Cantonese): No, his speech has also sidetracked. He said

PRESIDENT (in Cantonese): Dr PAN has already clearly explained at the start of his speech why he thought there was an urgent need to pass this resolution.

MR LEUNG KWOK-HUNG (in Cantonese): Understood. I also think that this resolution should be urgently passed. If the Government is concerned of what people are concerned and had not submitted the resolution relating to government restructuring, such thing would not have happened.

President, the truth is that the Government still insists until the very last minute and thus creates the present situation. This is not our fault. Frankly speaking, the Government took out more than \$6 billion just because of the problem with illegal structures. I have already told the Government that for the things which three Secretaries of Departments and 12 Directors of Bureaux can do, they should be handled accordingly. Buddy, for the matter concerning

poisons, does it need to be handled by five Secretaries of Departments and 14 Directors of Bureaux? Has the Poisons Bureau been established?

President, I am not going to speak. I know you are crossed. I find that Dr PAN Pey-chyou was making use of a subject as a pretext for his floundering talk in his speech. I will not take this blame. My stance is very clear. The urgency to dispatch reinforcements is similar to that of fire-fighting, and there should not be any negotiation on the conditions. If you are to save people's lives, then save them immediately. I am going to kneel down. Do I need to kneel down in front of the others? You need to respect yourself. I have said many times that for the things which the three Secretaries of Departments and 12 Directors of Bureaux can do, we will surely handle them. If you say that there are certain things which only the five Secretaries of Departments and 14 Directors of Bureaux can handle but in fact it is not the case, this is being deceitful.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Food and Health, do you wish to speak again?

SECRETARY FOR FOOD AND HEALTH (in Cantonese): I thank Members for voicing their opinions. I hope Members will support the passage of this motion.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed Resolution under the Employees' Compensation Ordinance.

I now call upon the Secretary for Labour and Welfare to speak and move the motion.

PROPOSED RESOLUTION UNDER THE EMPLOYEES' COMPENSATION ORDINANCE

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

The purpose of this resolution is to increase the amount of eight compensation items payable under the Employees' Compensation Ordinance (ECO). The ECO provides for the payment of statutory compensation to employees for occupational diseases or injuries caused by accidents arising out of and in the course of employment, or family members of the deceased employees for deaths so caused. It is an established practice to review the levels of compensation provided for under the ECO every two years. Adjustments to the amounts of compensation are made mainly by reference to the changes in wage and price levels in the intervening period.

Earlier, we have conducted a review for 2009 to 2010 pursuant to the established mechanism. The review findings indicated an increase in Nominal Wage Index but still a cumulative decrease in the Consumer Price Index (A). We proposed to raise the amount of the five relevant items under the ECO by 1.48% according to the rate of increase in the wage index but to freeze the other

levels of compensation. The ceiling of funeral expenses was to be increased by 57.14% from \$35,000 to \$55,000 according to the reference data collected from the funeral parlours.

At the meeting of the Legislative Council Panel on Manpower on 20 January 2012, some Members were concerned about the wage and price changes following the implementation of the statutory minimum wage (SMW) in May 2011 and the rising trend of funeral expenses in the period. In view of the very special circumstances, the Administration has made a special arrangement to further review the wage and price movements in 2011 and the funeral expenses, and revisit the changes of the relevant review indicators in the past three years. The various indicators were found to have exhibited higher growth.

In line with the review findings for 2009-2011, we propose to increase the amount of five compensation items by 9.69% according to the positive change in the wage index. The proposed revisions include increasing the ceiling of monthly earnings for calculating the maximum amounts of compensation for death and for permanent total incapacity from \$21,500 to \$23,580. We also propose to increase the minimum levels of compensation for death from \$310,000 to \$340,040, and for permanent total incapacity from \$352,000 to \$386,110. In addition, we propose that the maximum amount of compensation for employees injured at work who require the attention of another person be revised upwards from \$422,000 to \$462,890. As for the surcharge on late payment of compensation, we proposed to increase the minimum amount of surcharge imposed upon expiry of the payment period from \$500 to \$550 and the minimum of a further surcharge imposed three months after the expiry of the payment period from \$1,000 to \$1,100.

In addition, we also propose to increase the amount of two compensation items by 1.39% in line with the movement in the price index. The increase has already fully offset the negative price change accumulated since the last adjustment of compensation levels in 1998 and up to 2008. The proposed changes include increasing the maximum payments towards the cost of supplying and fitting a prosthesis and surgical appliance from \$33,000 to \$33,460, and towards the cost of the repair and renewal of a prosthesis and surgical appliance from \$100,000 to \$101,390.

As for funeral expenses, we have made reference to the practice in 2000 to approach the major funeral parlours for the cost of funeral services. According to the information collected in February 2012, and having regard to the prices of urns in the private market, we propose to increase the maximum amount of funeral expenses from \$35,000 to \$70,000. It would not only cater for inflation and the actual situation but also provide better financial relief to the family members of the deceased.

To accord the workforce with the enhanced protection earlier, we propose that the revised levels of compensation should take effect from 21 July 2012.

For the compensation item that should be revised downwards in accordance with the review findings, we recommend to maintain its existing level of compensation, in order not to adversely impact on the livelihood of the affected employees.

The Labour Advisory Board (LAB) has unanimously endorsed the above proposal. It is against the very special circumstances in the light of the substantive effect brought by the implementation of SMW in May 2011 that a three-year review was conducted. Nonetheless, upholding the spirit of mutual understanding, and in furtherance of harmonious labour relations and employees' rights and benefits, the employer representatives of the LAB have worked in unanimity with the employee representatives of give support to the present proposal. I wish to take this opportunity to express my gratitude to them. In future reviews, the Government will revert to the established practice of reviewing the levels of compensation every two years. I hope that Members will support and pass the motion so that the employees injured at work or sustaining occupational diseases or their family members can benefit as soon as possible.

Thank you, President.

The Secretary for Labour and Welfare moved the following motion:

"RESOLVED that, with effect from 21 July 2012, the Employees' Compensation Ordinance (Cap. 282) be amended as set out in the Schedule.

Schedule

Amendments to Employees' Compensation Ordinance

1. Sixth Schedule amended (specified amount of compensation)
 - (1) Sixth Schedule, entry relating to section 6(1)(a) —
Repeal
"21,500"
Substitute
"23,580".
 - (2) Sixth Schedule, entry relating to section 6(1)(b) —
Repeal
"21,500"
Substitute
"23,580".
 - (3) Sixth Schedule, entry relating to section 6(1)(c) —
Repeal
"21,500"
Substitute
"23,580".
 - (4) Sixth Schedule, entry relating to section 6(2) —
Repeal
"310,000"
Substitute
"340,040".
 - (5) Sixth Schedule, entry relating to section 6(5) —
Repeal
"35,000"
Substitute
"70,000".
 - (6) Sixth Schedule, entry relating to section 6C(8)(a) —
Repeal
"500"
Substitute
"550".
 - (7) Sixth Schedule, entry relating to section 6C(8)(b) —
Repeal
"1,000"

- Substitute
"1,100".
- (8) Sixth Schedule, entry relating to section 6D(3)(a) —
Repeal
"500"
Substitute
"550".
- (9) Sixth Schedule, entry relating to section 6D(3)(b) —
Repeal
"1,000"
Substitute
"1,100".
- (10) Sixth Schedule, entry relating to section 6E(9)(a) —
Repeal
"500"
Substitute
"550".
- (11) Sixth Schedule, entry relating to section 6E(9)(b) —
Repeal
"1,000"
Substitute
"1,100".
- (12) Sixth Schedule, entry relating to section 7(1)(a) —
Repeal
"21,500"
Substitute
"23,580".
- (13) Sixth Schedule, entry relating to section 7(1)(b) —
Repeal
"21,500"
Substitute
"23,580".
- (14) Sixth Schedule, entry relating to section 7(1)(c) —
Repeal
"21,500"
Substitute
"23,580".

- (15) Sixth Schedule, entry relating to section 7(2) —
Repeal
"352,000"
Substitute
"386,110".
- (16) Sixth Schedule, entry relating to section 8(1)(a) —
Repeal
"422,000"
Substitute
"462,890".
- (17) Sixth Schedule, entry relating to section 8(1)(b) —
Repeal
"422,000"
Substitute
"462,890".
- (18) Sixth Schedule, entry relating to section 16A(10)(a) —
Repeal
"500"
Substitute
"550".
- (19) Sixth Schedule, entry relating to section 16A(10)(b) —
Repeal
"1,000"
Substitute
"1,100".
- (20) Sixth Schedule, entry relating to section 63C —
Repeal
"33,000"
Substitute
"33,460".
- (21) Sixth Schedule, entry relating to section 36J —
Repeal
"100,000"
Substitute
"101,390".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Labour and Welfare be passed.

MR LEE CHEUK-YAN (in Cantonese): President, we certainly support suggestions for improvement, but we found a lot of major problems in the whole process.

The first is that the data are all lagged behind. The proposals submitted by Secretary to the Legislative Council Panel on Manpower for discussion are adjustments based on the wage index for 2009-2010. Surprisingly, the figure submitted in 2012 is the index for 2009-2010. Then, what is the situation of 2011? The answer is that the situation of 2011 is still under discussion and review of various committees. As a result, the proposed increase submitted to the Legislative Council in early 2012 is only 1.48% because the wage index of 2009-2010 only shows a 1.48% increase, while the information for the whole year of 2011 is entirely absent. We consider this totally incredible as the proposals submitted in early 2012 have only reflected the situation in 2009-2010, and the impact of the implementation of the minimum wage in 2011 is completely ignored as if it did not exist and had never been reviewed. Therefore, we request for a review again.

Fortunately, the Secretary is willing to conduct a further review before submitting the proposed 9.69% increase on the basis of latest figures for 2011, which can at least tie in with the movements of the past three years. However, I would like to give an advanced warning that the process will be too long if this biennial review will take one more year to complete before improvement can be implemented in the fourth year. I hope the Secretary can promise that the biennial review will be completed expeditiously, followed by immediate submission of proposals to the Legislative Council in order to avoid the data lagging too much behind the prevailing situation.

Certainly, as the Secretary said earlier, the wage movement is relatively great due to the implementation of the minimum wage, which is the special circumstance in 2011. However, regardless of the magnitude of wage movement, it is hardly justifiable that the improvement can only be implemented in the fourth year after the index for two years has been compiled and a review

has been conducted one year later. Should the authorities do their best to speed up the whole process?

Secondly, even though a 9.69% increase is proposed, review of some items should be conducted in a comprehensive manner. Despite our frequent request for a review of the Employees' Compensation Ordinance, the Secretary always brushes it aside on the pretext that those issues which need to be reviewed will always be reviewed from time to time. But in fact, it is necessary to conduct a comprehensive review because a lot of the most basic items have not been adjusted for several decades, even though minor adjustments have been made according to indices.

One of the most unreasonable points I consider is that although the ceiling of monthly earnings for the purpose of calculating the amount of compensation has been raised from \$21,500 to \$23,580, we have to consider the implication of the ceiling of monthly earnings, President. It means that the amount of compensation for those whose monthly earnings are more than \$23,580 is still calculated on the basis of \$23,580. For instance, the maximum sum for calculating the compensation for the victims of an accident who earn a monthly income of \$30,000 or even \$40,000 will remain \$23,580. However, if they have to repay mortgage loans, they still have to do so after the accident. The amount of compensation calculated on the earnings of \$23,580 will not be sufficient to maintain all their daily needs. Can they lower their living standard immediately and sell their properties in order to relieve their obligation to repay the mortgage loans? Is this what we wish to see? Given that their monthly income is \$30,000 or \$40,000, their compensation should be calculated on this income level, rather than the income ceiling of \$23,580. Some might argue that high-income earners may not sustain an injury so easily. But this is not necessarily so. Engineers may be injured or even killed at a construction site. If so, what should their families do? The proposal this time around is purely to raise the compensation levels of certain items by 9.69% according to the legislation, without conducting any review on some basic data. Therefore, Secretary, I consider a comprehensive review of the Employees' Compensation Ordinance most crucial.

Another problem is certainly the funeral expenses. The Secretary may recall that when we first started the discussion on the funeral expenses, we had mentioned that \$35,000 was impractical. At that time, we proposed \$50,000.

The Panel on Manpower even proposed to set the amount at \$85,000 for the passage of the resolution. In his final submission, the Secretary fixed the ceiling at \$70,000, adding that the latest cost information was collected. The Secretary also claimed that some consultation has at least been carried out. However, the point is that for those who died because of other people's fault, we hope that their family members can have a peace of mind and it needs quite a lot of money. We asked for at least \$100,000 when we negotiate with construction companies on funeral expenses. That amount might have been on the low side. According to traditional Chinese culture and thoughts, those who died because of other people's fault were victims of injustice. Because of this traditional concept, their family members always want the religious rituals to be held in a more solemn way.

In this regard, even though it is proposed that the funeral expenses be increased from \$35,000 to \$70,000, we still consider it necessary to conduct a review of the whole system on a regular basis in order to tie in with the contemporary level of expenses. In fact, we also find our negotiation with construction companies very difficult. If the Government has put better arrangements in place, we do not have to negotiate for a higher amount with the construction companies each time. In fact, even though the funeral expenses have been raised to \$70,000, the target of our negotiation is to raise it to \$100,000 or \$150,000 because this is really the cost to be borne by the victims' families. We really do not wish to solve problem through negotiation outside the law. We only hope that the families can hold the rituals with a peace of mind.

President, lots of employees' compensation items are subject to adjustment according to inflation, which will result in an even smaller amount. Although the original adjustment of some items would have been -3.99%, the current adjustment is an increase of 1.39% after taking into account the inflation of the past three years. I hope the Secretary will consider whether it is necessary to review all basic data on a comprehensive manner *vis-à-vis* the needs of the times. I believe we should study the Employees' Compensation Ordinance carefully and in-depth so as to find out whether there is any room for improvement in respect of legal protection for employees and the amounts of compensation items *vis-à-vis* the needs of the times. Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, first of all, I think I have to commend the Secretary for his willingness to take good advice. As far as I

remember, when the Panel discussed about the adjustment of the amount of eight compensation items payable under the Employees' Compensation Ordinance, we asked the Government to take into account the higher wage increase after the implementation of statutory minimum wage last year, as well as the serious inflation in the last couple of years. As we all know, the "easy money policy" adopted internationally has caused a sharp rise in prices. After the meeting, the Secretary accepted our advice and changed the established practice of having biennial reviews. It has taken the wage and price movements between 2009 and 2011, which is three-year period, as review indicators. In my view, this approach is worth supporting because it allows the Government to take into account the actual circumstances and is more flexible.

As stated by Mr LEE Cheuk-yan just now, the cycle is really too long. Therefore, I hope that the Government can consider this view in its future review of compensation levels.

Secondly, I would like to make a point on the huge increase in the maximum amount of funeral expenses, which will be doubled from \$35,000 to \$70,000 after adjustment. According to the Secretary, this substantial increase is meant to provide better financial relief to the family members of the deceased. Well, we do believe it is part of the reason.

However, the percentage constituted by this increase is unknown. This leap, on the contrary, has made me worry if there is another connotation. Over the past three years, Hong Kong people have to pay very much more for the funeral services of their loved ones. Many people have had first-hand experience of this astonishing increase. Previously, the Hong Kong Federation of Trade Unions — to be exact, it should be my partner Mr WONG Kwok-hing — and the funeral industry have revealed that the Government is suspected of taking the lead in raising funeral expenses. In the example of the Hung Hom Public Funeral Parlour, the Government has conducted three tender exercises to lease it out since 2002. While the tender price in 2002 was \$20 million, this year, the tender price has jumped to \$280 million, representing a hike of 14 times. Its rent is much higher than shops and domestic properties. By raising the tender price, the Government can of course bring in a handsome profit to the public coffers; yet, I hope the Government will not be flattered by the money. As the saying goes, "without a sheep, there can be no wool". This exceptionally

high tender price will just trigger a price rise in funeral services, making it hard for the deceased to rest in peace.

What worries me even more is that: does the rise in funeral expenses reflect an imbalance in the overall demand and supply of funeral services? For this situation, I think the responsibility lies in the Government. Year after year, the Government fails to work out a good population policy or proper planning. Ageing population is a problem that we are all aware of. If the Government had made an early planning, it would have foreseen an increase in the demand for funeral services and responded accordingly. Unfortunately, the Government is blind to our demographic change and takes stopgap measures only. Because of its failure to implement a population policy, funeral services, which represent the last stop of a man, are now in serious shortage. Currently, mortuaries, funeral services and crematoriums are all running short, let alone columbarium. Several bodies may have to be packed in a cubicle when they were stored in a mortuary. When everything mentioned just now is insufficient, who should take the blame? Well, you may blame Mainlanders for the increase in property price caused by their purchase, but not the imbalance in funeral services. Is that right? The root of the problem is that Hong Kong does not have proper planning. Here, I would like to make a point. I hope that the new Government, which has just been inaugurated, is aware of the big trend from this small sign, and hence make a good population planning. It should also introduce suitable strategies to cope with every need arising from our demographic change and take care of these most basic issues in people's livelihood.

I so submit.

MS LI FUNG-YING (in Cantonese): President, after all the twists and turns, this resolution can finally be tabled in this Legislative Session. It is fortunate that the Government has pulled back and made a wise choice at the last minute to give a new arrangement to the discussion of the reorganization of Government Secretariat. Otherwise, these 10-odd resolutions will not be able to pass in this legislative term since the filibusters have made it clear that they do not want the reorganization proposal to get passed. This will then do much harm to the interests of employees, patients and the general public.

President, today, I speak to support the resolutions moved under the Employees' Compensation Ordinance, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance. Yet, I must point out that while the resolutions are directly tabled to the Council without going through any subcommittee, it does not mean that the labour sector has no views about them. On the contrary, the labour sector holds the strong view that the authorities are careless and perfunctory in the current exercise of compensation adjustments.

President, when the Secretary spoke on this resolution just now, he said that the current adjustment was a special arrangement made for the special situation under which minimum wage was introduced in May 2011. Yet, I must point out that, in January this year, when the Government first submitted its proposal on various compensation adjustments to the Panel on Manpower, it had not in the least considered the fact that minimum wage had been introduced for nearly a year. Another important factor, that is, the anticipated inflation, was also missed out in its consideration. Thanks to the repeated criticism of the Panel members, the Government was willing to withdraw its original proposal and reconsider the adjustment rates. As the adjustment proposal was ill-thought-out on the whole and warranted a fresh discussion, its effective date had to be postponed from 1 April 2012 to 14 July 2012 as proposed. Right now, the effective date has to be further postponed to 21 July.

President, according to the normal practice, if the Government is willing to correct its mistake and revise all of the compensation levels, it is very reasonable for these adjustments to have a retrospective effect from their original effective date, that is, 1 April 2012. Unfortunately, the Government has turned down this suggestion, and worse still, a number of work-related fatalities have happened after March. In April, a carpenter fell to death at a construction site; in June, two more workers fell to death when they worked at height; last weekend, a scaffolding worker also died at work. These poor workers, who lost their lives in work-related accidents, can now only claim compensation under the old arrangement because of the Government's error in compensation adjustments. As for workers who are on different kinds of compensation for their work-related injuries, such as deaf and pneumoconiosis, their interests are also harmed by the repeated delay of compensation adjustments. In view of this, I am very sorry for the Government's refusal to give retrospective effect to the resolution from 1 April 2012, and I must ask the Secretary not to confuse right and wrong.

When he was actually fixing a problem with his policy, he should not have said that it was a special arrangement for a special circumstance; as for the damage to worker's interests, he should not have described it as a commitment to promote labour's rights.

President, being a Member of the labour constituency, I do not want to see further complications in the passage of these compensation adjustments as that will just further delay the improvement in workers' interests. However, I must tell the true story of compensation adjustments in its entirety and put it on record. In addition, as the Secretary has promised to conduct a comprehensive review on these compensation arrangements before the biennial review, I hope he will keep his words.

President, I so submit.

MR IP KWOK-HIM (in Cantonese): President, this meeting will end in less than one and a half hours but some resolutions are still pending. I do not think we will have enough time to discuss them in detail. So I will just give a brief comment on these three resolutions when I speak on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). The DAB are in support of these resolutions so that the adjusted amounts of a total of 15 compensation items and surcharges under three ordinances can soon be effective to give better protection to low-income workers and their families.

After the introduction of minimum wage in May last year, the wages of low-income workers have made some increases. However, in the face of high inflation and the wake of the financial tsunami, these workers have not been much better off because their slight pay rise cannot catch up with the general price increase. For most of the time, low-income workers are the breadwinners of their families, and their family budget is usually tight. In case they lost their ability to work or even their valuable lives at work, their families would be hard hit and in great need of help. Just now, Ms LI Fung-ying has already told us some cases of work-related injury or death in the last few months, and I think none of us want to see such accidents.

The amounts proposed to be adjusted this time are related to the compensation, surcharge or funeral expenses paid to workers who have

permanently lost their working ability or their lives. Just now, some Members have pointed out in their speeches that funeral expenses and some other fees have gone up as a result of the general increase in prices and cost of living; therefore, the proposed amounts may not be sufficient for them to cope with the sudden blow and extra burden. However, we think that by making an adjustment, the Government is at least taking the first step. We note that low-income workers and their families will be in dire need of financial support when they come across such situations. Therefore, we hope earnestly that the authorities can soon review the relevant compensation levels on the basis of the present situation.

Of course, I know that some of us have previously discussed the adjustment proposal in the Panel on Manpower and held that the original adjustments were insufficient. However, as the authorities has already taken Members' advice and made the necessary amendment, I hope we can now accept the revised proposal. What is more, the revised proposal has already been discussed and unanimously endorsed by the Labour Advisory Board. As both the employee and employer representatives have agreed to this proposal, I hope this resolution can be passed expeditiously.

President, I so submit to support the resolution.

MR WONG KWOK-HING (in Cantonese): President, I speak to support the resolution moved under the Employees' Compensation Ordinance. First of all, I hope the Government will keep its words and conduct annual reviews after the passage of this resolution. The reviews cannot be done once in a few years, and this is exactly the mistake made by the Government this time. Secondly, I hope the Government can deal with some of the items in a humane way, particularly those related to death and funeral arrangements, given that the Grand Peace Funeral Parlour operated by the Government has also taken a lead in raising the fees sharply.

President, lastly, I would like to ask the Members who filibuster with various means to take a look at the clock and show mercy. There are less than 80 minutes left but we still have eight resolutions to be dealt with. Even if we exclude the last resolution, that is, the reorganization of the Government Secretariat, seven proposed resolutions are still pending.

I beg the filibusters to do us an honourable favour and allow 10 minutes for the discussion of each of these seven resolutions. They are resolutions concerning people's livelihood. Please let us elaborate a bit further when we speak up for the workers and the people. This resolution is a case in point. Right now, we can only express our views briefly. Therefore, in the remaining time, which is less than 80 minutes, President, I would like to beg the filibusters again through you to do us an honourable favour. Thank you, President.

MR WONG YUK-MAN (in Cantonese): I do not have to do an honourable favour for my favour is not honourable. Hey, you, do not waste our time saying nonsense. I will say what I should say. If you want to go on with your speech, I can join you. But I can also stop talking because you are now the host, not me. You represent the working class, and I know it from the logo of the Hong Kong Federation of Trade Unions, a peripheral organization of the Communist Party committed to upholding the rights of workers. However, you have followed the Chinese Communist Party and become a capitalist roader. According to the Government, the purpose of this resolution is to increase the amount of eight compensation items payable under the Employees' Compensation Ordinance (ECO) by referring to the review mechanism on wages and prices. Such review was previously conducted biennially. Yet, with the introduction of the statutory minimum wage last year, the latest review was conducted for a three-year period. This case has demonstrated the strength of this Secretary: to drag on and out. Matthew CHEUNG, you are a machine. This morning, I got mad when I listened to you speaking on the special allowance for the elderly. Yet, I am not going to criticize you right now. I still have many chances to do so.

The adjustment proposal will increase the maximum payments towards the cost of supplying and fitting a prosthesis and surgical appliance, and towards the cost of the repair and renewal of a prosthesis and surgical appliance. In my view, the stipulation in ECO on the total amount of the probable cost of the normal repair and renewal during a period of 10 years is unclear. Well, I know what you are thinking. It is true that, in some cases, the employee will not have to renew the prosthesis or surgical appliance in a year while the prosthesis or surgical appliance may sometimes need to be repaired or renewed repeatedly in a year. While the current practice seems to allow some flexibility, it has got a problem. As the ECO has stipulated on the total amount of probable cost during a period of 10 years, in case the Government increases the maximum payments

towards the relevant cost, should the cases which are already in the compensation period follow the old payments or the new ones? Why is there no provisional clause?

As for the funeral expenses, while the Government tells us proud and loud that it will increase the maximum amount of funeral expenses, it has indeed leased out the Hung Hom Public Funeral Parlour at an exorbitant price of \$280 million recently, pushing up the fees of funeral services. The Government, by taking the lead in price hikes, has deprived the people of their excess to economical funeral services. Many low-income families therefore cannot bid final farewell to their loved ones. Frankly speaking, if the Government continues to act in such a self-contradictory manner, the increase in the maximum amount of funeral expenses will not be able to help the employees, no matter how high the increase is.

On balance, we agree to increase the maximum and minimum levels of compensation, but we think the increase rates and review indicators are subject to discussion.

President, in fact, I have prepared a speech for this resolution and I have just read out one page of my script. However, as I have to leave some time for those who uphold the rights of the working class, I will just speak for three minutes and stop now. Thank you, President.

MR ANDREW CHENG (in Cantonese): President, legislation like the Employees' Compensation Ordinance (ECO) is very important to the rights of grassroots because labourers in the lower social strata will often be thrown out of work when they get hurt at work. For those who have to do more physical work, it is more likely for work-related injuries to pose threat to their own lives and their families. This is something that we all know. However, in our past discussions over occupational diseases set out in the ECO and the Occupational Deafness (Compensation) Ordinance, I had the strong feeling that we were begging the Government "to show more mercy to the grassroots". President, this is why this Council sometimes makes us feel miserable and helpless.

I know that there are only one hour and 15 minutes left before twelve o'clock. However, when I compare this resolution with other remaining

resolutions, I think it is better for us to spend a few more minutes on this resolution. Here, I have to point out that it is the composition of this Council that often lets us down in our fight for labour's rights, such as the adjustment of compensation levels under the ECO, and brings degradation to the lives of the grassroots and workers.

Hong Kong is a financially well-developed city but it does not care much about the lives and working environment of the grassroots, especially labourers, as well as their compensation for work-related injuries. Of course, you may argue that Hong Kong has improved much in this aspect when compared with the situation 10 or 20 years ago. Yet, the comparison should actually be made to other international cities whose fiscal reserves are comparable to Hong Kong's. I believe the compensation amounts that we offer to workers are much less than those provided in many developed and democratic societies, despite our high per capita income. The reason for that is simple: our Council is not a council fully elected by the people; nor is our government elected by the people.

I have now put my hope on the government of LEUNG Chun-ying. He, being our Chief Executive, has stated that he will always put people's livelihood at the top of his agenda and fight for the rights of the grassroots. Today, I have heard the representatives of labour unions, such as Ms LI Fung-ying, accusing the Secretary for confusing right and wrong. Yet, she has also said that she can only accept the proposal unwillingly as she does not want to cause any further delay. President, our Council is always full of these contradictions. Whenever the Government tables a bill or a motion, labour unions tend to say that they will take it first because they do not want to cause any delay. To a certain extent, the accusation made by the labour unions against our Government is I have just explained this point and I am not going to repeat it since there is little time left. However, I want to give a serious advice to the Government: it is the duty for Members to monitor and advise the Government as it is in power. It should not lead us to wrong-doings. Meanwhile, representatives of labour unions should safeguard their own dignity. They should not make the protection of labour's dignity an empty talk. Before they press the button to support the Government, they should have the courage to say "no" to the Government if its proposal does not respect labourers.

President, today, when the meeting has come to this moment, I think it will be my last speech in my 17 years of career as a legislator because I want to leave

some time for the remaining resolutions so that they can be passed before the prorogation of the Council at twelve o'clock. By the way, I would like to thank all of you again for your tolerance. I am aware that sometimes I have made unfavourable comments or even strong criticisms against you. Yet, President, I think everyone of us here is trying to clarify the truth through debates so as to change a government without people's mandate into a government which really acts in the interests of Hong Kong people. Therefore, the vote of Members is very important. We should not go against our conscience. We should not go against the need and the hope of our supporters either.

President, I so submit. I know that some of my previous comments have made you feel bad for quite some time. I wish all of you good health and prosperity. This Council still needs you to speak up for the truth. Thank you.

MR WONG SING-CHI (in Cantonese): President, the Democratic Party will also support the resolution moved under the Employees' Compensation Ordinance. President, just now, a number of Members have spoken much from the bottom of their hearts. When I dealt with labour affairs in the last few years, I saw that the Government had taken labour welfare in a way the bureau under the purview of the Secretary is called "the Labour and Welfare Bureau", with "labour" and "welfare" being split up, but labour welfare is in fact a very important issue.

Talking about this resolution, at first, we were really disappointed by the Government. Yet, because of the immense public pressure and the situation after the introduction of minimum wage, the Government was later forced to take necessary action. Over the years, the Government does not seem to have given enough care to the welfare of the grassroots. Right now, the Secretary has already been reappointed, but he just keeps on repeating himself as he did in the past while he thinks that he has already put in a lot of efforts, many people are still living a miserable life and depend very much on the Government to take heed and care of their welfare.

This resolution is a timely help to some people. I hope that if the Secretary and the Chief Executive LEUNG Chun-ying can stay in office, they will conduct a comprehensive review on labour welfare to see how to provide workers with the necessary assistance in case of emergency. President, I do not

want to speak too much, but I hope the new Government can have a new mindset and competence to take care of the people. It should not force the Council to bombard it on every issue and then respond reluctantly with a slight progress. Its current approach cannot help solve any future contradictions in our society. I hope that the Secretary can be more responsive and propose better measures when he deals with the same issue again in the future.

Thank you, President.

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

MR IP WAI-MING (in Cantonese): President, neither do I want to speak too much as there are still many agenda items pending. Actually, I do not like to rush through the agenda like this.

President, in my career as a Member over the past four years, I often have a feeling that the Government will not include all of our advice into the proposals that it tables to the Legislative Council. Although Ms LI Fung-ying and I, as well as our brothers and sisters in labour unions outside the Council, have protested strongly for our demands, what does the Government finally come up with in its proposal tabled in the Council? To us, this proposal is not completely satisfactory. However, considering the levels of compensation proposed in the resolution, we are afraid that if we turn down the resolution without giving it a second thought, the compensation for funeral expenses, which is more than \$70,000, will be gone. Families of deceased workers will then lose the protection they could have had, will they not? As a matter of fact, we often have to make such difficult decisions. President, I think this kind of dilemmas is not peculiar to us in the past four years. For many of those in the labour unions, if they later join the Council as the representatives of workers, they will have to face it too. If we simply say "no" and walk away, how can we face our brothers in the labour sector?

I have served workers for 27 years and spent most of the time fighting for labour rights. While I may not share the political stance of other labour groups, I always feel bad when others query our commitment in upholding labour rights. To be honest, I cannot accept these queries. Perhaps, I have many other

shortcomings, but I have been fighting for workers and upholding their rights for more than 20 years. I do not want my commitment to be distorted or smeared by anybody. President, this is the most passionate speech that I have ever made in the past four years, and maybe I will continue to be so passionate in the future. Yet, it is really my strong wish to let Secretary Matthew CHEUNG know that his decisions have often disappointed many workers.

President, let us come back to this resolution. I totally agree to the view of Ms LI Fung-ying, that is, the Government often acts in a way that infuriates the workers. Officials should be honest to themselves. Firstly, regarding the compensation levels mentioned in the resolution, I hope that the Secretary can review them annually instead of biennially. Secondly, I must state once again that, Secretary, in the current review, the compensation for medical expenses has not been increased. It remains at the level of \$200 a day. Is it really enough to cover the medical expenses of a worker? We should all think about this question.

Lastly, I would like to tell the Secretary sincerely that the Employees' Compensation Ordinance has never been reviewed comprehensively since its enactment in 1954. Throughout the years, it has only got some minor piecemeal amendments. I hope the Secretary can conduct a comprehensive review on this ordinance and introduce the element of rehabilitation into it to help injured workers get back to work.

Thank you, President.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I thank the nine Members who have just spoken in support of the resolution. I wish to highlight a few points in response to Members' concerns.

To begin with, I can understand Members' concern about whether the data will lag behind the prevailing situation. As a matter of fact, the revision has fully demonstrated the interaction and communication between the Government and the Legislative Council. After listening to Members' views, we have promptly responded to Members' concerns, and immediately, as Members may be aware, extended the time of the review for one more year. We hope that we can genuinely respond to Members' aspirations after reviewing the outcome of the minimum wage, so as to better safeguard wage earners' rights and interests. As for whether the data will lag behind the prevailing situation, we will definitely include this issue into the future review, and will seek to, as Member has said, shorten the review cycle and take better control of the consultation time so as to avoid any vacant period in the interim.

Second, I wish to clarify that there is not a retrospective period for this type of legislative amendment, but, we will make good use of the time. Once the resolution is passed today, it will be published in the Gazette on Friday and be effective on Saturday, in a bid to promptly assist those employees who have unfortunately been injured, as well as their family members.

President, I urge for Members' support for the passage of the resolution today. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance.

I now call upon the Secretary for Labour and Welfare to speak and move the motion.

PROPOSED RESOLUTION UNDER THE PNEUMOCONIOSIS AND MESOTHELIOMA (COMPENSATION) ORDINANCE

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that the resolution, as printed on the Agenda, be passed.

The purpose of this resolution is to increase the amount of five compensation items payable under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (the Ordinance). The Ordinance provides for the payment of compensation to persons or their family members in respect of incapacity or death resulting from pneumoconiosis and/or mesothelioma. It is an established practice to review the levels of compensation provided for under the Ordinance together with those under the Employees' Compensation Ordinance every two years, and adjustments to the amounts of compensation are made by reference to the changes in the price level and other relevant indicators in the intervening period.

We propose to increase the amount of three compensation items under the Ordinance by 1.39%. The proposed changes include increasing the monthly amount of compensation for pain, suffering and loss of amenities from \$3,180 to \$3,220. We also propose to increase the amount of compensation for bereavement from \$100,000 to \$101,390. Also, the minimum amount of compensation for death would be adjusted from \$100,000 to \$101,390.

We propose to increase the monthly amount of compensation for care and attention from \$4,160 to \$4,520. Regarding funeral expenses, just as I have

pointed out earlier, we also proposed to increase the maximum amount from \$35,000 to \$70,000.

The Labour Advisory Board and the Pneumoconiosis Compensation Fund Board have endorsed the above proposals. I propose that the revised levels of compensation should take effect from 27 July, that is, this Saturday.

I hope that Members will support and pass the motion so that persons suffering from pneumoconiosis and mesothelioma or their family members can benefit as soon as possible.

Thank you, President.

The Secretary for Labour and Welfare moved the following motion:

"RESOLVED that, with effect from 21 July 2012, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) be amended as set out in the Schedule.

Schedule

Amendments to Pneumoconiosis and Mesothelioma
(Compensation) Ordinance

1. First Schedule amended (amounts of compensation)
 - (1) First Schedule, Part IIA —
Repeal
"\$3,180"
Substitute
"\$3,220".
 - (2) First Schedule, Part IV —
Repeal
"\$4,160"
Substitute
"\$4,520".
 - (3) First Schedule, Part V —
Repeal
"\$100,000"

Substitute

"\$101,390".

(4) First Schedule, Part VI —

Repeal

"\$35,000"

Substitute

"\$70,000".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Labour and Welfare be passed.

MR LEE CHEUK-YAN (in Cantonese): President, after looking at the amount of compensation, I am sad and feel how mean the Government is. How much has the amount of compensation for pain, suffering and loss of amenities resulting from pneumoconiosis been increased? President, it is a mere increase of \$40. These people have sacrificed their health, and perhaps ultimately their lives, for the prosperity of Hong Kong.

This group of construction workers has suffered from pneumoconiosis. As Members may be aware, when people who suffered from pneumoconiosis climb up the staircases, they are short of breath, which is indeed very painful. And yet, we now only increase the compensation by \$40. President, the increase was initially less than \$40. Why has the increase now become \$40? It is because the adjustment has taken into consideration the inflation rate of one more year, that is, the inflation rate of 2011, which justified that the amount of compensation be further increased by some 1%. There has been deflation since 1998, and inflation has all along failed to catch up with deflation. It was not until 2011 that inflation finally caught up with deflation, and we finally have slight increase in the amount of compensation.

However, should it be calculated that way? I always ask the Secretary why we cannot treat this group of people better. This warrants a fundamental review of the compensation for pain. President, I was most infuriated by the proposal to lower the levy rate of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance. Why should the levy rate be lowered? It is because the relevant fund is flooded with money. This is why the levy rate

imposed on employers is lowered to relieve the flood pressure of the Pneumoconiosis Compensation Fund. But why can the excess money not be used to make compensation instead? These people have been living in great pain and have waited for more than a decade, but compensation for pain has increased by only \$10 since 1998. Is this not mean?

In my opinion, the worst thing is that the Government dictates the magnitude of increase of the amount of compensation, and there is no way we can amend it. How can we increase the amount of compensation for pain by a mere \$40 and lower the levy rate? If the Fund is "flooded", why did the Government not spend the money on the workers so that their living can be slightly improved? What is the point of increasing the amount by \$40 from \$3,100? Is this giving out alms? I think that the Secretary should not be so mean. You always claim to improve people's livelihood and give priority to people's livelihood, but you have nonetheless become so mean when addressing the livelihood concerns. How can you claim that you are concerned about people's livelihood?

President, I regret very much about the increase of the mere \$40 and have no doubt that the Government is financially capable of affording a greater increase. Given that the Fund is already "flooded", it should therefore comprehensively review the amount of various compensations and propose an increase across the board. Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): While the amount of five compensation items payable under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (the Ordinance) has been increased this time, which is worth supporting, I consider that the remark made by Mr LEE Cheuk-yan earlier has its points. It is also our common concern. When providing compensation to workers suffering from chronic illnesses or occupational diseases resulting from their employment, the Government has imposed criteria which are too stringent in some cases. The Government seems to fear that increasing the amount of compensation might "benefit" certain people.

Yesterday, in this Chamber, we heard that the incumbent Chief Executive LEUNG Chun-ying has introduced a series of new initiatives, among which the so-called "enhanced fruit money" is really an eye-opener. I hope that the Secretary will abandon the old mindset of the previous government, which was so

afraid of benefiting certain people, particularly because the number of people who have suffered from pneumoconiosis and mesothelioma is actually decreasing. Why should these people not receive higher compensation?

Here, I would like to talk about pneumoconiosis and mesothelioma as many people cannot tell what diseases they are simply by their names. The cause of pneumoconiosis

PRESIDENT (in Cantonese): Dr PAN, please be concise as there are still six outstanding resolutions.

DR PAN PEY-CHYOU (in Cantonese): Okay, I will try to be concise.

Pneumoconiosis is caused by the inhalation of silica dusts, which deposit in the lung alveolus and cause long-standing stimulation and inflammation, thereby weakening our pulmonary function. This is a very serious disease. People who frequently inhale silica dusts are construction workers, masonry workers, workers who need to use pneumatic drills to dig up the road, or even workers who make glasses, although glass craftsmanship no longer exists in Hong Kong. Workers who need to polish glasses for an extensive period of time are also prone to inhalation of silica dusts and may suffer from this disease.

Asbestos is another common cause. Silica, which is an essential element of asbestos, is also a cause of pneumoconiosis. Worse still, asbestos is found to have a causal relationship with an uncommon cancer (called mesothelioma). Mesothelioma can be benign or malignant, and malignant mesothelioma will continue to attack the body and is therefore fatal.

As a result, people who suffer from such diseases have to endure great pain day and night. The short of breath has prevented them from climbing slopes or staircases, or even getting a job. They have to stand the pain for a long period of time until their pulmonary function deteriorates so badly that they die.

Luckily, as workers become more health conscious in recent years, new cases of pneumoconiosis have actually decreased. From the statistics released by the Pneumoconiosis Compensation Fund Board, we can see that the number of

new cases in 1982 was 512 whereas that of 2010 was 74. Noting that the number of such patients has decreased, should we consider increasing the amount of compensation, especially that for pain, for people who are suffering from such diseases?

Furthermore, I also consider it worthwhile to discuss the use of asbestos. The use of chrysotile is still permitted in Hong Kong in recent years

PRESIDENT (in Cantonese): Dr PAN, please consider cutting your speech short by all means.

DR PAN PEY-CHYOU (in Cantonese): Okay. I just have a few more sentences to speak.

Importation of chrysotile is still allowed in Hong Kong. I hope that Hong Kong will be on a par with the rest of the world and completely ban the importation and trading of asbestos, which can actually be replaced nowadays. I am speaking to get this point across.

PRESIDENT (in Cantonese): There are less than 50 minutes before this Council ceases operation, but we still have six outstanding resolutions concerning people's livelihood. The decision lies with Members as to whether they prefer to give longer speeches or endorse a few more resolutions.

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 Secretary for Labour and Welfare to reply. This debate will come to a close after the Secretary has replied.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to focus my brief reply on Mr LEE's remarks about the little increase in the amount of compensation for pain, suffering and loss of amenities. Our proposal has followed the relevant mechanism and adjustments were made with reference to the movement of the Consumer Price Index (A). However, just as I have pointed out clearly at the meeting of the Panel on Manpower, I would be happy to fully consider Members' suggestions in the next review to see if the matter can be dealt with in a more flexible manner.

Therefore, today, I hope that Members will support this government resolution. Thank you.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Occupational Deafness (Compensation) Ordinance.

I now call upon the Secretary for Labour and Welfare to speak and move the motion.

PROPOSED RESOLUTION UNDER THE OCCUPATIONAL DEAFNESS (COMPENSATION) ORDINANCE

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

This resolution seeks to increase the amount of two compensation items under the Occupational Deafness (Compensation) Ordinance (ODCO). The purpose of the Ordinance is to provide compensation to persons who have been exposed to noise in their working environment and have suffered noise-induced deafness.

Under the ODCO, the maximum amount of compensation for permanent incapacity is calculated on the basis of the claimant's monthly earnings. The ceiling of monthly earnings currently adopted under the Ordinance is \$21,000 while the minimum sum for calculating the compensation for permanent incapacity is set at \$341,000.

Just now, we passed the upward adjustment of the amounts of eight items under the Employees' Compensation Ordinance (ECO). In particular, the ceiling of monthly earnings for the purpose of calculating the compensation for death and permanent total incapacity has been increased from \$21,500 to \$23,580. In order that the compensation under the ODCO is pegged at a similar level as that under the ECO, we propose that the ceiling of monthly earnings for the purpose of calculating the maximum compensation for permanent incapacity under the ODCO be increased from the current \$21,000 to \$23,580. On this basis, the maximum compensation for permanent incapacity for employees under the age of 40 will be increased from \$2,016,000 ($\$21,000 \times 96$) to \$2,263,680 ($\$23,580 \times 96$); the maximum compensation for permanent incapacity for employees between the age of 40 to under 56 will be increased from \$1,512,000 ($\$21,000 \times 72$) to \$1,697,760 ($\$23,580 \times 72$); and the maximum compensation for permanent incapacity for employees aged 56 and above will be increased from \$1,008,000 ($\$21,000 \times 48$) to \$1,131,840 ($\$23,580 \times 48$).

As for the minimum amount of compensation for permanent total incapacity under the ODCO, we also propose to bring it on a par with the relevant compensation under the ECO so that it will be increased from \$341,000 to \$386,110.

These proposals have been endorsed by the Labour Advisory Board and the Occupational Deafness Compensation Board. We recommend that the revised compensation amounts come into effect on Saturday, 21 July.

I hope Members will support and pass this motion so that people suffering from occupational deafness will benefit as soon as possible.

Thank you, President.

The Secretary for Labour and Welfare moved the following motion:

"RESOLVED that, with effect from 21 July 2012, the Occupational Deafness (Compensation) Ordinance (Cap. 469) be amended as set out in the Schedule.

Schedule

Amendments to Occupational Deafness
(Compensation) Ordinance

1. Schedule 5 amended (amount of compensation)
 - (1) Schedule 5, section 1(a)(ii) —
Repeal
"\$341,000"
Substitute
"\$386,110".
 - (2) Schedule 5, section 1(b) —
Repeal
"\$2,016,000"
Substitute
"\$2,263,680".
 - (3) Schedule 5, section 1(b) —
Repeal
"\$1,512,000"
Substitute
"\$1,697,760".
 - (4) Schedule 5, section 1(b) —
Repeal
"\$1,008,000"
Substitute
"\$1,131,840".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Labour and Welfare be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Buildings Ordinance.

I now call upon the Secretary for Development to speak and move the motion.

PROPOSED RESOLUTION UNDER THE BUILDINGS ORDINANCE

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I move that the motion standing in my name on the Agenda be passed. I hope Members will lend support. Thank you, President.

The Secretary for Development moved the following motion:

"RESOLVED that the Buildings Ordinance (Cap. 123) be amended as set out in the Schedule.

Schedule

Amendments to Buildings Ordinance

1. Schedule 5 amended (scheduled areas)
 - (1) Schedule 5, area number 3(1)(a) —
Repeal
"to 3".
 - (2) Schedule 5, area number 3(1)(a) —
Repeal
"and MTR/RP/101"
Substitute
", MTR/RP/101 to 139 and MTR/RP/142".
 - (3) Schedule 5, area number 3(1)(a) —
Repeal
"; and"
Substitute a semicolon.
 - (4) Schedule 5, area number 3(1)(b) —
Repeal
"Registry."
Substitute
"Registry; and".
 - (5) Schedule 5, after area number 3(1)(b) —
Add
"(c) the areas delineated and shown edged black on the plans numbered MTR/G/2 Rev. A, MTR/G/3 Rev. A, MTR/RP/140 Rev. A, MTR/RP/141 Rev. A and MTR/RP/301 to 306, dated 16 May 2012, signed by the Secretary for Development and deposited in the Land Registry."
 - (6) Schedule 5, area number 3(2)(a) —
Repeal
"KCR/WR/RP/100 Rev. 1,".

- (7) Schedule 5, area number 3(2)(a) —
Repeal
everything after "KCR/WR/RP/136 Rev. 1" and before
"dated 6 June 2003"
Substitute
"and KCR/WR/RP/139 Rev. 1,".
- (8) Schedule 5, area number 3(2)(a) —
Repeal
"; and"
Substitute a semicolon.
- (9) Schedule 5, area number 3(2)(b) —
Repeal
"areas delineated and shown edged black on the plans
numbered KCR/ERE/TSTE/RP/100,
KCR/ERE/TSTE/RP/101 and"
Substitute
"area delineated and shown edged black on a plan
numbered".
- (10) Schedule 5, area number 3(2)(b) —
Repeal the full stop
Substitute
"; and".
- (11) Schedule 5, after area number 3(2)(b) —
Add
"(c) the areas delineated and shown edged black on
the plans numbered KCR/WR/RP/100 Rev. 3,
KCR/WR/RP/137 Rev. 2, KCR/WR/RP/138
Rev. 2, KCR/WR/RP/140 Rev. 2,
KCR/WR/RP/141 Rev. 2, KCR/WR/RP/142
Rev. 2, KCR/WR/RP/143 Rev. 2,
KCR/WR/RP/144 Rev. 2, KCR/WR/RP/145
Rev. 2, KCR/ERE/TSTE/RP/101 Rev. C,
MTR/RP/1658 to 1659, MTR/RP/1670 to 1680
and MTR/RP/1804 to 1809, dated 16 May 2012,
signed by the Secretary for Development and
deposited in the Land Registry."
- (12) Schedule 5, area number 5 —
Repeal
everything after "on the"

Substitute

"plans numbered KCE/S/G/765B, KCE/S/G/766B, KCE/S/G/767B, KCE/S/G/768B, KCE/S/G/769B, KCE/S/G/770B, KCE/S/G/771B and 90806/STPA/1000 to 1004, dated 16 May 2012, signed by the Secretary for Development and deposited in the Land Registry."."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Development be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Disability Discrimination Ordinance to approve the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012.

I now call upon the Secretary for Labour and Welfare to speak and move the motion.

PROPOSED RESOLUTION UNDER THE DISABILITY DISCRIMINATION ORDINANCE

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I move that the motion as printed on the Agenda be passed. The resolution is to the effect that the amendment of Schedule 5 to the Disability Discrimination Ordinance (the DDO) be approved by this Council, in order to include Government's proposed public transport fare concession scheme for a particular group of persons with disabilities (the Scheme) as a further exception under Schedule 5.

In order to build a caring and inclusive society by encouraging the elderly and persons with disabilities to participate more in community activities, the former Chief Executive has announced in his 2011-2012 Policy Address a proposal to enable elderly persons aged 65 or above, as well as eligible persons with disabilities to travel on the general MTR lines, franchised buses, ferries and other franchised buses at a concessionary fare of \$2 per trip at any time. Eligible persons with disabilities will be the group of Comprehensive Social Security Assistance recipients aged between 12 and 64 with 100% disabilities and Disability Allowance recipients of the same age group.

Since the definition of "disability" under the DDO is very broad, the provision of fare concessions only to a particular group of persons with disabilities may give rise to an argument as to whether this would constitute unlawful disability discrimination under the DDO. In this regard, to minimize possible legal proceedings instituted under the DDO against the proposed scheme, the Government now proposes such an amendment.

President, we hope Members will support the amendment. Thank you.

The Secretary for Labour and Welfare moved the following motion:

"RESOLVED that the Disability Discrimination Ordinance (Amendment of Schedule 5) Notice 2012, made by the Chief Executive in Council on 8 May 2012, be approved."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Labour and Welfare be passed.

MR CHEUNG KWOK-CHE (in Cantonese): I believe that the granting of the proposed concessionary fare of \$2 per trip is a fruit for which the elderly and persons with disabilities have been striving over a long time. While the proposal has been long-awaited, we do understand that it is better late than never. With such a concessionary offer in place, both the elderly and persons with disabilities will be able to participate in community activities away from home more frequently to expand their social circles or to enjoy the nature.

During our discussion at the meeting of the Panel on Welfare Services, we named a few areas where there is still room for improvement. The modes of public transport covered are the MTR, franchised buses and ferries only, whereas trams and green minibuses are excluded. I think trams are not included because the elderly only need to pay half of the current fare charged at \$2.3, namely \$1.2, which is less than the concessionary fare of \$2 under the fare concession scheme. Otherwise they will have to pay higher fare and no one knows who will benefit from the extra amount paid. Yet, adult persons with disabilities will have to pay full fare at \$2.3. Why does the Government not propose to provide free rides for the elderly? In fact, it only needs to pay \$1.2 instead of \$2 for them. As for persons with disabilities, why not let them pay \$2 for a trip and the remaining 30 cents be subsidized by the Government? The Government has never taken these into consideration.

According to the Government, green minibuses are excluded because there are too many routes while the fares are charged in a much complicated way. Moreover, whether the Octopus card system will apply cannot be ascertained, but I believe that the real concern lies in that the system may possibly be tampered by drivers of green minibuses. However, if the elderly cannot be connected to the MTR stations by green minibuses due to the exclusion of green minibuses from the scheme, they may not be able to get away from home. We know that many of the elderly live in housing estates at present and they depend primarily on green minibus services that help convey them to the MTR stations. So do the persons with disabilities. Given the current situation of both the elderly and persons with disabilities, I think it is imperative that the Government should consider the issue carefully.

In addition, we are aware that many persons with disabilities are users of rehasub service but the Government has not considered reducing the fares of rehasub. Should the Government not pay more heed to their needs in using such important modes of transport in the long run?

Another flaw of the scheme is that persons aged under 12 with 100% disabilities are not covered. The reason given by the Government is that they have already been offered student travel concessions by the Education Bureau. Yet we all know that some concessions involve more than \$2, so should the two Policy Bureaux remind each other of such inconsistency? I hope the Secretary will make use of the six weeks ahead to have thorough discussion with the Education Bureau on this issue to facilitate the offer of concessionary fare of \$2 to dovetail with the commencement of the new school year in September.

As I trust that my Honourable colleagues do have concerns for persons with less than 100% disabilities, I will not speak in that regard. Lastly, I want to point out that according to the Secretary, the scheme will be reviewed three years after implementation. In my opinion, the scheme should be reviewed one year after it is fully implemented so that other modes of public transport will also be covered under the scheme to offer travel concessions for the elderly and persons with disabilities. Thank you, President.

MR WONG KWOK-HING (in Cantonese): President, I have reservations on this resolution for two reasons. First, the concessionary fare of \$2 proposed in the resolution is utterly unable to cater for persons with less than 100% disabilities. The Government's justification is that they have not lost their limbs totally.

As today's meeting is the last one, I do not bring in the "broken leg" which is kept in my office at Room 603. At first, I wanted to bring it along to this Chamber in protest. Previously, we had been to the Office of the Chief Executive-elect and subsequently met CY in person, together with organizations representing the persons with disabilities. He promised to conduct further review and let those having lost one limb to enjoy a concessionary fare of \$2 per trip after he had assumed office. Both the persons with disabilities and the representatives were of the view that they should give CY a chance to fulfil his promise then. Yet, at today's meeting of the Legislative Council, we have

Secretary CHEUNG of "LEUNG's Era" advocating a proposal of the "TSANG Era" here. He works in LEUNG's team but takes forward TSANG's policy, so he just read out the resolution without making any alteration. I consider this an improper practice that should be rectified. We should not regard something right after long existence of its impropriety, or else, CY will be rendered unrighteous. If he proceeds with what he is now doing, CY will not be able to fulfil the pledges that he made when standing in the election.

Besides, we propose that minibuses and trams should also be covered. At the meeting with us, he indicated that he was willing to conduct a review and this is the same as what the Secretary has said. However, now we are told that a comprehensive review will only be conducted after three years. Will it be too late then? Moreover, the resolution involves the issue of disabilities which may well be associated with discrimination that once the resolution is passed, the Disability Discrimination Ordinance will not apply under the scheme. This will render us unrighteous.

Given that most of the elderly will immediately benefit from the resolution proposed by the Government, we support it. In order not to cause any delay to the entitlement of the elderly to the concessions offered under the scheme, Members of the Hong Kong Federation of Trade Unions will abstain from voting if any Member claims a division later on. Nevertheless, this does not mean we concur with the Government's sluggish attitude in conducting the review and expanding the scheme to cover trams and minibuses. Nor does it mean that CY need not fulfil his promise in allowing persons with less than 100% disabilities to enjoy the concessionary fare of \$2 even if the resolution is passed today.

I beg to submit for putting on record. Thank you, President.

MS EMILY LAU (in Cantonese): President, the Government has proposed the current fare concession for the elderly and persons with disabilities in response to the demand of the local community.

President, the United Nations Convention on the Rights of Persons with Disabilities (the Convention) has been applied to Hong Kong since late August 2008. According to Article 19 of the Convention, persons with disabilities are

entitled to independent living and full inclusion in the community which should be facilitated by the state parties to the Convention the best they can, including to make available the community services and facilities for the general population to those persons with disabilities on an equal basis and be responsive to their needs. Furthermore, Article 20 states that the Government should "take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities", including "facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost".

President, here is a report submitted by the Government. The relevant Committee of the United Nations will hold the first hearing on 18 and 19 September 2012. President, Articles 19 and 20 of the Convention do not shed light on how persons with disabilities can become independent or move around in the community taking part in various activities. In the case of Hong Kong, persons with disabilities are unable get away from home because they cannot afford the travelling expenses. Why this point is never mentioned in the report? President, who will lead a team to the United Nations to give them an explanation on this? Will the Government submit a supplemental report in this regard?

I find this really unreasonable. This Council has made a large number of demands over the years to which the Government has never taken any action in response. The Convention is signed and the report submitted now, but there is still a hearing to attend ahead. It is not necessarily the case that the Government has done nothing in the end but the contents of the report are not good enough. According to the authorities, about 130 000 persons with disabilities will benefit, but how many persons with disabilities are there in Hong Kong? The number of persons with disabilities already reached 270 000 a few years ago. How can it be so unfair? President, why can children with disabilities aged below 12 not benefit from the Scheme?

I think this is rather outrageous. Why should the Government have signed such a Convention to deceive not only the people of Hong Kong but also the international community? Why is this not mentioned in the report submitted by the Government? This is just because they got nothing to report at that time. Now, given that they have got something on hand, should Hong Kong and the international not be informed of it? As to the issue of criteria, what is meant by

"disability"? According to a report issued by The Ombudsman in 2009, the criteria for disability are set in accordance with the Employees' Compensation Ordinance. Yet, that Ordinance was formulated more than 50 years ago where the standards adopted are unquestionably too general and out of date. That is why we have been demanding the Government to conduct a review and make due amendments, but it has not taken any action so far.

President, I believe that even if this resolution is passed today, the anger of our community and organizations representing the persons with disabilities will not die down but keep burning all the way through to Geneva. So see you at the United Nations in September!

MR RONNY TONG (in Cantonese): President, to some extent, this is the last time I speak on the policy change which I have been fighting for in this Council over the past eight years. It is quite appropriate. As many colleagues have stated in their speeches, I must sanction the Government in public here for its practice of always getting things half done only when materializing the Council's proposals that it has accepted, rather than having them wholly done. Such a practice is, of course, consistent with the implementation of all its other policies.

President, we have already had many discussions at the Panel meetings and expressed clearly to the Secretary our strong discontent specifically about the arrangements in respect of tram fares and children with disabilities.

Besides, I wish to take this opportunity to say that although the Secretary has promised this Council to conduct a review later on, three years is still too long. More importantly, it is imperative that the Secretary should promise to fully review the definition of the term "disability", given that the existing DDO is rather unfair to persons with disabilities in a sense that it serves to rationalize such unfair acts in its provisions. I hope the Secretary can make a promise openly to Hong Kong people that the Government will review the definition of the term "disability" if he has the chance to make a response.

DR PAN PEY-CHYOU (in Cantonese): President, the concessionary fare of \$2 granted to persons with disability by the Government requires 100% of incapacity of the recipient, meaning that only those with 100% disabilities are entitled to the

concessionary offer. In fact, this is totally unacceptable for it is clearly so unfair that an ordinary or rational person will find it in breach of natural justice.

I wish that the Secretary would explain in person to someone with a broken leg the reasons for excluding people like him from benefiting from the public transport concession fare scheme. These people have difficulty in going upstairs and downstairs as well as entering or getting out of any premises due to their impaired mobility, but our Government tells them that they should not be entitled to fare concessions.

Government policies are always like this. Consider the case of the last Government. Why it happened that the more it did, the lower its popularity rating was recorded, and that the more money it gave out to members of the public, the lower its popularity would become? It is because nothing is more annoying than someone being deprived of something he actually deserves. Everything will be fine if there is no such a concession fare scheme, but once it comes into being but people obviously eligible and well-justified are denied their entitlement, it is much worse than not offering them anything. This is how public outcry is being triggered.

It is perfectly fine if we have to endure the misery of poverty or face difficulties together. Yet, the root of the problem lies in that some people are provided for while some are not, just as the saying goes: The problem is not with scarcity but with uneven distribution. Hence, I hope the Secretary will expedite the review on relevant policies. It is not our wish to see the Government being constantly condemned and so it should heed words from Members which may not sound so pleasing to their ears.

I so submit.

MR TAM YIU-CHUNG (in Cantonese): President, actually I have prepared several pages of speaking note but I will certainly be mistaken as following suit in filibustering if I read out every word of it, yet the contents of the speech which I am going to deliver is rather substantive. However, I will take your advice for I am sure you will stop me or suggest that I conclude my speech in one or two minutes if I keep on speaking. Under this situation, I would choose to voice the views of the DAB only.

PRESIDENT (in Cantonese): You have been speaking for 20 seconds.

MR TAM YIU-CHUNG (in Cantonese): Yes, the DAB concurs with this resolution and hopes that the scheme will be implemented as early as possible, but it does not mean that we consider it unnecessary for the Government to further extend the coverage of the public transport fare concession scheme to persons with disabilities in the future.

Despite the Government's promise to evaluate comprehensively the effectiveness of the scheme three years after its implementation, we still find it necessary to review the scheme as soon as possible after it comes into operation. Meanwhile, it is imperative that the coverage of beneficiaries under the scheme be extended as far as practicable and a set of specific eligibility criteria be established with a view to benefiting more persons with disabilities.

Thank you, President.

MR FREDERICK FUNG (in Cantonese): President, although I will no longer serve on the Equal Opportunities Commission starting from today, I still believe that as regards the concept of equality as upheld by the commission, it is worthy for this Council and the Government to abide by. The reason is that when it comes to people with disabilities, apart from our own legislation, it is also internationally held that discrimination should not exist in the area concerned.

As time is running out, I am not going to speak too much, in order not to affect other resolutions. I just want to make clear my point on the level of disability. One option is that only a disability of 100% is counted; the other option is that one as low as 0.1% should also be counted. So, are we going to set the benchmark of disability at 100%, hence only the least number of people will benefit? Does it constitute discrimination to those who are 99%, 98% or 97% disabled? That is a problem.

The second problem is that the ineligibility of children aged below 12 for the subsidy constitutes another form of discrimination. Does it mean that when age discrimination is incorporated in the future, it is worthy for the Government to consider removing the age limit for the scheme?

All in all, we hold that the \$2 travel subsidy should be included as part of the legislation as a whole. Yet, in my opinion, there still exists discrimination against the disabled. I wish that the Government would consider proposing further amendments in the form of resolution as soon as possible, so that the rest of them may also be entitled to the subsidy. Thank you.

MR LEUNG KWOK-HUNG (in Cantonese): President, this is the only point I would like to make here: "There is no Bodhi-tree, nor stand of a mirror bright; since all is void, where can the dust alight?" The Government should decisively cut off what should be cut off, otherwise it will be subject to the havoc they wreck. If the Government had withdrawn the resolution for the establishment of five Secretaries of Departments and 14 Director of Bureaux in the first place, things would not have turned out in this way, right? "There is no Bodhi-tree, nor stand of a mirror bright; since all is void, where can the dust alight?"

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

(No Member indicated a wish to speak)

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

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I thank the eight Members for their remarks. I would like to make three points succinctly.

First, I have given a clear account of all our rationales to the Panel on Welfare Services. But I would like to emphasize that after the scheme has come into operation, that is, after the scheme is passed today and is expected to cover buses in the third quarter and be further extended to Lantau buses and ferries in the first quarter of next year, we would proactively look into the prospect on extending it to green minibuses and trams in due course.

Second, we have mentioned that a comprehensive review on the scheme will be conducted after three years of implementation. But practically speaking, we will review the progress on an ongoing basis. As what I mentioned for trams and green minibuses, we would deal with it rather than wait. We will also look into the eligibility of children aged below 12 with 100% disabilities for the subsidy.

As regards those with disability in one limb, as mentioned by Mr WONG Kwok-hing, we have made a promise on that, since this is what the incumbent Government has promised to follow up in its manifesto.

Thank you, President. It is my hope that Members would support this motion.

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

(Members raised their hands)

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

(No hands raised)

Mr WONG Kwok-hing rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Kwok-hing has claimed a division. The division bell will ring for five minutes.

(While the division bell was ringing)

PRESIDENT (in Cantonese): Time is precious. As for how such precious time can be utilized, everyone may have his own idea.

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

PRESIDENT (in Cantonese): Prof Patrick LAU, how would you like to vote?

PROF PATRICK LAU (in Cantonese): I am in favour of the motion.

PRESIDENT (in Cantonese): Prof Patrick LAU is in favour of the motion.

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 LEE Cheuk-yan, Dr David LI, 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 Kong-wah, Mr LAU Wong-fat, Ms Miriam LAU, Ms Emily LAU, Mr Andrew CHENG, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Mr LEE Wing-tat, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr Ronny TONG, Mr CHIM Pui-chung, Prof Patrick LAU, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Dr LAM Tai-fai, Mr CHAN Hak-kan, Mr Paul CHAN, Mr CHAN Kin-por, Dr Priscilla LEUNG, Mr CHEUNG Kwok-che, Mr WONG Sing-chi, Mr IP Kwok-him, Mrs Regina IP, Mr Paul TSE, Dr Samson TAM, Mr Alan LEONG and Miss Tanya CHAN voted for the motion.

Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr IP Wai-ming, Dr PAN Pey-chyou, Mr LEUNG Kwok-hung, 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 58 Members present, 50 were in favour of the motion and seven abstained. Since the question was agreed by a majority of the Members present, he therefore declared that the motion was passed.

PRESIDENT (in Cantonese): Proposed resolution under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance.

I now call upon the Secretary for Labour and Welfare to speak and move the motion.

PROPOSED RESOLUTION UNDER THE PNEUMOCONIOSIS AND MESOTHELIOMA (COMPENSATION) ORDINANCE

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, the Labour and Welfare Bureau and the Development Bureau will move technical amendments to the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (PMCO) and the Construction Industry Council Ordinance (CICO) respectively in order to lower the rate of levy under the former by 0.1 percentage point and at the same time increase the rate of levy under the latter by 0.1 percentage point with a view to maintaining the rate of levy as a whole unchanged and ensuring that the Pneumoconiosis Compensation Fund can maintain a healthy financial status while the Construction Industry Council can have more resources to implement new initiatives for supporting the development of the construction industry. Later on, the Acting Secretary for Development will move a motion to increase the rate of levy under the CICO.

I now move that the motion, as printed on the Agenda, be passed to reduce the rate of levy on construction operations and quarry products under the PMCO by 0.1 percentage point from 0.25% to 0.15%.

Thank you, President.

The Secretary for Labour and Welfare moved the following motion:

"RESOLVED that the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) be amended as set out in the Schedule.

Schedule

Amendments to Pneumoconiosis and Mesothelioma
(Compensation) Ordinance

1. Schedule 5 amended (levy)
 - (1) Schedule 5, Part 2, Division 1 —
Repeal
"0.25% "
Substitute
"0.15% ".
 - (2) Schedule 5, Part 2, Division 2 —
Repeal
"0.25% "
Substitute
"0.15% ".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Labour and Welfare be passed.

MR LEE CHEUK-YAN (in Cantonese): President, I would like to remark that we cannot support this form of fund deployment. Why? The Government reduces the levy rate for pneumoconiosis by 0.1% and makes a corresponding change to the rate for the Construction Industry Council (CIC), yet both are meaningful initiatives. The CIC is absolutely meaningful, so it is also meaningful to enhance the levy rate under the Construction Industry Council Ordinance.

However, we would vote in abstention to send a clear message to the Government: it actually has not done enough to improve the amount of compensation for pneumoconiosis, and then deploy the fund to the Construction

Industry Council. If the Pneumoconiosis Compensation Fund is flooded with money and then fund deployment is made, and at the same time the amount of compensation for pneumoconiosis is improved, we would support such arrangement, which is at least an improvement. However, as I put it, if the improvement only takes the form of raising the "pain compensation" by \$40, and then the Government claims that the fund concerned is flooded with money Let me emphasize once again: if the fund is flooded with money, the Government should increase the amount of compensation, rather than mark down the levy rate and deploy the fund to the CIC. Hence, we would vote in abstention. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Secretary for Labour and Welfare, do you wish to speak again?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): Let me respond it briefly. As I said earlier, in the near future, we will review in detail and in an objective manner whether there is any room for further improvement to various compensation items for employees under the PMCO in the hope that better protection can be provided to employees. Thank you, President.

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Construction Industry Council Ordinance.

I now call upon the Secretary for Development to speak and move the motion.

PROPOSED RESOLUTION UNDER THE CONSTRUCTION INDUSTRY COUNCIL ORDINANCE

SECRETARY FOR DEVELOPMENT (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed. I hope Members will lend support. Thank you, President.

The Secretary for Development moved the following motion:

"RESOLVED that the Construction Industry Council Ordinance (Cap. 587) be amended as set out in the Schedule.

Schedule

Amendment to Construction Industry Council Ordinance

1. Schedule 5 amended (levy)
Schedule 5, Part 2 —
Repeal
"0.4% "
Substitute
"0.5% ". "

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Development be passed.

Does any Member wish to speak?

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

PRESIDENT (in Cantonese): Proposed resolution under the Import and Export Ordinance and the Interpretation and General Clauses Ordinance to approve the Import and Export (Registration) (Amendment) Regulation 2012.

I now call upon the Secretary for Commerce and Economic Development to speak and move the motion.

PROPOSED RESOLUTION UNDER THE IMPORT AND EXPORT ORDINANCE AND THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): President, I move that the motion as set out under my name on the Agenda be passed.

The purpose of this resolution is to reduce the import and export declaration charges (hereinafter referred as "TDEC") specified in the Import and Export (Registration) Regulations under the Import and Export Ordinance.

The Financial Secretary announced in his Budget Speech on 1 February 2012 a package of support measures for the business sector. One of the measures is to reduce the TDEC across the board by half to ease the business cost for the import and export trade.

The proposed reduction of the TDEC would have positive effects for Hong Kong's external trade as it would lower the transaction cost, and thus, directly benefiting the import and export trade sector generally. We estimate that the proposal will help each company that lodges trade declarations to save about \$9,000 a year on average. We estimate that the proposal will result in about \$750 million loss in TDEC receipts for the Government in each year.

If the motion is passed, the Government intends to implement the new TDEC rates on 1 August 2012.

With these remarks, President, I move the motion and hope that the resolution be passed with Members' support.

The Secretary for Commerce and Economic Development moved the following motion:

"RESOLVED that the Import and Export (Registration) (Amendment) Regulation 2012, made by the Chief Executive in Council on 17 April 2012, be approved, subject to the amendments as set out in the Schedule.

Schedule

Amendments to Import and Export (Registration) (Amendment) Regulation 2012

1. Section 1 amended (commencement)
Section 1 —
Delete
"June"
Substitute
"August".
2. Section 4 amended (regulation 16 added)
(1) Section 4, new regulation 16(a) —
Delete
"June"
Substitute
"August".

- (2) Section 4, new regulation 16(b) —
Delete
"June"
Substitute
"August"."

(The Import and Export (Registration) (Amendment) Regulation 2012 is set out in Appendix E)

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by the Secretary for Commerce and Economic Development be passed.

MR ANDREW LEUNG (in Cantonese): President, I just wish to say a few words. In fact, this measure has been announced by the Financial Secretary on 1 February. The trade has been looking forward to its early implementation. The measure should originally be ready for implementation on 1 June. Due to Members' filibustering, its implementation has been postponed time and again and is almost unable to secure its passage today.

I am delighted that the resolution can ultimately be voted for its passage. I hope Members can support the resolution so that the reduction concerned can be implemented on 1 August.

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, I am very angry. I am now only left with one minute to deliver my 15-minute speech which I originally prepared.

Members of the logistics industry have long anticipated the policy measure put forth by the resolution. As I have repeatedly pointed out in the meeting, the existing Import and Export Ordinance is outdated. At present, to import an article, an import declaration has to be lodged and a charge has to be paid; but an export declaration has to be lodged again and another charge paid if the article is to be exported. Many cargo owners have asked the logistics industry why this

has to be so. They do not understand why two separate charges have to be paid for the same cargo container when it is imported and exported. They consider the practice time-consuming and causing additional costs.

The policy measure put forth by the resolution, which seeks to slash the import and export charges by half, will precisely target at the problem voiced by the industry of double declarations and double charges, by introducing an amendment. This is something that should be done and should long be done because the aforesaid problem has hindered the development of the logistics industry as well as that of the re-export trade.

While this policy measure may not be a long-term one, we hope the Government can seriously consider the need of double declarations at the points of imports and exports in the light of future development needs of the logistics industry and the re-export trade because the problem has not been addressed yet. Although the problem of the charges has been partially addressed, I hope the Bureau can further its study on the policy measure. Thank you.

MR TAM YIU-CHUNG (in Cantonese): President, I am indignant after hearing what "Long Hair" just said, but I will only give him four lines in return: "How detestable when filibuster hijacks this Council, it stirs up troubles and minds no people; you can never speak when they pontificate (*Someone in the public gallery yelled*) causing Council esteem low and losing trust of the people".

PRESIDENT (in Cantonese): Will the person yelling in the public gallery leave immediately.

(The person in the public gallery kept on yelling)

PRESIDENT (in Cantonese): Leave the public gallery immediately.

MR JEFFREY LAM (in Cantonese): President, the business sector has long been waiting for the passage of the resolution. Particularly in view of the present sluggish economy, the business sector does need a little boost. In the

past few weeks, the pan-democrats have been playing their tricks of disappearance and filibustering, paralysing the debate on many livelihood affairs and support measures for the business sector. We are now left with only a few minutes to express our views. How unfair! I hope that they can learn a lesson and turn over a new leaf.

MR WONG TING-KWONG (in Cantonese): President, I am glad that today, after so many days of the meeting, the resolution can have a chance to be put to vote because I am worried that the filibustering will hinder its passage, which will have adverse impact on our import and export trade and deprive trade members of the chance to receive timely support at economic downturns.

Filibustering is political bickering which shows no respect for the economy or people's livelihood. Members have indeed gone too far. Thank you, President.

DR LAM TAI-FAI (in Cantonese): President, although the Government will receive less revenue after passage of the resolution, the import and export trade can be substantially benefited from it.

May I remind Members, "Peace is precious; harmony is gold". If we will remain as Members in the future, I hope less energy will be spent on wrangling and more on doing things for the interests of Hong Kong.

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

MR ALBERT CHAN (in Cantonese): President, as promised, all motions relating to people's livelihood will be passed by this midnight. I thank the Democratic Alliance for the Betterment and Progress of Hong Kong and the Federation of Trade Unions for helping us in the filibuster. Thank you.

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

MR WONG KWOK-HING (in Cantonese): President, the filibuster, dating back all the way to May, is a waste of taxpayers' money and the precious time of the Legislative Council. They should be condemned.

MR WONG YUK-MAN (in Cantonese): Mr WONG Kwok-hing, put on your act.

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

MR WONG KWOK-KIN (in Cantonese): I wish also to condemn them for abusing the time of Council meeting, depriving many Members of a chance to speak at the end. They were still using filibuster tactics this morning. They should be condemned.

MR CHIM PUI-CHUNG (in Cantonese): President, do it again next term if they dare.*(Laughter)*

MR ANDREW CHENG (in Cantonese): President, I can never imagine that the meeting will end in Members hurling abuse at each other. If Mr WONG Kwok-hing is of the view that Members using filibuster tactics are wasting time, let me say it once again that the existence of functional constituencies has wasted a lot time of the Hong Kong people and of Legislative Council Members! He had better save his breath at these last few minutes of the meeting, or his neck will hurt.*(Laughter)*

President, filibuster shows that there exists a divide in this Council. In face of this divide, Members should maintain respect for each other. The purpose of employing filibuster tactics in this Council is to stop evil bills from passage. It is as simple as that. This Council is already very fragmented and it can no longer represent the people of Hong Kong. Thank you, President.

MRS SOPHIE LEUNG (in Cantonese): President, I will say no more. We should all shut up.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, we filibuster for justice for the people of Hong Kong! Mr WONG Kwok-hing, your neck can be guillotined.*(Laughter)*

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

(No Member indicated a wish to speak)

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

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Cantonese): Will Members please make haste and support the motion.

(Members tapped on the bench to mark the occasion)

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

(Members raised their hands)

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

(No hands raised)

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

END OF SESSION

PRESIDENT (in Cantonese): Proposed resolution under section 54A of the Interpretation and General Clauses Ordinance to be moved by the Secretary for Constitutional and Mainland Affairs.

PRESIDENT (in Cantonese): Members and Public Officers, in order to enable a general election to be held, the Chief Executive of the last term has, pursuant to section 6(3) of the Legislative Council Ordinance, come to the decision that this Council be prorogued, and specified that 17 July 2012, that is today which is going to end in two minutes, be the last day before this Council stands prorogued. In other words, in less than two minutes, this Council will terminate its operation.

Will Members please refer to the script. I believe no matter how fast I read I cannot finish reading the content in two minutes. That said, this Council has operated to the very last minute as allowed by the law. As for the other items on the Agenda, I am afraid we cannot finish them. I would rather not take up this time to say something irrelevant to the Agenda. All I wish to say is, may success be with Members' and Public Officers' future endeavours.

I now adjourn the meeting.

(Members tapped on the bench and clapped hands to mark the occasion)

Adjourned accordingly at Twelve o'clock at midnight.

Annex VI

Statute Law (Miscellaneous Provisions) Bill 2012

Committee Stage

Amendments moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “subsection (3)” and substituting “subsections (3) and (4)”.
1	By adding— “ (4) Section 72(2) comes into operation on the day on which section 157 of the Lifts and Escalators Ordinance (8 of 2012) comes into operation.”.
33	By adding— “(6A) Schedule 1, after item 25—

Add

“25A. Section 20(3)	Repeal everything after “principal” and substitute— “without the special leave in writing of the Society unless the person— (a) is practising as a solicitor on the person’s own account or in partnership; or (b) is a director of a
---------------------	--

solicitor
corporation.”.”.

(6B) Schedule 1—

Repeal items 26 and 27.”.

33 By adding—

“(15A) Schedule 1, item 88, column 2—

Repeal

“and (3)”.

(15B) Schedule 1, Chinese text, item 88, column 3, before “律師”——

Add

“法院在”.

(15C) Schedule 1, after item 88—

Add

“88A. Section 67(3) Add “or solicitor corporation
or the foreign lawyer” after
“the solicitor”.”.

(15D) Schedule 1, item 90, column 3, new section 67A(1),
after “corporation” (wherever appearing)——

Add

“or the foreign lawyer”.

(15E) Schedule 1, item 90, column 3, new section 67A(2),

after “solicitor corporation”—

Add

“or the foreign lawyer”.

- (15F) Schedule 1, item 90, column 3, new section 67A(3)(a),
after “solicitor corporation”—

Add

“or the foreign lawyer”.

- (15G) Schedule 1, item 90, column 3, new section 67A(4),
after “solicitor corporation”—

Add

“or a foreign lawyer”.”.

72 (a) By renumbering the clause as clause 72(1).

(b) By adding—

“(2) The Lifts and Escalators (Safety) (Fees) Regulations
(Cap. 327 sub. leg. A) is repealed.”.

Schedule By adding after item 10—

“10A. Hong Kong Airport (Control of Obstructions)
(Consolidation) Order (Cap. 301 sub. leg. A).”.

Appendix A

Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 2012

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Eastern Harbour Crossing Road Tunnel (Amendment) Bylaw 2012

(Made by the New Hong Kong Tunnel Company Limited under section 54 of the Eastern Harbour Crossing Ordinance (Cap. 215) subject to the approval of the Legislative Council)

1. Commencement

This Bylaw comes into operation on 18 May 2012.

2. Eastern Harbour Crossing Road Tunnel By-laws amended

The Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg. E) are amended as set out in sections 3 to 13.

3. By-law 2 amended (interpretation)

(1) By-law 2, definition of *autotoll booth*---

Repeal

“equipped with an automatic toll collection facility approved by the Commissioner”

Substitute

“designated as an autotoll booth under by-law 16A(2)”.

(2) By-law 2, Chinese text, definition of *訂明交通標誌*---

Repeal

“附表所訂明的大小、顏色及類型”

Substitute

“大小、顏色及類型均在附表訂明”。

(3) By-law 2, Chinese text, definition of *訂明道路標記*---

Repeal

“附表所訂明的大小、顏色及類型”

Substitute

“大小、顏色及類型均在附表訂明”。

(4) By-law 2—

Add in alphabetical order

“*light signal* (交通燈) has the same meaning as in the regulations;

prescribed light signal (訂明交通燈) means a light signal of the size, colour and type prescribed in the Schedule;”.

4. **By-law 5 amended (control of traffic)**

By-law 5—

Repeal

“Drivers of vehicles”

Substitute

“All persons in the road tunnel area”.

5. **By-law 7 amended (directions of tunnel officers to be obeyed)**

By-law 7—

Repeal

“The driver of a vehicle”

Substitute

“All persons in the road tunnel area”.

6. **By-law 9 amended (meaning of traffic signs and road markings)**

(1) By-law 9, heading, after “traffic signs”—

Add

“, light signals”.

(2) By-law 9(1), after “a prescribed traffic sign”—

Add

“, a prescribed light signal”.

(3) By-law 9(1), after “that sign”—

Add

“, signal”.

- (4) By-law 9(2), after “traffic sign” —

Add

“, light signal”.

- (5) By-law 9(2), after “that sign” —

Add

“, signal”.

7. By-law 10 substituted

By-law 10—

Repeal the by-law

Substitute

~10. Traffic signs, light signals and road markings to be obeyed

- (1) The driver of a vehicle in the road tunnel area must comply with the requirement indicated by any prescribed traffic sign or prescribed light signal.
- (2) A person in the road tunnel area must comply with the requirement indicated by any traffic sign, light signal or road marking that is—
 - (a) prescribed under the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);
 - (b) erected, placed or otherwise displayed by the Road Company within the road tunnel area pursuant to the regulations; and
 - (c) applicable to the person.”.

8. By-law 12 amended (general restrictions)

By-law 12(1)(j), after “traffic sign” —

Add

“, light signal”.

9. By-law 15 amended (liability for tolls)

By-law 15—

Repeal

“The driver”

Substitute

“The owner or the driver”.

10. By-law 16A amended (automatic toll collection facilities)

By-law 16A—

Repeal paragraph (2)

Substitute

“(2) The Road Company may, with the written approval of the Commissioner, designate a toll booth at which an automatic toll collection facility is installed under paragraph (1), as an autotoll booth—

(a) by displaying above a lane that leads to the toll booth a prescribed traffic sign of the type shown in Figure No. 20 in the Schedule; or

(b) by displaying at the side of the toll booth a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule.”.

11. By-law 16B heading amended (prohibition against interference with or falsification of electronic toll passes)

By-law 16B, heading—

Repeal

“toll”.

12. By-law 18 amended (vehicles requiring permits)

By-law 18(1)(b)—

Repeal

“11 metres”

Substitute

“12 metres”.

13. Schedule amended

(1) The Schedule—

Repeal

“[by-laws 2, 3, 9 & 10]”

Substitute

“[by-laws 2, 3, 9 & 16A]”.

(2) The Schedule—

Repeal Figure No. 5

Substitute

“Figure No. 5



Use Dipped Headlights

This sign indicates that all traffic must proceed through the road tunnel on dipped headlights.”

(3) The Schedule, Figure No. 6 --

Repeal

“FOLLOWING THE SIGN.”

Substitute

“FOLLOWING THE SIGN.

THE SIGN MAY BE USED WITHOUT THE LETTERS “km/h”.”.

- (4) The Schedule, Figure No. 7—

Repeal

“FOLLOWING THE SIGN.”

Substitute

“FOLLOWING THE SIGN.

THE SIGN MAY BE USED WITHOUT THE LETTERS “km/h”.”.

- (5) The Schedule—

Repeal Figure No. 15**Substitute**

“Figure No. 15

BLUE BACKGROUND



WHITE BORDER, LETTERS,
CHARACTERS & ARROW

3 100

No Change Toll Sign

When this sign is displayed over a toll booth or booths adjacent to a traffic lane or lanes as indicated by the downward pointing arrows on the sign, it indicates that the toll booth or booths are for use only by drivers paying the correct toll and requiring no change to be given.

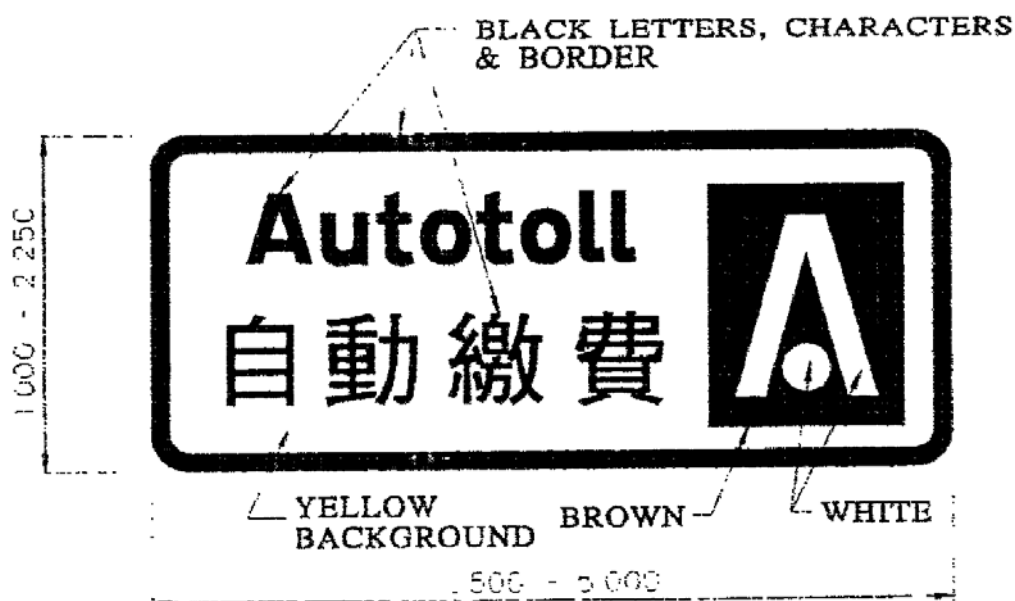
The number of arrows and the overall dimensions of the sign may be varied to suit the particular circumstances.”.

(6) The Schedule—

Repeal Figure No. 20

Substitute

Figure No. 20



Lane
(Autotoll Only)

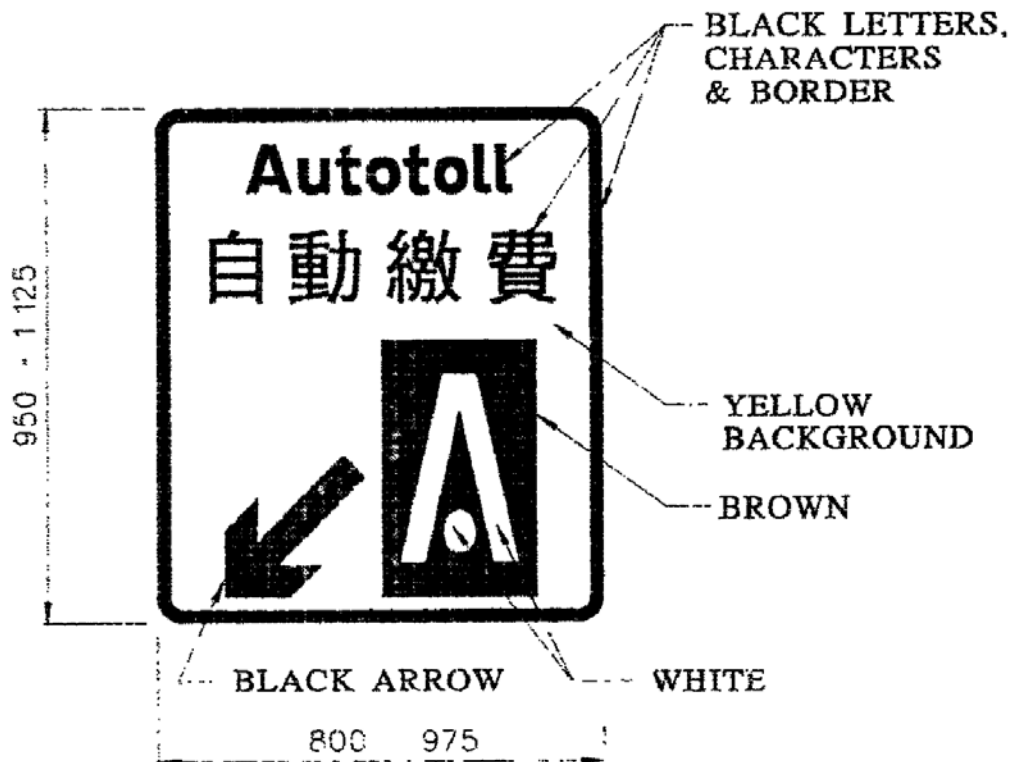
This sign is displayed above a lane that leads to an autotoll booth. It indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may proceed in the lane.”.

(7) The Schedule—

Repeal Figure No. 21

Substitute

"Figure No. 21



Autotoll Booth

When this sign is displayed at the side of a toll booth it indicates that the toll booth is an autotoll booth. It may be used in conjunction with the sign in Figure No. 20 and it indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may pass through the autotoll booth.”.

14. Transitional provision

During the period of 12 months after the commencement date of this Bylaw—


- (a) a prescribed traffic sign of the type shown in Figure No 20 in the Schedule to the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg. E) (*principal*

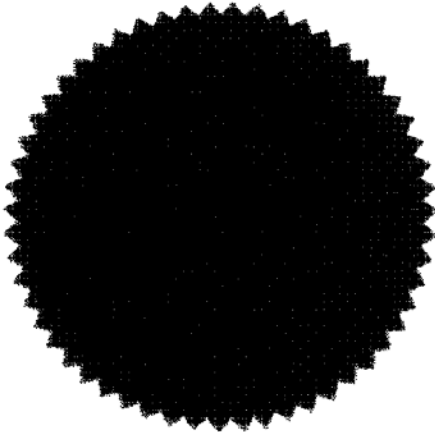
By-laws) as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 20 in the Schedule to the principal By-laws as amended by this Bylaw; and

- (b) a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule to the principal By-laws as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule to the principal By-laws as amended by this Bylaw.

Made by the New Hong Kong Tunnel Company Limited this
30th day of March 2012.

Signed by
under the Common Seal of the Company


Miranda Yip



New Hong Kong Tunnel Company Limited

Explanatory Note

This Bylaw amends the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg. E) to---

- (a) require all persons in the road tunnel area to comply with any order, signal, requirement or instruction given or made by a tunnel officer in the course of his duty;
- (b) enable the use of light signals to regulate vehicular traffic or pedestrians in the road tunnel area;
- (c) make the owner of a vehicle in respect of which a toll is payable also liable for paying the toll;
- (d) conform to the statutory maximum length of rigid vehicles as described in the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A);
- (e) introduce a new design of signage for “Use dipped headlights” (Figure No. 5);
- (f) enable speed limit signs (Figure Nos. 6 and 7) with or without the letters “km/h” on them to serve the same meaning;
- (g) revoke the prohibition on motor cycles using the “Exact Payment” toll booths; and
- (h) adopt new and standardized autotoll booth signs (Figure Nos. 20 and 21) in the road tunnel area as part of the standardization programme launched by the Transport Department to standardize the signs for autotoll booths at various tolled tunnels and bridges in Hong Kong.

Appendix B

Tate's Cairn Tunnel (Amendment) Bylaw 2012**Contents**

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Tate's Cairn Tunnel (Amendment) Bylaw 2012

(Made by the Tate's Cairn Tunnel Company Limited under section 35 of the Tate's Cairn Tunnel Ordinance (Cap. 393) subject to the approval of the Legislative Council)

1. Commencement

This Bylaw comes into operation on 18 May 2012.

2. Tate's Cairn Tunnel By-laws amended

The Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B) are amended as set out in sections 3 to 13.

3. By-law 2 amended (interpretation)

(1) By-law 2, definition of *autotoll booth*—

Repeal

“equipped with an automatic toll collection facility approved by the Commissioner”

Substitute

“designated as an autotoll booth under by-law 16A(2)”.

(2) By-law 2, definition of *electronic pass*, after “the Company”—

Add

“or its agent”.

(3) By-law 2, Chinese text, definition of *訂明交通標誌*—

Repeal

“附表所訂明的大小、顏色及類型”

Substitute

“大小、顏色及類型均在附表訂明”.

(4) By-law 2—

Add in alphabetical order

“light signal (交通燈) has the same meaning as in the regulations;

prescribed light signal (訂明交通燈) means a light signal of the size, colour and type prescribed in the Schedule;”.

4. By-law 3 amended (application)

By-law 3(2), before “traffic sign”—

Add

“prescribed”.

5. By-law 9 substituted

By-law 9—

Repeal the by-law**Substitute****“9. Meaning of traffic signs, light signals and road markings**

(1) The meaning of a prescribed traffic sign or prescribed light signal is in accordance with the content and the note relating to the figure of that sign or signal in the Schedule.

(2) The meaning of a traffic sign, light signal or road marking prescribed by the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) is in accordance with the content and the note relating to the figure of that sign, signal or marking in the Schedules to those regulations.”.

6. By-law 10 substituted

By-law 10—

Repeal the by-law**Substitute**

“10. Traffic signs, light signals and road markings to be obeyed

- (1) The driver of a vehicle in the tunnel area must comply with the requirement indicated by any prescribed traffic sign or prescribed light signal.
- (2) A person in the tunnel area must comply with the requirement indicated by any traffic sign, light signal or road marking that is—
 - (a) prescribed under the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);
 - (b) erected, placed or otherwise displayed by the Company within the tunnel area pursuant to the regulations; and
 - (c) applicable to the person.”.

7. By-law 12 amended (general restrictions)

By-law 12(1)(j), after “traffic sign”—

Add

“, light signal”.

8. By-law 15 amended (liability for tolls)

By-law 15—

Repeal

“The driver”

Substitute

“The owner or the driver”.

9. By-law 16 amended (collection of tolls)

By-law 16(1)(b), after “the Company”—

Add

“or its agent”.

10. By-law 16A amended (automatic toll collection facilities)

(1) By-law 16A—

Repeal paragraph (2)**Substitute**

“(2) The Company may, with the written approval of the Commissioner, designate a toll booth at which an automatic toll collection facility is installed under paragraph (1) as an autotoll booth—

(a) by displaying above a lane that leads to the toll booth a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule; or

(b) by displaying at the side of the toll booth a prescribed traffic sign of the type shown in Figure No. 22 in the Schedule.”.

(2) By-law 16A(3), after “the Company” (wherever appearing)—

Add

“or its agent”.

11. By-law 16B amended (prohibition against interference with or falsification of electronic toll passes)

(1) By-law 16B, heading—

Repeal

“toll”.

(2) By-law 16B(1), after “the Company”—

Add

“or its agent”.

12. By-law 20 amended (general prohibitions)

By-law 20(j), Chinese text—

Repeal

“規則”

Substitute

“規例”。

13. Schedule amended

- (1) The Schedule—
Repeal
“[by-laws 2, 3, 9 &10]”
Substitute
“[by-laws 2, 3, 9 &16A]”.
- (2) The Schedule, English text, Figure No. 1—
Repeal
“TRAFFIC LANE”
Substitute
“LANE”.
- (3) The Schedule, English text, Figure No. 3—
Repeal
“TRAFFIC LANE” (wherever appearing)
Substitute
“LANE”.
- (4) The Schedule, English text, Figure No. 4—
Repeal
“TRAFFIC LANE” (wherever appearing)
Substitute
“LANE”.
- (5) The Schedule, Figure No. 6—
Repeal
“FOLLOWING THE SIGN.”
Substitute

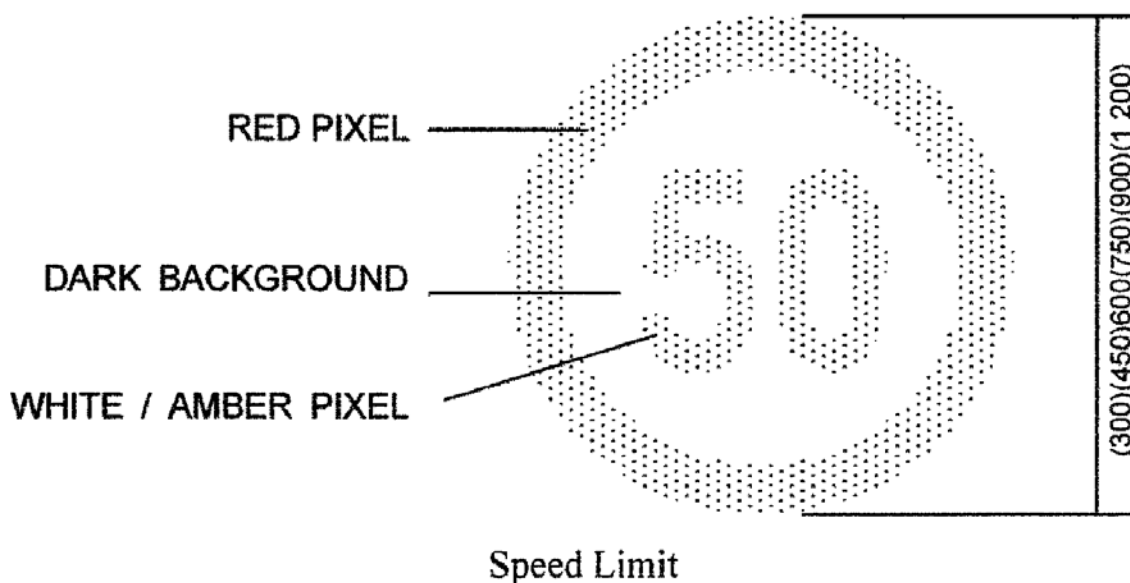
“FOLLOWING THE SIGN.

THE SIGN MAY BE USED WITHOUT THE LETTERS
“km/h”.”.

(6) The Schedule, after Figure No. 6—

Add

“Figure No. 6A



This sign indicates that a speed limit of 50 km per hour is imposed on the section of the road immediately following the sign.

The sign may be erected on both sides of the road and/or on a central reservation in the case of a dual carriageway at the start of a restriction facing oncoming traffic.

The 300 mm sized sign may also be erected at intervals along the road to remind motorists of the speed limit in force.”.

(7) The Schedule, Figure No. 7—

Repeal

“FOLLOWING THE SIGN.”

Substitute

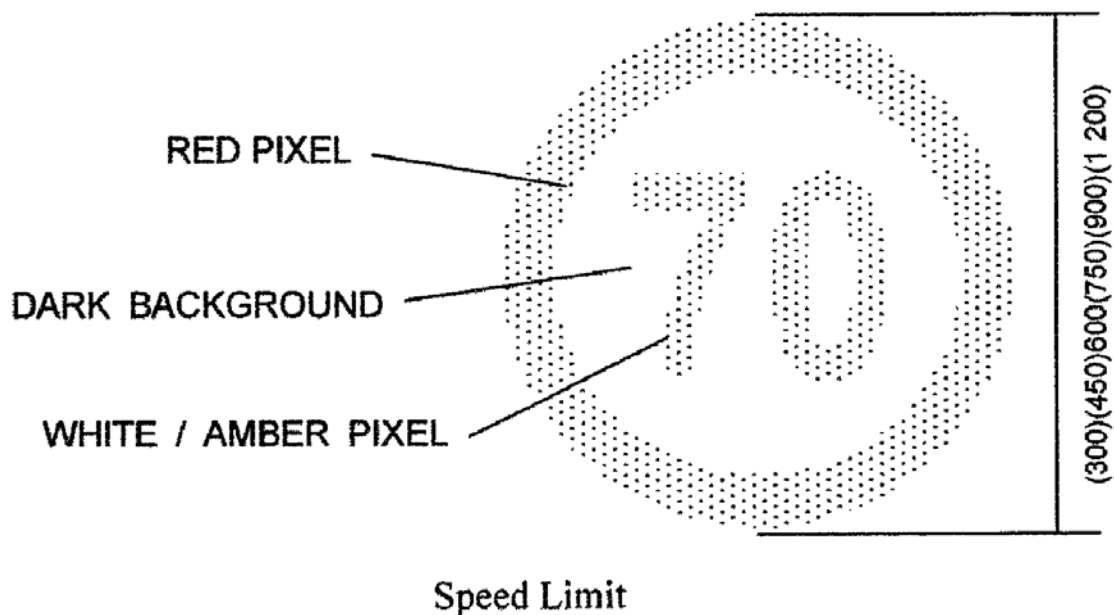
“FOLLOWING THE SIGN.

THE SIGN MAY BE USED WITHOUT THE LETTERS “km/h”.”.

- (8) The Schedule, after Figure No. 7—

Add

“Figure No. 7A”



This sign indicates that a speed limit of 70 km per hour is imposed on the section of the road immediately following the sign.

The sign may be erected on both sides of the road and/or on a central reservation in the case of a dual carriageway at the start of a restriction facing oncoming traffic.

The 300 mm sized sign may also be erected at intervals along the road to remind motorists of the speed limit in force.”.

- (9) The Schedule, Figure No. 8—

Repeal

“525”

Substitute

“525 (825)”.

- (10) The Schedule, Figure No. 8—

Repeal

“1400”

Substitute

“1 400 (1 975)”.

- (11) The Schedule, English text, Figure No. 15—

Repeal

“TRAFFIC LANE”

Substitute

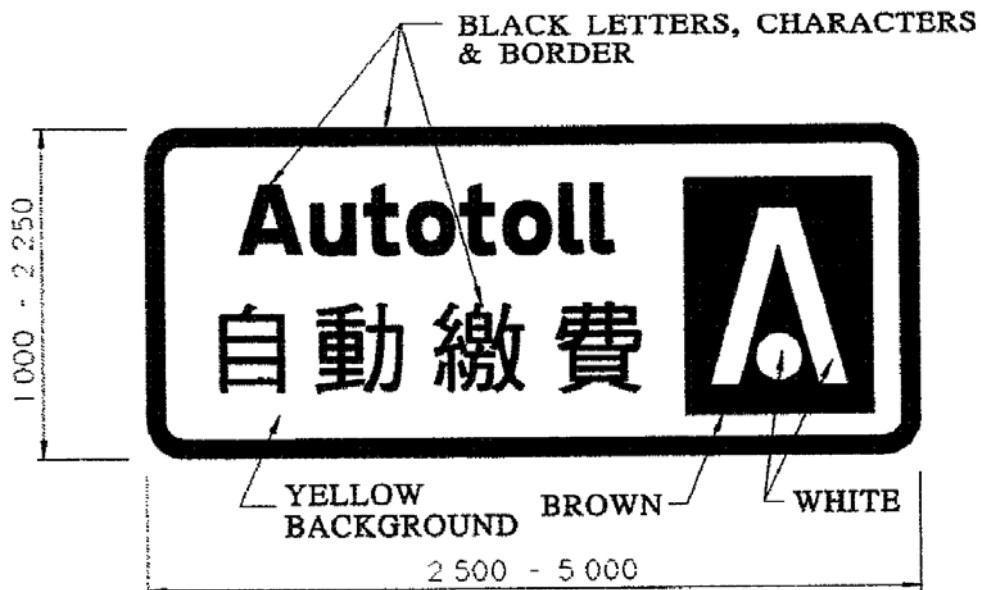
“LANE”.

- (12) The Schedule—

Repeal Figure No. 21

Substitute

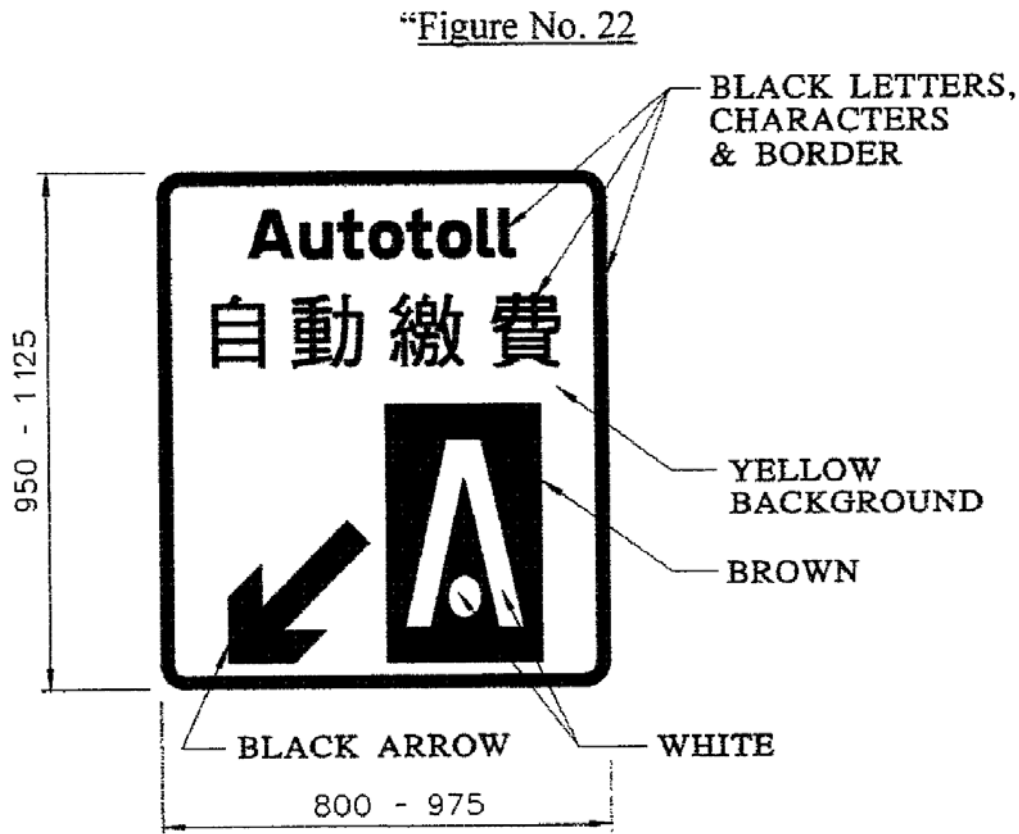
“Figure No. 21



Lane
(Autotoll Only)

This sign is displayed above a lane that leads to an autotoll booth. It indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may proceed in the lane.”.

- (13) The Schedule—
Repeal Figure No. 22
Substitute



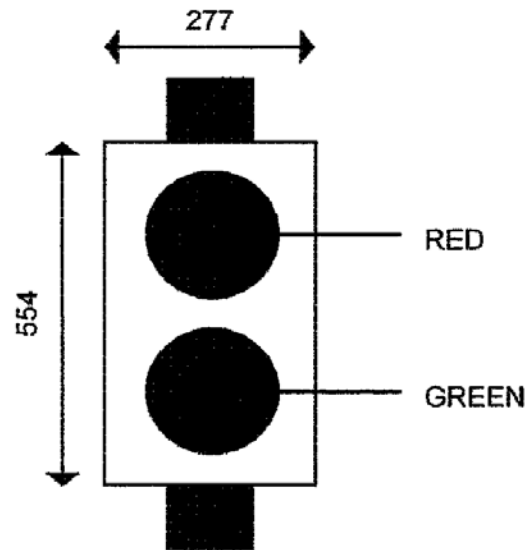
When this sign is displayed at the side of a toll booth it indicates that the toll booth is an autotoll booth. It may be used in conjunction with the sign in Figure No. 21 and it indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may pass through the autotoll booth.”.

(14) The Schedule—

Repeal Figure No. 23

Substitute

“Figure No. 23



Autotoll Payment Signal

This signal is placed in a vertical position at the side of a lane dedicated for use of an automatic toll collection facility. It may be used in conjunction with the signal in Figure No. 24.

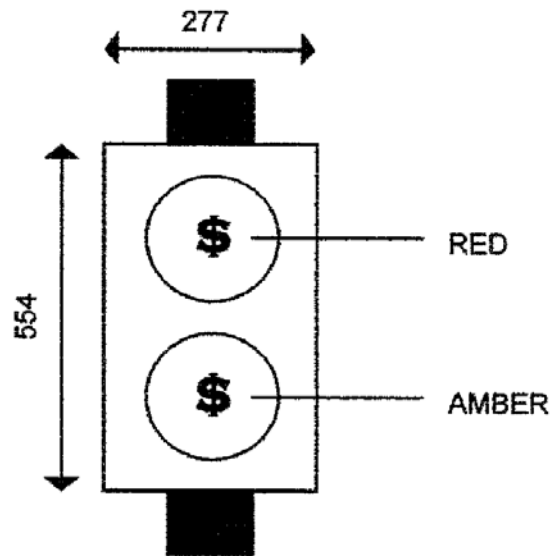
The significance of the signal is as follows—

- (i) The display of a red signal indicates that the appropriate toll payment has not been made and that the account balance with the company or its agent in respect of the electronic pass is nil.
- (ii) The display of a green signal indicates that the appropriate toll payment has been made.”.

(15) The Schedule—

Repeal Figure No. 24

Substitute

“Figure No. 24

Autotoll Account Balance Signal

This signal is placed in a vertical position at the side of a lane dedicated for use of an automatic toll collection facility. It may be used in conjunction with the signal in Figure No. 23.

The significance of the signal is as follows—

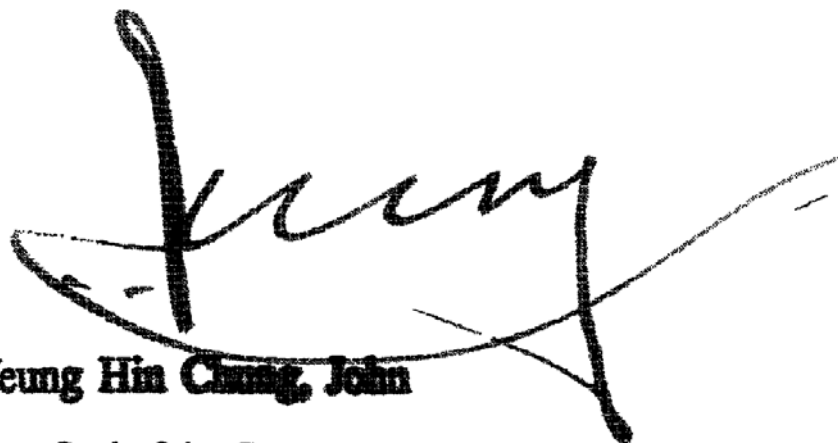
- (i) The display of the red dollar sign indicates that the account balance with the company or its agent in respect of the electronic pass is nil.
- (ii) The display of the amber dollar sign indicates that the account balance with the company or its agent in respect of the electronic pass is less than the amount specified by the company or its agent.”.

14. Transitional provision

During the period of 12 months after the commencement date of this Bylaw—

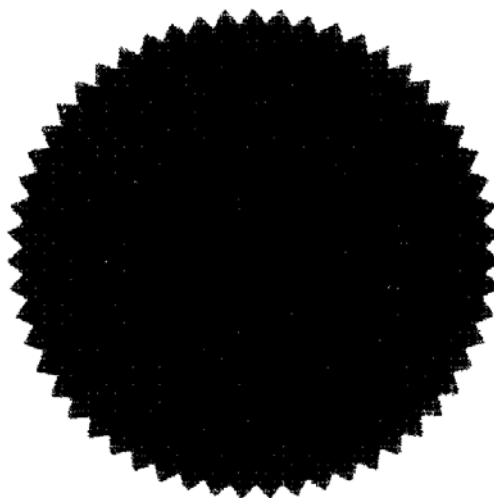
-
- (a) a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule to the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B) (*principal By-laws*) as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule to the principal By-laws as amended by this Bylaw; and
 - (b) a prescribed traffic sign of the type shown in Figure No. 22 in the Schedule to the principal By-laws as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 22 in the Schedule to the principal By-laws as amended by this Bylaw.

Made by the Tate's Cairn Tunnel Company Limited this 30th day
of March 2012.



Yeung Hin Chung, John

Signed by
under the Common Seal of the Company



Tate's Cairn Tunnel Company Limited

Explanatory Note

The purposes of this Bylaw are to amend the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B) to—

- (a) enable the use of light signals to control vehicular traffic or pedestrians in the tunnel area;
- (b) impose liability for tolls on vehicle owners in addition to the driver of vehicles;
- (c) enable Tate's Cairn Tunnel Company Limited or its assignee to delegate certain powers to their agents;
- (d) enable speed limit signs (Figure Nos. 6 and 7) with or without the letters "km/h" on them to serve the same meaning;
- (e) introduce light emitting diode (LED) speed limit signs (Figure Nos. 6A and 7A); and
- (f) adopt new and standardized autotoll booth signs (Figure Nos. 21 and 22) in the tunnel area as part of the standardization programme launched by the Transport Department to standardize the signs for autotoll booths at various tolled tunnels and bridges in Hong Kong.

Western Harbour Crossing (Amendment) Bylaw 2012

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Western Harbour Crossing (Amendment) Bylaw 2012

(Made by the Western Harbour Tunnel Company Limited under section 32 of the Western Harbour Crossing Ordinance (Cap. 436) subject to the approval of the Legislative Council)

1. Commencement

This Bylaw comes into operation on 18 May 2012.

2. Western Harbour Crossing Bylaw amended

The Western Harbour Crossing Bylaw (Cap. 436 sub. leg. D) is amended as set out in sections 3 to 11.

3. Section 1 amended (interpretation)

(1) Section 1, definition of *autotoll booth*—

Repeal

“equipped with an automatic toll collection facility approved by the Commissioner”

Substitute

“designated as an autotoll booth under section 18(2)”.

(2) Section 1, definition of *nearside lane*, after “most lane”—

Add

“(in relation to the direction of traffic)”.

(3) Section 1, Chinese text, definition of *訂明交通標誌*—

Repeal

“附表所訂明的大小、顏色及類型”

Substitute

“大小、顏色及類型均在附表訂明”.

(4) Section 1—

Add in alphabetical order

- “bus (巴士)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);
- heavy goods vehicle (重型貨車)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);
- light goods vehicle (輕型貨車)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);
- light signal (交通燈)* means an illuminated signal to control vehicular traffic or pedestrians within the tunnel area;
- medium goods vehicle (中型貨車)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);
- middle lane (中間行車綫)* means the lane between the nearside lane and the right most lane (in relation to the direction of traffic) in any road within the tunnel area;
- motor cycle (電單車)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);
- motor tricycle (機動三輪車)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);
- prescribed light signal (訂明交通燈)* means a light signal of the size, colour and type prescribed in the Schedule;
- private car (私家車)* has the same meaning as in the Road Traffic Ordinance (Cap. 374);”.

4. Section 2 amended (application)

Section 2(2), before “traffic sign”—

Add

“prescribed”.

5. Section 7 substituted

Section 7—

Repeal the section

Substitute

“7. Speed limit

- (1) Subject to subsection (2), the driver of a vehicle in the tunnel area must not cause or permit the vehicle to travel at a speed exceeding the speed indicated by a speed limit sign as prescribed by Figure No. 6, 7 or 7A in the Schedule.
- (2) The driver of a vehicle in the tunnel area must not cause or permit the vehicle to travel at a speed exceeding 70 km per hour if—
 - (a) the speed limit sign mentioned in subsection (1) is a speed limit sign as prescribed by Figure No. 7A in the Schedule; and
 - (b) either—
 - (i) the vehicle is a bus, medium goods vehicle or heavy goods vehicle; or
 - (ii) the vehicle is a motor cycle, motor tricycle, private car or light goods vehicle, and the driver is authorized to drive the vehicle by a probationary driving licence issued under regulation 12G of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B).”.

6. Section 9 substituted

Section 9—

Repeal the section

Substitute

“9. Meaning of traffic signs, light signals and road markings

- (1) The meaning of a prescribed traffic sign or prescribed light signal is in accordance with the content and the note relating to the figure of that sign or signal in the Schedule.

- (2) The meaning of a traffic sign, light signal or road marking prescribed by the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) is in accordance with the content and the note relating to the figure of that sign, signal or marking in the Schedules to those regulations.”.

7. Section 10 substituted

Section 10—

Repeal the section

Substitute

“10. Traffic signs, light signals and road markings to be obeyed

- (1) The driver of a vehicle in the tunnel area must comply with the requirement indicated by any prescribed traffic sign or prescribed light signal.
- (2) A person in the tunnel area must comply with the requirement indicated by any traffic sign, light signal or road marking that is—
 - (a) prescribed under the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);
 - (b) erected, placed or otherwise displayed by the Company within the tunnel area pursuant to the regulations; and
 - (c) applicable to the person.”.

8. Section 12 substituted

Section 12—

Repeal the section

Substitute

“12. Control of use of lanes in tunnel

- (1) Subject to subsection (2), any medium goods vehicle or a heavy goods vehicle may, except when otherwise directed by a tunnel officer, be driven only in the nearside lane or middle lane inside the tunnel.
- (2) The following vehicles may, except when otherwise directed by a tunnel officer, be driven only in the nearside lane inside the tunnel—
 - (a) a bus;
 - (b) a vehicle requiring a permit under section 21;
 - (c) a vehicle to which section 22 applies;
 - (d) a vehicle towing another vehicle.”.

9. Section 13 amended (general restrictions)

Section 13(1)(j), before “signal”—

Add

“light”.

10. Section 18 amended (automatic toll collection facilities)

Section 18—

Repeal subsection (2)**Substitute**

- “(2) The Company may, with the written approval of the Commissioner, designate a toll booth at which an automatic toll collection facility is installed under subsection (1) as an autotoll booth—
- (a) by displaying above a lane that leads to the toll booth a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule; or
 - (b) by displaying at the side of the toll booth a prescribed traffic sign of the type shown in Figure No. 22 in the Schedule.”.

11. Schedule amended**(1) The Schedule—****Repeal**

“[ss. 1, 2, 7, 9, 10 & 18]”

Substitute

“[ss. 1, 2, 7, 9 & 18]”.

(2) The Schedule—**Repeal Figure No. 11****Substitute****Figure No. 11****Keep to Nearside Lane Sign**

This sign indicates that buses must keep to the nearside lane inside the tunnel.”.

- (3) The Schedule, after Figure No. 11—
Add

“Figure No. 11A



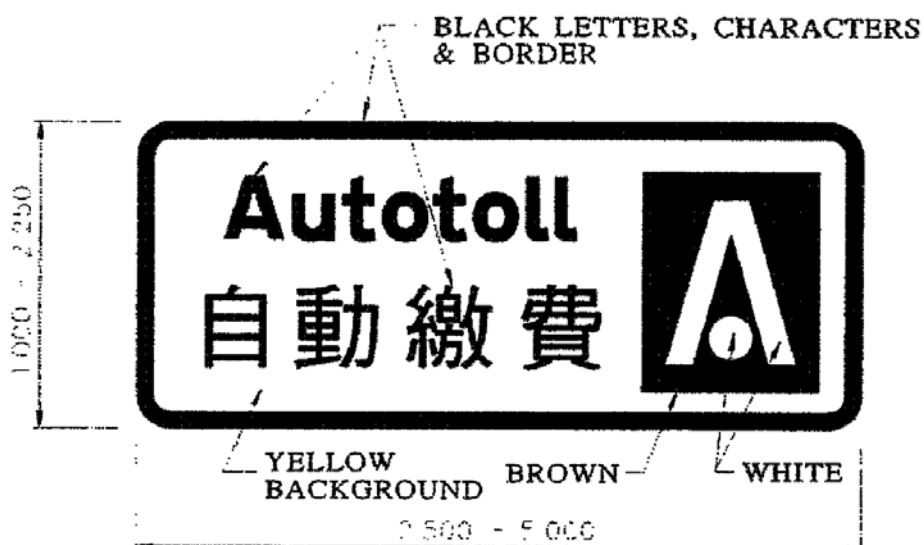
Keep to Nearside Lane or Middle Lane Sign

This sign indicates that medium goods vehicles and heavy goods vehicles must keep to the nearside lane or the middle lane inside the tunnel.”.

- (4) The Schedule—

Repeal Figure No. 21

Substitute

Figure No. 21

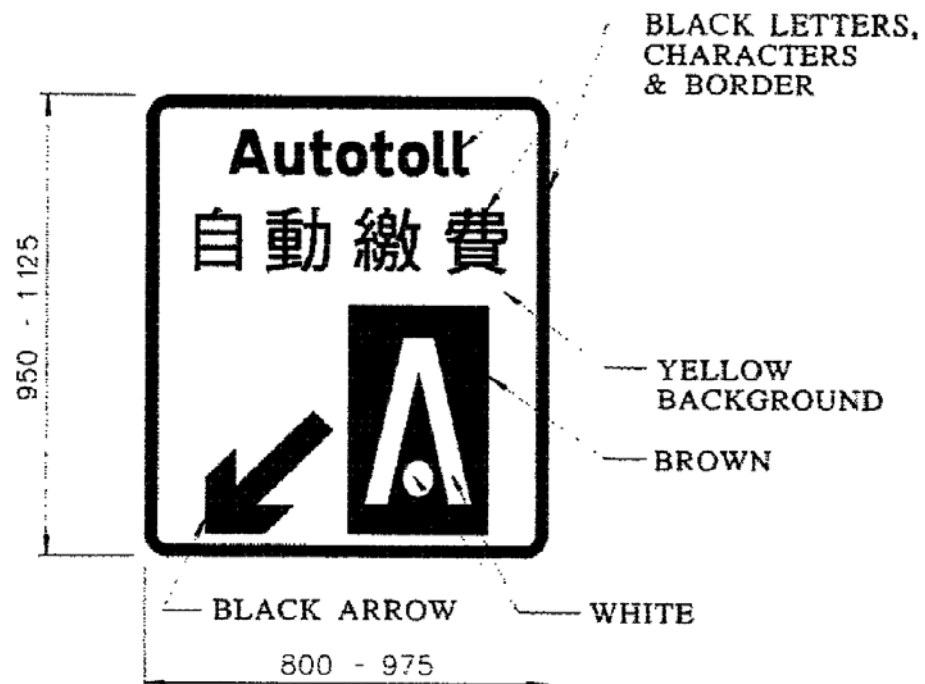
**Lane
(Autotoll Only)**

This sign is displayed above a lane that leads to an autotoll booth. It indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may proceed in the lane.”.

(5) The Schedule—

Repeal Figure No. 22

Substitute

“Figure No. 22**Autotoll Booth**

When this sign is displayed at the side of a toll booth it indicates that the toll booth is an autotoll booth. It may be used in conjunction with the sign in Figure No. 21 and it indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may pass through the autotoll booth.”.

12. Transitional provision

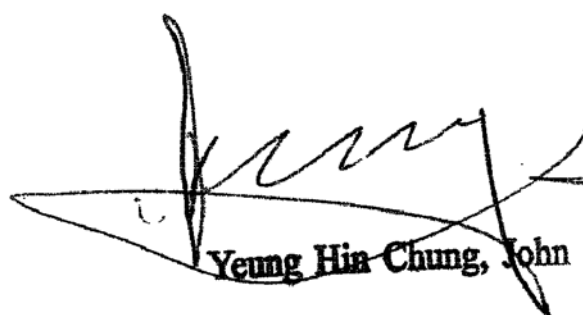
During the period of 12 months after the commencement date of this Bylaw—

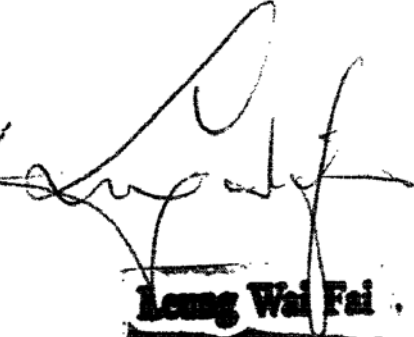
- (a) a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule to the Western Harbour Crossing Bylaw (Cap. 436 sub. leg. D) (*principal Bylaw*) as in force immediately before the commencement date of this

Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 21 in the Schedule to the principal Bylaw as amended by this Bylaw; and

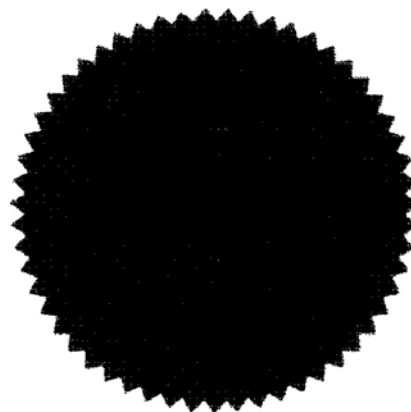
- (b) a prescribed traffic sign of the type shown in Figure No. 22 in the Schedule to the principal Bylaw as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 22 in the Schedule to the principal Bylaw as amended by this Bylaw.

Made by the Western Harbour Tunnel Company Limited this
30th day of March, 2012.


Yeung Hin Chung, John


Leung Wai Fai

Signed by
under the Common Seal of the Company



Western Harbour Tunnel Company Limited

Explanatory Note

The purposes of this Bylaw are to amend the Western Harbour Crossing Bylaw (Cap. 436 sub. leg. D) to—

- (a) restrict the maximum speed limit for certain vehicles in the tunnel at 70 km per hour even though there is a speed limit sign indicating a speed limit exceeding 70 km per hour;
- (b) allow medium goods vehicles and heavy goods vehicles to use the nearside lane or middle lane of the tunnel; and
- (c) adopt new and standardized autotoll booth signs (Figure Nos. 21 and 22) in the tunnel area as part of the standardization programme launched by the Transport Department to standardize the signs for autotoll booths at various tolled tunnels and bridges in Hong Kong.

Appendix D

Tai Lam Tunnel and Yuen Long Approach Road (Amendment) Bylaw 2012

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Tai Lam Tunnel and Yuen Long Approach Road (Amendment) Bylaw 2012

(Made by the Route 3 (CPS) Company Limited under section 26 of the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) after consultation with the Commissioner for Transport and subject to the approval of the Legislative Council)

1. Commencement

This Bylaw comes into operation on 18 May 2012.

2. Tai Lam Tunnel and Yuen Long Approach Road Bylaw amended

The Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474 sub. leg. C) is amended as set out in sections 3 to 11.

3. Section 1 amended (interpretation)

(1) Section 1, definition of *autotoll booth*—

Repeal

“equipped with an automatic toll collection facility approved by the Commissioner”

Substitute

“designated as an autotoll booth under section 18(2)”.

(2) Section 1—

Repeal the definition of *light signal*

Substitute

“*light signal* (交通燈) means an illuminated signal to control vehicular traffic or pedestrians within the toll area;”.

(3) Section 1, definition of *prescribed light signal*—

(a) Repeal

“(訂明管制燈號)”

Substitute

“(訂明交通燈)”;

- (b) Chinese text—

Repeal

“由附表所”

Substitute

“均在附表”;

- (c) Chinese text—

Repeal

“的管制燈號”

Substitute

“的交通燈”.

- (4) Section 1, Chinese text, definition of ~~訂明交通標誌~~—

Repeal

“由附表所”

Substitute

“均在附表”.

- (5) Section 1—

Add in alphabetical order

“light goods vehicle (輕型貨車) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

motor cycle (電單車) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

motor tricycle (機動三輪車) has the same meaning as in the Road Traffic Ordinance (Cap. 374);

private car (私家車) has the same meaning as in the Road Traffic Ordinance (Cap. 374);”.

4. Section 7 amended (speed limit)

(1) Section 7(1), English text—

Repeal

“shall”

Substitute

“must”.

(2) Section 7(1), English text, before “speed exceeding”—

Add

“a”.

(3) Section 7(1), English text—

Repeal

“Figures”

Substitute

“Figure”.

(4) Section 7—

Repeal subsection (2)**Substitute**

“(2) The driver of a vehicle in the toll area must not cause or permit the vehicle to travel at a speed exceeding 70 km per hour if—

(a) the speed limit sign mentioned in subsection (1) is a speed limit sign as prescribed by Figure No. 8 or 9 in the Schedule; and

(b) either—

(i) the vehicle is a bus, medium goods vehicle or heavy goods vehicle; or

(ii) the vehicle is a motor cycle, motor tricycle, private car or light goods vehicle, and the driver is authorized to drive the vehicle by a probationary driving licence issued under

regulation 12G of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B).”.

5. Section 9 substituted

Section 9—

Repeal the section

Substitute

“9. Meaning of traffic signs, light signals and road markings

- (1) The meaning of a prescribed traffic sign or prescribed light signal is in accordance with the content and the note relating to the figure of that sign or signal in the Schedule.
- (2) The meaning of a traffic sign, light signal or road marking prescribed by the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) and the Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q) is in accordance with the content and the note relating to the figure of that sign, signal or marking in the Schedules to those regulations.”.

6. Section 10 substituted

Section 10—

Repeal the section

Substitute

“10. Traffic signs, light signals and road markings to be obeyed

- (1) The driver of a vehicle in the toll area must comply with the requirement indicated by any prescribed traffic sign or prescribed light signal.

- (2) A person in the toll area must comply with the requirement indicated by any traffic sign, light signal or road marking that is—
- (a) prescribed under the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G);
 - (b) erected, placed or otherwise displayed by the Company within the toll area pursuant to the regulations; and
 - (c) applicable to the person.”.

7. Section 12 amended (traffic confined to the nearside lane and/or middle lane in tunnel)

- (1) Section 12, heading—

Repeal

“Traffic confined to the nearside lane and/or middle lane in tunnel”

Substitute

“Control of use of lanes in tunnel”.

- (2) Section 12(1)—

Repeal

“A goods vehicle having a permitted gross vehicle weight in excess of 5.5 tonnes shall”

Substitute

“Subject to subsection (2), any medium goods vehicle or a heavy goods vehicle may”.

- (3) Section 12(2), English text—

Repeal

“shall”

Substitute

“may”.

(4) Section 12(2)(c)—

Repeal

“or”.

(5) Section 12—

Repeal subsection (3).

8. Section 13 amended (general restrictions)

Section 13(1), Chinese text—

Repeal

“管制燈號” (wherever appearing)

Substitute

“交通燈”.

9. Section 18 amended (automatic toll collection facilities)

Section 18—

Repeal subsection (2)

Substitute

“(2) The Company may, with the written approval of the Commissioner, designate a toll booth at which an automatic toll collection facility is installed under subsection (1) as an autotoll booth—

(a) by displaying above a lane that leads to the toll booth a prescribed traffic sign of the type shown in Figure No. 23 in the Schedule; or

(b) by displaying at the side of the toll booth a prescribed traffic sign of the type shown in Figure No. 24 in the Schedule.”.

10. Section 23 amended (general prohibitions)

Section 23(h)(i), Chinese text—

Repeal

“管制燈號”

Substitute

“交通燈”。

11. Schedule amended

(1) The Schedule—

Repeal

“[ss. 1, 2, 7, 9, 10 & 18]”

Substitute

“[ss. 1, 2, 7, 9 & 18]”。

(2) The Schedule, Figure No. 6—

Repeal

“FOLLOWING THE SIGN.”

Substitute

“FOLLOWING THE SIGN.

THIS SIGN MAY BE USED WITHOUT THE LETTERS
“km/h”.”。

(3) The Schedule, Figure No. 7—

Repeal

“FOLLOWING THE SIGN.”

Substitute

“FOLLOWING THE SIGN.

THIS SIGN MAY BE USED WITHOUT THE LETTERS
“km/h”.”。

(4) The Schedule, Figure No. 8—

Repeal

“FOLLOWING THE SIGN.”

Substitute

“FOLLOWING THE SIGN.

THIS SIGN MAY BE USED WITHOUT THE LETTERS
“km/h”.”.

- (5) The Schedule, Figure No. 9—

Repeal

“FOLLOWING THE SIGN.”

Substitute

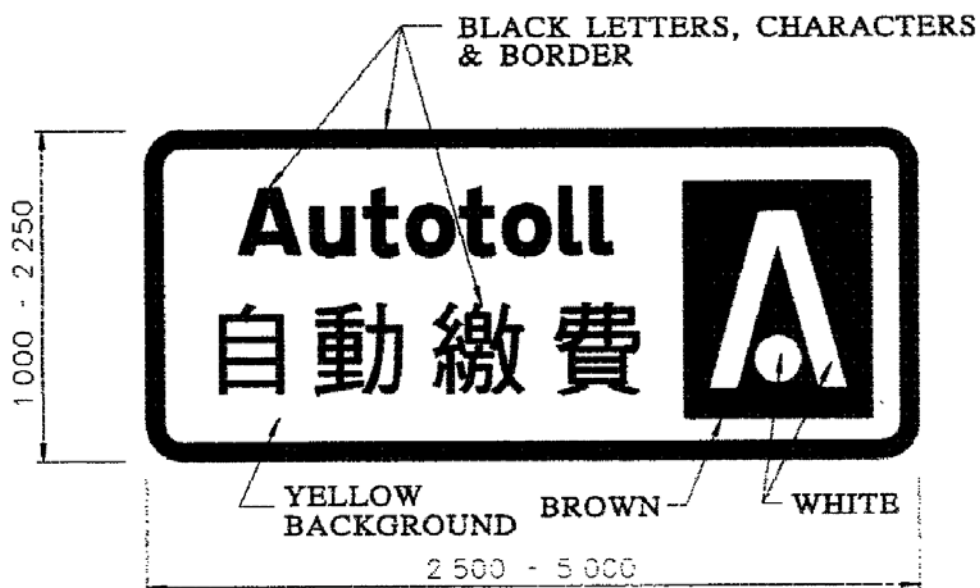
“FOLLOWING THE SIGN.

THIS SIGN MAY BE USED WITHOUT THE LETTERS
“km/h”.”.

- (6) The Schedule—

Repeal Figure No. 23**Substitute**

“Figure No. 23



**Lane
(Autotoll Only)**

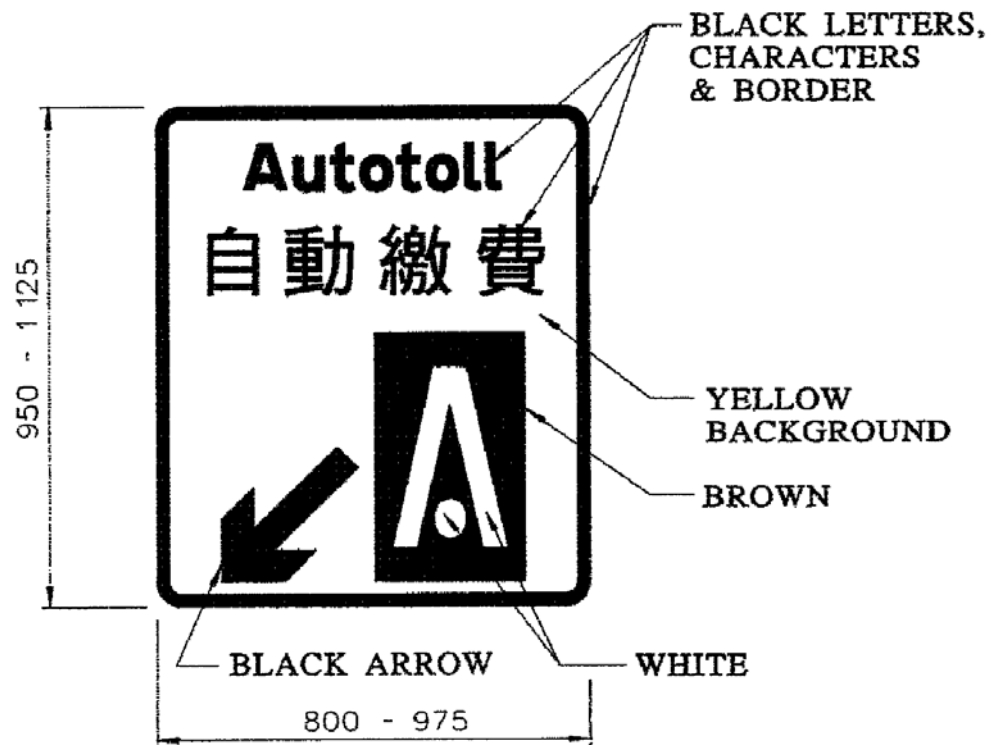
This sign is displayed above a lane that leads to an autotoll booth. It indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may proceed in the lane.”.

(7) The Schedule—

Repeal Figure No. 24

Substitute

"Figure No. 24

**Autotoll Booth**

When this sign is displayed at the side of a toll booth it indicates that the toll booth is an autotoll booth. It may be used in conjunction with the sign in Figure No. 23 and it indicates that only a vehicle with a valid electronic pass the account of which is opened in respect of the vehicle may pass through the autotoll booth.”.

12. Transitional provision

During the period of 12 months after the commencement date of this Bylaw—

- (a) a prescribed traffic sign of the type shown in Figure No. 23 in the Schedule to the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474 sub. leg. C)

(principal Bylaw) as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 23 in the Schedule to the principal Bylaw as amended by this Bylaw; and

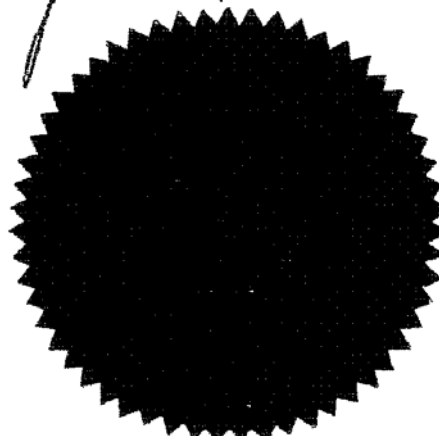
- (b) a prescribed traffic sign of the type shown in Figure No. 24 in the Schedule to the principal Bylaw as in force immediately before the commencement date of this Bylaw and erected at any time before that commencement date is to be treated as a prescribed traffic sign of the type shown in Figure No. 24 in the Schedule to the principal Bylaw as amended by this Bylaw.

Made by the Route 3 (CPS) Company Limited this 3rd day
of April 2012.

Signed by Mr. John Anthony Miller and Mr. So Wai Kei, Godwin
under the Common Seal of the Company



Route 3 (CPS) Company Limited



Explanatory Note

The purposes of this Bylaw are to amend the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474 sub. leg. C) to—

- (a) restrict the maximum speed limit for certain vehicles in the toll area at 70 km per hour even though there are speed limit signs indicating different speed limits; and
- (b) adopt new and standardized autotoll booth signs (Figure Nos. 23 and 24) in the toll area as part of the standardization programme launched by the Transport Department to standardize the signs for autotoll booths at various tolled tunnels and bridges in Hong Kong.

Appendix E

**Import and Export (Registration) (Amendment)
Regulation 2012**

(Made by the Chief Executive in Council under section 31 of the Import and Export Ordinance (Cap. 60) subject to the approval of the Legislative Council)

1. Commencement

This Regulation comes into operation on 1 June 2012.

2. Import and Export (Registration) Regulations amended

The Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) are amended as set out in sections 3 and 4.

3. Regulation 8 amended (charges payable on lodgement of declarations)

(1) Regulation 8(1)(a)—

Repeal

“50”

Substitute

“20”.

(2) Regulation 8(1)(b)(i)—

Repeal

“50”

Substitute

“20”.

(3) Regulation 8(1)(b)(ii)—

Repeal

“50”

Substitute

“20”.

- (4) Regulation 8(1)(b)(ii)—

Repeal

“25”

Substitute

“12.5”.

- (5) Regulation 8(1)(c)(i)—

Repeal

“50”

Substitute

“20”.

- (6) Regulation 8(1)(c)(ii)—

Repeal

“50”

Substitute

“20”.

- (7) Regulation 8(1)(c)(ii)—

Repeal

“25”

Substitute

“12.5”.

- (8) Regulation 8(1)(d)(i)—

Repeal

“50”

Substitute

“20”.

- (9) Regulation 8(1)(d)(ii)—

Repeal

“50”

Substitute

“20”.

(10) Regulation 8(1)(d)(ii)—

Repeal

“25”

Substitute

“12.5”.

4. Regulation 16 added

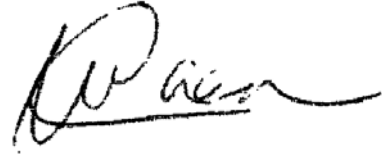
After regulation 15—

Add

“16. Transitional provision (Import and Export (Registration) (Amendment) Regulation 2012)

Regulation 8(1), as amended by the Import and Export (Registration) (Amendment) Regulation 2012, applies in relation to—

- (a) import declarations relating to articles imported on or after 1 June 2012; and
- (b) export declarations relating to articles exported (including re-exported) on or after 1 June 2012.”.



Clerk to the Executive Council

COUNCIL CHAMBER

17 APRIL 2012

Explanatory Note

This Regulation amends regulation 8(1) of the Import and Export (Registration) Regulations (Cap. 60 sub. leg. E) to reduce the charges for import and export declarations.

2. The particulars of the reduction of charges are as follows—
 - (a) in respect of an import declaration relating to an article specified in Appendix I of the Imports and Exports Classification List, a reduction from 50 cents to 20 cents;
 - (b) in respect of any other import declaration or an export declaration—
 - (i) if the relevant value does not exceed \$46,000, a reduction from 50 cents to 20 cents; or
 - (ii) if the relevant value exceeds \$46,000—
 - (A) for the first \$46,000 of the value, a reduction from 50 cents to 20 cents; and
 - (B) for each additional \$1,000 of the value or part of it, a reduction from 25 cents to 12.5 cents.