

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 30 November 2011

The Council met at Eleven o'clock

MEMBERS PRESENT:

THE PRESIDENT

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

DR THE HONOURABLE MARGARET NG

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

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

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

THE HONOURABLE LEUNG YIU-CHUNG

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

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

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

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

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

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

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

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

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

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

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

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

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

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

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

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

THE HONOURABLE CHIM PUI-CHUNG

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

THE HONOURABLE KAM NAI-WAI, M.H.

THE HONOURABLE CYD HO SAU-LAN

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

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

THE HONOURABLE CHAN HAK-KAN

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

THE HONOURABLE CHAN KIN-POR, J.P.

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

DR THE HONOURABLE LEUNG KA-LAU

THE HONOURABLE CHEUNG KWOK-CHE

THE HONOURABLE WONG SING-CHI

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

THE HONOURABLE IP WAI-MING, M.H.

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

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

DR THE HONOURABLE PAN PEY-CHYOU

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

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

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

THE HONOURABLE LEUNG KWOK-HUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE WONG YUK-MAN

MEMBERS ABSENT:

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

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

THE HONOURABLE TANYA CHAN

PUBLIC OFFICERS ATTENDING:

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

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

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

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

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

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

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

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

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

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

CLERKS IN ATTENDANCE:

MS PAULINE NG MAN-WAH, SECRETARY GENERAL

MRS CONSTANCE LI TSOI YEUK-LIN, ASSISTANT SECRETARY
GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY
GENERAL

MRS PERCY MA, ASSISTANT SECRETARY GENERAL

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

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

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	<i>L.N. No.</i>
Prisons (Amendment) Order 2011	166/2011

Other Papers

No. 35 — Hong Kong Tourism Board Annual Report 2010/11

No. 36 — Annual Report 2010 to the Chief Executive by The Commissioner on Interception of Communications and Surveillance (together with a statement under section 49(4) of the Interception of Communications and Surveillance Ordinance)

Report No. 4/11-12 of the House Committee on Consideration of Subsidiary Legislation and Other Instruments

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. The first question.

Employment in Financial Services Industry

1. **DR DAVID LI:** *President, according to some recent official statistics of Hong Kong and Singapore, the number of persons employed in the financing and insurance industry in Hong Kong increased by 29.2% during the period from 2002 to 2010, representing an increase of around 45 000 jobs; and during the same period, the number of persons employed in the financial services industry (covering employments in financial institutions and the insurance sector) in Singapore increased by 87.9%, representing an increase of around 80 000 jobs. As financial services is one of the traditional pillar industries in Hong Kong and as it is a stated government policy to establish Hong Kong as the international financial centre for China, will the Government inform this Council:*

- (a) what parameters the Government considers in evaluating its success in nurturing the financial services industry, and whether the employment situation in the industry is a key consideration;*
- (b) whether the Government has monitored Hong Kong's competitiveness against other regional financial centres; if it has, whether it has reached any conclusion on the positive/negative factors and policies which had contributed to the different employment growth in the financial services industry of Hong Kong and Singapore during the period from 2002 to 2010; and*
- (c) whether it has assessed if there is any evidence of a shift in employment opportunities in the financial services industry in Hong Kong from lower value-added positions to higher value-added positions; if there is such evidence, whether the present education system is able to cope with the corresponding increase in the demand for talents to fill the higher value-added positions in that industry in the next decade?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:

President, the financial services industry is one of Hong Kong's four pillar industries. According to the Composite Employment Estimates compiled by the Census and Statistics Department (C&SD), the financial services industry employed 208 900 persons in 2010. Its share of overall employment rose from 5.4% in 2002 to 6% in 2010. The number of persons employed in the industry,

and its share of overall employment, were further increased to 224 800 and 6.2% respectively in the second quarter of 2011.

Hong Kong boasts a large pool of financial talent capable of supporting the sustainable development of our financial services industry. The following are some examples:

- there were more than 4 000 Chartered Financial Analysts in Hong Kong as at end June 2011, making the Hong Kong Society of Financial Analysts the largest of its kind in Asia and the fourth largest globally (after New York, Toronto and the United Kingdom);
- there were 4 270 Certified Financial Planners (CFPs) in Hong Kong as at mid-2011, which translates to a ratio of six CFPs for every 10 000 citizens, the highest ratio in the world; and
- the Hong Kong Institute of Certified Public Accountants has over 32 000 members as at end October 2011, of which some 3 800 members are certified to sign statutory audit reports.

The performance of various sectors of the financial services industry over the past years also demonstrates the strengths of the industry:

Initial public offerings (IPOs) on the Hong Kong Stock Exchange in 2009 and 2010 raised \$248.2 billion and \$449.5 billion respectively, the highest in the world in both years. Despite the volatility in financial markets during recent months, IPOs on the Hong Kong Stock Exchange still managed to raise a respectable \$208.9 billion in the first 10 months of 2011.

In the asset management sector, Hong Kong's combined fund management business hit the \$10,000 billion mark in 2010, an increase of 18.6% over 2009. The average annual growth rate of the combined fund management business during the past decade has been over 18%. Hong Kong's fund management business is not only highly internationalized, but also boasts the highest assets under management in Asia (excluding Oceania), ahead of both Japan and Singapore.

The burgeoning Renminbi (RMB) business is another bright spot in our financial services industry. In the first nine months of 2011, Hong Kong banks handled a total of RMB 1,329.4 billion yuan in RMB trade settlement, accounting for 86% of Mainland's RMB trade settlement during that period. Meanwhile, RMB deposits swelled to RMB 622.2 billion yuan as at end September 2011, almost doubling that of end 2010. Hong Kong is also the largest offshore RMB bond market. As at end October 2011, there had been 100 issuances of RMB bonds with the total issuance size exceeding RMB 166.3 billion yuan.

The question mentioned that Singapore's financial services industry enjoyed a faster pace of growth in employment compared to Hong Kong. However, in terms of contribution to the economic growth of the city, Hong Kong's financial services industry registered a remarkable increase of 132.6% in real terms from 2002 to 2010, whereas the corresponding figure for Singapore was 119.1%. This suggests that the overall growth in financial services in Hong Kong has been broadly comparable to that of Singapore.

The financial services industry and employment market in Hong Kong are, generally speaking, highly market-driven. Therefore, increase in employment depends to a large extent on factors such as the market environment, the human resource management strategies of individual enterprises, and the growth prospect of individual sectors in the industry.

To reinforce Hong Kong's status as an international financial centre, the Government has been nurturing local financial talent through formal and continuing education as well as collaborating closely with the industry, tertiary institutions and professional bodies through various channels on manpower demands in financial services.

Specifically, there were around 16 000 students enrolled on about 130 University Grants Committee-funded programmes in economics, finance, business administration and logistics management in the 2010-2011 academic year at sub-degree, degree and post-graduate level. As for the self-financing sector, our tertiary institutions provided around 120 programmes in these areas for more than 20 400 students.

Under the Qualifications Framework (QF) launched in 2008, the Education Bureau has been assisting industries to set up Industry Training Advisory

Committees (ITACs) for drawing up Specification of Competency Standards, providing a basis for course providers to design training courses that meet the needs of the individual industries. The banking industry and the insurance industry have already set up their respective ITACs under the QF. Meanwhile, professional bodies in the financial services industry such as the Hong Kong Securities Institute and Hong Kong Institutes of Bankers have also been providing a wealth of professional training and qualification programmes in response to the latest market development to support the training needs of the industry. These measures will enhance the competitiveness of the local workforce.

Since its establishment in 2000, the Advisory Committee on Human Resources Development in the Financial Services Sector (or what we call the FinMan Committee) has been serving as a platform for representatives from the industry, academia, professional bodies, regulators and government to exchange views and explore co-operation opportunities. Over the years, the FinMan Committee has organized a number of events, including seminars, opinion surveys and student placement programmes.

The financial services industry is indeed moving up the value chain. According to the General Household Survey conducted by the C&SD, the share of managers, administrators and professionals employed in the financial services industry rose from 28.6% of the total employment in the industry to 36.8% between 2002 and 2010, higher than the overall figure of 16.1% for all industries.

Admittedly, workers with higher skills and educational attainment account for a major part of the labour force in the financial services industry. However, I would like to emphasize that the financial services industry, as a key strategic component of our modern service-based economy, remains in need of talent from a variety of backgrounds and educational levels to fill different positions in the services supply chain. In fact, one in every four persons engaged in the financial services industry is a clerical worker. As regards educational attainment, one in every three persons engaged in the industry possesses upper secondary qualifications, a figure similar to the overall economy. Therefore, a robust financial services industry will not only create high-end positions. It will also drive employment growth throughout the value chain.

DR DAVID LI: *President, the banking sector has long been seeking equal treatment with other financial centres in the region and around the world on important tax policies, such as group loss relief. Will the Government be committed to improving Hong Kong's standing as a financial centre by ensuring that our tax policy is competitive?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY:

President, the group loss relief proposal has been raised various times in the Council. Let me repeat our position. The group loss relief proposal involves a number of complicated issues, such as how to ascertain whether companies are members of the same group, and their loss set-off arrangements with each other. This proposal could also be easily abused for tax avoidance. Therefore, if this proposal is to be implemented, it must be complemented by very complicated legislative provisions to define clearly the scope of application, so that we can avoid tax abuse. This would inevitably complicate our simple tax regime. Moreover, this proposal would benefit mainly the larger companies, whereas the small and medium enterprises (SMEs) in general, which do not operate as a group, would not benefit from the arrangement. But then, SMEs constitute 98% of Hong Kong's business establishment. So, this is the consideration that we have. As I recall, I have answered this question repeatedly on many occasions in this Council. Actually, I have pointed out that in the 2006-07 Budget, the Government clearly stated that it had no intention to introduce group loss relief. Besides, we have reiterated our position in our subsequent replies to Members of this Council.

MS EMILY LAU (in Cantonese): *President, in the final part of the main reply the Secretary said that a robust financial services industry will drive employment growth throughout the value chain and not just high-end positions. He said that one in every four persons engaged in the financial services industry is a clerical worker and only one in three persons engaged in the industry possesses upper secondary qualifications.*

At present, there are more than 1 million people living in poverty and some people have a low level of skills and educational attainment. Does the Secretary have other information to prove that the development of the financial services

industry can drive the development of, say, the services industry or other trades, as well as increasing the number of jobs significantly, so that the public can give their full support to the efforts on promoting the development of the financial services industry? This is because often members of the public think that those policies may not be able to benefit them. Secretary, can more information be provided?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I thank Ms LAU for her supplementary question. In fact, we have all along been very concerned about this issue. On the proportion of the financial services industry to the overall economy in Hong Kong, generally speaking, at present, the financial services industry accounts for 15.4% of the local GDP. In the case of cities with conditions similar to those in Hong Kong, in fact, the proportions are also quite similar.

I have said just now that the types of employees hired by the financial services industry in Hong Kong are quite wide-ranging. As regards whether or not there are figures to show that the financial services industry drives employment growth in other service industries, I do not have such figures. However, the financial services industry is one of the service industries and when it booms, it will drive the growth of other service industries, including industries not belonging entirely to the financial services industry and industries related to commercial services. All these industries will see growth.

The growth of these service industries will also be conducive to the growth of other industries, for example, the retail and catering sectors. However, what I want to say is mainly that the financial services industry is an important pillar of the modern services industry that can promote the growth of other service industries. Particularly, when we talk about the economic development of Hong Kong and the Mainland, often, the financial services industry is the locomotive giving impetus to the development of other industries, so this is conducive to the long-term economic development of Hong Kong.

MS EMILY LAU (in Cantonese): *President, my supplementary question asked the Secretary whether or not he can provide more information and figures to*

prove that the financial services industry can drive the employment growth in other areas. Can the Secretary provide more information after the meeting?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, I will see if there are ways to explain this more clearly. (Appendix I)

MR WONG KWOK-HING (in Cantonese): *The financial services industry is a very important pillar of the local labour market. Concerning the question on employment in the financial services industry raised by Dr David LI, I am very concerned about whether or not the Government still maintains a market-driven approach. If this is the case, the Government simply will not bother to do anything. For example, recently, a leading note-issuing bank has given advance notice of lay-offs and we are all very concerned about this. On this situation, what measures and actions will the authorities take to help employees in the financial services industry and protect their employment opportunities? This is because the profits made by this leading note-issuing bank have seen significant increases every year but it still took the lead in giving advance notice of layoffs, thus making employees in the financial services industry develop a great sense of insecurity, as if they were treading on thin ice. In particular, now*

PRESIDENT (in Cantonese): Please make your supplementary question concise.

MR WONG KWOK-HING (in Cantonese): *..... under the impact of the European sovereign debt crisis, they are very worried about their employment prospect in the future. Therefore, my supplementary question is: What methods and measures do the authorities have to protect the employment of workers in the financial services industry?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): President, simply put, the financial market is a free market, so the Government must follow the rules of a free market when taking actions to ensure that financial service institutions will continue to invest in Hong Kong, including

local financial institutions and those outside Hong Kong that may make investments here in the future. Certainly, the Government is very much concerned about the employment situation in the financial services industry and, as I said in the main reply, the Government maintains long-standing and regular communication with the industry to discuss the demand for talents in the financial services industry and take actions in various aspects accordingly, so that talents can pursue development and find employment.

Concerning the layoffs made by individual banks, our major concern is whether or not such measures will affect the various areas of these industries under our supervision, for example, risk management. This is an area of concern relating to regulation. However, on the whole, we should ensure that the financial services industry can enhance its competitiveness in various areas under a stable regulatory regime, so as to drive the development of the workforce.

MR WONG KWOK-HING (in Cantonese): *The Secretary has only given a general answer, but he has not replied to my*

PRESIDENT (in Cantonese): Mr WONG, the Secretary has already answered your supplementary question.

MR WONG KWOK-HING (in Cantonese): *President, he did not give any reply on the core issue of the layoffs made by a leading note-issuing bank.*

PRESIDENT (in Cantonese): Mr WONG, the Government has already given a reply to your supplementary question on the existing policy of the Government. If you are not satisfied with the Secretary's reply, please follow this up on other occasions.

MR CHIM PUI-CHUNG (in Cantonese): *President, in his main reply, the Secretary gloated over the financial services industry and the talents of the financial services industry in Hong Kong. However, may I ask the Secretary why non-locals are still hired to fill the posts of the chief executives of the Hong*

Kong Exchanges and Clearing Limited and the Securities and Futures Commission? This practice is painted in a positive light as international recruitment. We do not discriminate against expatriates, but does this practice not amount to discrimination against locals? Since there are so many talents, why does the Government not groom local talents by all means instead of adopting such a policy?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Mr CHIM, I did not gloat over our local talents. We believe that of course, the Government has put in place good policies to support the development of local talents but in the face of global competition, not only can we not be complacent, we also have to ensure that the competitiveness of the financial services industry is enhanced. One of the ways to enhance competitiveness is to ensure that the market is open, so that people of various backgrounds from various regions can find employment in the market and make contribution to the economic development of Hong Kong.

As regards the chief executives of the individual institutions mentioned by the Member just now, the recruitment of chief executives by these institutions is decided by their respective boards and relevant recruitment boards. However, I think these major institutions should adopt the policy of meritorious recruitment and the goal of striving to develop the financial market in Hong Kong in their recruitment of suitable people.

PRESIDENT (in Cantonese): We have spent more than 20 minutes on this question. Second question.

General Employment Policy

2. **MR IP WAI-MING** (in Cantonese): *President, regarding the application for importation of foreign labour under the "General Employment Policy" (GEP) of the Immigration Department (ImmD), will the Government inform this Council:*

- (a) *of the number of such applications received by the ImmD in each of the past five years; among them, of the number of those approved*

and its percentage in the total number of applications; whether there were applicants who had been given approval to enter Hong Kong for employment in the past but when they applied again for entry into Hong Kong for employment or extension of the duration of stay in Hong Kong, they were not given approval to enter Hong Kong or continue to stay and work in Hong Kong because their employers were able to recruit suitable staff locally to take up the positions;

- (b) *of the vetting and approving procedures adopted by the ImmD upon receipt of the applications concerned, and whether consultation with the relevant government departments and trade unions is included in such procedures; if so, how their views would be considered; whether it has assessed the capacity of the local labour market in absorbing the additional labour; how it establishes that such positions cannot be readily taken up by local employees; whether the employers concerned are required to provide sufficient training for local employees with a view to transferring to them the skills required for these positions; if so, of the details; if not, the reasons for that; whether it has any plan to review the existing vetting and approving procedures to ensure that local workers are given priority in employment; and*
- (c) *whether the authorities had conducted any inspection in the past five years to find out the situation of those persons from overseas who were granted entry into Hong Kong for employment after their arrival; if they had, of a breakdown of the number of inspections by year and job category; if not, the reasons for that; whether they have any plan to enhance the existing monitoring mechanism, including increasing the number of surprise inspections and the penalties for breaches, and so on?*

SECRETARY FOR SECURITY (in Cantonese): President, the objective of the GEP is to allow local employers to recruit professionals not readily available in Hong Kong to meet their manpower needs. In general, professionals seeking to apply to work in Hong Kong under the GEP shall meet three main criteria:

- (i) having a good education background, normally a first degree in the relevant field;
- (ii) having a confirmed offer of employment and are employed in a job relevant to their academic qualifications or working experience that cannot be readily taken up by local professionals; and
- (iii) the remuneration package is broadly commensurate with and not inferior to the local prevailing market level.

Employers shall submit relevant information and documentary proof for the applications, including details of the positions concerned, remuneration package and the reasons why the positions cannot be filled by local professionals.

In processing applications under the GEP, the ImmD will strike an appropriate balance between upholding priority employment of the local workforce as an important policy measure and admitting needed professionals to Hong Kong.

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

- (a) The statistics of applications under the GEP for the past five years are at Table 1:

Table 1

<i>Year</i>	<i>Number of applications received</i>	<i>Number of applications approved</i>	<i>Approval rate</i>
2007	28 696	26 384	92%
2008	28 454	26 466	93%
2009	22 253	20 988	94%
2010	29 121	26 881	92%
2011 (January to October)	28 096	26 018	93%

The ImmD does not maintain statistics on the number of applications that had been approved previously but were subsequently refused upon new applications or applications for extension of stay.

- (b) In processing the applications, the ImmD requires applicants to submit proof of educational qualifications, working experience and professional qualifications. The ImmD will verify the authenticity of the documents submitted accordingly. At the same time, the ImmD will vet the information provided by employers, including the nature of business, the operational status, the number of employees and the ratio of local and non-local employees, and so on. Employers are also required to provide justifications for employing the concerned applicants and to furnish proof on reasons for failing to recruit professionals locally. If the ImmD needs further information on the manpower situation of the relevant markets, employers will be required to provide recruitment details and documentary proof, including the recruitment advertisements published, the number of local applicants, the record of recruitment interviews and results, and so on. Employers are also required to provide a copy of the employment contract to show that the applicant is recruited on a remuneration package commensurate with the prevailing local market level. Besides, the ImmD will make reference to the statistics prepared by the Census and Statistic Department and information provided by relevant professional bodies. The ImmD will also consult the Labour Department (LD), other government departments or relevant professional bodies on individual cases as necessary to ensure that applications are in line with the objective of the GEP.
- (c) As I have explained in the reply to part (b), the ImmD will ensure that applications are in full compliance with the stated policy and eligibility criteria in processing each application. It is the responsibility of both the applicants and employers to provide full and correct details to the ImmD. According to the Immigration Ordinance, any person who provides false information or makes false statement in making an application is liable on summary conviction to the maximum penalty of a fine of \$100,000 and

imprisonment of two years. Regarding the approved cases, the ImmD had received 28 complaints in the past five years but none of the cases was found to be in breach of the GEP requirements. Besides, in assessing applications, the ImmD will verify the case information by appropriate means. In the past five years, the ImmD had conducted inspections on 37 applications of which two cases were subject to prosecution.

MR IP WAI-MING (in Cantonese): *President, from the relevant figures provided by the Secretary, I can see that the vetting of applications by the ImmD is extremely lax, with the approval rates over the past several years exceeding 90%.*

I am particularly interested in part (b) of the main reply, as all the information examined by the ImmD during the vetting and approval procedures is apparently submitted by employers and the LD and professional bodies will be consulted for other information only when necessary.

However, will attempts be made to ascertain if the employers have any adverse records and consult the trade unions? I asked this question because, in a recent dispute involving the Labour Advisory Board (LAB), LD and ImmD, the aircraft engineering company concerned indicated last year the need to import some overseas trainees into Hong Kong but actually they were working as cheap labour de facto. Will such records be considered and trade unions be consulted?

SECRETARY FOR SECURITY (in Cantonese): *President, in processing a case, we will certainly look up the relevant employer's previous records and relevant files. If the employer had an adverse record in the past, we will take it into consideration in vetting the latest case.*

As regards the question of whether or not trade unions will be consulted on each case, first of all, the prevailing GEP is targeted at professionals, not workers. In this respect, the ImmD is highly experienced. But under some circumstances,

if we have doubts about cases involving certain technical professionals, we will definitely consult the LD and relevant government departments.

MR ANDREW LEUNG (in Cantonese): *President, the GEP is actually greatly helpful to Hong Kong economy because it allows the importation of some not readily available professionals into Hong Kong.*

However, one of the public concerns about the GEP is whether it will be abused, thus circumventing the vetting and approval procedures of the LAB. May I ask the Government how the GEP can be protected from abuse and whether the Government can provide a detailed analysis to inform us of, in general, the positions and types of professions filled under the GEP?

SECRETARY FOR SECURITY (in Cantonese): President, I have pointed out in the main reply that, insofar as the GEP is concerned, we have two policy objectives: First, to import some overseas professionals not readily available in Hong Kong but useful and conducive to the development of Hong Kong economy in all aspects; and second, we will definitely uphold priority employment of local professionals and workers at the same time.

Hence, in these two aspects, first of all, we require employers to prove their need for such talents in Hong Kong; and second, they have to produce evidence to show that they have great difficulties in recruiting such talents in Hong Kong. Sometimes we require employers to provide the relevant recruitment advertisements or information on the number of candidates, the availability of suitable persons among the candidates, and so on. In this respect, the ImmD was indeed quite experienced in ensuring that applications were in full compliance with the stated policy and eligibility criteria.

I shall now answer the second part of the supplementary question asked by Mr Andrew LEUNG with the help of some figures. Approximately 40% (precisely 37%) of the professionals approved in 2010 were administrative or managerial staff, such as finance directors, managers and human resources heads, and so on, whose remuneration packages were generally within the range of \$50,000 and \$100,000. Another 30% or so (precisely 33%) of the professionals who had succeeded in their applications were financial analysts, architects,

mechanical engineers, lawyers, professors, and so on, whose remuneration packages were generally within the range of \$35,000 and \$65,000. It is thus evident that, as per our policy objective, those who had succeeded in their applications were mostly administrative or managerial talents and professionals with high academic qualifications. Their remuneration packages were also commensurate with the local market level.

President, I have to emphasize again here that it is now the 21st century, also the century of talents. All advanced economies around the world are competing for overseas talents to assist with local development. Given that Hong Kong is an open economy, this was our objective in adopting the GEP in the past. Of course, in admitting talents from overseas, we will definitely bear in mind the priority employment of local labour and professionals.

PRESIDENT (in Cantonese): Is your supplementary question not yet answered?

MR ANDREW LEUNG (in Cantonese): *He has not answered how the Government ensures that no one can circumvent the Supplementary Labour Scheme (SLS) and make use of the general importation policy.*

SECRETARY FOR SECURITY (in Cantonese): President, by the so-called General Labour Importation Scheme, I think Mr LEUNG was referring to the scheme vetted and approved by a committee formed by the LAB, that is, employers and employees. According to my understanding, the positions approved by the LAB under the labour importation policy are generally of a relatively low level and their income levels are quite low. As for the GEP, the overseas talents we hope to import are all professionals. Therefore, these two human resources tanks are different. In this respect, should the ImmD consider that some applications involve technical positions and there are doubts about whether the applicants are genuine professionals, such as engineers, we will definitely enquire with the relevant government departments, such as the LD. If aircraft engineering is involved, we might need to consult the Civil Aviation Department or relevant government departments for their expertise to determine whether the professional talents in question should be classified as professionals under the GEP or ordinary imported workers.

MR VINCENT FANG (in Cantonese): *President, this is a golden opportunity for me to raise the following question as both the Secretary for Security and the Secretary for Labour and Welfare are here today.*

As we are all aware, the mismatch problem in Hong Kong's labour market is worsening. In particular, after the implementation of the minimum wage, many people have switched to security or hourly-paid jobs. Therefore, many trades and industries are facing a manpower shortage or difficulties in recruiting people, with our wholesale and retail sector being a case in point. The problem faced by residential care homes for the elderly (RCHEs) is even worse. These institutions are unable to recruit people to feed the elderly as the nature of the jobs there is slightly obnoxious.

May I ask the two Secretaries whether the Labour and Welfare Bureau will, having regard to the opening in Hong Kong's labour market, suitably provide more job opportunities for people possessing such skills to allow imported workers to come to Hong Kong for employment and, in approving applications and issuing visas, maintain communication with the Security Bureau with a view to tackling the existing problem of this urgent need?

PRESIDENT (in Cantonese): Which Secretary will answer this question? Secretary for Labour and Welfare.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, perhaps I will give a reply on the labour aspect. Our policy direction under the SLS is extremely clear. If it is proven that certain job types in Hong Kong face a shortage of local workers, we will conduct reviews from time to time on the premise of upholding priority employment of local workforce. However, Mr Vincent FANG was right in making the remarks just now. The manpower in RCHEs, for instance, is indeed extremely tight. The number of imported workers engaging in this field is only 1 968, which is actually a small figure, with 968 persons working as care workers in RCHEs, including those working in institutions for people with disabilities and elderly services. In other words, 49% of the imported workers are currently engaged in these care services. As regards the other trades and industries mentioned by Members just now, if such needs arise in the future, we will certainly explore and examine the situation in

detail in the LAB. Our policy will be adjusted from time to time in the light of Hong Kong economy, but it remains our most important task to uphold priority employment of local workforce. We will import labour only when it is impossible for the vacancies to be filled by local workers.

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

SECRETARY FOR SECURITY (in Cantonese): President, I have nothing to add.

DR PHILIP WONG (in Cantonese): *President, perhaps I will follow up Mr Andrew LEUNG's supplementary question from another angle. As Members are aware, the frequency of the inspections conducted by the authorities under the GEP is relatively low. May I ask whether the Government will adopt any measures to prevent employers from exploiting the GEP to circumvent the SLS which is monitored by the LAB?*

SECRETARY FOR SECURITY (in Cantonese): President, it is unlawful for anyone to deliberately provide false information and circumvent the SLS in an attempt to enter through the back door of the GEP.

As I pointed out in the main reply, according to the Immigration Ordinance, any person who provides false information or makes a false statement in making an application is liable on summary conviction to the maximum penalty of a fine of \$100,000 and imprisonment of two years. During the verification process, the ImmD had conducted inspections in respect of 37 applications and initiated prosecution in two cases. In one of these cases, the person concerned was sentenced to six months' imprisonment. We consider that our inspections have achieved deterrent effect. The number of complaints involving the GEP over the past five years has been very small, mainly because our vetting and approval procedures are quite stringent. As a result, the number of the so-called "abuse" or "through-the-backdoor" cases is not substantial. Over the past five years, only 28 relevant complaints had been received and no

concrete evidence had been found after investigation showing deliberate breaches of the requirements by employers or employees.

Hence, I think that the current implementation of the GEP is quite sound. Certainly, we pay great attention to the views expressed by local residents, particularly the labour sector. Should they receive any complaint from trade unions, they are greatly welcome to refer it to us. We will definitely follow up the complaint seriously.

MR IP KWOK-HIM (in Cantonese): *President, I note that the Secretary pointed out in his reply that "the objective of the GEP is to allow local employers to recruit professionals not readily available in Hong Kong to meet their manpower needs". Just now, he also emphasized this again and again. May I ask the Secretary how long these employees can stay in Hong Kong and what are the criteria governing their duration of stay? A major concern to us recently is the problem with recruiting foreign workers for RCHes, as raised in the question just now. Does this also fall into the ambit of the GEP? Has the current problem with recruiting foreign workers for RCHes been resolved?*

SECRETARY FOR SECURITY (in Cantonese): President, a successful applicant under the GEP will generally be issued a 12-month visa for entry into Hong Kong. Generally speaking, if the applicant undertakes the same job in Hong Kong and continues to work for the same employer, he may apply for extension of stay, normally for a period of two years or the contract period, whichever is the shorter. This also applies to the period of stay for his initial application. Although I pointed out just now that the maximum period for the first visa is 12 months, if he comes to Hong Kong for short-term employment, a visa will be granted to him according to his short-term employment contract. For instance, a three-month visa will be granted if the employment contract is for three-month employment; a six-month visa will be granted if the employment contract is for six-month employment.

For instance, the applications processed in 2010 were largely related to short-term employment contracts. The total number of long-term employment contracts, that is, employment contracts for one year or longer, was 16 397, or

61% of the total number of the applications, whereas the total number of short-term employment contracts was approximately 10 484, representing 39% or approximately 40% of the total number of the applications. From this, it can be seen that many of the applications under the GEP are short-term contracts for such purposes as teaching in schools for a couple of months, performing in such places as the Hong Kong Academy for Performing Arts in Hong Kong, and so on. Approvals were granted under the GEP to allow these persons to come to Hong Kong.

(Mr IP Kwok-him raised his hand in indication)

PRESIDENT (in Cantonese): Mr IP, which part of your supplementary question is not answered?

MR IP KWOK-HIM (in Cantonese): *The Secretary has not answered my supplementary question regarding the criteria, that is, whether RCHEs fall into this ambit, and whether or not the relevant problem has been resolved.*

SECRETARY FOR SECURITY (in Cantonese): As I pointed out in the main reply just now, our criteria include: First, such talents are not readily available in Hong Kong; and second, the wages, remuneration and benefits offered by employers are commensurate with those of the relevant local professionals. As for the question concerning RCHEs, may I defer to Secretary Matthew CHEUNG.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I will add some comments very briefly. Insofar as RCHEs are concerned, their care workers have all come to Hong Kong under the SLS, not the GEP. In other words, their applications were vetted and approved by the LD and the LAB. As I pointed out in my reply just now, there are currently 968 imported care workers working in Hong Kong for 357 institutions. We are greatly concerned about the current suspension of the vetting and approval procedures by LAB's employee members. Moreover, I have personally maintained contact with them. We

have joined the ImmD in putting forward some proposals to give them peace of mind in response to their misgivings. Under the proposals, the ImmD will require employers to declare, upon submission of applications under the GEP, whether they have submitted any applications through the SLS during the preceding 18 months, whether or not such applications are successful. This is the first point. After the submission of relevant information by employers, the ImmD will consult the LD on the cases to intercept certain employers who might submit applications to the ImmD under the GEP after their applications through the SLS were rejected. I believe this effective measure can answer the people's aspirations. Moreover, we undertake to conduct a review six months after the implementation of the new measure in the hope of protecting the job opportunities of local workers while allowing employers with the genuine need to import labour to receive the required manpower assistance.

PRESIDENT (in Cantonese): We have spent nearly 25 minutes on this question. Third question.

Regulation of Waste Recycling Yards

3. **MR VINCENT FANG** (in Cantonese): *President, fires broke out at waste recycling yards in the New Territories one after another, and the waste materials stocked in such yards were burnt, emitting toxic smoke which polluted the air of Hong Kong. Regarding the regulation of waste recycling yards and the implementation of waste recovery and waste treatment measures, will the Government inform this Council of:*

- (a) *the number of waste recycling yards in Hong Kong at present and their areas; whether it knows the major types of wastes recovered and stocked at such waste recycling yards; the details of the big fires which broke out at waste recycling yards in the past three years and the follow-up actions taken;*
- (b) *the regulation of waste recycling yards by the authorities at present; the means and procedures for waste recycling yards to obtain approval for the relevant land use; whether there are restrictions on*

the types and quantity of wastes being recovered and stocked; whether it knows the methods of treatment, the outlets and the final destinations of such wastes, and whether regulation is in place; if regulation is not in place, please explain the reasons; and

- (c) *the results and effectiveness of waste separation and recycling since implementation as well as the latest improvement measures in place; how the amount of wastes recovered through the relevant policy compares with that of similar types of wastes disposed of at landfills in the past three years; the ways to treat the wastes recovered and the percentage of wastes recycled locally; whether the Government has any plan for recycling usable wastes in Hong Kong through the introduction of policy, financial or tax concessions and technical support; if not, the reasons for that?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I wish to thank Mr Vincent FANG for his question. Waste recycling yards in Hong Kong must be operated in compliance with various requirements relating to land use, town planning, environmental protection and fire safety, and so on. My reply to Mr FANG's question is as follows:

- (a) At present, in Hong Kong, there are approximately 200 waste recycling yards for various types of items such as metal, plastics, paper, and electrical and electronic equipment. In the past three years, there were 13 cases of major fires (with No. 3 alarm or above) broken out in waste recycling yards. Out of these 13 cases, eight were found with undetermined cause, two were caused by flying ember caused by hill fire, and the remaining three cases were caused by general electric faults, flying ember caused by waste burning, and careless handling of lighted materials. After the outbreak of fire, the Fire Service Department (FSD) will conduct inspection at the relevant recycling yard for any contraventions under the Fire Services Ordinance (Cap. 95) and the Dangerous Goods Ordinance (Cap. 295). In two of the 13 cases mentioned above, the FSD has initiated prosecution actions under the Dangerous Goods Ordinance.

Currently many recycling yards are operating on private land or on Government land under a short term tenancy (STT). In response to the fire incidents occurred at recycling yards, starting from February 2011, the Lands Department (LandsD) will remind applicants of STTs or Short Term Waivers (STWs) after the approval of the such instruments that they should install fire service installations in accordance with the FSD's requirements. Should the applicants fail to install the fire service installations in accordance with the FSD's requirements in a timely manner, the FSD may inform the LandsD of the situation or recommend that the LandsD terminates the relevant STT or STW.

- (b) Regarding land use, the location of recycling yards is subject to the relevant requirements under the Town Planning Ordinance (Cap. 131). Taking into account the actual circumstances, the LandsD may also consult relevant departments including the FSD to see if it is necessary to include any conditions on land use restrictions in the STT (for cases involving Government land) or the STW (for cases involving private land).

In addition, all recycling yard operators must comply with the relevant regulations relating to fire safety, waste disposal and pollution control. Waste recycling yards will also be subject to the relevant control should their operation involve the handling of some specific types of wastes such as livestock waste, chemical waste, construction waste and clinical waste.

- (c) In the past few years, the Government has implemented a number of new policies and initiatives to promote waste recycling. Under the Product Eco-Responsibility Ordinance which was enacted in 2008, we have implemented the environmental levy scheme on plastic shopping bags and are planning for a mandatory producer responsibility scheme (PRS) on waste electrical and electronic equipment (WEEE). This PRS will enhance the recycling and recovery of WEEE. At the same time, we have proposed new licensing requirements for the storage and treatment of used and waste electrical and electronic products. On the other hand, the Government will continue to promote the various voluntary PRSs to

enhance the recycling of computer, compact fluorescent lamps, fluorescent tubes, rechargeable batteries and glass in conjunction with the relevant trades.

The development of the EcoPark is another important initiative to promote the local recycling industry. It aims to provide long-term land and associated communal facilities at affordable rent to encourage investment by the environmental industry for the treatment of locally generated recyclables. EcoPark Phase 1 has been in operation, whereas all six lots in Phase 2 have been leased. Together with the two recycling centres run by non-profit organizations, there are in total 14 tenants in the EcoPark for such recyclables as waste wood, waste cooking oil, WEEE, waste plastics, waste metals, waste batteries, waste rubber tyres and waste construction materials. We have also earmarked land in EcoPark Phase 2 for the development of the WEEE treatment plant required under the PRS on WEEE.

With the support of the Environment and Conservation Fund (ECF), we have launched a series of community-based waste recovery projects including the two afore-mentioned recycling centres at the EcoPark which handle waste plastics and WEEE respectively. Through the source separation programmes supported by the ECF, residential and commercial and industrial buildings receive financial assistance to procure and install waste separation facilities. Together with the three-coloured waste separation bins installed by the Government at public places, we encourage members of the public to practise source separation of waste at home, at workplace and in public areas. In addition, the Funding Scheme for Food Waste Recycling in Housing Estates has been rolled out under the ECF to subsidize the installation of on-site food waste treatment facilities at participating housing estates. Residents are encouraged to recycle food waste for on-site treatment; activities are also organized for the purpose of public education and publicity among the residents.

With the above policies and initiatives, we have achieved a 52% municipal solid waste recovery rate in 2010, up from 43% in 2005. Our target is to further enhance our recycling initiatives to achieve a recovery rate of 55% in 2015. The Government will continue to engage relevant stakeholders and the District Councils to further enhance waste reduction and recycling and to provide convenient channels for the collection of recyclables.

Among the major recyclables such as waste paper and waste plastics, many have recorded an increased recycling amount in the past three years. The amount of the three major types of recyclables being recycled and disposed of is set out in the Annex. The majority of these recyclables is exported to neighbouring jurisdictions, such as the Mainland, Taiwan, Japan, Korea, the Philippines, Thailand and Vietnam, for recovery or reuse.

Annex

2008-2010 Statistics on the Three Major Recyclables:
Amount Recycled and Disposed

	<i>Paper</i>		<i>Plastics</i>		<i>Metals</i>	
	<i>Recycled (Thousand Tones)</i>	<i>Disposed (Thousand Tones)</i>	<i>Recycled (Thousand Tones)</i>	<i>Disposed (Thousand Tones)</i>	<i>Recycled (Thousand Tones)</i>	<i>Disposed (Thousand Tones)</i>
2008	1 091	803	1 021	623	933	80
2009	1 027	753	1 208	622	834	62
2010	1 195	731	1 573	708	717	64

MR VINCENT FANG (in Cantonese): *The long-term plan which the Secretary has in mind is to treat waste materials in Hong Kong locally. This is an idea which I fully agree. It is because of this that when the Secretary said that he hoped to solve the problem of waste by building incinerators, I gave him my full support. However, when considering the building of incinerators, have the authorities ever thought that if toxic substances are found in the waste materials,*

should they be extracted first before they are incinerated? For if not, the practice of burning waste materials direct does not differ very much from recycling yards in the New Territories burning the waste materials. Will the Secretary add such matching facilities?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I wish to thank Mr Vincent FANG for his supplementary question. First, regardless of the existing ways of treatment or those modern treatment methods to be introduced, as Mr Vincent FANG has said in his supplementary question, source separation — that is, extracting all materials which are useful — is essential and it should be done on a greater scale. I have also said in the main reply that our recovery rate has increased greatly in recent years. I hope to achieve a recovery rate of 55%.

With respect to the situation mentioned by Mr FANG, I would say that when certain waste materials come to the final treatment stage, we hope to extract some useful materials from them, or remove some toxic materials as mentioned by Mr FANG. So now if there are toxic substances in the waste materials, such as chemicals and clinical waste, we would treat them in some other ways and we would not dispose of them in the landfills. This approach will continue to be taken in future. The modern facilities we will have will include this separation work before incineration and we hope that work in this aspect can be improved.

MR CHAN HAK-KAN (in Cantonese): *President, I am especially concerned about the recycling yards for WEEE. This is because such recyclables have a lot of heavy metals and, leaving aside the case of fire, when these materials are burnt, these substances will run into the soil or underground water. Even in the case of rain, these heavy metals and toxic substances will be carried into the soil and underground water. May I ask the Government whether inspections are carried out on these recycling yards on a regular basis to see if the soil and rivers are polluted by heavy metals?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I wish to thank Mr CHAN for his supplementary question. As I have said in the main reply, apart from being regulated by the Fire Services Ordinance, these recycling

yards are also subject to the regulation of environmental protection laws. The ambit covers noise pollution, air pollution and also the treatment of pollutants as mentioned by Mr CHAN earlier. Besides legislative control, the Environmental Protection Department (EDP) has inspected soil samples collected from these areas in the past. The scope of such tests includes the presence of heavy metals and brominated flame retardants. Findings show that in the vicinity of these yards, nothing is found which would pose health hazards to people.

MS MIRIAM LAU (in Cantonese): *President, Hong Kong produces as many as 70 000 tonnes of WEEE each year. Under the PRS, only 30 000 tonnes can be treated in the treatment plant, so in other words, 40 000 tonnes of WEEE can only be placed in places like the recycling yards in the New Territories. Part (c) of the main reply mentions that the Government has proposed new licensing requirements for the storage and treatment of used and waste electrical and electronic products. Can the Secretary tell us, apart from the treatment plant which will certainly have to be licensed, what is the licensing policy with respect to other venues? Can the Secretary brief us on that and what is the timetable for it?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, I wish to thank Ms Miriam LAU for her supplementary question. In the meeting of the Panel on Environmental Affairs held just a few days ago, that is, last Monday, we informed Members of our preliminary plan concerning WEEE. The Government will finance the building of the terminal treatment plant, and as I have said in the main reply, we will introduce a licensing regime. We hope that a licensing regime can be set up for the recycling, storage and treatment of WEEE. This will enable us to comply with the relevant requirements in the regulation of the import and export of WEEE.

As to Ms Miriam LAU's point about the waste treatment capacity of the government treatment plant being set at 30 000 tonnes, that capacity was set with consideration of the expected demand and our hope that the recycling and treatment activities of the trade concerned can be preserved instead of having all such activities undertaken by the Government. So of the 70 000 tonnes of

WEEE, according to our design, we will treat about 30 000 tonnes and the rest will be treated by participants of the relevant scheme.

We hope that a licensing regime can be imposed on enterprises which join in the recycling, storage and treatment of WEEE. And, as Mr Vincent FANG has mentioned, this will also help us add those requirements and stipulations from fire services or other environmental protection laws to the terms and conditions of licensing so that these enterprises can operate and effect better management. After obtaining the approval of the Panel last Monday, we would start work in law drafting and the relevant bill and licensing system will be submitted to the Legislative Council for deliberation.

MS AUDREY EU (in Cantonese): *President, the Secretary has just mentioned that last Monday he had explained to the Legislative Council Panel on Environmental Affairs the PRS regarding WEEE. Now the authorities have proposed that a levy be collected at both the levels of consumers and retail outlets. And the retail merchants will be responsible for the recovery of old electronic equipment. May I ask the Secretary whether consideration should be given to requiring producers to bear part of the responsibility? This is especially the case as the Secretary has just said that he would consider imposing import and export control, and Mr Vincent FANG has also mentioned that certain electronic products are toxic. So may I ask the Secretary, with respect to the PRS, whether consideration will be given to collecting a levy from certain producers or upon the import or export of these products? An example is the imposition of a levy on toxic products or products with non-environmentally-friendly materials. Should this be included in the scheme for WEEE?*

SECRETARY FOR THE ENVIRONMENT (in Cantonese): I wish to thank Ms Audrey EU for her supplementary question. First of all, we have clarified the meaning of "producer" in the meeting of the Panel on Environmental Affairs last Monday. Under the PRS, the so-called "producer" actually refers to the producer of pollution. Of course, we have also heard some Members say that the initial manufacturer or producer of these WEEE should also be included in the levy scheme. As Hong Kong is a city of consumer goods and we do not have

such producers, there would be practical difficulties if we were to collect this levy from factories or producers overseas.

Having said that, the principle under the PRS is that the responsibility should be shared by a number of parties. This is something we would agree. As we explained in the meeting, there are three parties involved. Besides the consumers, there is also the party which sells the products. In this respect, we have accepted the views put forward by Ms Audrey EU. This party which sells the products includes not only the retailers but also importers and wholesalers. They too have to bear some responsibility. However, such a responsibility is an actual responsibility and one cannot shirk it simply by paying money. They may have to recycle such products according to ways stipulated by the laws and without charging any fees. We hope this can be done.

As for Members' concern about waste which is toxic or for which special treatment is required, we will approach the problem in two ways. First, for toxic waste, and this applies chiefly to chemical waste and heavy metals, now there is a treatment mechanism in place and such treatment can be undertaken by the Tsing Yi Chemical Treatment Centre and the new treatment works to be set up later can also treat such kinds of waste. But on the other hand some Members have said that with respect to separation at source, if some electrical products are found to contain toxic substances, then can these be eliminated at the design or manufacture stages? There are such practices in the international community. We hope that when these happen, something can be done through co-operation of the parties concerned or adoption of certain practices. This is, for example, like setting such specifications when these products are introduced so as to obviate the need to remove the toxic substances later.

MS EMILY LAU (in Cantonese): *President, the Secretary has mentioned in the main reply that there are about 200 recycling yards in Hong Kong and in response to the fire incidents that occurred at recycling yards, starting from February 2011, the Lands Department (LandsD) will remind applicants of STTs or STWs after the approval of such instruments that they should install fire service installations. Should the applicants fail to install the fire service installations, the FSD may inform the LandsD of the situation or recommend that*

the LandsD terminates the relevant STT or STW. President, I know that most of these 200 waste recycling yards were set up before this February, but it is only in February that the LandsD announced this requirement. If someone makes an application with respect to his land, the abovementioned practice will be adopted. Then are these 200 waste recycling yards set up before that time not required to comply with such fire service requirements? Has the LandsD ever issued any warnings to them? Or have they been informed that they cannot continue with their operation?

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the supplementary question from Ms Emily LAU points out that starting from this February, the LandsD and the FSD have been reminding new applicants because they are concerned about whether fire hazards would increase in these recycling yards. However, even if no reminders are issued, under the existing laws, and as I have pointed out in the main reply, all along such land lots, irrespective of whether they are Government land under a STT or private land granted a STW, they will all have to meet such requirements. Both the FSD and the LandsD have enhanced work in this aspect this year, in the hope that users of such land lots can pay special attention to the relevant requirements. In many of these lots with STT, they will usually have a time limit which is two to three years. When the leases are due for renewal, we will also have a chance to remind the users by imposing new terms and conditions. This kind of work will continue.

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

MS EMILY LAU (in Cantonese): *If the Government has really been doing this kind of work, then there would be no need for it to do it again. My supplementary question is, since work has all along been done by the authorities, just how many warnings are issued? And how many waste recycling yards have seen their operation terminated?*

PRESIDENT (in Cantonese): Ms LAU, this is not the supplementary question you asked earlier.

MS EMILY LAU (in Cantonese): *President, this was the question I asked. Please listen to the tape again.*

PRESIDENT (in Cantonese): I will allow you to raise this question as no other Member is waiting to ask a question. Secretary, please reply.

SECRETARY FOR THE ENVIRONMENT (in Cantonese): President, the information I have at hand shows that after the reminders are issued, we have not found any case which warrants a termination of lease. We also understand that the reason for enhancing work in issuing reminders is the hope that when new terms and conditions are proposed, the land users will pay special attention to requirements in this respect. Moreover, as I have said in the main reply, the FSD will carry out inspections of these places, and especially after the outbreak of a fire. The FSD can also instigate prosecutions under the related laws. There are past examples of successful prosecutions.

PRESIDENT (in Cantonese): We have spent more than 21 minutes on this question. Fourth question.

Government's Replies to Questions Asked by Legislative Council Members

4. **MR PAUL TSE** (in Cantonese): *President, on 4 November 2009, 13 April 2011 and 15 June 2011, I represented the affected general public and travel agents to raise questions to the Government, seeking explanation from it regarding what data and methods the Civil Aviation Department (CAD) uses for calculating, vetting and approving passenger fuel surcharges which are often criticized by the public as "quick in going up but slow in coming down". In addition, I also requested the Government to explain based on what justifications and criteria the CAD approved the applications by Air France and KLM Royal Dutch Airlines for not following the Air Services Agreements (ASAs) signed with the Hong Kong Government to unilaterally reduce to zero the commissions paid*

to travel agents in Hong Kong in respect of air tickets sold. Although the wording of the questions already directly and explicitly requested the authorities to provide the justifications, data and calculating methods for vetting and approving the amounts, the Government ultimately did not provide the information requested in the questions. Some of the passengers and travel agents who had previously relayed their views to me pointed out that the Government's responses were irrelevant and perfunctory. In this connection, will the Government inform this Council:

- (a) whether the Government has assessed if the various Policy Bureaux and government departments were not able to address the concerns raised by the public and the business sector in their replies to the questions raised by Members of this Council in the past, hence making the public feel that the Government had deliberately averted the problems or acted in a perfunctory manner, thereby leading to the stagnant relationship between the executive authorities and the legislature as well as undermining public confidence in the Government's governance; if it has, of the outcome of assessment; if it has not conducted such an assessment, the reasons for that, and whether it can assess right away and study if there is any room for improvement;
- (b) of the policies, measures and codes of practice the Government has in place to ensure that the various Policy Bureaux and government departments will not reply or respond to Members' questions in a perfunctory manner; and
- (c) whether it will instruct the CAD to follow up the aforesaid issues again, so as to respond to the reasonable questions raised by the public, the business sector and Members, as well as providing important data that are of public concern?

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

- (a) and (b)

A good relationship between the executive and the legislature enhances government administration, facilitates implementation of policies and promotes the development of the society. The

Government respects the legislature's role in overseeing its work and reflecting the views of the public, and has actively co-ordinated with the legislature in delivering its duties. In fact, the Government has, through its attendance at the various meetings regularly held at the Legislative Council, including Council meetings, panels, subcommittees and Bills Committees, explained its policies, listened to the views of Members, provided replies to Members' questions and furnished Members with required information. To address the concerns of Members, Policy Bureaux and departments have been handling all the questions raised during Legislative Council meetings seriously and provided the required information. If an official cannot provide the information requested by the Member, the Administration will certainly explain in its reply the reasons for not being able to do so. The Government will not avoid the problems or act in a perfunctory manner.

In addition, all the replies provided by the Government at Legislative Council meetings are open records which are accessible by the general public. This arrangement is highly transparent, which facilitates the public in monitoring the work of the Government.

- (c) With respect to Mr TSE's enquiries about the issues related to the approval of the passenger fuel surcharges and agency commissions, I will now elaborate the relevant principles again.

The air services between Hong Kong and other areas are governed by the bilateral ASAs that Hong Kong has entered into with its aviation partners. The purpose of the ASAs is to promote the development of air services between the respective areas. The ASAs also provide for the principles, policies, regulatory framework and the specific operational arrangements and requirements concerning the provision of air services.

According to ASAs, the tariffs to be charged by the airlines for air services, including the fares charged for the carriage of passengers, the rates charged for the carriage of cargo, the charges and conditions for services ancillary to the carriage, fuel surcharges, and the rate of commission paid to an agent in respect of air tickets sold

for carriage on scheduled air services, shall be those approved by the aeronautical authorities of both Contracting Parties. The ASAs also provide for the aeronautical authorities to approve tariffs at reasonable levels, with due regard to all relevant factors, including the airlines' operating costs and benefits to consumers. Such requirements aim to prevent airlines of either Contracting Party from adopting such practices as dumping and discriminatory or predatory pricing, which would distort normal market operations and affect the provision of air services, to the extent of adversely affecting the interests of passengers. As the aeronautical authority of Hong Kong, the CAD is responsible for the implementation of the measures stipulated in the ASAs to promote healthy competition in the market and protect consumer interests.

The fuel surcharges levied by the airlines are part of the aviation tariffs which allows airlines to partially recover the increase in operating costs due to fluctuations in aviation fuel prices. The CAD considers and approves fuel surcharge applications in accordance with the ASAs. During the period from December 2010 to November 2011, the CAD considered and approved fuel surcharge applications on a monthly basis, of which seven approvals involved upward adjustments to the fuel surcharges, three approvals involved downward adjustments, whereas two approvals maintained the surcharge at the same level. This generally reflected the changes in the fuel prices over the same period.

The commissions paid by airlines to travel agents are also part of the aviation tariffs. The CAD considers and approves applications in accordance with the ASAs. With respect to the applications submitted by Air France and KLM Royal Dutch Airlines in August 2009 to reduce the rate of commission payable to travel agents, the CAD approved the applications in accordance with the requirements stipulated in ASAs. As mentioned earlier, it is the CAD's responsibility to approve the tariffs charged by airlines on a reasonable basis to foster fair competition and protect consumer interests. The commercial arrangements concerning the level of commissions should be negotiated and determined by the airlines and the travel agents in accordance with their commercial

considerations. This is not within the scope of the ASAs. Therefore, the applications of the two airlines in question are not in breach of the respective ASAs.

Regarding Mr TSE's requests to the CAD to provide detailed data used in the approval process of the fuel surcharges, except for those commercially sensitive information, the department in fact announces the results of the latest approved fuel surcharge levels on a monthly basis. It also publishes the results on its webpage for ease of reference of passengers.

MR PAUL TSE (in Cantonese): *President, allow me to make a declaration. I am the person in charge of a travel agency.*

President, I am afraid that the reply of the Secretary today has once again highlighted the crux of the problem. Her reply is actually more or less the same as the previous replies given to the three written questions (on 4 November 2009, 13 April 2011 and 15 June 2011), and she was just repeating over and over again.

We have only requested some very simple data, and we already have not asked the Government why it still allows the airlines to levy fuel surcharges. Despite that many Members eagerly asked questions on this point at the meeting of the Panel on Economic Development on 23 February 2009, including Mr CHIM Pui-chung and Ms Emily LAU who are in the Chamber now, and consistently urged the Government to consider abolishing the fuel surcharge, we are not asking why the fuel surcharges are approved and instead, we are just asking how the surcharges are calculated, what criteria are adopted for their calculation, and under what circumstances an increase of the surcharge will not be approved.

President, the Secretary introduced a new bill on the regulation of the sale of first-hand residential properties just yesterday. A scenario that we have longed for has finally arrived. But in the aviation sector there are still a lot of secrets, and we do not know what exactly has happened. Can the Secretary keep on saying that this involves commercial secrets and cite compliance with the international practice as an excuse to invariably refuse to give us an answer or

tell us what criteria are adopted for calculating the surcharges?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, my reply is consistent with those in the past, because we have all along adopted the same principles for vetting and approving applications having regard to the same factors in our consideration. As I said in reply to the question on commissions earlier, whether in the adjustment of tariffs or adjustment of the fuel surcharges, we always uphold the two major principles in the ASAs, which are firstly, to foster fair competition among the airlines and secondly, to protect consumer interests through fair competition in the long term.

Under these major principles, I believe there is transparency in the process of vetting and approving the adjustment of fuel surcharges, and so on. For instance, as Members may recall, the fuel surcharge used to be adjusted every three months and after detailed discussions in the Legislative Council, the adjustment interval was subsequently revised to two months and now, it is adjusted on a monthly basis. These are done in response to the view of Members who considered that the Government should shorten the vetting and approving time in the light of fluctuations in aviation fuel prices. In fact, we are always glad to explain to the Legislative Council our work objectives and the approach taken by us.

MR CHIM PUI-CHUNG (in Cantonese): *President, the Secretary's reply is a reason why the Government has failed to command public confidence in various aspects.*

My supplementary question is this: Can the Government provide a list of the criteria adopted by it, such as the baseline price per barrel of fuel and setting out the percentage of commission paid by airlines to travel agencies, so that members of the public, being consumers themselves, can understand it, thereby ensuring transparency in the measures taken by the Government. If this can be done, it would be unnecessary for the Secretary to give explanations at length here. So, my supplementary question has hit the nail on the head. Can the Government make public such data for public information?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):

President, as far as I understand it, the percentage of commission paid by airlines to travel agencies may not be sensitive information, because we do see that different percentages are being applied now. In Hong Kong, for example, the current level of commission is around 3%, 5% or 7%. As regards the two airlines mentioned in the main question, the commission has been adjusted to zero.

Why do we have in place such a vetting and approving process? Because commissions are part of the tariffs. As I explained earlier on, the ASAs actually do not regulate the commercial relationships between airlines and travel agencies but the adjustment of commissions will affect the tariffs and may affect consumers, and in respect of the airlines, we must understand that a bilateral relationship is involved, and we hope to maintain fair competition. Whether in respect of the overall objectives or the work procedures, such as the information on fuel surcharges published on a monthly basis, we will enhance transparency by all means. If Members would like to obtain other information, we will certainly respond to their aspiration by all means. Just now Mr CHIM asked what information could not be published openly. Our major consideration is that the airlines have some sensitive information that cannot be made public, such as what prices they are paying for fuel, and in considering and approving their applications, we will certainly assess whether the prices provided by them are of a reasonable level with reference to the market prices. The CAD will perform its gate-keeping role properly.

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

MR CHIM PUI-CHUNG (in Cantonese): *The Secretary has not answered my supplementary question and that is, with regard to making public the approval process for public information, what secrets are there in this process?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in fact, the approval process has incorporated a certain degree of transparency. As I said earlier, the information on fuel surcharges is published

on a monthly basis.

MR PAUL TSE (in Cantonese): *President, if we review the past results of vetting and approval, we will see that they were mainly about how much should be increased for standard long-haul flights and how much should be increased for short-haul flights, rather than approving the increase at a rate requested by the airlines or in response to an increase in the cost. Such being the case, the Secretary's reply is in itself invalid. The Government must have some criteria and the calculating method is actually very simple. Why does it refuse to tell us? President, we have been scrutinizing the competition bill, in which one of the most important targets to be combated is price fixing, and the aviation sector is quite notorious in this regard. The airlines of Hong Kong — they are, of course, not airlines of Hong Kong, as they are only listed in Hong Kong — do have a track record in this regard. What the Government has done now is actually tantamount to acting as an accomplice in price fixing. If things go on like this, how can we allow the Government to enjoy exemptions in respect of its role in the competition law in the future? This, I think, is entirely unacceptable.*

Another point is that not all the airlines levy a fuel surcharge. Emirates, for instance, has never levied a fuel surcharge. Why has the Government allowed the levying of fuel surcharges? Is it mainly because it wants to shield the airlines in Hong Kong and therefore has to conceal the relevant information? If so, we may have to step up efforts to further press the Government to publish the information that it has never published in vetting and approving applications from the airlines, as this is what we all the more wish to know.

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

MR PAUL TSE (in Cantonese): *My supplementary question is this: Secretary, can you you are still unwilling to answer the questions asked by me and Mr CHIM Pui-chung. Can you make public the relevant standard? Or, what criteria are adopted in vetting and approving applications? You must not say repeatedly all the time that you do have criteria or make similar remarks but*

entirely refusing to tell us the actual standard adopted by you.

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, in respect of fuel surcharges, our position has all along been very clear, that airlines are allowed only to partially recover the cost from the fuel surcharges, and no other costs will be factored into calculation. So, when they submit an application, they have to tell us their prevailing fuel cost, and we will also look at the trend of aviation fuel prices before approving their application. I have some information with me which shows that Emirates has recently submitted an application to us for levying a fuel surcharge. Therefore, generally speaking, we have all along adopted the same criteria and the same vetting and approving procedures, and published information on a regular basis. Our practice has been transparent.

MR CHIM PUI-CHUNG (in Cantonese): *President, as no other colleague wishes to further follow up the question, I wish to give the Secretary more opportunities to give explanations. Let me now ask my supplementary question again. With regard to the vetting and approving of applications, can the Government openly publish the detailed information?*

PRESIDENT (in Cantonese): What do you mean by detailed information?

MR CHIM PUI-CHUNG (in Cantonese): *That is, regarding the process of considering and approving fuel surcharge applications from airlines and in other approval processes of the Government or the CAD, can the Government make public the secrets involved? This has to do with the Government's reputation, which is very important. Why? Because as the Legislative Council will deliberate on the competition law, anti-trust legislation, and so on, if the Government has really covered up the details or the approval process for the airlines, how could this be convincing to the public? This is just a small thing, and the Government cannot even do this. What secrets are involved in the process?*

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese):

President, as I said in the main reply, other than some commercially sensitive information, we would be glad to make public the general vetting and approving principles and procedures. Having said that, I hope Members will understand that when an application involves information on costs and if such information involves the commercial agreements signed by airlines with their service providers or fuel suppliers, we have to respect the position of the airlines in keeping such cost-related information confidential, because they are competing with other airlines.

Other than this, I think nothing else would need to be covered up, so to speak, and we definitely will not cover up anything. We will certainly uphold the principle of maintaining a high degree of transparency in our work. Therefore, I would like to appeal to Members here to continuously work with us to this end. Members should understand that it is also the original intention of the ASAs to foster fair competition in the aviation sector for the benefit of consumers.

MR PAUL TSE (in Cantonese): *There is still a little time left and please allow me to ask another follow-up. President, the Secretary has kept on emphasizing the criterion of fostering fair competition but I am afraid this is unfair competition to the detriment of consumers. The vetting and approving of applications should be in the interest of the community as a whole.*

President, from the Secretary's reply earlier on, we can see that the Government is still unwilling to tell us the formula. Certainly, the formula can be worked out according to the movements of oil prices in the market, which will ensure a high degree of transparency and make it impossible for anyone to cover up anything. Besides, speaking of the operational cost of individual airlines, in order to be fair in vetting and approving applications, does the Government really have to help airlines reap a greater profit when they recorded a profit and cut their loss when they suffered a loss? Or, should it follow the standard of ensuring fairness to consumers in the market as a whole? This is actually very simple, President. All the Government has to do is to publish the method of calculation, such as under what circumstances and by using what method the percentage is worked out, and also what benchmarks the Government has used in predicting the trend movements of oil prices. In this respect, the Secretary can provide supplementary information on what benchmarks or criteria are adopted

by the Government to assess the movements of oil prices. I have once again put a supplementary question to the Secretary. Thank you.

PRESIDENT (in Cantonese): Secretary, can the formula be made public?

SECRETARY FOR TRANSPORT AND HOUSING (in Cantonese): President, we do not forecast oil prices, and all the applications are considered and approved on the basis of past statistics. For example, if an approval is to be given for one month, we will consider the trend of oil prices in the past month when approving the application. We do not make a forecast on oil prices.

Moreover, we do not aim to particularly protect any sector. I think we should enable any sector to recover their cost to a certain extent, and the fuel surcharge is an arrangement permitted under the ASAs and also a rather long-standing international practice. We have been observing these bilateral agreements in our work.

PRESIDENT (in Cantonese): Fifth question.

Converting Land Use of Agricultural Land

5. **DR RAYMOND HO** (in Cantonese): *President, shortage of land is one of the reasons for high property prices in Hong Kong. In this connection, will the Government inform this Council:*

- (a) given that at present quite a number of pieces of agricultural land have been abandoned or converted to other uses, what strategies the Government has to ensure that precious land resources can be put to more effective use in the face of the fact that some agricultural land has been converted to non-agricultural uses;*
- (b) of the total area of agricultural land in Hong Kong at present and the percentage of that land area in the total land area of Hong Kong; and*
- (c) of the total number of applications received by the Town Planning*

Board (TPB) in the past five years for converting agricultural land to other land uses; the total area of the agricultural land involved; and regarding those applications which were approved, of the area of agricultural land involved, the approved land uses as well as the total amount of additional land premium payable?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, the Special Administrative Region Government is well aware that a sufficient supply of land for housing development could facilitate the healthy development of the property market. Therefore, we have been stepping up efforts on various fronts to increase residential land supply and vigorously creating a land reserve in accordance with the instruction of the Chief Executive. In addition to expediting the land supply in the Kai Tak Development Area and taking forward in full swing the planning and engineering studies for the new development areas in northern New Territories and the remaining land for development in the Tung Chung New Town, the Chief Executive has announced six innovative measures in this year's Policy Address for expanding our land resources. One of those measures exactly addresses the question raised by Dr Raymond HO today — to explore the possibility of converting into housing land some deserted agricultural land in the New Territories.

My reply to the three-part question raised by Dr HO is follows:

- (a) Although agricultural production is not a major economic activity in Hong Kong, it supplies a considerable amount of quality fresh food and flowers for local consumption. Moreover, an increasing number of people have become holiday farmers to experience the fun of farming and cropping. Therefore, we should not completely scrap agricultural land in the New Territories. As a matter of fact, the retention or rezoning of the "Agriculture" (AGR) Zone is a rather controversial issue. Some consider the retention of the AGR Zone a waste of Hong Kong's precious land resources and a hindrance to economic and social developments. On the other hand, there is a body of opinion that agricultural land not only has high ecological and economic values, but also plays a role in maintaining the rural character of the New Territories. The Government has all along attached importance to development issues. It is also concerned

about environmental changes. On such premises, the Government will conduct timely reviews of land uses in all districts in response to varying circumstances with a view to achieving an optimal use of rural land and striking a balance between environmental conservation and socio-economic development. To effectively release agricultural land for development purposes, the Government's strategy includes identifying and developing new development areas through undertaking thorough planning and engineering studies. This enables housing and related developments to be systematically located together in appropriate areas taking into account feasibility in environmental, transport and infrastructural terms. A case in point is the new development areas in the North East New Territories (that is, Fan Ling North, Kwu Tung North, and Ping Che/Ta Kwu Ling). At present, the areas being planned for development include 224 hectares of land currently zoned AGR.

Another strategy is to make reference to the Review of Rural Land Uses in Northern New Territories completed by the Planning Department (PlanD) in 2001 to systematically preserve high-quality agricultural land for the sustainable development of the local AGR industry, while rezoning some low-quality agricultural land with low ecological value into other land-use zones, such as the "Other Specified Uses" annotated "Rural Use" Zone, to tie in with rural development. For the agricultural land within such a zone, applications could be made to the TPB for a selected range of rural and recreational uses which could improve the environment of the area concerned, preserve the character of the rural area and achieve an effective use of land resources.

- (b) According to a rough estimate of land usage distribution, agricultural land accounts for about 6.1% of the 1 100 sq km of total land area in Hong Kong, that is, about 6 700 hectares. As at October this year, among the 31 385 hectares of land in the New Territories covered by statutory plans (excluding new towns), about 3 292 hectares are zoned AGR.
- (c) Under the Town Planning Ordinance, statutory plan amendment

applications or planning applications may be submitted to the TPB for changing land use. From January 2007 to October this year, the TPB received a total of 49 applications for converting land involving AGR Zone to other land uses, six of which were approved by the TPB, involving about 6.8 hectares of land. Among those approved applications for change of land use, three cases were for residential development, two cases for institution and community use and one case for resort hotel use.

During the same period, the TPB also processed 716 planning applications involving land zoned AGR, out of which 368 were approved by the TPB (including 255 cases with approval for permanent use and 113 cases with approval for temporary use). Among the applications for review, eight cases were approved by the TPB (including three cases with approval for permanent use and five cases with approval for temporary use). The majority of the above 258 applications with approval for permanent use were for New Territories exempted houses development, involving about 7 hectares of land, whereas a few were for uses of warehouse/open storage, public utilities installation and public carpark/vehicle repair workshop. Information relating to statutory plan amendment applications or planning applications is uploaded to the Statutory Planning Portal of the TPB for public inspection.

After receiving Dr HO's question and the aforesaid information provided by the PlanD, the Lands Department (LandsD) searched its records over the past few days but did not find any information about premium payment relating to the aforesaid 264 approved cases of changing the use of agricultural land. The main reason is that the vast majority of the cases approved by the TPB were for small house development, most of which may involve construction of small houses by indigenous New Territories residents on their own private agricultural land using building licences where premium payment is generally not required. As for the remaining small number of cases, two cases, one involving lease modification and the other involving land exchange, are currently being processed by the LandsD but have not yet reached the premium assessment stage.

Generally speaking, an applicant with permission granted by the TPB for change of land use will not submit lease modification or land exchange application to the LandsD immediately upon or shortly after approval. This is because the applicant may not be ready to implement the approved new uses, may not have fully met the conditions of approval set out by the TPB, or is still carrying out land acquisition/merger or title unification, and so on.

DR RAYMOND HO (in Cantonese): *President, there must be sufficient housing land supply and a land reserve in order to stabilize the property market. However, the Government did not play an active role in this regard in the past. In this connection, the Secretary has introduced a number of new policies in recent years. For instance, a funding application of \$300 million has been made for purposes of identifying possible reclamation sites beyond the Victoria Harbour and reclamation will be implemented after public consultation. Rock cavern development is another option in increasing land supply with a view to reprovisioning public facilities such as water treatment works, sewage treatment works or refuse transfer stations, thereby releasing such sites for housing. Although these are relatively proactive initiatives, it may take a longer time or even more than a decade to produce land.*

There are about 6 700 hectares of agricultural land in the New Territories, accounting for about 6.1% of the total land area of the territory. A lot of such agricultural land is being used for storage of old tyres, dilapidated cars, containers or construction materials. May I ask the Secretary whether partnership between the people and the Government can be enhanced in respect of such a large expanse of land so that it can be converted into useful land through a policy on agricultural land, thereby increasing the land supply and stabilizing the property market instead of leaving the land deserted?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as I have pointed out in the main reply, we are now working in the direction as mentioned by Dr HO. The Chief Executive has pointed out in this year's Policy Address that in respect of increasing land supply, six innovative measures will be implemented in addition to the traditional way of opening up new development areas. One of these measures is to carry out study and planning afresh on some

agricultural land which is deserted or currently used for open storage or simple industrial purpose. Therefore, our approach is no different from the proposal mentioned by Dr HO just now. However, I have to point out the difficulty involved in the process and the time required will also be very long. This is because it will take quite a long time to complete the whole process of planning, studying and public engagement if land acquisition and clearance are involved before land can be released for housing development. Nevertheless, the development direction advocated by us is the same as Dr HO's view.

PROF PATRICK LAU (in Cantonese): *President, I would like to ask a follow-up question. The Secretary said that agricultural land being used for temporary storage of containers or as warehouses or open storage space for tyres and vehicles will be subject to re-examination and re-planning. This is certainly a good thing. However, it is also necessary to set aside some land in Hong Kong for the aforesaid storage purposes. May I ask the Secretary what policy the Government has to ensure that there will be a continuous supply of land for such temporary uses? This is because the TPB will face a dilemma whenever applications for extending the aforesaid temporary uses are received. Therefore, may I ask the Secretary whether planning has been made so that a balance can be struck in respect of operations on land in Hong Kong?*

SECRETARY FOR DEVELOPMENT (in Cantonese): As pointed out by Prof LAU, balance is a very important factor in land planning because land resources in Hong Kong have to meet various needs. Nevertheless, Prof LAU may rest assured because, as I have pointed out in the main reply, about 3 292 hectares of land are zoned AGR in the Outline Zoning Plan. The Chief Executive has proposed in this year's Policy Address that the Government will explore the possibility of converting into housing land some 150 hectares of agricultural land which is deserted. Therefore, there is still much land for open storage purpose which is part of our economic activities, although we have to deal with the issue in a more focused manner. As for some agricultural land which is being used for open storage purpose, we may have to change the land use of such land by converting it into other uses if we consider it suitable for housing development. Overall, corresponding arrangements will be made in land planning.

DR RAYMOND HO (in Cantonese): *President, I understand that the Secretary*

has conducted an in-depth study of the development of the New Territories and tried to identify agricultural land which has been deserted or put into other uses. May I ask the Secretary, among the 6 700 hectares of land mentioned just now, the area of land which has been deserted or put to other uses as well as the percentage of that land area in the total land area of Hong Kong? Has the Government identified lands on which such a situation has occurred? Have the authorities formulated any policy on the handling of each piece of such relatively useful land or land of larger area by negotiating with the local residents or through consultations, with a view to positively, proactively and genuinely developing such lands in a harmonious partnership between the people and the Government, as I said earlier?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, given the large expanse of the land, I am afraid that there is no such data as requested by Dr HO in relation to the 6 700-odd hectares of agricultural land, which is based on a rough estimate of land usage distribution as I mentioned earlier. However, among the 3 000-odd hectares of agricultural land which is in the process of planning, the PlanD has confirmed that the 150 hectares of land I mentioned just now are currently used for simple industrial purposes or temporary storage, or deserted. They are generally located in four main districts. In fact, I should say that they are four pieces of lands of a vast area located at Kwu Tung South, Yuen Long South, Fan Ling/Sheung Shui and Kong Nga Po. We will kick-start a study on this in the next phase.

I notice that Dr HO, in his two follow-up questions, has asked how best a partnership can be achieved between the people and the Government in the planning and follow-up aspects. This is really a hard test of our wisdom in administration as many people are worried that in the process of planning, we may give excessive accommodation or convenience to development projects of developers who are holding a large amount of land in the New Territories. So, I have to add a footnote here: this is a very controversial and sensitive issue. But we will certainly discuss the issue with the Legislative Council and give an account when launching a study on the new development areas in the next phase in future.

PROF PATRICK LAU (in Cantonese): *President, in her reply just now, the*

Secretary mentioned that agricultural land planned for development might be converted into residential use. In our opinion, this is a direction which is worth consideration. As for the land mentioned by the Secretary just now, some may involve the opening up of the Frontier Closed Area (FCA). In this regard, may I ask the Secretary whether, among the lands she has mentioned, most of them are located within the FCA? What is the amount of land located within the FCA? What is the progress of opening up the FCA to release land for development?

SECRETARY FOR DEVELOPMENT (in Cantonese): President, as the area of the FCA has been dwindling, we can see that the PlanD has put in enormous efforts and the public have been actively participating in the consultation exercise in the past couple of years. At the present stage, the PlanD has prepared five Development Permission Area Plans corresponding to the opening up schedule of the FCA, with the Outline Zoning Plan to be prepared in the next phase. However, in the whole process of deciding the land uses in the opened up FCA, the views collected after a series of public discussions and consultations have in general held that instead of carrying out high-intensity development immediately, only proportionate commercial development or recreational and leisure facilities of a limited scale will be suitable for some appropriate and developed land within the FCA, such as Man Kam To. Therefore, the 150 hectares of identified land I mentioned just now is not located within the FCA as infrastructure and other complementary facilities are the prerequisites for converting the land into residential uses.

DR RAYMOND HO (in Cantonese): *President, I wonder whether the Secretary has the intention to formulate policies for improving the partnership between the people in the New Territories and the Government. However, in her reply, the Secretary mentioned that high-quality agricultural land would be preserved in an effective manner. May I ask what is the area of such agricultural land?*

SECRETARY FOR DEVELOPMENT (in Cantonese): President, in this regard, we will act in accordance with the professional advice of the Agriculture, Fisheries and Conservation Department (AFCD). As mentioned by Prof Patrick LAU earlier, the TPB will always receive applications for change of land use of

agricultural land or converting agricultural land into small house development. But more often than not, according to professional advice, the land in question is still high-quality agricultural land and should be preserved for agricultural purposes. However, I believe there are still difficulties to overcome if systematic planning is to be conducted given the enormous area of the land as I have mentioned. Whenever the TPB receives such applications, however, it will act in accordance with the professional advice of the AFCD in order to decide whether the land in question is high-quality agricultural land and whether it can be released for non-agricultural development purposes.

PRESIDENT (in Cantonese): Last oral question.

Review of Statutory Minimum Wage Rate and Formulation of Standard Working Hours

6. **MR FREDERICK FUNG** (in Cantonese): *President, will the Government inform this Council:*

- (a) *since the implementation of the statutory minimum wage (SMW) on 1 May this year, whether it has assessed the positive and negative impacts of the implementation of the minimum wage on the basis of the latest statistics and the employment data collected by the Labour Department (LD); if it has, of the outcome; whether there are negative impacts such as waves of closures and layoffs, reduction in junior jobs, worsening of the unemployment situation of the middle-aged and the elderly, as well as "ripple effects", and so on, as warned earlier by some business people and academics who opposed the implementation of the minimum wage; if such an assessment has not been made, of the reasons for that;*
- (b) *given that it has been reported that surveys and interviews conducted by community groups reveal that the negative impacts in part (a) have not been found since the implementation of the minimum wage, and wage rises and increase in junior jobs have instead benefited grass-roots workers, whether the authorities will,*

when conducting the review of the minimum wage rate in the future and the current study on standard working hours, weigh carefully the dissenting views raised by some business people and academics and avoid discussions being led by subjective and biased views, so as to strive to take an objective approach on the basis of evidence in reviewing the minimum wage rate and promoting the implementation of standard working hours; and

- (c) *given that the first SMW rate was set according to the prevailing data at that time, and the economic environment, in particular inflation, has worsened since then, whether the authorities will, in response to the recent social situation and the heavy pressure on the livelihood of the grassroots, review and raise the minimum wage rate as soon as possible and implement it with effect from 1 May next year?*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, my reply to the three parts of the question raised by the Mr Frederick FUNG is set out below:

- (a) The SMW is a new policy in Hong Kong. Its actual impact on society, economy and employment, as well as whether there is any ripple effect, can only be assessed thoroughly through studies and surveys over a longer implementation period.

As reflected by preliminary data, since the implementation of the SMW on 1 May 2011, the potential negative impact of it on the labour market and business sentiment has been largely moderated by the rapid economic growth in the six consecutive quarters since 2010. The overall labour market has largely held stable so far. The latest employment figures (August to October 2011) showed that the seasonally adjusted unemployment rate fell cumulatively by 0.2 percentage points to 3.3%, when compared with the pre-SMW situation (that is, February to April 2011). It also dropped by 0.9 percentage points when compared with the same period last year.

As a result of robust economic performance, the employment

situation of some vulnerable groups witnessed some improvements. Compared to the periods before SMW implementation, the unemployment rate for middle-aged persons aged 40 to 49 fell by 0.7 percentage points to 2.4% in August to October 2011, while the unemployment rate for persons aged 50 to 59 remained at 3.3%. These two rates also decreased by 0.6 percentage points and 0.5 percentage points respectively over the same period last year. For older workers aged 60 or above, the unemployment rate in August to October 2011 was 2.3%, up by 0.3 percentage points and 0.4 percentage points respectively over the pre-SMW period and a year ago.

No obvious waves of business closure or retrenchment have been caused by the implementation of the SMW, owing to the largely favourable macroeconomic environment. According to the latest statistics spanning July to September 2011, 47.9% of the unemployed persons (excluding first-time job seekers and re-entrants into the labour force) were dismissed or laid-off, which was smaller than 54.2% in the pre-SMW period and 53.4% in the same period last year.

Since the implementation of the SMW, the number of private sector vacancies recorded by the LD has stayed at a high level of over 3 000 per working day on average, similar to the pre-SMW situation, reflecting the abundant employment opportunities in the labour market. However, the Hong Kong economy will continue to be affected by the worsening external conditions amidst the trend of a deepening Eurozone debt crisis and the subdued economic growth in the United States. Employers have turned more cautious in staff hiring. The Government will remain vigilant and closely monitor and evaluate the actual impact of the SMW on various fronts.

- (b) Regarding the review of the SMW rate in future, the Minimum Wage Commission (MWC) will study and recommend the next SMW rate by adopting an evidence-based approach. The MWC will take into account empirical data of related researches and surveys, examine the potential impact of the SMW on society, local

economy and employment, and consult stakeholders extensively. This ensures that the SMW rate can be deliberated in a comprehensive, objective and balanced manner.

As regards standard working hours, this is a highly complex issue. We would not underestimate its implications on employers and employees, as well as society and economy at large. Because of this, the Government will need to adopt an independent, objective and unbiased approach and conduct the policy study in a serious manner. We will conduct detailed analysis and assessment of relevant data, including the collection of statistics on the current working hours situation of our labour force in general and of various sectors of Hong Kong, so as to facilitate in-depth analysis. The findings of the study would deepen society's understanding of the topic, promote deliberation and discussion in this respect, and facilitate the building of consensus.

- (c) In recommending the initial SMW rate, inflation was one of the important considerations of the Provisional Minimum Wage Commission (PMWC). The PMWC not only considered the latest prevailing inflation situation but also the inflation forecast. Indeed, the initial SMW rate has brought about substantial improvement to the employment earnings of low-income workers. The latest figures in July to September 2011 showed that the average employment earnings of the lowest decile full-time low-income employees registered a year-on-year hike of 14.2%, or an increase of 6.0% net of inflation, which was much higher than the overall average increase of 8.8%.

When the post-implementation wage distribution data for May to June 2011 become available in the first quarter next year, the MWC will review the SMW rate by conducting comprehensive and prudent studies and analyses based on the wage distribution data and results of other surveys, taking fully into account the views of various stakeholders. According to the Minimum Wage Ordinance, the MWC must recommend the next SMW rate to the Chief Executive in Council no later than mid-November 2012.

MR FREDERICK FUNG (in Cantonese): *President, I would like to raise a*

supplementary question with regard to part (b) of the main reply. Let me begin with a brief account of two news reports today which happen to be relevant to this question. According to the first news report, Café de Coral has indicated that, since the implementation of the minimum wage in May this year, its earnings have retrogressed due to rising staff cost and hence it has planned to increase prices by 3% to 5%. But, after gathering more information, the newspaper has found that wages only account for approximately 3.8% of its 13% major cost increases, or \$120 million out of the \$2.6 billion increase. In other words, Café de Coral has attributed its rising costs entirely to the minimum wage without mentioning rises in food materials and rent. This is the content of one of the news reports. In the other news report, it is said that Fairwood has posted a 5.7% rise in core earnings, amounting to \$50 million or so. According to the report, Fairwood holds a different view on rising costs: the reduction in its earnings is attributed to the 30% rise in the prices of food materials such as pork, beef, chicken, and so on.

Obviously, according to the first news report, Café de Coral has attributed its rising cost entirely to the minimum wage. May I ask the Secretary whether the Government will request the party concerned to make clarifications with regard to this kind of report? Furthermore, what will the Government do on noting this kind of report?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to thank Mr FUNG for his views and supplementary question. We are not in a position to comment on the operation situation of individual enterprises. Neither should the Government express views on their operation. I would like to point out that many people were concerned that the SMW, upon implementation, would further push up inflation. However, our view is that the implementation of the minimum wage will undoubtedly produce a one-off impact on local wages. As shown in the main reply, the wages of the lowest decile employees have registered a year-on-year hike of 14.2%. However, escalating inflationary pressure has become a common global phenomenon. In fact, the local rising inflation over the past several months, caused mainly by rising global food prices and local rents, might cause certain business people to raise prices. President, this is the clarification I would like to make.

MR CHEUNG KWOK-CHE (in Cantonese): *President, all people are entitled*

to earning the minimum wage, and people with disabilities are no exception. President, an assessment mechanism has been put in place for purposes of the minimum wage with regard to people with disabilities. However, the trades and industries have seen that since the implementation of the assessment mechanism, very few people with disabilities have undergone the assessment and very few of them have managed to get the minimum wage after assessment. On the other hand, people with disabilities can enjoy an hourly wage of \$28 if they do not opt for the assessment. Hence, some people with disabilities only express an interest in making an application but no intention to undergo the assessment for the time being. In doing so, the people with disabilities concerned can continue to receive their original wages. In my opinion, this is a loophole. May I ask the Secretary what he will do to tackle this loophole?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): In our opinion, what Mr CHEUNG mentioned in his supplementary question is absolutely not a loophole. If Members still remember it, the background of the assessment mechanism is that, prior to the implementation of the SMW, quite a number of people with disabilities, their family members and the relevant sectors expressed great concern that the minimum wage would affect the job opportunities of people with disabilities. Owing to this concern, we had discussed for two years and convened a number of meetings, including focus group meetings and conferences. We had also made reports to the Legislative Council on several occasions. The existing productivity assessment mechanism seeks precisely to protect the right to choose of people with disabilities to allow them to opt for the assessment to examine if their productivity meets the minimum wage level, thereby protecting their job opportunities.

In fact, after the assessment, some people with disabilities were offered an hourly wage of \$28, and some even higher than that. I know their situation because I have come into contact with them during my visits to different organizations. The right to choose is vested in employees rather than employers, though some people mistakenly believe that employers can compel employees to undergo the assessment. It is very important that employers have no right to compel employees to do so, for the decision rests with the latter.

We can see from the latest figures that as at the end of last month, a total of

142 people with disabilities had undergone the productivity assessment, and most of them were eventually offered higher wages than before. For them, this is some sort of improvement and protection. That said, the right to choose is absolutely vested in them.

The small number of people undergoing the assessment might precisely indicate that our mechanism is running smoothly. Why? This is because the mechanism protects the employment of people with disabilities, and so they do not need to worry and take great pains over the assessment. They can undergo the assessment at any time they like because the right to choose is vested in them.

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

MR CHEUNG KWOK-CHE (in Cantonese): *I would like to point out the loophole that only 142 people have undergone the assessment. Despite the fact that several thousand people have indicated their intention to undergo the assessment, they continue to earn their original wages without attending the assessment. My question is: What will the Secretary do to make people with disabilities undergo the assessment during a period of time after expressing the intention to do so? There is currently no time limit.*

PRESIDENT (in Cantonese): Mr CHEUNG, the Secretary has already answered your question. If you are dissatisfied with the Government's existing policy, please find another occasion to follow it up with the Secretary for a debate.

MR TOMMY CHEUNG (in Cantonese): *President, Mr Frederick FUNG's main question has asked whether employers and trade organizations will publish biased data.*

President, I would like to say a few words about a survey conducted by the Hong Kong Catering Industry Association a year and a half ago on wages in Hong Kong. The findings of the survey reveal that when the hourly wage is set at \$28, 53% of the shops will increase prices, 32% will lay off staff, and about 9.6% (I am talking about 9.6% of the shops being surveyed, not 9.6% of all the

shops in the territory) will wind up their business. In addition, 57% of the shops will reduce working hours and opt for part-time staff, 32% will cut staff benefits, and 11% will resort to other measures.

There are also discrepancies between some figures in the report of this survey and the figures provided by the Census and Statistics Department (C&SD). Calculating on the basis of a minimum hourly wage of \$28, it is pointed out in the report compiled by the Hong Kong Catering Industry Association that the overall wage increase will be 16.6%, while the C&SD has predicted a 2.9% increase. On fast-food shops, the wage increase will be 19.3% according to the survey but 8% according to the C&SD. On Chinese restaurants, the increase will be 15% and 1.5% according to the survey and the C&SD respectively. As for Hong Kong style cafes and non-Chinese restaurants, the increases forecast by the C&SD are 3.9% and 1.6% respectively.

President, why am I citing these figures? Firstly, the "ripple effects" were not taken into consideration when the C&SD made its calculation based on the \$28 hourly wage. However, the "ripple effects" were taken into account in the survey conducted by the Hong Kong Catering Industry Association and food premises were asked to estimate the rates of wage increases should the hourly wage be set at \$28.

Regarding the figures published yesterday by a certain fast-food chain, as mentioned by Mr Frederick FUNG just now, the rate of wage increase published is precisely 20%

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

MR TOMMY CHEUNG (in Cantonese): the 20% wage increase is very close to the figure mentioned in our report.

President, my question for the Secretary is very simple. Given that the Secretary will conduct an annual information collection exercise with the C&SD early next year, I hope the Secretary can inform us of how he will actually conduct the survey to ascertain the impacts of the minimum wage on our trade. Will the impact of the minimum wage on earnings, manpower, remuneration, increases or decreases in training resources, quality of training, and even young

and old employees with low academic qualifications and low wages be studied altogether? Will all these be studied by the Secretary?

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): I would like to thank Mr CHEUNG for his question.

Actually, there was no way for the PMWC to factor the "ripple effects" into calculation due to the absence of comprehensive data at that time. However, this factor has been taken into consideration after the formal establishment of the MWC. Future studies and reviews will definitely take into account the impact of the remuneration ladder, or the "ripple effects" mentioned by Mr CHEUNG.

We understand that the retail and catering industries in particular have numerous ranks and an extremely small disparity in remuneration, and hence "ripple effects" will really be produced. Therefore, we have commissioned a consultancy to undertake a focus study, the result of which will be presented to the MWC in the second quarter of next year.

Certainly, the C&SD will endeavour to make reference to the information mentioned by Mr CHEUNG just now in conducting the Annual Earnings and Hours Survey. We will incorporate what we can by all means to facilitate the MWC in conducting a comprehensive and objective analysis and assessment.

DR LAM TAI-FAI (in Cantonese): *President, I would like to follow up the supplementary question raised by Mr CHEUNG Kwok-che. In fact, the impact of the minimum wage on the employment of people with disabilities has always been a grave concern to me. I am greatly concerned that enacting legislation on minimum wage will do harm to them despite our good intentions. Actually, my concern has already been mirrored in the community and workplaces. I am aware that many people with disabilities and people with intellectual disability, including the son of a friend of mine, have lost their jobs because of the enactment of legislation on minimum wage.*

The Government mentioned today in answering part (a) of the main question raised by Mr Frederick FUNG that the unemployment rate has not been affected after the implementation of the minimum wage as a result of robust economic performance and the largely favourable macroeconomic environment.

However, the Government has made no mention at all of the impact on people with disabilities and people with intellectual disability. Is the Government unconcerned about these people or is the impact so large that the Government does not dare and wish to mention it?

As the global economy continues to fall, Hong Kong cannot stay aloof. I am actually greatly concerned about the employment rate of the coming year, particularly the second half of 2012, as well as the employment rate of people with disabilities

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

DR LAM TAI-FAI (in Cantonese): *my supplementary question is: In the past, there were approximately 40 000 employees with disabilities who aged 15 or above. Since the implementation of the minimum wage, has the Government conducted any survey to ascertain how many people have lost their jobs because of the implementation of the minimum wage policy? I believe the son of my friend is not the only one who has lost his job.*

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to thank Dr LAM for his concern about the employment of people with disabilities. I am very much concerned about the employment of these people, too. However, we do not have specific figures on this because the statistics released by the Government reveal the territory-wide unemployment rates only. We did indeed conduct a survey on people with disabilities in 2007, but no such surveys have been carried out in the past several years. We have begun considering whether more efforts should be made in collecting data on the employment of people with disabilities. But we do not have such data on hand now.

I understand that it has always been hard and not easy at all for people with disabilities to seek employment. An additional hurdle may be erected after the implementation of the minimum wage. Hence, the LD and the Social Welfare Department (SWD) have enhanced employment assistance by all means. For instance, this year's Policy Address has proposed an injection of \$100 million. Later on, I will seek funding from the Finance Committee for an injection of

\$100 million into the "Enhancing Employment of People with Disabilities Through Small Enterprise" project to encourage small enterprises with a \$2 million grant from the SWD for the setting up of businesses with the requirement that not less than 50% of their employees must be people with disabilities.

Furthermore, we will give subsidies to employers who are willing to employ people with disabilities for workplace enhancement and modifications to, for instance, facilitate wheelchair access, purchase large monitors for use by people with serious visual impairment, and so on, and provide an additional bonus of \$500 for follow-up by instructors. All these support measures precisely reflect our hope to make more effort in assisting people with disabilities in seeking employment.

However, we do not have on hand the data requested by the Honourable Member just now, and we have to make an effort to acquire them.

DR LAM TAI-FAI (in Cantonese): *President, how can the right remedies be prescribed if the Secretary has no statistics?*

PRESIDENT (in Cantonese): Dr LAM, the Secretary has already answered your question.

MR WONG YUK-MAN (in Cantonese): *President, regarding the review of the minimum wage, when the Minimum Wage Bill was read the Second time, the majority of Members were in favour of an annual review. However, the Government's proposed two-year review cycle was subsequently carried because the majority of Members here were royalists, despite the fact that the majority of Members supported the one-year review in separate voting. Buddy, this is outrageous, for violence is used here sometimes by the majority and sometimes by the minority, right?*

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

MR WONG YUK-MAN (in Cantonese): *..... I am responding asking him*

about part (c) of the main reply.

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

MR WONG YUK-MAN (in Cantonese): *According to the Secretary's reply, the next SMW rate will not be recommended to the Chief Executive in Council until mid-November 2012.*

However, when the Bill was read the Second and Third times, the story told by the Secretary was different. According to the Secretary, two years were just the maximum period, and an annual review was possible. In other words, during the discussion, the Government was merely appeasing us

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

MR WONG YUK-MAN (in Cantonese): *..... when the Secretary wished to pacify us, he said that a review could be conducted every year, not necessarily every two years. He was merely appeasing people. His reply now indicates that this Government, including the Secretary himself, is outrageous. I am now telling him*

PRESIDENT (in Cantonese): Mr WONG, no more comments and your question please.

MR WONG YUK-MAN (in Cantonese): *President, I am not expressing my views. The background must be*

PRESIDENT (in Cantonese): Please raise your question.

MR WONG YUK-MAN (in Cantonese): *I must tell Members the background to*

prove that his reply to part (c) of the question is so unbearable, right? He was merely cheating

PRESIDENT (in Cantonese): Mr WONG, please raise your question immediately.

MR WONG YUK-MAN (in Cantonese): *My question is: Can the timetable be brought forward? He said in the main reply that the time scheduled is mid-November. We hope the timetable can be brought forward. Mr Frederick FUNG's question is very clear: Can the new SMW rate be implemented in May 2012?*

PRESIDENT (in Cantonese): Mr WONG, you have raised your question. Please let the Secretary answer it.

MR WONG YUK-MAN (in Cantonese): *..... it must be raised. The current hourly rate of \$28 is simply not enough*

PRESIDENT (in Cantonese): Mr WONG, please sit down and let the Secretary answer the question.

MR WONG YUK-MAN (in Cantonese): *..... President, excuse me, would you please ask him to answer my question as to whether the timetable can be brought forward?*

PRESIDENT (in Cantonese): Please sit down. Secretary, please.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, there is a clear timetable and schedule for the work of the MWC. Members must be aware that, before obtaining a full picture of the relevant data, the MWC really cannot make recommendations to the Government, for there are practical

difficulties in doing so. What are these data? They are about the Annual Earnings and Hours Survey on the impact on the labour market and economy after the implementation of the minimum wage. The Survey cannot be completed by the C&SD until the first quarter of 2012.

Second, let me respond to the question raised by Mr Tommy CHEUNG just now. The study on the "ripple effects" will soon be published in the second quarter. When the MWC receives the information actually, the MWC has already commenced the preliminary work. As Members are aware, it has begun meeting with many stakeholders, deputations, trade organizations and trade unions one after another. It has absolutely not stopped for a moment in carrying out its work and collecting views. We must use data as our basis. After collecting the data, the MWC will weigh a basket of indicators before making recommendations.

My answer is: The MWC shall make recommendations to the Government not later than mid-November 2012.

MR WONG YUK-MAN (in Cantonese): *President, I have had this experience before. When he mentioned a two-year review cycle, buddy he was lying when he lobbied Members lying!*

PRESIDENT (in Cantonese): Mr WONG, please sit down. Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

Supply of and Demand for Public and Private Residential Units

7. **MS AUDREY EU** (in Chinese): *President, at the meeting of the Panel on Housing of this Council on 7 November this year, the Government indicated that the projected planning target of an average annual supply of 40 000 public and private residential units in the future was derived based on the number of people on the Waiting List (WL) for public rental housing (PRH), the distribution of population growth in Hong Kong, the volume of private residential property transactions over the past 10 years, as well as the data in the final report of the*

"Hong Kong 2030: Planning Vision and Strategy". In this connection, will the Government inform this Council:

- (a) given that the Government is implementing measures to gradually ban the sub-division of flat units (commonly known as "sub-divided units") on the ground of building safety issues, and on the other hand, the Chief Executive pointed out in this year's Policy Address that, such "sub-divided units" at the same time provide accommodation for low-income people not eligible for public housing, and there have also been comments that "sub-divided units" are one of the indicators which reflect the potential housing demand in Hong Kong, whether the current methods for projecting housing demand have taken into account such potential housing demand; if so, based on what data the Government made its projection; if not, the reasons for that;*
- (b) of number of "sub-divided units" in Hong Kong according to the existing statistics compiled by the Government, with a breakdown by the size of households living in "sub-divided units", average monthly income and occupation; and*
- (c) whether the data based on which the Government made the aforesaid housing supply projection have covered the various types of potential housing demand in Hong Kong; if not, whether the Government will review afresh the current methods adopted for projecting the housing demand in the light of the potential housing demand in Hong Kong, and adjust the projected future supply of public and private residential units based on the outcome of the review?*

SECRETARY FOR TRANSPORT AND HOUSING (in Chinese): President, the Government and the Housing Authority's objective is to provide PRH to low-income families who cannot afford private rental accommodation, with the target of maintaining the average waiting time of general WL applicants at around three years. After consulting the relevant Policy Bureau, our consolidated reply to the three-part question is as follows:

- (a) and (c)

Housing demand includes demand for public housing and private housing.

Public housing demand is affected by a basket of factors, including population growth, rate of household formation, and so on. On population growth and household formation, we adopt the population projection and household formation projections of the Census and Statistics Department (C&SD) which cover households and population living in different types of housing in Hong Kong. Moreover, we make use of the income distribution of tenant households in private sector, based on findings from the General Household Survey conducted by the C&SD, to project the number of households satisfying the WL income limit for PRH, which also cover households living in various kinds of premises in private market. Together with other relevant factors, including redevelopment programmes, number of applications on the WL, number of PRH flats being recovered, and so on, a projection would be made on the total and average number of new PRH units required in the coming few years, under the overarching principle of maintaining the average waiting time for general WL applicants at around three years.

On the demand for housing in the private market, our experience is that the hard figures estimated by any model could not accurately quantify demand, especially as the demand in the private residential market may be affected by many factors, including changes in socio-economic environment, such as market sentiment, liquidity and interest rate, and so on. It is very likely that any estimation would be very different from the actual situation.

Notwithstanding the above, our aim is to ensure an annual supply of land for an average of about 40 000 residential units of various types, including about 20 000 private residential units, 15 000 PRH units and 5 000 New Home Ownership Scheme flats. Even when demand for land declines, land development will continue. The newly developed land will be kept in the Government's land reserve and made available when appropriate. By doing so, we will be able

to supply sufficient land when demand rises.

- (b) As regards the statistics requested in respect of "sub-divided units", the Government does not have detailed figures on the number of "sub-divided units" and occupants living therein.

The objective of the Buildings Department's enforcement action against "sub-divided units" is to ensure that such units will not pose building safety problems. The Government understands that "sub-divided units" provide accommodation for some low-income people and therefore would not ban "sub-divided units" across the board. The relevant government departments will also ensure that no households will be rendered homeless as a result of government action through the provision of appropriate assistance to those in need, which includes Social Welfare Department to consider referring such cases to the Housing Department for Compassionate Rehousing according to the individual merits of each case.

Housing Assistance for Female Victims of Abuse

8. **MR LEE WING-TAT** (in Chinese): *President, regarding the housing needs of female victims of abuse in the territory, will the Government inform this Council:*

- (a) *of the numbers of female victims of abuse seeking assistance from the Social Welfare Department (SWD) in each of the past five years; among them, of the respective numbers of those originally residing in public rental housing (PRH) units and private flats, as well as the respective numbers of new arrival women or ethnic minority women;*
- (b) *whether it knows, among the female victims of abuse in part (a), how many of them petitioned for divorce each year, and among them, of the number of those who sought housing assistance from the SWD, and whether the SWD has provided them with information leaflets on the Conditional Tenancy (CT) Scheme or Compassionate Rehousing (CR) Scheme offered by the Housing Department (HD); how many women moved into PRH units under the CR Scheme or CT Scheme upon the recommendation of the SWD each year; how many women*

were not recommended by the SWD and of the reasons for that; among the women recommended for the CT Scheme, of the respective numbers of domestic violence victims who belonged to the categories of bringing along minor children, having no offspring and bringing along no dependant children when leaving their matrimonial home; among the women in the aforesaid categories, how many of them were offered CT and what the average waiting time was; how many of them were not offered CT and of the reasons for that (and provide the respective figures of new arrival women and ethnic minority women);

- (c) among the cases in part (b) in which CTs were offered, of the number of cases in which a CT was successfully converted into a normal tenancy each year to date; and the number of cases in which conversion into normal tenancy is successful because of recommendation by the SWD on other compassionate rehousing grounds; how many applications for conversion into normal tenancy had been turned down and of the reasons for that (and provide the respective figures of new arrival women and ethnic minority women);
- (d) of the criteria considered by the SWD in deciding whether or not an application for the CR or CT Scheme should be recommended, and the difference between the two sets of criteria (for example, whether there are different requirements on years of residence in Hong Kong); of the guidelines or criteria adopted by the SWD in considering social and medical factors; whether mental stress and the risk of being abused will be taken into account in considering the medical factors of the applicant; whether such guidelines and criteria will be reviewed;
- (e) in considering an application for the CR or CT Scheme, whether the living environment of the applicant at the time will be taken into account; if so, what objective criteria have to be met to satisfy the conditions of "having genuine housing needs" and "in grave need of assistance" for recommendation for CR or CT, whether the applicants have to sleep on the street to become eligible; whether the SWD will review those criteria;
- (f) in providing assistance to female victims of abuse seeking help, of

the time generally taken by the SWD to decide if their applications for CR or CT should be recommended to the HD; and how it will notify help-seekers of its decision on making recommendation or otherwise and the justifications, as well as the decision of the HD and the justifications; and

- (g) *of the respective quotas of PRH units for the CR and CT Schemes in each of the past five years, and the allocation of such quotas; among them, of the respective numbers allocated to female victims of abuse, elderly persons, persons with disabilities and other persons; and whether such quotas will be reviewed?*

SECRETARY FOR LABOUR AND WELFARE (in Chinese): President, our reply to Mr LEE Wing-tat's question is as follows:

- (a) The numbers of new spouse/cohabitant battering cases handled by the Family and Child Protective Services Units of the SWD in the past five years are set out below:

<i>Year</i>	<i>2006- 2007</i>	<i>2007- 2008</i>	<i>2008- 2009</i>	<i>2009- 2010</i>	<i>2010- 2011</i>
Number of cases	2 578	2 555	2 447	2 279	2 340

The SWD does not have any statistical breakdown on the gender, living conditions, years of residence in Hong Kong and ethnicity of the abused persons of the cases concerned.

- (b) CR is a form of housing assistance which aims at providing assistance for individuals and families who have genuine and imminent long-term housing needs which, however, cannot be resolved by themselves. Under CR, the CT Scheme provides housing assistance to those who are assuming custody of children and in need of accommodation while awaiting the Court decision on their divorce applications. The CT Scheme also covers victims of domestic violence who do not assume custody of children but have petitioned for divorce.

The SWD does not have any breakdown on the marital status and

housing assistance application for the spouse/cohabitant battering cases listed in part (a) above. In handling cases involving domestic violence, the SWD will, having regard to the circumstances of individual cases, provide the victims in need with information on housing assistance, including leaflets on CR (with information of CT included). The leaflets are also made available at the SWD service units and relevant non-governmental organizations for distribution to those in need. Relevant information can also be found in the SWD's website at <<http://www.swd.gov.hk>>.

The Administration does not have the breakdown as requested in the question. Overall speaking, the numbers of CR cases (including CT cases) recommended by the SWD and received by the HD in the past five years are set out below:

<i>Year</i>	<i>Number of CR cases (including CT cases shown in brackets)</i>
2006-2007	1 851 (510)
2007-2008	1 857 (428)
2008-2009	2 168 (449)
2009-2010	2 727 (501)
2010-2011	2 738 (479)

Generally speaking, in view of the urgent nature of CT applications involving victims of domestic violence as recommended by the SWD, the HD could complete the vetting within seven working days, followed by prompt arrangement of flat allocation.

The numbers of CR (including CT) cases not recommended by the SWD in the past five years are set out below:

<i>Year</i>	<i>Number of CR cases not recommended by the SWD (including CT cases shown in brackets)</i>
2006-2007	55 (2)
2007-2008	43 (1)
2008-2009	25 (1)
2009-2010	36 (4)
2010-2011	54 (5)

The reasons for not recommending CT by the SWD included failure

of the applicants to take any formal action to cancel their ownership of private properties or subsidized home ownership flats; insufficient medical or social grounds to support the applications; applicants having sufficient financial means to meet their housing needs; and the marital situation of the applicants or the custody arrangements of the children could not be verified, and so on.

(c) and (g)

As the HD does not have the required breakdown in part (b) of the question, the HD cannot provide the required breakdown on case numbers in parts (c) and (g) of the question.

(d) and (e)

Generally speaking, CR (including CT) applicants have to meet the eligibility criteria applicable to the Waiting List for PRH, including meeting the Comprehensive Means Test and the Domestic Property Test, as well as compliance with the residence rule. However, the SWD may also exercise discretion based on the merits of individual cases. As mentioned in part (a) of the reply, the targets of the CT Scheme under CR include those who are involved in domestic violence cases and in need of accommodation while awaiting the Court's decision on their divorce applications. In deciding whether there are sufficient grounds for making CR (including CT) recommendation, social workers will make professional assessment on the individual circumstances of each case, including consideration on the medical grounds (for example, physical and mental conditions of the applicants and related supporting documentary proofs) and social grounds (for example, living and family conditions of the applicants and the resources available), and so on. The SWD will review the operation of CR (including CT) from time to time.

(f) Applications for CR (including CT) are processed promptly by social workers upon receipt. Under normal circumstances, if sufficient information and supporting documents are in place, the SWD's recommendation will be made in six weeks for consideration by the HD. The responsible social worker will inform the applicant of the SWD's recommendation in writing. Nevertheless, the processing

time of individual applications may vary according to the circumstances of each case. As for cases not recommended by the SWD, the responsible social worker will inform the applicant of the decision as well as the reasons for not granting recommendation.

Upon receipt of the recommendation from the SWD, the HD will conduct eligibility checking and vetting of these cases. After the completion of these procedures, eligible applicants will be informed by the HD of the allocation arrangements.

In addition, the responsible social workers will arrange abused women with urgent accommodation needs to be admitted to refuge centres for women or assist them in securing private rental housing.

Measures to Improve Competitiveness of Hong Kong

9. **MR ABRAHAM SHEK:** *President, according to The Global Competitiveness Report 2011-2012 of the World Economic Forum (the Report), Hong Kong's position in the overall rankings of the Global Competitiveness Index among 142 countries/economies remains the same (that is, 11th) as that in 2010-2011. In the Report, it is recommended that Hong Kong should continue to seek improvements in higher education and innovation in order to maintain its competitiveness. In this connection, will the Government inform this Council:*

- (a) *whether the Government will further step up its efforts in increasing the participation rate in education so as to improve educational outcomes which can help boost the innovative capacity of Hong Kong; and*
- (b) *given that according to the Report, Hong Kong's innovative capacity remains constrained by the limited availability of scientists and engineers, and Hong Kong ranks 43rd in this regard, what measures the Government has in place at present to foster talents, particularly in the areas of science and engineering; whether it will consider introducing new measures to increase the number of scientists and engineers available in Hong Kong?*

SECRETARY FOR EDUCATION: President, Hong Kong is widely recognized

as one of the most competitive economies in the world. Apart from being ranked 11th in the Report, Hong Kong shares with the United States the first place in the World Competitiveness Yearbook 2011 published by the International Institute for Management Development based in Lausanne, Switzerland in May this year.

- (a) Education is conducive to not only the enhancement of the quality and competitiveness of our population, but also the promotion of social mobility. Post-secondary education plays a particularly important role in nurturing the right people for Hong Kong to develop into a knowledge-based and high value-added economy. The Government attaches importance to the development of post-secondary education. At present, our annual recurrent expenditure on education exceeds \$54 billion, which is more than one fifth of the total recurrent expenditure of the Government, and about a quarter of the recurrent education expenditure is allocated to post-secondary education.

We will continue to adopt a two-pronged strategy of promoting the parallel development of the publicly-funded sector and the self-financing sector. Our objective is to provide young people with quality, diversified and flexible study pathways with multiple entry and exit points, so that they can equip and continue to upgrade themselves and contribute to society.

To meet the future development needs of Hong Kong, we will invest heavily in the publicly-funded sector. Starting from the 2012-2013 academic year, the number of first-year-first-degree places funded by the University Grants Committee (UGC) will be increased to 15 000, while the number of senior year undergraduate intake places will be doubled by phases to 4 000. Taking into account the increase in undergraduates after the implementation of the New Academic Structure, we expect that the number of undergraduates in publicly-funded institutions will surge by about 40% by 2016. By the 2014-2015 academic year, the annual recurrent grants for UGC-funded institutions will increase by \$3 billion to about \$14 billion.

The Government encourages the development of the self-financing

post-secondary sector through a series of support measures, including granting land at nominal premium and providing start-up loans, quality enhancement grants and accreditation grants. We have also expanded the student financial assistance schemes so that students pursuing locally accredited self-financing post-secondary programmes are eligible for means-tested grants and loans, as well as non-means-tested loans, on largely the same basis as students of publicly-funded programmes.

We estimate that by 2015, over one third of the relevant age cohort will have the opportunity to pursue degree-level education. Including sub-degree places, over two thirds of our young people in the relevant age group will have access to post-secondary education.

- (b) The Government has spared no efforts in nurturing local technology and engineering talent. In the 2010-2011 academic year, around 27 000 students were enrolled in UGC-funded programmes in science, engineering and technology disciplines, representing about 36% of the total enrolment. In the 2009-2010 to 2011-2012 triennium, the Government also provided 800 additional research postgraduate places. This demonstrates our strong commitment to nurturing talent for innovation activities.

To encourage more university graduates to pursue a career in the science and technology field, the Government launched the Innovation and Technology Scholarship Award Scheme earlier this year. The scheme gives recognition to high-achieving science undergraduates from local universities. Under this scheme, undergraduates will be awarded scholarships to participate in overseas attachment, internship and mentorship programmes. We hope to nurture more future leaders in scientific research through this scheme.

Equally important is to attract research talent from outside Hong Kong. In 2009, the Research Grants Council launched the Hong Kong PhD Fellowship Scheme to attract the best and brightest students from around the world to pursue PhD studies in Hong Kong. A total of 4 024 applications from 103 countries/regions were received for the 2011-2012 academic year, and 118 elite candidates from 17 countries/regions were eventually offered PhD

fellowships in Hong Kong.

At the primary and secondary levels, we have been actively pursuing curriculum reform and seek to promote scientific thinking, investigative skills and problem solving abilities through the curriculum. We seek to nurture students with a proactive attitude and positive values, and encourage them to participate in local and international science and technology competitions, so as to promote students' interest in science and technology and broaden their horizons. We also provide advanced training for outstanding students in science or technology so as to maximize their potential.

The Government is committed to arousing interest in innovation and technology in the community, particularly among young people, and deepening their understanding in this area. Apart from the annual flagship event — InnoTech Month, the Government also supports various science competitions and promotes a vibrant innovation and technology culture in the community through our public education programme.

We note that the indicator of availability of scientists and engineers in the Report is based on an executive opinion survey conducted by the World Economic Forum rather than hard data. Hong Kong's score in this indicator is comparable to some developed economies (such as Germany, Italy and Australia).

Verification of Voter Registration Particulars

10. **MR ALBERT HO** (in Chinese): *President, it has been reported that in respect of the 2011 District Council (DC) Election completed not long ago, a large number of poll cards mailed by the Registration and Electoral Office (REO) were undeliverable, indicating that the registered residential addresses of the electors might be incorrect. Moreover, under section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), it is a corrupt conduct for any person to vote at an election after having given materially false or misleading information to an electoral officer. In this connection, will the Government inform this Council:*

(a) *with regard to the 2007 DC Election, the 2008 Legislative Council*

Election and the 2011 DC Election, of the respective numbers and percentages of poll cards mailed to registered electors which were undeliverable;

- (b) whether it has looked into the reasons why the poll cards in part (a) were undeliverable; if it has, of the details and follow-up actions taken; if not, the reasons for that;*
- (c) after the elections in 2007 and 2008, whether it had further verified the particulars of the electors concerned with regard to the undeliverable poll cards; if it had, of the number of electors who were verified to have given information that was materially false or misleading; if not, the reasons for that;*
- (d) of the numbers of members of the public who were prosecuted in each year since 2007 for having given voter registration particulars which were materially false or misleading and then voted at an election; among them the respective numbers of convicted persons and the penalties imposed;*
- (e) what procedures it has currently put in place during the process starting from voter registration to the official voting for verifying that the electors' particulars are correct; of the procedures that the authorities will follow and the time required in average to omit from the final register the electors whose registered residential addresses are incorrect; whether Hong Kong permanent residents residing on the Mainland on a long-term basis and do not have any local residential address are eligible to be registered as electors; and*
- (f) whether it has conducted a review on and considered improvements to the existing voter registration system, so as to ensure that the registered particulars of members of the public are correct; if it has, of the details; if not, the reasons for that?*

Chinese): President,

- (a) For the 2007 DC Election, the 2008 Legislative Council Election and the 2011 DC Election, the number and percentage of the poll cards and notices of uncontested election mailed to registered electors, which were returned to the REO are as follows:

<i>Election</i>	<i>Number of poll cards and notices of uncontested election mailed to registered electors</i>	<i>Number of poll cards and notices of uncontested election returned to REO (as percentage of the total number mailed)</i>
2007 DC Election	around 3.29 million	around 117 000 (around 3.6%)
2008 Legislative Council Election	around 3.37 million	around 56 000 (around 1.7%)
2011 DC Election	around 3.56 million	around 74 000 (around 2.1%) (as at today)

- (b) For poll cards or notices of uncontested election which cannot be delivered to electors through their residential addresses recorded in the register of electors, the Hongkong Post will return them to the REO for follow-up. The REO will call the electors concerned to enquire whether they still reside in the residential addresses recorded in the register. If the electors concerned have moved, the REO will remind them that they have to update their residential addresses on or before the statutory deadline on updating registration particulars for the following year (29 August for a DC election year or 29 June for a non-DC election year), or else their names will be omitted from the final register of electors to be compiled in that following year. If the electors concerned do not update their residential addresses or the REO cannot contact them through telephone calls, the REO will conduct the inquiry process according to section 7 of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A). The REO will send letters by registered mail to the electors concerned to ascertain whether they have moved from the residential addresses recorded in the current final register of electors. If no reply or application to update registered residential address is received by the deadline specified in the letters of inquiry, the REO will put the registration particulars of these electors into the

Omissions List for that following year for public inspection. If, before the statutory deadline on change of particulars, the electors concerned do not submit any claim or application for updating their residential address according to the law, their names will not be recorded in the final register of electors to be compiled for that following year.

- (c) For poll cards and notices of uncontested election returned after the 2007 DC Election and the 2008 Legislative Council Election, the REO has followed up according to the procedures mentioned in part (b), including calling the electors concerned to enquire whether they still reside in the residential addresses recorded in the register, reminding them to update with the REO their residential addresses and sending letters of inquiry to those electors who had not updated their residential addresses and to those electors who could not be contacted through telephone calls. For those electors who did not update their residential addresses on or before the statutory deadline on change of particulars, the REO has already omitted their names from the relevant final register of electors.
- (d) According to section 16 of the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), a person engages in corrupt conduct at an election if the person votes at the election after having given to the Electoral Registration Officer (ERO) information that the person knew to be materially false or misleading. According to the information provided by the Independent Commission Against Corruption, from 2007 to the present, no members of public were prosecuted or convicted for engaging in the corrupt conduct mentioned above in respect of the DC Election, the Legislative Council Election, the Election Committee Subsector Elections or the Chief Executive Election.
- (e) The Administration recognizes the importance of maintaining the integrity of the elections to ensure that the elections are conducted fairly, openly and honestly. An eligible person has to sign on the application form to confirm that the residential address he provides is his only or principal residence in Hong Kong when he is filling in the form for Application for Voter Registration (Geographical Constituencies)/Report on Change of Residential Address. A reminder to the applicant is also printed on the first page of the form

stating that a person who knowingly or recklessly makes any false or incorrect statement or gives information which is materially false or misleading commits an offence under the law. According to section 22(1)(a) of the Electoral Affairs Commission (Registration of Electors) (Legislative Council Geographical Constituencies) (District Council Constituencies) Regulation (Cap. 541A), he is liable to a Level 2 fine and imprisonment of six months.

When processing voter registration applications, the REO will request the applicant to submit further information in case of doubt (for example, incomplete address or an address suspected to be a commercial address). If the applicant cannot provide the information required, the ERO can decide that he will not process the application further. If the ERO suspects that the applicant may be providing a false residential address, the ERO will refer the case to relevant law-enforcement agencies for investigation. The REO will issue a Confirmation Notice to the elector after processing his application. If there is any mistake in the registration particulars, an elector should inform the REO as soon as possible for rectification.

According to existing legislation, the ERO should publish a provisional and a final register of electors for public inspection. The public may lodge claim or objection to the ERO against the entries in the register. Any person should report to the REO on cases where an elector provides false registration particulars (including the address provided not being his only or principal residence in Hong Kong). The REO will follow up the cases and, where necessary, refer the cases to the relevant law-enforcement agencies for investigation and follow-up.

Furthermore, the REO will conduct regular checks on addresses with seven or more registered electors. The REO will ascertain whether the electors concerned reside in the residential addresses by making telephone enquiries and conducting the inquiry process.

According to section 28 of the Legislative Council Ordinance (Cap. 542), a person is eligible to be registered as an elector in the register of geographical constituencies if, at the time of applying for registration, he ordinarily resides in Hong Kong; and that the

residential address notified in the person's application for registration is the person's only or principal residence in Hong Kong. Whether a person is eligible for registration will depend on the merits of each case. The ERO may omit from the final register of geographical constituencies the name of an elector if he is satisfied on reasonable grounds that the elector no longer ordinarily resides in Hong Kong or that the residential address last notified to the ERO is no longer the elector's only or principal residence in Hong Kong.

- (f) The Administration recognizes the importance of maintaining an honest and fair voter registration system. At the same time, the voter registration system should facilitate the public to register, and to exercise the voting right they enjoy. There are currently appropriate arrangements for registered electors to update their registration particulars. The internal measures mentioned above are also in place to inquire and check the registration particulars. The Administration will review the existing arrangements, consider improvement measures, and deal with any illegal conduct seriously.

Use of Vacant School Premises

11. **MR ALBERT CHAN** (in Chinese): *President, the Government indicated in its reply to my question at the Legislative Council Meeting on 13 January 2010 that from 2007 to 2010 school years, only three school premises had been approved by the Lands Department for other uses by non-profit making organizations. The authorities also indicated that given their sizes and other technical constraints, it was difficult to convert certain vacant school premises into residential care homes for the elderly (RCHEs). The authorities later indicated that they would reconsider the suggestion of converting vacant school premises for welfare service purposes. Yet, as far as I understand, there are still quite a number of non-profit making organizations which have applied to the Government for using vacant school premises but their applications were rejected, resulting in quite a number of vacant school premises not being put to good use. In this connection, will the Government inform this Council:*

- (a) *of the numbers of additional vacant primary and secondary school premises since January 2010 and their respective gross floor areas (list in table form), with a breakdown by District Council districts;*

how the authorities plan to deal with such vacant school premises;

- (b) of the names of the non-profit making organizations which are now applying for using such vacant school premises, the uses involved and the names of the schools to which such school premises belonged before becoming vacant;*
- (c) of the number of vacant school premises which had been approved since January 2010 for use by non-profit making organizations, the locations of such school premises and the names of the schools to which such school premises belonged before becoming vacant, as well as the names of the organizations which were given approval for using these premises, the uses and years of use of such school premises; and*
- (d) whether the authorities will reconsider converting suitable vacant school premises into RCHEs, and letting vacant school premises to ethnic minority groups to set up community halls or religious facilities for themselves; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR EDUCATION (in Chinese): President,

- (a) From the 2010-2011 to 2011-2012 school years (up to October 2011), nine primary schools have ceased operation as a result of school consolidation arrangements. Separately, one secondary school has ceased operation during the same period. A breakdown of the 10 premises by district is at Annex A. The gross floor areas of the school buildings vary depending on the year of construction, type of school use, size of the site, and so on. We do not have information of the gross floor areas of all the school premises.

The Education Bureau has a mechanism for handling vacant school premises. We will consider if the size, location and physical conditions of the premises would render it suitable for reallocation for school or other educational uses. Under normal circumstances, for school premises which are considered suitable to be so recycled, we will confirm the reallocation of these premises for further school

or other educational uses upon consultation with relevant bureaux and departments. Among the 10 premises concerned, two have attained confirmation to be deployed for further educational uses while six are to be reallocated or earmarked for such uses in the longer term. For vacant school premises which have been confirmed for educational uses, the Education Bureau is discussing with the relevant users on the redeployment of these premises in the short term.

The remaining two premises were confirmed not suitable/required for further educational uses after due consideration. According to the established arrangement, we have informed the Planning Department and returned these two school premises to relevant departments for their consideration on alternative uses. Should individual bureaux or departments indicate interest to use any of these premises on Government land in support of their policy initiatives, they would consult the relevant departments and the Planning Department and apply for use.

- (b) Since January 2010, two vacant school premises were considered not suitable/required for further educational use by the Education Bureau and have been returned to relevant bureaux/departments (see Annex B). The bureaux/departments concerned are considering applications for using the site of these two former vacant school premises in accordance with established government policies, relevant land grant conditions and the long term use of the sites. The Administration is not in a position to disclose details at this stage.
- (c) Since January 2010, one vacant school premises has been redeployed for other use by a non-profit making organization as approved by the relevant department. Details are set out in Annex C.
- (d) According to the Labour and Welfare Bureau, in view of the growing demand for subsidized residential care places for the elderly, the Social Welfare Department (SWD) has been in close liaison with relevant government departments to explore the feasibility of constructing RCHEs in new development projects or redevelopment projects (for example, public housing estates) under

their purview, or converting vacant government buildings (for example, school premises which have ceased operation) into RCHEs.

In exploring the suitability of a particular site or premises for development as an RCHE, the SWD will look into various factors, including whether the size of the concerned site or premises allows the construction or remodelling of an RCHE of a certain scale so as to achieve cost-effectiveness, and the accessibility of the site or premises by public transport to facilitate visits by family members of the elders. As places with bad air quality or those affected by noise pollution may not be suitable for elders to reside in, the SWD needs to consider the facilities and development projects in the vicinity during the site searching process.

In the past few years, the SWD has identified a few vacant school premises and explored the feasibility of converting them into RCHEs. Nevertheless, most of the school premises were subsequently found not suitable for the purpose owing to their relatively small size or other constraints (for example, lifts or ramps could not be installed or constructed to facilitate access by frail elders because of structural limitations). The SWD will continue to identify sites and vacant buildings for development of RCHEs through different means.

At present, there are 95 community halls and community centres under the Home Affairs Department, providing rental facilities for district organizations to hold community activities. Ethnic minority organizations interested in renting the community halls and community centres can contact the respective District Offices. Besides, if any ethnic minority organization proposes to convert suitable vacant school premises into ethnic minority community halls, the Home Affairs Department will refer the proposal to the departments overseeing the vacant school premises concerned for follow-up and render appropriate assistance. In general, the Home Affairs Bureau provides facilitation in the course of applications on constructing religious facilities by religious organizations. If any religious organization applies to the Government to use vacant school premises for the construction of religious facilities, the Home

Affairs Bureau will consider granting policy support.

Annex A

Number of Primary Schools Closed under the Consolidation Policy
and Number of Secondary Schools Ceased Operation

<i>District</i>	<i>School year in which the relevant schools ceased operation</i>			
	<i>2010-2011</i>		<i>2011-2012</i>	
	<i>PS</i>	<i>SS</i>	<i>PS</i>	<i>SS</i>
Central and Western	0	0	0	0
Hong Kong East	1	0	1	0
Islands	0	0	0	0
Kowloon City	0	0	0	0
Kwai Tsing	0	0	0	0
Kwun Tong	0	0	0	0
North	0	0	0	0
Sai Kung	0	0	0	0
Sham Shui Po	0	0	0	0
Sha Tin	0	0	0	0
Southern	0	0	1	0
Tai Po	1	0	0	1
Tsuen Wan	1	0	0	0
Tuen Mun	2	0	0	0
Wan Chai	0	0	0	0
Wong Tai Sin	1	0	0	0
Yau Tsim Mong	1	0	0	0
Yuen Long	0	0	0	0
Total	7	0	2	1

Notes:

- "PS" denotes primary schools which have ceased operation as a result of under-enrolment of Primary One students under the arrangements for school consolidation implemented since the 2003-2004 school year.
- "SS" denotes secondary schools which have ceased operation.

Annex B

Vacant school premises considered not suitable/required
for further educational use by the Education Bureau
(since January 2010)

<i>No.</i>	<i>District</i>	<i>School</i>	<i>Address</i>
1	Tai Po	CCC Kei Ching Primary School	Fu Shin Estate, Tai Po, New Territories
2	Wong Tai Sin	SKH Kei Sum Primary School	Fu Shan Estate, Po Kong Village Road, Kowloon

Annex C

Vacant School Premises not Suitable/Required for Educational Uses and
Approved for Use by Non-profit Making Organizations
for Other Uses since January 2010

<i>No.</i>	<i>District</i>	<i>School</i>	<i>Address</i>	<i>The premises have been approved for use by non-profit making organizations for other uses, with details as follows:</i>
				<ol style="list-style-type: none"> 1. <i>Name of organization;</i> 2. <i>Use;</i> 3. <i>Term</i>
1	Tsing Yi	Tsing Yi Public School (Cheung Hong)	Estate Primary School No. 3, Cheung Hong Estate Area 4, Tsing Yi Island, New Territories	<ol style="list-style-type: none"> 1. Occupational Safety and Health Council 2. Training centre 3. Ten years starting from 1 May 2010

Impact of Construction Works of Hong Kong Section of Guangzhou-Shenzhen-Hong Kong Express Rail Link

12. **MR CHEUNG HOK-MING** (in Chinese): *President, since the MTR Corporation Limited (MTRCL) commenced the tunnelling works for the Hong Kong section of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (XRL) last year, quite a number of residents in the villages have relayed to me that the MTRCL conducts tunnel blasts regardless of night or day in order to meet*

deadlines, and the villagers are disturbed by the noise nuisance and are unable to sleep at night. Such villagers have also pointed out that because of the vigorous blasting works, vertical cracks appear on the walls of the village houses in the vicinity of the construction sites, gaps are found between the external walls of the houses and the ground, settlement in buildings and falling groundwater tables are detected, and other serious problems also prevail. Regarding the progress and safety issues of the XRL project, will the Government inform this Council:

- (a) of the latest progress of the XRL project;*
- (b) whether it has assessed and measured the intensity of shock generated by the tunnel blasting works concerned in respect of three aspects, namely the extent of damages made to the affected buildings on the ground, changes in topography and people's feelings; if it has, of the details; if not, the reasons for that; and whether it will make public the findings as soon as possible after making the assessment and measurements; and*
- (c) whether it knows the total number of complaints received since the commencement of the works by the authorities and the MTRCL about the problems caused to the buildings and the topography in the vicinity of the construction sites as a result of the impact of the XRL project, the problems concerned and the measures taken to deal with them?*

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

- (a) Construction works for the Hong Kong section of the XRL commenced in January 2010 and are progressing smoothly. Foundation works for the West Kowloon Terminus are substantially completed, while various related construction works in Yau Tsim Mong, Sham Shui Po, Kwai Tsing, Tsuen Wan and Yuen Long, en-route areas of the railway alignment, have started successively. As the Hong Kong section of the XRL runs in a dedicated tunnel throughout, the tunnels are built mainly by using tunnel boring machines (TBMs) and the drill and blast method. We have briefed the relevant District Councils on the construction methods of the

tunnels. We also keep liaising with the relevant communities on the works arrangement in the light of progress of the drilling and blasting works.

On tunnel boring, the first TBM was activated in September 2011 and has bored through 80 m so far. Separately, tunnel drilling and blasting works in Tsuen Wan commenced in November 2010, while those in Kwai Tsing and Yuen Long began in 2011 gradually

It is expected that civil works (including tunnel drilling and blasting) for the main tunnel will be completed in 2013 and the Hong Kong section of the XRL will be completed in 2015 as scheduled.

- (b) We will do our best to minimize the impact of the works on the public during the construction of the XRL project.

As early as the project design stage, we carried out careful and comprehensive assessments on the geological conditions and structures in the vicinity of the works areas to ensure that the construction works and the methods employed would not affect the structural safety of nearby structures. In addition, we conducted an environmental impact assessment as required under the Environmental Impact Assessment Ordinance on the Hong Kong section of the XRL, in which the environmental impact during the construction and operation of the railway was carefully evaluated and corresponding mitigation measures were proposed.

In the course of the drilling and blasting works, the MTRCL and their contractor will stringently implement various safety measures and codes of practice concerned, and will strictly observe all relevant legislation and requirements, including the mitigation measures specified in the Environmental Permit for alleviating environmental impact. Also, the MTRCL and their contractor have installed monitoring points to oversee the works by checking such relevant data as measurements on noise and vibration, with a view to monitoring the impact of the works on the adjacent environment and structures for enhancing public safety and minimizing environmental impact.

Every time when blasting works are carried out, the airflow and

vibration caused will be measured at both ends of the tunnel and nearby monitoring points. Up to now, the data recorded, including those on airflow and vibration, have not exceeded the corresponding statutory ceilings or jeopardized the structural safety of adjacent buildings. The noise generated during the works has not gone beyond the relevant statutory limit either.

During construction, the MTRCL and their contractor will try to minimize the impact of works on the neighbourhood, and maintain close contact and communication throughout with residents concerned by such measures as giving explanation to relevant dwellers, owners' committees/corporations, village representatives, district councillors and local communities and addressing their concerns; organizing community liaison group meetings; distributing XRL Newsletters and pamphlets on tunnel drilling and blasting works; and arranging site inspections for district councillors and local personalities to inspect the works and be briefed by engineers on the works procedures and safety measures taken.

- (c) We have so far received 80 reports on damage to relevant land lots and buildings suspected to have been caused by the works. Upon receipt of such reports, the MTRCL and their contractor will visit the damaged lots or buildings within one working day to conduct investigation. If the damage is proved to have been caused by the works, repairs will be carried out as soon as possible; if proved otherwise, the MTRCL will also inform the clients of the investigation results. On some occasions, the MTRCL will, at the request of the clients, refer the cases to notaries public for objective and fair arbitration to safeguard the interests of local residents.

Handling of Complaints About Water Seepage/Leakage in Residential Units

13. **DR PRISCILLA LEUNG** (in Chinese): *President, regarding the handling of complaints about water seepage/leakage in residential units, will the Government inform this Council:*

- (a) *of the average time needed to complete the procedures for handling*

public complaint cases of water seepage/leakage in residential units received by the Joint Office (JO) of the Food and Environmental Hygiene Department (FEHD) and the Buildings Department (BD), an office responsible for handling water seepage in buildings, in each of the past three years, and list the breakdown in the following table;

<i>Time taken from receipt of complaints to completion of handling procedures</i>	<i>Number of cases</i>		
	<i>2008</i>	<i>2009</i>	<i>2010</i>
<i>Within 30 days</i>			
<i>31 to 60 days</i>			
<i>61 to 90 days</i>			
<i>91 to 180 days</i>			
<i>181 days or more</i>			

- (b) *of the reasons why the number of cases in which the source of water seepage/leakage could not be established and investigation was terminated increased from 986 in 2008 to 1 433 in 2009 (up by 447 from 2008), and surged to 2 322 in 2010 (up by 889 from 2009) as indicated by the statistics provided by the Secretary for Development in her reply to the question asked by a Member of this Council on 25 May this year;*
- (c) *of the reasons why there are cases in which the cause and source of water seepage/leakage could not be established even after completion of extensive professional tests; whether it has examined if such cases are related to the manpower of the JO or technology level of the equipment used; of the method and equipment used by the JO to test the seepage/leakage condition of buildings at present, and which types of experts are responsible for conducting the tests, and whether the method of testing and the equipment used are the most advanced in the world at present;*
- (d) *as the Secretary for Development also indicated in her reply on 25 May this year that the JO would issue a warning letter to the party concerned and requested it to arrange for repairs once the source of water seepage/leakage was established, and that if the situation did not improve, the FEHD might issue a "Nuisance Notice" under the Public Health and Municipal Services Ordinance (Cap. 132) to the party concerned requesting it to abate the nuisance*

within a specified period, of the total number of warning letters and "Nuisance Notice" issued by the authorities in the past three years; and

- (e) *whether the authorities will consider introducing new measures to resolve the disputes over water seepage/leakage in residential units more effectively; if they will, of the details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, as property owners are responsible for maintaining and managing their buildings, they also have responsibility for resolving any seepage/leakage problems. Hence, if water seepage/leakage is found inside a private property, the owner should first investigate the cause and, as appropriate, co-ordinate with the occupants and owners concerned for repairs.

Where the water seepage/leakage problem poses a public health nuisance, a risk to the structural safety of the building or water wastage, the Government would step in and take action in accordance with the relevant provisions of the Public Health and Municipal Services Ordinance (Cap. 132), Buildings Ordinance (Cap. 123) or Waterworks Ordinance (Cap. 102). The JO was set up with staff of the BD and the FEHD to tackle such offences through a "one-stop shop" approach.

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

- (a) The time required for processing a seepage/leakage case largely depends on the complexity of the case and the extent of co-operation from the parties concerned, in particular the owners and occupants involved. Since the circumstances of individual cases vary, the procedures and time taken for investigation may also differ widely. In relatively straight-forward cases, where the source of water seepage/leakage could be identified by the JO staff during initial site inspection, the case can normally be concluded within a short period of the inspection. These cases may be completed as quickly as within four weeks. For more complicated cases and cases involving other occupants, the JO could, with co-operation from all parties, generally be able to complete the investigations in about 130 days.

For more complicated cases which may, for instance, involve

multiple sources or intermittent water seepage/leakage, JO staff will have to conduct different or repeated tests or ongoing investigations and monitoring in order to ascertain the cause. As these tests take time and require full co-operation from the owners/occupants concerned, from experience such cases would on average take about 170 days. Where vacant units or unco-operative owners/occupants are involved, the JO would have to apply to the Court for warrants of entry in order to carry out investigations. These cases will take even more time. The JO does not keep statistics on the time taken for investigation of individual cases.

- (b) The increase in 2010 of the number of cases where the source of water seepage/leakage could not be established and investigation thus terminated corresponds to a substantial increase in the number of complaints received and handled by the JO in that year. The JO received a total of 25 717 complaints in 2010, which increased by 3 948 cases when compared with the 21 769 cases received in 2009. While the latter (that is, number of complaints received in 2009) increased by only 52 when compared with the 21 717 cases received in 2008.
- (c) There are many different reasons for water seepage/leakage in buildings which may be caused by defective water pipes, sanitary fittings or drainage pipes. Water seepage/leakage may come from defective pipes in the flats above, in adjacent units or even from inside the same flat. It may also be due to water seeping through common areas, such as the roof or external walls. Especially in cases where water seepage/leakage is not obvious or only intermittent, it is possible that the cause or source of water seepage/leakage still could not be established even after extensive professional tests.

According to established procedures, JO staff will inspect the unit concerned upon receipt of a complaint to ascertain the condition of water seepage/leakage and conduct basic investigations and tests with a view to establishing the source of water seepage/leakage. Where necessary, the JO will further arrange for a consultant to conduct more in-depth professional tests. Staff of the consultant, who conducts field investigation, possesses the relevant qualifications in the building studies/building

surveying/engineering/architectural disciplines and with working experience relevant to building works or investigation of water seepage. The investigations are overseen and testified by professionals, who are members of the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, the Hong Kong Institute of Surveyors or equivalent and have working experience relevant to building works or investigation of water seepage.

The JO and its consultants will take into account the circumstances of the individual case and will adopt appropriate tests to ascertain the source of water seepage/leakage, including colour water test at drainage outlets, ponding test, water spray test for walls and moisture content monitoring, and so on. These methods are generally recognized to be direct and effective means for investigation of source of water seepage/leakage.

To further enhance the effectiveness of the JO's investigation work, the BD and Innovation and Technology Commission, with the assistance of the Hong Kong Applied Science and Technology Research Institute, are looking into ways to improve the JO's methods and equipment used in the investigation of water seepage/leakage.

- (d) The numbers of Nuisance Notices issued by the FEHD under the Public Health and Municipal Services Ordinance (Cap. 132) from 2008 to 2010 are tabulated below:

<i>Year</i>	<i>Number of Nuisance Notice Issued</i>
2008	2 101
2009	3 581
2010	3 379

Since April 2008, the JO has stopped issuing warning letter to the party concerned in order to expedite the enforcement process. Once the JO has completed the investigation with the source of water seepage/leakage confirmed, the FEHD would issue a Nuisance Notice directly to the owner of the premises concerned.

- (e) We appreciate the public concern over the problems of water

seepage/leakage. We will continue to review and improve the *modus operandi* of the JO with a view to further enhancing the efficiency. We will consider promoting public awareness of building maintenance, repair and management through publicity and public education. We will explore the feasibility of various options and will draw from the experience and practice of handling water seepage/leakage cases in other territories.

Scheme \$6,000

14. **DR LAM TAI-FAI** (in Chinese): *President, the batching period of "Scheme \$6,000" (the Scheme), which commenced on 28 August this year, ended on 5 November this year, and the authorities have received a total of over 4 million registration forms. In this connection, will the Government inform this Council:*

- (a) of the respective numbers of registrants in various age groups, those who are eligible persons living in Hong Kong or outside Hong Kong, and those who are persons with special needs (with a breakdown set out in table form);*
- (b) of the number of registrants who have submitted registrations but do not meet the eligibility criteria, and the reasons for their ineligibility; among them, how many are ineligible because they do not hold a valid smart Hong Kong permanent identity card; the number of people who have filed for review and appeal, and the outcome (with a breakdown set out in table form);*
- (c) of the number of people who have collected their cheques; the number of people aged 65 or above who have opted to collect their cheques at the post offices in various districts; and whether the authorities have made any arrangement to assist them in collecting cheques at post offices; if they have, of the details; if not, the reasons for that;*
- (d) apart from the aforesaid people, when the other registrants will receive the payment (list the timetable);*
- (e) of the estimated number of people who opt to receive \$6,000 plus a*

- bonus of \$200; the resultant increase in government expenditure;*
- (f) of the number of enquiries received through the Scheme hotline 186 000 so far and their contents (with a breakdown set out in table form);*
 - (g) whether the various government departments have received any complaint relating to the Scheme; if they have, of the details of such complaints (with a breakdown set out in table form);*
 - (h) whether it has assessed if the present progress and arrangements of the Scheme are satisfactory, and the reasons for their being satisfactory; whether it will conduct a review on the Scheme; if it will, when the review will be conducted, and whether it will submit a review report to this Council; if not, of the reasons for that;*
 - (i) since the Macao SAR Government has announced that it will continue to hand out money to Macao residents for the fifth consecutive year in 2012, whether it has assessed if this has imposed pressure on the Hong Kong SAR Government; if it has imposed pressure, of the details; if not, the reasons for that;*
 - (j) whether it will consider handing out cash to members of the public again in the 2012-2013 financial year; if it will, of the details; if not, the reasons for that;*
 - (k) given the view expressed by the International Monetary Fund Staff Mission on 16 November this year that in the absence of a major external shock in Hong Kong, measures taking the form of universal transfers could be discontinued in the upcoming Budget, whether the Government has assessed such a view; if it has, of the details; if not, the reasons for that; and*
 - (l) given that some members of the public consider that the Scheme is not a measure which makes good use of social resources and suggest that the Government should focus the resources on helping people in society who are in greater need of assistance, whether the Government has assessed such views; if it has, of the details; if not, the reasons for that?*

Chinese): President,

- (a) As at 26 November 2011, about 4.18 million people have successfully registered for the Scheme. Among them, around 40 000 are persons with special need. A breakdown by age group of the number of successful registrants is set out in the table below:

<i>Batch</i>	<i>Year of Birth (Age)</i>	<i>Number of Successful Registrants (million)</i>
1	1946 or before (Aged 65 or above)	0.87
2	1947-1956 (Aged 55 to 64)	0.77
3	1957-1966 (Aged 45 to 54)	0.92
4	1967-1981 (Aged 30 to 44)	1.01
5	1982-1993 (Aged 18 to 29)	0.61
Total:		4.18

As the registration arrangements for eligible persons in or outside Hong Kong are the same, we do not have a breakdown by geographical location.

- (b) As at 26 November 2011, there were about 6 000 registration forms of which the registrants did not meet the eligibility criteria, that is, without a valid Hong Kong Permanent Identity Card (HKPIC) (the HKPIC criterion) and/or under the age of 18 (the age criterion). Among them, about 5 600 cases did not meet the HKPIC criterion. We have so far received 68 applications for review and have completed 10 cases. The original decision was upheld in four cases while the remaining six cases were confirmed to be enquiries in nature rather than review applications.
- (c) As at 26 November 2011, more than 50 000 eligible persons in the first batch (that is, those aged 65 or above) have successfully registered for the Scheme through the Hongkong Post. Cheque collection notifications have been mailed to them in phases. The cheques will be available for collection at the post offices for at most

one year starting from the dates of issue.

Those who have received the notifications may collect the cheques at the post offices selected during office hours. For the convenience of the public, 50 of the 56 post offices providing cheque collection service will extend office hours to 5 pm on five consecutive Saturdays on 19 and 26 November, and 3, 10 and 17 December for dedicated handling of cheque collection under the Scheme. Relevant information is detailed in the notifications for reference.

- (d) Other eligible persons who register through banks and are confirmed to have met the eligibility criteria will normally receive the payment directly through the specified bank account in around 10 weeks after registration. Those who register through the Hongkong Post and are confirmed to have met the eligibility criteria will normally be notified by post of cheque collection at the post office selected in around 12 weeks after registration.
- (e) As there are still more than four months before April 2012, it is difficult to estimate the number of people who will opt to receive \$6,000 plus a bonus of \$200. We will continue to keep in view the progress of registration.
- (f) As at 26 November 2011, a total of more than 220 000 telephone enquiries have been handled by the Scheme's enquiry hotline 186 000. Details are as follows:

<i>Types of Enquiries</i>	<i>Number</i>
Registration procedures	116 387
Progress of registration	26 509
Eligibility criteria	25 034
Registration timetable	10 404
\$200 bonus	7 523
Payment	7 432
Request for access to or correction of registration data	6 035
Others	21 005
Total	220 329

- (g) As at 26 November 2011, we have received a total of 859 complaints

in relation to the Scheme. Details are as follows:

<i>Types of Complaints</i>	<i>Number</i>
Registration procedures	396
Eligibility criteria	119
Payment	69
Progress of registration	43
\$200 bonus	22
Registration timetable	20
Request for access to or correction of registration data	10
Others	180
Total	859

- (h) Since its launch, we have closely monitored the implementation of the Scheme, put in place appropriate arrangements for registration and payment, and made timely announcement to the public of the Scheme's progress and other relevant information to enable eligible persons to register and receive payment in a convenient and efficient manner as scheduled. Up till now, more than 4 million people have registered for the Scheme with eligible persons receiving payments by batches. The Scheme has been running smoothly and making good progress. We will continue to keep in view its implementation and make appropriate arrangements when necessary.

(i) to (l)

In preparing for the annual budget, we will have regard to the prevailing fiscal conditions and take into account the needs of the community and related policies before making any decision.

Regulation of Liquor-licensed Premises

15. **MR KAM NAI-WAI** (in Chinese): *President, in recent years, quite a number of members of the public have complained that they were disturbed by the noises and hygiene problems generated by bars and restaurants near their residences which have seriously affected their daily lives as well as work and rest. Some members of the community have requested the Government to review its policies on the issue of liquor licences and the enforcement of regulation of*

liquor-licensed premises. In this connection, will the Government inform this Council of:

- (a) the respective numbers of complaints received by the authorities about the noises and hygiene problems caused by bars and restaurants in Central and Western, Wan Chai and Yau Tsim Mong Districts in each of the past three years, together with a breakdown by the government department receiving such complaints (that is, the Hong Kong Police Force (HKPF), the Food and Environmental Hygiene Department (FEHD) and the Environmental Protection Department (EPD));*
- (b) the respective numbers of enforcement actions taken by the HKPF in each of the past three years against bars and restaurants in Central and Western, Wan Chai and Yau Tsim Mong Districts for violating the licensing conditions of liquor licences, and the numbers of cases in which prosecutions were instituted; and*
- (c) the respective numbers of liquor licences issued by the Liquor Licensing Board (LLB) in respect of the premises in Central and Western, Wan Chai and Yau Tsim Mong Districts in each of the past three years; among them, the number of licences permitting the sale of liquors beyond midnight; and the number of cases in which the LLB had, targeting at the liquor-licensed premises under complaint, penalized the licensees or revoked their licences?*

SECRETARY FOR FOOD AND HEALTH (in Chinese): President, Hong Kong is a cosmopolitan city. Catering, tourism, leisure and entertainment industries play an important role in Hong Kong's economic development, and liquor business is a key component of these industries. However, Hong Kong is densely populated and some licensed premises selling liquor for consumption (liquor-licensed premises) are located in districts or property developments with mixed uses including residential use, affecting residents living nearby to different degrees. This situation is more commonly found in Central and Western, Wan Chai and Yau Tsim Mong Districts. The Government has to strike a balance among various needs. On one hand, it would like to nurture a business friendly environment for the industry to grow, but on the other it needs to minimize the impact of liquor-licensed premises on the surrounding environment.

At present, the LLB, an independent statutory body to consider liquor

licence applications, adopts an open, transparent and fair approach in considering applications and aims to balance the interests of legitimate commercial activities and those of the locality. Pursuant to the Dutiable Commodities (Liquor) Regulations (Cap. 109B), the LLB has to consider three factors when deciding on each application, namely (i) whether the applicant is a fit and proper person to hold the licence; (ii) whether the premises are suitable for selling and supplying intoxicating liquor, having regard to the location and structure of the premises and the fire safety and hygienic conditions in the premises; and (iii) whether in all the circumstances the grant of the licence is not contrary to public interest. The LLB will impose conditions in liquor licences as it thinks fit, which may include additional licensing conditions for the purpose of minimizing the nuisance caused to nearby residents by certain liquor-licensed premises, such as restricting the liquor-selling hours, requiring all doors and windows of the premises to be closed after specific hours and prohibiting the playing of music or the use of amplifiers.

The police are the main enforcement department for the liquor licensing regime. Other relevant government departments also enforce the laws and regulations under their respective purview with regard to these premises. The enforcement agencies conduct regular and surprise checks on liquor-licensed premises so as to ensure continued compliance with the respective statutory or administrative requirements. In areas where liquor-licensed premises have a greater impact on nearby residents, the departments concerned will step up inspection and enforcement actions, including conducting late night inter-departmental joint operations and giving advices, warnings or instituting prosecutions against those premises which caused nuisance to the public, according to the nature and seriousness of each case. Besides, government departments organize publicity and education activities from time to time to remind liquor-licensed premises to comply with license requirements, maintain environmental hygiene and avoid making excessive noise.

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

- (a) Most liquor-licensed premises concurrently hold Restaurant Licences or Certificates of Compliance for clubs. There is no standardized method of further categorizing the nature of business of individual liquor-licensed premises (for example, as bar or restaurant) among the LLB and the enforcement departments. Hence we can only provide information according to the statistics

kept by the departments. Annex 1 lists the number of complaints received by the FEHD and the EPD about noise and environmental hygiene problems caused by liquor-licensed premises in Central and Western, Wan Chai and Yau Tsim Mong Districts from 2009 to October this year, as well as the number of complaints received by the police about noise and obstruction in relation to upstairs bars during the same period in the said three districts.

- (b) The detailed statistics on enforcement and prosecution actions of the police in relation to liquor-licensed premises in the said districts during the same period are at Annex 2.
- (c) The number of liquor licences and information on restricted hours of selling liquor in the said three districts are at Annex 3.

Pursuant to the Dutiable Commodities (Liquor) Regulations (Cap. 109B), in considering whether an application by liquor-licensed premises for licence renewal should be approved (including whether to issue the licence for a period of less than one year, impose additional licensing conditions or refuse the renewal application), or whether the liquor licence of a liquor-licensed premises should be revoked, matters relating to the three factors mentioned in the second paragraph above, including the views of the government departments concerned and local residents, the number and substance of complaints received against the premises, and so on, should be taken into account comprehensively before coming to a decision. The LLB does not compile statistics on the cases in which penalties were imposed or liquor licences were revoked solely as a result of complaints against liquor-licensed premises. The number of licence revocation cases due to breaches of licensing conditions in 2009, 2010 and this year (up to October) were five, seven and six respectively. All of the premises involved were located in Yau Tsim Mong District, except for one case this year in which the premises concerned was located in Central and Western District.

Number of complaints received by the HKPF, the FEHD and the EPD about noise and environmental hygiene problems caused by liquor-licensed premises in Central and Western, Wan Chai and Yau Tsim Mong Districts⁽¹⁾

		2009	2010	2011 (up to end-October)
Central and Western District	The HKPF (Complaints on noise and obstruction) ⁽²⁾	9	54	32
	The FEHD (Complaints on environmental hygiene)	31	62	55
	The EPD (Complaints on noise)	28	40	49
Wan Chai District	The HKPF (Complaints on noise and obstruction) ⁽²⁾	118	50	32
	The FEHD (Complaints on environmental hygiene)	69	44	53
	The EPD (Complaints on noise)	16	19	35
Yau Tsim Mong District	The HKPF (Complaints on noise and obstruction) ⁽²⁾	No available records	152 ⁽³⁾	73
Yau Tsim Mong District	The FEHD (Complaints on environmental hygiene)	73	82	24
	The EPD (Complaints on noise)	37	17	17

Notes:

- (1) Since a complainant may lodge his/her case to a number of government departments at the same time, there might be overlaps in the number of cases in the table above.
- (2) Figures provided by the police only include complaints against upstairs bars. The police do not compile complaint statistics on all liquor-licensed premises but especially keep complaint numbers in relation to upstairs bars due to public concern about those premises.
- (3) This covers the police's Mong Kok District and Tsim Sha Tsui Division. Data from Yau Ma Tei Division is not available.

Enforcement and prosecution statistics of the police
in relation to liquor-licensed premises

2009			<i>Wan Chai District</i>	<i>Central and Western District</i>	<i>Yau Tsim Mong District</i>	<i>Sub-total</i>		<i>Total</i>	
Upstairs bars	Suspected breach/ breach of licensing conditions	Summons/ Prosecution	11	1	18	30	221	234	
		Verbal and written warnings	34	46	81	161			
		Advisory letters	29	0	1	30			
	Other offences (noise, smoking, obstruction, fire safety)	Summons/ Prosecution	0	0	0	0	13		907
		Verbal and written warnings	8	0	2	10			
		Advisory letters	0	0	3	3			
	Other liquor-licensed premises	Suspected breach/ breach of licensing conditions	Summons/ Prosecution	2	16	52	70		
Verbal and written warnings			90	106	101	297			
Advisory letters			41	0	26	67			
Other offences (noise, smoking, obstruction, fire safety)		Summons/ Prosecution	0	0	171	171	239	907	
		Verbal and written warnings	0	8	50	58			
		Advisory letters	0	0	10	10			

2010			<i>Wan Chai District</i>	<i>Central and Western District</i>	<i>Yau Tsim Mong District</i>	<i>Sub-total</i>			<i>Total</i>
Upstairs bars	Suspected breach/ breach of licensing conditions	Summons/ Prosecution	4	0	61	65	274	339	628
		Verbal and written warnings	42	26	93	161			
		Advisory letters	25	0	23	48			
	Other offences (noise, smoking, obstruction, fire safety)	Summons/ Prosecution	47	0	3	50	65		
		Verbal and written warnings	0	0	15	15			
		Advisory letters	0	0	0	0			
Other liquor-licensed premises	Suspected breach/ breach of licensing conditions	Summons/ Prosecution	6	1	14	21	210		
		Verbal and written warnings	18	56	73	147			
		Advisory letters	22	0	20	42			
	Other offences (noise, smoking, obstruction, fire safety)	Summons/ Prosecution	10	0	0	10	79		
		Verbal and written warnings	52	0	17	69			
		Advisory letters	0	0	0	0			

<i>2011 (up to October)</i>			<i>Wan Chai District</i>	<i>Central and Western District</i>	<i>Yau Tsim Mong District</i>	<i>Sub-total</i>		<i>Total</i>
Upstairs bars	Suspected breach/ breach of licensing conditions	Summons/ Prosecution	4	6	80	90	206	285
		Verbal and written warnings	21	13	67	101		
		Advisory letters	13	0	2	15		
	Other offences (noise, smoking, obstruction, fire safety)	Summons/ Prosecution	39	0	39	78	79	
		Verbal and written warnings	1	0	0	1		
		Advisory letters	0	0	0	0		
								758
Other liquor-licensed premises	Suspected breach/ breach of licensing conditions	Summons/ Prosecution	11	68	11	90	357	473
		Verbal and written warnings	77	67	104	248		
		Advisory letters	19	0	0	19		
	Other offences (noise, smoking, obstruction, fire safety)	Summons/ Prosecution	21	0	21	42	116	
		Verbal and written warnings	8	16	50	74		
		Advisory letters	0	0	0	0		

Number of liquor-licensed premises in
Central and Western, Wan Chai and Yau Tsim Mong Districts

	<i>End-2009</i>	<i>End-2010</i>	<i>End-October 2011</i>
Central and Western District	654	700	752
Wan Chai District	884	921	936
Yau Tsim Mong District	1 284	1 456	1 529

Note: As at 31 October 2011, the numbers of liquor licences with licensing conditions restricting liquor selling hours were 182 in Central and Western District, 115 in Wan Chai District and 166 in Yau Tsim Mong District. The restricted hours mainly range from beyond 11 pm to beyond 5 am.

Questionnaire Surveys Conducted Under 2011 Population Census

16. **MR ABRAHAM SHEK** (in Chinese): *President, a member of the public has relayed to me that during the 2011 Population Census (11C), even though a household had immediately completed online the "long form questionnaire" to provide more detailed information on the household's socio-economic characteristics upon receipt of the notification letter about the Census, a census officer suddenly visited the household in late July this year without making any appointment in advance, claiming that no e-Questionnaire had been received from the household. The member of the public also pointed out that during the second visit, the census officer still could not confirm whether the household had submitted the e-Questionnaire, and it was after the visits that an acknowledgement of receipt of the household's e-Questionnaire was made over the phone. In this connection, will the Government inform this Council:*

- (a) *whether the authorities have received any similar enquiry or complaint, and of the statistics on duplication of enquiry efforts made because of failure to confirm receipt of the e-Questionnaire completed by households;*
- (b) *whether the authorities will conduct investigation and report the relevant causes for the problem, as well as whether any human error was involved and wastage of resources was resulted; of the corresponding remedial measures adopted; and*

- (c) *of the number of e-Questionnaire actually used in the 11C, and the time required by the computer personnel concerned to notify the front-line staff and acknowledge receipt of the e-Questionnaire filed by households?*

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): President, the face-to-face interview phase of the 11C was conducted between 16 July and 2 August 2011, targeted at those households that had not returned the 11C questionnaire via the self-enumeration mode. Throughout this phase, the Census and Statistics Department (C&SD) generated updated reports from its computer system listing those households that had already returned their questionnaires (including e-questionnaires) for distribution to enumerators on a daily basis. According to the 11C working guide issued by the C&SD, enumerators were required to update their records on those households that they were responsible for accordingly in arranging their visit itinerary. In general, enumerators would not visit those households that had already completed and returned their e-questionnaires. In case the enumerators visited a household that indicated that it had already returned its e-questionnaire, then the enumerators should verify the record of households that had returned questionnaires in accordance with the 11C working guide, and if there was subsequent confirmation that the questionnaires returned by the concerned household had been duly received, no interview would be conducted.

My reply to the questions raised by Mr Abraham SHEK is as follows:

- (a) According to the C&SD, in the beginning of the face-to-face interview phase, it had received a few enquiries from households concerning visits by enumerators after they had returned the e-questionnaires. As the C&SD had not maintained records of the numerous public enquiries relating to 11C by categories in such detail, it cannot provide figures of such enquiries. According to the 11C working guide, if a household indicated that it had already returned questionnaire, enumerator was not required to proceed with the interview with that particular household. As such, there was no duplication of enquiry efforts.
- (b) On the basis of the information provided by the concerned households making enquiries, the C&SD has looked into the cases

involved and found that individual enumerators had visited households that had returned questionnaires mainly because the relevant records of the households to be visited had not been updated on a timely basis. As there was only a very small number of such cases, it did not have any adverse impact on the progress of the face-to-face interview phase and the resource allocation of 11C. That said, the C&SD had reminded enumerators through daily briefings from time to time of the need for timely update of the records of households they should visit so as to avoid causing inconvenience to households.

- (c) According to the preliminary enumeration results, over 300 000 households, representing about 14% of the total number of households enumerated, chose to return the 11C e-questionnaires via the self-enumeration mode during the census period. Throughout the face-to-face interview phase, the C&SD generated daily computer reports in the morning on those households that had already returned their questionnaires as at the close of the previous day for distribution to enumerators.

Protection for Consumers who Bought Travel Packages

17. **MR PAUL TSE** (in Chinese): *President, in recent years, the number of outbound travellers of Hong Kong who buy travel packages from licensed travel agents to visit other places on DIY tours (DIY travellers) has been on the increase. In the event of natural or man-made disasters (for example, Thailand's red-shirt protest in 2009, as well as the earthquake and radiation leak incidents in Japan, and the flood disaster in Thailand this year, and so on), my Member's office (my office) would receive a large number of enquiries and urgent requests for assistance from DIY travellers, who indicated that despite their incessant attempts to contact the relevant government departments and organizations (including the Travel Industry Council of Hong Kong (TIC), Tourism Commission (TC) and Consumer Council (CC), and so on), they could not get the assistance they urgently needed. They pointed out that the TIC's telephone lines were very busy, or its staff just asked them to leave their contact information but did not reply after a long time. The staff of my office had on their behalf relayed their cases to the TC which supervises the TIC, but the TC could not provide any assistance either. In addition, quite a number of DIY*

travellers even pointed out that travel packages are products that are not monitored by all the three parties (that is, the Government, the TIC and the CC cannot offer any protection or regulate). In this connection, will the Government inform this Council:

- (a) of the respective numbers of complaints involving travel packages received by the TIC, the TC and the CC in each of the past three years;*
- (b) regarding DIY travellers affected by Amber or Black Outbound Travel Alert (OTA) issued by the authorities for their outbound travel destinations, whether they are provided with any protection under the existing legislation; if so, of the details (including the protection they can obtain in respect of changes or cancellation of itineraries, or during their visit to the relevant countries or regions when OTA is still in effect); if not, the reasons for that;*
- (c) whether it has conducted study on the improvement to the existing policies and measures, with a view to providing DIY travellers with reasonable, timely and appropriate assistance for issues involving travel packages; if it has, of the details; if not, whether it will conduct such a study immediately;*
- (d) what policies it has put in place to ensure that before making any advance booking for air tickets or hotel rooms through travel agents, DIY travellers understand that they will not enjoy the same protection as that offered to group tours which generally pay a Council levy to the TIC, so as to avoid causing any dispute; if not, whether it can conduct study in this regard promptly; and*
- (e) given that some DIY travellers pointed out that, they could not get assistance when sudden incidents took place at their outbound travel destinations and they urgently needed to seek information or assistance from the TIC before setting off for the journey, how the Government ensures that in the event of such outbound travel incidents, the TIC will have sufficient manpower to handle enquiries from travellers, and whether it will consider setting up enquiry*

hotlines by the TC to offer appropriate assistance to travellers; in addition, given that many travellers aggrieved by the way the TIC had handled their complaints had lodged complaints with the CC, but were rejected on the ground that travel-related complaints should be handled by the TIC, whether the Government will explain clearly to the public how the CC and the TC handle the complaints of DIY travellers, and whether such organizations have the authority and responsibility to handle complaints including those seeking re-dress for grievances about the way how the TIC had handled their complaints?

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, our replies to the questions raised by Mr Paul TSE are as follows:

- (a) The numbers of complaints related to travel packages received by the TIC, the TC and the CC respectively in the past three years are set out below:

	2009	2010	2011 (January to October)
TIC	139	149	154
TC	0	4	20
CC	50	50	85

- (b) and (c)

The OTA System set up by the Government aims to facilitate Hong Kong residents to better understand possible risks to their personal safety when travelling overseas, so that they may make their travel plans and arrangements accordingly. While it is a personal decision of residents to travel abroad, they are encouraged to make reference to the OTA and assess the relevant factors as well as their personal circumstances before firming up their travel plans or travelling abroad.

On protection of outbound travellers, the Travel Agents Ordinance (Cap. 218) provides that travellers holding receipts franked with the levy stamp for joining package tours or purchase of travel packages comprising carriage from Hong Kong to places outside Hong Kong and accommodation outside Hong Kong are under the protection of the Travel Industry Compensation Fund (TICF). The TICF provides protection to travellers who may claim *ex gratia* payments up to 90% of the outbound fares paid if a licensed travel agent defaults. It also provides a maximum amount of HK\$300,000 as financial relief to cover the actual expenses incurred in case of a traveller's death or injury caused by an accident in an activity of a package tour organized by a travel agent.

Moreover, the Government, the TIC and the Travel Industry Compensation Fund Management Board (TICFMB) always encourage the public to purchase travel insurance that suits their personal needs before travelling abroad and pay attention to the coverage provided. The travel insurance available in the market now in general offers protection to outbound travellers against losses incurred due to forced cancellation or change of itineraries as a result of the issuance of Black OTA. There are also individual travel insurance products which provide protection to outbound travellers to partially cover their losses incurred as a result of the issuance of Red or Amber OTA.

- (d) As mentioned above, outbound travellers holding receipts franked with the levy stamp for purchase of travel packages comprising carriage from Hong Kong to places outside Hong Kong and accommodation outside Hong Kong are protected under the TICF in the event of a travel agent's default. However, travellers buying air tickets alone or hotel accommodation alone are not covered by the TICF. Over the years, the TICFMB has publicized the purpose of the TICF and deepened travellers' knowledge in the scope of protection through various channels, such as television, radio, newspapers, website of the TICF, publicity leaflets and travel agents.

Where necessary, it also updates the publicity content on the TICF from time to time.

- (e) In addition to handling general enquiries and complaints from travellers, the TIC also co-ordinates within the trade in handling emergency incidents involving outbound tours, and providing appropriate assistance to travellers. The TIC has a dedicated department for handling enquiries and requests for assistance from travellers. In times of emergency incidents, the number of enquiries and calls for help received by the TIC inevitably increases. The number may soar from the usual daily average of 30-odd to over 200 if the incident occurs in travel destinations that are popular among Hong Kong residents, such as Thailand where the recent flooding occurred. The sudden influx of cases requiring urgent follow-up actions puts additional pressure on the work of the TIC, but the TIC still strives to follow up each and every case promptly. The TIC also reviews its procedures and resource allocation for handling travellers' enquiries from time to time to enhance its operation. The TC and Travel Agents Registry under it also receive enquiries and requests for assistance from travellers from time to time, and will liaise closely with the TIC to render timely assistance to travellers as far as possible.

The Consumer Relations Department and Inbound Department under the TIC deal with enquiries and complaints from outbound and inbound travellers respectively. Some travellers may lodge complaints about travel products to the CC and request it to follow up. To enhance the efficiency in handling complaints and optimize the use of resources, the CC and the TIC have established a complaint referral mechanism. Under this mechanism, complaints received by the CC that involve issues under the TIC's regulatory purview, such as travel products provided by the TIC's member travel agents, registered shops or reception service for inbound tour groups, and so on, are referred to the TIC for direct contact with the member travel agent, registered shop or traveller concerned for mediation of the dispute. For complaints involving issues outside the TIC's purview, such as direct purchase of air tickets from airlines

or shopping at general retail shops, the CC will directly contact the merchants concerned for follow-up actions.

The TIC's Board of Directors oversees the TIC's complaint handling mechanism and procedures. The TC always monitors the TIC's operation closely and requires it to deal with complaints in an impartial, professional and serious manner. Whenever the TC receives complaints from travellers who are dissatisfied with the TIC's handling of their case, it will seek information from the TIC, and offer advice and assistance as necessary. The CC is not empowered to handle complaints against the way the TIC handles complaints.

Supply and Prices of Rice

18. **MR FREDERICK FUNG** (in Chinese): *President, it has been reported that the rice production of Thailand, which is the top rice exporting country in the world, has been seriously affected by the recent floods, and it is estimated that the flooded agricultural land in the country accounts for about 14% to 16% of the total agricultural land. It has also been reported that much of this year's harvest has been rotten in the floods, with an estimated loss of seven million tonnes of rice which represented 28% of the total harvest of 25 million tonnes for the whole year. Moreover, the new government has raised the export prices of Thai rice across the board after taking office, and some local importers of Thai rice have indicated that the overall amount of imported Thai rice has reduced by 10% to 20%, and the prices have gone up subsequently. In this connection, will the Government inform this Council:*

- (a) *whether it knows the changes in international rice prices in each of the past 12 months (including the changes in the monthly import and retail prices of rice from Thailand, Mainland, Vietnam and other places, as well as the changes in the differences between such import and retail prices); whether the authorities have assessed the impact of the flooding in Thailand on local rice prices; if they have, of the outcome;*

- (b) *given that some members of the public have relayed to me that while rice from other origins (for example, Vietnam and Mainland) is already available in the market, its prices are not much lower than those of Thai rice, whether the authorities have looked into the reasons for that; whether the authorities have assessed if the introduction of rice from various origins can stabilize rice prices or has gradually widened the gap between import and retail prices; whether they have uncovered any local wholesalers and retailers jacking up prices indiscriminately for profiteering; if they have, whether such acts reflect that there is insufficient competition in the imported rice market, and what targeted measures the authorities have put in place to prevent retailers from reaping excessive profits, so as to enable the general public to buy rice at reasonable prices; and*
- (c) *whether the authorities will consider exploring regions other than Southeast Asia for the supply of rice, so as to ensure sufficient competition in local rice market and stabilize the supply of rice?*

SECRETARY FOR COMMERCE AND ECONOMIC DEVELOPMENT (in Chinese): President, the Government has been closely monitoring the supply and price of rice in Hong Kong. As Thailand and its adjacent areas were recently flooded, the international prices of rice are on an upward trend but its impact on local retail prices is still under observation. Over the first 10 months of 2011, Hong Kong imported 282 900 tonnes of rice, representing an increase of 3.6% when compared with the same period in the previous year. Replies to Questions (a) to (c) are as follows:

- (a) On the international prices of rice, according to the figures of the Food and Agriculture Organization of the United Nations, the average price index for rice of the past 12 months was higher than that of the previous 12 months by 11.1%. The monthly price indexes for rice in the past 12 months published by the Food and Agriculture Organization of the United Nations are set out in Annex 1.

By comparing the average price of rice in Hong Kong of the past 12 months with the previous 12 months, the import price of Thai Fragrant rice has increased by 4.99%, similar to the 3.97% increase in retail price. The import price of Chinese See Mew has increased by around 22.8%⁽¹⁾ while the retail price has increased by 9.02% only. The monthly changes in rice prices vary for different types of rice. For import prices, the monthly changes ranged between -6.43% and +32.1%⁽¹⁾. As for the retail prices, the range was between -5.43% and +6.11%. The breakdown in import prices and retail prices of Thai Fragrant rice, Chinese See Mew and Vietnamese Fragrant rice over the past 12 months is at Annex 2.

The Government notes that the local prices of rice are under pressure to increase but the actual effect has yet to materialize. The prices of rice are affected by many factors, including currency fluctuations, influence of climate in the rice exporting countries on output and export (for example, the flooding in Thailand), as well as changes in the operation costs of traders.

- (b) In Hong Kong, the rice trade generally operates in a free and market-driven environment. The retail prices depend on the operation costs of traders as well as the supply and demand of the market. In the first 10 months of the current year, the ratio of retail prices to import prices has been maintained at a level between 1.34 and 1.77, which was similar to that of last year and no abnormal fluctuation has been detected. As there is a time gap between rice import and its retail sale due to the time required for transportation, storage and delivery, the retail price may not be able to reflect changes in import price immediately.

Hong Kong has liberalized the rice trade in 2003 by reducing and simplifying control in order to create an open market, attract new entrants, promote competition within the trade and enhance market

(1) The figure covers the import price of Chinese See Mew in October 2011. In comparison with the import price of the previous month, the import price of Chinese See Mew in that month has increased by 32.1%. However, only two import licence applications were received in that month. In view of the small sample size, the rise in import price may not be able to reflect the full picture of the market. Thus, the figure should only be used for reference.

efficiency, with a view to benefiting consumers and the community as a whole. The number of rice stockholders has increased from about 50 in 2003 to about 150 at present, demonstrating an increased competition in rice trade.

- (c) The Government does not impose special control on the source of rice import. Rice stockholders may import rice from different sources according to consumers' demand. As at end October 2011, Thailand, Vietnam and Mainland China accounted for 61%, 28% and 9% respectively of the total rice import of Hong Kong. Other sources of rice supply included Japan, Taiwan, the United States and Cambodia. The market share of Thai rice has decreased from 90% in 1997 to 60% as at end October 2011, reflecting that the sources of rice import have spread to many different regions. The Government is glad to see the diversification of rice import sources as it can reduce the risks of over-concentration in supply sources and resulting in more choices for the consumers.

Annex 1

Monthly Price Indexes for Rice by the
Food and Agriculture Organization of the United Nations

	<i>Price Indexes for Rice</i>
November 2010	257
December 2010	256
January 2011	253
February 2011	255
March 2011	248
April 2011	245
May 2011	242
June 2011	247
July 2011	251
August 2011	260
September 2011	260
October 2011	255

	<i>Price Indexes for Rice</i>
Average price index between November 2009 to October 2010	227.2
Average price index between November 2010 to October 2011	252.4 (+11.1%) [#]

Note:

Compared with the average price index between November 2009 and October 2010.

Annex 2

Comparison of Prices of Various Rice in Hong Kong

(Prices in HK\$/kg)

	<i>Import Prices⁽¹⁾</i> (% change against the preceding month)			<i>Retail Prices⁽²⁾</i> (% change against the preceding month)			<i>Ratio of Retail Prices to Import Prices</i>		
	<i>Thai Fragrant</i>	<i>Chinese See Mew</i>	<i>Vietnamese Fragrant</i>	<i>Thai Fragrant</i>	<i>Chinese See Mew</i>	<i>Vietnamese Fragrant</i>	<i>Thai Fragrant</i>	<i>Chinese See Mew</i>	<i>Vietnamese Fragrant</i>
November 2010	7.89 (+4.92%)	6.27 (+14.63%)	N/A ⁽³⁾	10.66 (-0.19%)	10.47 (+1.55%)	N/A ⁽⁴⁾	1.35	1.67	N/A
December 2010	7.92 (+0.38%)	6.17 (-1.59%)	N/A ⁽³⁾	10.75 (+0.84%)	10.42 (-0.48%)	N/A ⁽⁴⁾	1.36	1.69	N/A
January 2011	7.80 (-1.52%)	6.33 (+2.59%)	5.57 (-)	10.78 (+0.28%)	11.20 (+7.49%)	8.87 (-)	1.38	1.77	1.59
February 2011	7.70 (-1.28%)	7.15 (+12.95%)	5.69 (+2.15%)	10.84 (+0.56%)	11.41 (+1.88%)	9.24 (+4.17%)	1.41	1.6	1.62
March 2011	7.95 (+3.25%)	6.69 (-6.43%)	5.69 (0%)	10.94 (+0.92%)	10.79 (-5.43%)	9.24 (0%)	1.38	1.61	1.62
April 2011	7.68 (-3.40%)	6.67 (-0.30%)	5.44 (-4.39%)	11.16 (+2.01%)	11.36 (+5.28%)	9.24 (0%)	1.45	1.70	1.70
May 2011	7.42 (-3.39%)	6.48 (-2.85%)	5.23 (-3.86%)	11.13 (-0.27%)	11.46 (+0.88%)	9.17 (-0.76%)	1.50	1.77	1.75
June 2011	7.61 (+2.56%)	7.12 (+9.88%)	5.39 (+3.06%)	11.18 (+0.45%)	11.57 (+0.96%)	9.10 (-0.76%)	1.47	1.63	1.69
July 2011	7.80 (+2.50%)	7.27 (+2.11%)	5.40 (+0.19%)	11.15 (-0.27%)	11.64 (+0.61%)	9.00 (-1.10%)	1.43	1.60	1.67
August 2011	7.79 (-0.13%)	6.84 (-5.91%)	5.45 (+0.93%)	11.12 (-0.27%)	11.56 (-0.69%)	9.55 (+6.11%)	1.43	1.69	1.75

	<i>Import Prices⁽¹⁾</i> <i>(% change against the</i> <i>preceding month)</i>			<i>Retail Prices⁽²⁾</i> <i>(% change against the</i> <i>preceding month)</i>			<i>Ratio of Retail Prices to</i> <i>Import Prices</i>		
September 2011	7.72 (-0.90%)	6.51 (-4.82%)	5.46 (+0.18%)	10.99 (-1.17%)	11.43 (-1.12%)	9.60 (+0.52%)	1.42	1.76	1.76
October 2011	8.20 (+6.22%)	8.60 (+32.10%) ⁽⁵⁾	5.68 (+4.03%)	11.17 (+1.64%)	11.52 (+0.79%)	9.76 (+1.67%)	1.36	1.34	1.72
Average price between November 2009 and October 2010	7.42	5.57	N/A ⁽³⁾	10.57	10.31	N/A ⁽⁴⁾			
Average price between November 2010 and October 2011	7.79 (+4.99%) ⁽⁶⁾	6.84 (+22.80%) ⁽⁶⁾	5.50 ⁽⁷⁾ (-)	10.99 (+3.97%) ⁽⁶⁾	11.24 (+9.02%) ⁽⁶⁾	9.28 ⁽⁷⁾ (-)			

Notes:

- (1) The import prices of rice are calculated from the information declared by rice stockholders in their import licences. All costs incurred locally before retail sale, such as transportation, storage, packing, and so on, have not been included.
- (2) The retail prices in supermarkets are calculated according to the information collected from field surveys to a number of local supermarkets, representing the average prices of selected brands of the above three types of rice.
- (3) The import price figures for Vietnamese rice before 2011 have not been compiled and therefore are unavailable.
- (4) In the past, Vietnamese rice was mainly sold to restaurants and rarely supplied for retail sale purpose. It was only in 2011 when the retail supply of Vietnamese rice became active then the authorities began to collect retail price figures of Vietnamese rice.
- (5) Only two import licence applications were received in October 2011. In view of the small sample size, the rise in import price may not be able to reflect the full picture of the market. Thus, the figure should only be used for reference.
- (6) Compared with the average price between November 2009 and October 2010.
- (7) The average prices of Vietnamese rice are calculated based on the monthly prices of January to October 2011.

Free Legal Service for Transfer of Land Relating to Wong Wai Tsak Tong

19. **MR TAM YIU-CHUNG** (in Chinese): *President, given that the former Legislative Council enacted the Block Crown Lease (Cheung Chau) Ordinance (Cap. 488) (the Ordinance) in 1995 to terminate the Block Crown Lease granted to Wong Wai Tsak Tong (WWTT) of Cheung Chau, and to deem all sub-lessees (Cheung Chau landlords) and sub-leases under the Block Crown Lease as Crown lessees and Crown leases respectively, I have recently received enquiries with regard to some large banners on the streets of Cheung Chau claiming that some lawyers will provide free service for the transfer of the titles to the original leases from WWTT to the affected Cheung Chau landlords. In this connection, will the Government inform this Council:*

- (a) *whether there will be any problem with Cheung Chau landlords' titles to the land, if they have not gone through the formalities for transfer of the aforesaid titles; if not, whether the authorities have found out if issues such as professional conduct or abuse of personal data, and so on, are involved with regard to those lawyers claiming to provide free service for processing the formalities for transfer of titles for such landlords; if such issues are involved, of the details; if not, the reasons for that;*
- (b) *whether the authorities have received any complaint involving the aforesaid claims of free service for processing the formalities for transfer of titles for Cheung Chau landlords; if they have, of the details, and whether they will refer any dispute arising from the relevant lawyers' services and fees to The Law Society of Hong Kong (Law Society) for follow-up; and*
- (c) *whether it knows if the promotion of services of practising lawyers through a third party, their chargeable and free services, as well as the protection of their clients' personal data privacy, and so on, are subject to the regulation and guidelines of Law Society, the Consumer Council and the Office of the Privacy Commissioner for Personal Data; if they are, of the respective details; if not, the reasons for that?*

SECRETARY FOR DEVELOPMENT (in Chinese): President, between the 1980s and the early 1990s, the WWTT and the sub-lessees had disputes over the land title, the renewal of sub-leases, payment of Government rent and redevelopment of land. Although legal action was taken in 1990 between some of the sub-lessees and WWTT with a settlement reached subsequently, such action did not help resolve the abovementioned disputes. Afterwards, in 1994, a majority of these sub-leases were not renewed upon expiry as a result of the disputes, creating uncertainty to title. Property transactions in Cheung Chau were thus effectively frozen.

In 1995, a Private Member's Bill was passed by the former Legislative

Council which sought to terminate the Block Crown Lease granted to WWTT and to deem all sub-lessees and sub-leases under the Block Crown Lease as Crown lessees and Crown leases respectively. The Private Member's Bill was subsequently passed and became the Ordinance.

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

- (a) As explained above, the Ordinance sought to terminate the Block Crown Lease granted to WWTT and to deem all sub-lessees and sub-leases under the Block Crown Lease as Crown lessees and Crown leases respectively. The only exception is the sub-leases which, by agreement between WWTT and the sub-lessees, had been granted or renewed for any period extending beyond 9 November 1994, and under which agreement WWTT and the sub-lessees had agreed on the amount of rent payable to WWTT after 30 June 1997. That said, these sub-leases are deemed to be Crown leases after the expiry of their term. Due to the fact that the abovementioned arrangements came into effect upon the commencement of the Ordinance, the sub-lessees of the relevant leases are not required to make arrangements for a transfer of title.

As regards the enquiries received by Mr TAM about the provision of free services for the transfer of title of the Block Crown Lease by some lawyers to the Cheung Chau landlords as mentioned in his question, I would suggest Mr TAM to invite the enquirer to contact Law Society direct, as the question on professional conduct of lawyers and Law Society's regulation of its members are the independent affairs of Law Society.

- (b) Neither the Lands Department, the Islands District Office, the Consumer Council nor the Office of the Privacy Commissioner for Personal Data have received any complaints on the matter referred to in the question. If such complaints are received, the authorities will take appropriate follow-up actions, including referring the case to Law Society.
- (c) Policies pertaining to consumer protection and protection of personal

data come under the respective purview of the Commerce and Economic Development Bureau and the Constitutional and Mainland Affairs Bureau. Their replies to part (c) of the question are as follows:

The Consumer Council (CC) does not have the power to regulate the services provided by the legal profession (such as its promotional practices, fees or measures protecting personal data privacy). As an advocate for consumer welfare, the CC often appeals to traders (through, for instance, publishing a Good Corporate Citizen's Guide) not to adopt practices that could be prejudicial to consumer interests (such as deceptive marketing and other tactics which may annoy consumers or harm their interests).

As regards protection of personal data, use (including transfer) of personal data is currently governed by Data Protection Principle 3 (DPP 3) of the Personal Data (Privacy) Ordinance (PDPO). DPP 3 provides that personal data shall not, without the prescribed consent of the data subject, be used for any purpose other than the purpose for which the data was to be used at the time of collection or a directly related purpose. If a data user breaches DPP 3, the Privacy Commissioner for Personal Data (PCPD) may issue an enforcement notice directing the data user to take specified steps to remedy the contravention within a specified period. Contravention of an enforcement notice is an offence and would render the data user liable, on conviction, to a fine at level 5 (\$50,000) and imprisonment for two years.

Use of personal data in direct marketing is also governed by section 34 of the PDPO which allows a data subject to request the data user to cease to so use his data. The PCPD has issued guidelines providing practical guidance on the collection and use of personal data in direct marketing.

with Disabilities

20. **MR WONG SING-CHI** (in Chinese): *President, regarding the allocation of places in residential care homes for the elderly (RCHEs) and persons with disabilities by the Social Welfare Department (SWD), will the Executive Authorities inform this Council:*

- (a) *given that owing to an error of SWD's computer system which assists in the allocation of places in RCHEs, an elderly man who had originally been on the waiting list for places in RCHEs with his wife under "group application" and had subsequently switched to "individual application" after the death of his wife was allocated a place after a delay of six months, how often the authorities conduct inspection and maintenance of the computer system used for allocating places in RCHEs and persons with disabilities;*
- (b) *whether they had compiled statistics in the past five years on the errors of the computer system used for allocating residential care home places which had affected the elderly or persons with disabilities on the waiting list; if so, of the details; if not, the reasons for that; and*
- (c) *given that some elderly groups have pointed out that the SWD currently does not have a notification or inquiry mechanism in place to inform the elderly concerned when they will be able to move into residential care homes and, as a result, they are unable to plan and make arrangements for their lives; whether the authorities will consider setting up such a notification or inquiry mechanism, so as to inform the elderly or persons with disabilities on the waiting list when they will be able to move into residential care homes; if so, of the details; if not, the reasons for that?*

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

- (a) The Central Referral System for Rehabilitation Services

(CRSRehab) and the Long Term Care Services Delivery System (LDS) of the SWD were set up in April 2000 and November 2003 respectively for the allocation of subsidized rehabilitation services to persons with disabilities and long-term care services for the elderly.

The SWD engages an information technology system contractor (contractors) to provide maintenance and support services for each of the two systems mentioned above. The maintenance and support services include daily checking of the system to ensure its smooth and normal operation, and upgrading of the system and software as and when necessary. If any computer application programme problem is identified, the contractor concerned will conduct a full investigation and adopt rectifying measures immediately.

The SWD also reviews the operation of the two systems from time to time and makes arrangements for improving them. As the SWD launched the Client Information System, CRSRehab was upgraded in 2010. The Department also plans to fully upgrade LDS and the relevant work is expected to commence in 2012-2013.

- (b) Since the implementation of CRSRehab and LDS, with the exception of the present case under LDS in which a technical problem arose from a change of the application from "group application" to "individual application", no other computer system problem affecting the queuing position of the applicants on the service waiting list has been found.
- (c) Under the existing mechanism of the Central Waiting List, applicants for residential care services have many choices. For example, applicants for long-term care services for the elderly can choose RCHEs in terms of location (that is, cluster, district or a specific home, and so on), type (that is, subvented RCHEs, contract RCHEs, RCHEs participating in the Enhanced Bought Place Scheme or Nursing Home Place Purchase Scheme), religious background, diet, and so on. An applicant may also choose to wait for the service jointly with other applicants (including spouse, relative, friend, and so on) by way of "group application". Applicants of residential care services for persons with disabilities can also

indicate location preference of the home in terms of cluster, district or a specific home. Applicants who are on the waiting list of Hostel for Moderately Mentally Handicapped Persons and Long Stay Care Home can also choose to accept the residential care places provided under the Pilot Bought Place Scheme for Private Residential Care Homes.

Both LDS and CRSRehab will allocate suitable service to applicants in accordance with their application dates and preferences.

Besides, we also allow applicants to change their preferences owing to changes in personal or family circumstances during the waiting period. In fact, such changes are rather common, and they will affect the queuing position of, and the time required for allocation of residential care places to, other applicants on the Central Waiting List.

Since each applicant has a number of choices as mentioned above, and their preferences may change from time to time, it is difficult for the SWD to inform each and every applicant his/her latest waiting situation. Nevertheless, the SWD will regularly provide general information about the waiting list on its homepage for reference by the applicants and the referral service units. Such information includes the "number of applicants on the waiting list for subsidized residential care services for the elderly", "average waiting time for admission to subsidized residential care services for the elderly", "the latest application date with placement offer of subsidized residential care services for the elderly", "number of applicants on the waiting list for subsidized residential services for persons with disabilities" and "the latest application date with placement offer of subsidized residential services for persons with disabilities". When applicants are allocated a residential care place, they will be given sufficient time to consider whether to accept it or not. Besides, they can discuss with the SWD or the home concerned when exactly to move in. These arrangements can help the applicants properly plan and make arrangements for their lives.

First Reading of Bills

PRESIDENT (in Cantonese): Bill: First Reading.

MEDIATION BILL

CLERK (in Cantonese): Mediation Bill.

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

Second Reading of Bills

PRESIDENT (in Cantonese): Bill: Second Reading.

MEDIATION BILL

SECRETARY FOR JUSTICE (in Cantonese): President, I move that the Mediation Bill be read a Second time.

Mediation is a process to resolve disputes other than by way of litigation in the Courts. It is increasingly used in many jurisdictions around the world. In my visits to the Justice Departments of many other jurisdictions, they are also taking various steps to promote and facilitate the use of mediation. These steps include the provision of a regulatory framework to support the conduct of mediation.

Mediation is not new to Hong Kong; it is widely used by parties to construction and family disputes. Following the promulgation of the Practice Direction 31 on Mediation by the Judiciary in February 2009, which came into effect in 2010, mediation has further established itself as a form of dispute resolution in Hong Kong.

The Working Group on Mediation that I chaired published its Report in

February 2010 with 48 recommendations for a three-month public consultation. One of the recommendations is to enact a Mediation Ordinance.

The Mediation Bill presently before the Legislative Council is aimed at providing a legal framework for the conduct of mediation without hampering the flexibility of the mediation process, and to address some of the issues in which the existing law is uncertain, such as confidentiality and admissibility of mediation communications. We believe that the enactment of the Mediation Bill will promote the wider and more effective use of mediation to resolve disputes and strengthen Hong Kong's status as an international dispute resolution centre.

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

There was overwhelming support for the enactment of a Mediation Ordinance during the public consultation of the recommendations of the Report of the Working Group on Mediation. The Mediation Task Force which I set up has considered and deliberated on the provisions of the proposed mediation legislation and two consultation sessions were held with stakeholders in June 2011. The Administration of Justice and Legal Services Panel was consulted on the legislative proposal in July 2011 and had indicated support for the Bill.

I will now give an outline of the main provisions of the Mediation Bill.

Firstly, "mediation" is defined in the Bill in order to state clearly what constitutes "mediation". It is distinguishable from arbitration and litigation as a mediator does not adjudicate a dispute or any part of it.

The importance of confidentiality in mediation is given prominence in the Bill because it is one of the main reasons why parties choose mediation over litigation. Mediation communications are confidential and must not be disclosed except in limited circumstances. While the definition of "mediation communication" expressly excludes an agreement to mediate or a mediated settlement agreement, that is, the information on these two types of agreement can be disclosed, in practice, parties to mediation may still agree among themselves that their agreement to mediate or mediated settlement agreement be

treated as confidential.

The Bill makes it clear that the assistance or support provided to a party in mediation does not constitute an infringement of certain provisions in the Legal Practitioners Ordinance (Cap. 159). This is in line with the Arbitration Ordinance and will serve to attract more parties to choose Hong Kong as the place to conduct mediation and promote Hong Kong as an international centre for dispute resolution.

The Bill deals with the confidentiality of mediation communications by forbidding the disclosure of a mediation communication. In order to strike a balance, the limited instances where a person may disclose a mediation communication are expressly set out in the Bill.

The Bill also restricts the use of mediation communications in any proceedings by requiring the leave of a specified court or tribunal before mediation communications may be adduced in evidence.

The Bill also provides for consequential amendments to ensure the consistent use of the terminology used in existing Ordinances so that the Chinese rendition of "mediation" will be "調解" and the Chinese rendition of "conciliation" will be "調停".

Deputy President, this Bill will set out the platform for the development of mediation in Hong Kong and represents a significant milestone in the promotion of mediation. It is the product of the diligent and conscientious work of Members of the Working Group on Mediation, the Mediation Task Force, their sub-groups, various organizations (including trade, consumer organizations and non-governmental organizations (NGOs)) and many others including the Administration of Justice and Legal Services Panel of this Council.

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

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

In accordance with the Rules of Procedure, the debate is now adjourned

and the Bill referred to the House Committee.

MEMBERS' MOTIONS

DEPUTY PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to amend the Securities and Futures (Professional Investor) (Amendment) Rules 2011.

I now call upon Mr KAM Nai-wai to speak and move the motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR KAM NAI-WAI (in Cantonese): Deputy President, I move that the motion, as printed on the Agenda, be passed.

I proposed an amendment to the Rules on professional investor today because of the closure of the Lehmann Brothers (LB) incident that happened in September 2008. I am sure Members will still recall the incident. In the wake of the incident, we woke up to our great surprise that there were so many new investment products in Hong Kong, such as minibonds, equity linked notes and principal protected notes, and so on. Members may be very familiar with these names now. To the ordinary investor, all these products were extremely attractive at that time. But now, it can well be said that these products just leave us dazzled and perplexed.

After the LB incident, in July 2009 the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA) jointly made the first proposal of a repurchase scheme together with 16 retail banks to the victims of LB minibonds. At that time, no one knew the term "professional investor". And in these repurchase agreements as well as other repurchase agreements proposed by other banks from then on, people who are classified as "professional investors" are not eligible for such repurchase schemes. Then we came to learn that it turned out that professional investors had to bear a rather great responsibility and even when there was compensation, that is, the repurchase

schemes as described by the Government, these investors would not be qualified.

We know that the Legislative Council has formed a Subcommittee on the LB incident. Many victims came to the hearings in this Council and many of them said that they were illiterate or advanced in age and they were persuaded by bank staff to use the savings they had intended for term deposits to buy minibonds or all sorts of complicated structured products. Also, many people were classified as "professional investors" without knowing it.

I wish to quote some figures here. In the LB incident, the HKMA received complaints from 104 people who were classified as professional investors. As I said just now, these people only came to realize that they had been classified as professional investors after the repurchase schemes were put forward. Then they lodged complaints. They looked up the laws and found that the definition of a professional investor was very simple indeed. Anyone who has an investment portfolio in a bank or financial institution of not less than \$8 million would be classified as a professional investor. In simple terms, provided that the amount of investment reaches a certain amount, then a person can be called a professional investor.

In the LB incident, although the number of people who made this kind of complaint was not substantial when compared to the total number of some 20 000 victims Let us just look at some actual figures. With respect to the clients of the retail banks, as at end June 2011, there were altogether some 27 000 people in Hong Kong who were classified as professional investors. This 27 000 is quite a large number. As I have said, after the LB incident, people woke up to their great surprise that there were many kinds of products which they had never heard about. There were products like equity linked notes, and so on. And they are products that we have never heard about. At the same time, the threshold for classifying someone as a professional investor is not at all complicated and so it is easy for ordinary members of the public to be misled or classified wrongly as professional investors.

Therefore, the Democratic Party holds that some sort of measures should be adopted to strengthen the relevant laws so as to prevent members of the public from being classified wrongly as professional investors. The contents of the amendment proposed by me today mainly come from the Code of Conduct for

Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct). This Code of Conduct was issued not too long ago and I have taken materials from the latest version of the Code of Conduct dated June 2011. The amendment has contents like the following on professional investors: "whose expertise and investment products trading experience and knowledge have been assessed as, in light of the nature of the transactions or services envisaged, providing assurance that the individual is capable of making an investment decision on his own with understanding of the risks involved", "having traded not less than 40 transactions per year", and "having traded actively in the relevant market for at least 2 years". In my opinion, these are essential conditions. But they are not invented by the Democratic Party. We have only drawn reference from the Code of Conduct and added the requirements therein to the principal legislation.

From the LB incident, we can learn from the investigation conducted by this Council and from media reports that there are many investment products around and there are some employees in certain financial institutions who want to get a great amount of commission and to make quick money. Of course, most of the people working in the financial sector are people with professional integrity and good service. But we cannot rule out the existence of some black sheep in their midst and because these people want to make quick money, they take the risk and classify some ordinary members of the public as professional investors and sell some high-risk products to them.

As we all know, any person found in breach of the stipulations of the Code of Conduct will only be liable to a revocation of licence as the maximum penalty now. The bank concerned may be liable to a fine. But the fine is not paid to the victim as compensation. Therefore, the Democratic Party thinks that for any deterrent effect is to be achieved, it would not be enough if we just rely on making public denunciations, imposing fines, suspending the licence or revoking it. We hope that the requirements concerned can be added to the principal legislation because a breach of the law is subject to criminal sanction. We would think that criminal sanction carries the greatest deterrent effect and so there is a need to write the relevant contents of the Code of Conduct into the law. Since the requirements for adducing evidence in the prosecution proceedings are very stringent, once the requirements concerned are incorporated into the law, practitioners in the financial sector need not worry about being caught by the long

arm of the law out of inadvertence as long as they have complied with the relevant provisions.

There are provisions in the Securities and Futures Ordinance (SFO) which aim at protecting investors. But these provisions are not applicable once investors are classified as professional investors. In the LB incident, it is likely that professional investors may only lose the compensations as promised in the repurchase agreements because they will be singled out. But the SFO provides for legal restrictions like those found in section 103 on issuing advertisements relating to investment; section 174 on unsolicited calls and section 175 on offers relating to securities, and so on, and they are not applicable to cases of professional investors. So the term "professional investor" must be rigorously defined and this should be turned into some legal provision to protect ordinary members of the public. Requirements found in the Code of Conduct should be incorporated into the law such that the threshold for the definition of "professional investor" can be raised.

Recently, I know that there are various associations of banks such as the Hong Kong Association of Banks and the Alternative Investment Management Association have written to us, stating that the amendment concerned would pose some obstruction to Hong Kong such as in our competition with other cities in the financial industry. Some people in the banking sector are worried that tightening up the laws would affect the Code of Conduct which is widely accepted in the banking sector and impede the business development opportunities of professional investors marshalling a substantial amount of investment. Moreover, this will impose restrictions on financial institutions in designing products for their clients. The Democratic Party disagrees with such a view. This is because if the law is amended to offer greater protection to investors, it can boost investor confidence in Hong Kong's financial system and hence further strengthen our position as a financial hub. We can see from the LB incident what harm can be done and we do not want to see a recurrence of similar incidents in Hong Kong.

Some people in the financial sector point out that incorporating the requirements of the Code of Conduct into the law would create great obstacles to the kinds of products available to investors. For example, a certain investor may have carried out 39 transactions in the year past and as the amendment states that the threshold is 40 transactions and so he cannot buy certain investment products

in his capacity as a professional investor. But if this kind of loose requirement is imposed on the original standard, then should investors who have carried out just 35 transactions be classified as professional investors? How about investors who have carried out 30 transactions? In our opinion, stringent enforcement of the relevant requirements will meet the needs of an international financial hub and we do not think the amendment concerned will cause any impediments to market development.

I know that the Secretary will say later that we have not held any consultation on our amendment. I am grateful to the President — now it is the Deputy President in the Chair — because the President has given his approval to me for proposing this amendment. In the ruling given by the President, the Legal Advisor has made it clear that in 2007, the Government amended the Securities and Futures (Contracts Limits and Reportable Positions) (Amendment) (No. 2) Rules 2007, but no consultation was held with the market on the amendments. I do not know why the Government did not say at that time that consultation was required, but now it is saying that there is a need for it. In the view of the Legal Advisor to this Council, the Government is holding double standards.

After the LB incident, the SFC has held many forums with banks, brokers, fund managers, investment consultants and such like trades and organizations. A few hundred people have taken part in these forums. The SFC then made some amendments and held some consultations, then the Code of Conduct was issued. From this it can be seen that with respect to the issue of how best market rules can be improved in the Code of Conduct, certain related bodies, especially the SFC, have held extensive consultations after the LB incident. Therefore, we do not agree to the view that there has not been any consultation regarding this amendment. When a Member wants to propose some amendment during the committee stage but the authorities say that this cannot be done because no consultation has been held, then the power of the Legislative Council to amend laws will be undermined. This is a point mentioned by the Legal Adviser in the President's ruling. So I hope that Honourable colleagues can take a good look at the amendment. If Members have any questions, they can refer to the Code of Conduct. This is because I have only copied the original text and added the requirements to the law in order to enhance the protection for investors.

At this time of a debt crisis in Europe, the financial markets are very

volatile. A financial crisis may happen at any time. So we must do a good gate-keeping job in the law. And we must learn a lesson from the LB incident and try our best to protect the people so that they will not be wrongly classified as professional investors. This is the ultimate aim of this amendment. *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

MR KAM NAI-WAI (in Cantonese): Thank you, Deputy President.

Mr KAM Nai-wai moved the following motion:

"RESOLVED that the Securities and Futures (Professional Investor) (Amendment) Rules 2011, published in the Gazette as Legal Notice No. 135 of 2011 and laid on the table of the Legislative Council on 12 October 2011, be amended as set out in the Schedule.

Schedule

Amendment to Securities and Futures (Professional Investor) (Amendment) Rules 2011

1. Section 3 amended (section 3 amended (persons prescribed as professional investors))
After section 3(3) —
Add
"(3A) Section 3(b) —
Repeal
"within 12 months before the relevant date;"
Substitute
"within 12 months before the relevant date,
and meeting the following requirements —
(iii) whose expertise and investment products trading
experience and knowledge have been assessed
as, in light of the nature of the transactions or
services envisaged, providing assurance that the

- individual is capable of making an investment decision on his own with understanding of the risks involved;
- (iv) having traded not less than 40 transactions per annum; and
 - (v) having traded actively in the relevant market for at least 2 years; ". ".

DEPUTY PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr KAM Nai-wai be passed.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Cantonese): Deputy President, with respect to the resolution proposed by Mr KAM Nai-wai, I must stress that the Government fully agrees with the importance of investor protection. In principle we do not oppose examining the existing definition of "professional investor". As a matter of fact, in the meetings of the Subcommittee on Securities and Futures (Professional Investor) (Amendment) Rules 2011, the SFC has clearly undertaken that public consultation on this will be conducted.

When the SFC is to formulate rules or amend existing rules, it has all along followed the proper procedures laid down under section 398 of the Securities and Futures Ordinance (SFO). These include issuing a draft text for the purpose of soliciting public representations and opinions. In view of this, the SFC will publish a report on the results of the consultation, listing the representations received and responses to such representations. The significance of this procedure lies in ensuring that there is an opportunity in the market for the expression of views on the proposed new subsidiary legislation and that preparations for that can be undertaken early to enhance compliance.

Mr KAM holds that when amending the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct), the SFC has held extensive public consultations and therefore his proposed resolution has fulfilled the requirement for public consultation.

I must point out that the specific scope of the public consultation exercise

undertaken by the SFC in the context of amending its Code of Conduct did not include the proposal made by Mr KAM Nai-wai now to incorporate the requirements under the Code of Conduct into the law.

The amendment proposed by Mr KAM Nai-wai will provide for criminal law consequences for failure to comply with the existing requirements of the Code of Conduct. Some of these consequences are rather grave. An example is that a breach of section 103(1) is liable upon conviction on indictment to imprisonment up to three years and a fine of up to \$500,000.

The wording used by Mr KAM Nai-wai in his amendment is drafted with reference to elements found in the existing Code of Conduct. However, I must point out that the Code of Conduct is not legal provisions and it is not written with the accuracy required by the language of law. It is not meant for construction based on such standards. If an attempt is made only to extract certain elements from the Code of Conduct without any attention paid to other surrounding provisions, it may affect the totality of the regulatory requirements in the Code of Conduct and hence disturb the existing balance of the regulatory regime, rendering it more difficult to administer.

Such an amendment may necessitate consequential amendments to other parts of the SFO or subsidiary legislation. And the language to be used must be drafted to provide a high level of legal certainty as it would result in potential criminal sanctions.

Many of the words used in the amendment now proposed by Mr KAM Nai-wai are unclear. An example is how "transactions" and "the relevant market" should be defined. Likewise, other words used in the amendment should be carefully scrutinized to pre-empt any challenge in Court, or difficulties in enforcement.

The amendment proposed by Mr KAM Nai-wai has not undergone any process of public consultation. The proposal is raised in hasty circumstances without any comprehensive considerations.

We strongly think that proper procedures must be followed to uphold our position as an international financial hub and for the protection of the investors. As the proposed amendment may involve criminal consequences, there is a need

all the more for consultation in the market. There should also be holistic considerations in the context of the existing laws so as to avoid the emergence of any unforeseeable consequences or failure in enforcement due to incompatibility with the existing laws.

Deputy President, let me reiterate our position once again: The Government fully agrees that it is important to protect investors and the SFC has made a pledge clearly that the existing regulatory regime with respect to professional investors will be reviewed.

For the reasons I have just stated, I oppose this proposed resolution.

Thank you, Deputy President.

MR CHAN KAM-LAM (in Cantonese): Deputy President, in my capacity as Chairman of the Subcommittee on Securities and Futures (Professional Investor) (Amendment) Rules 2011, I would like to report the highlights of the deliberations made by the Subcommittee.

The Subcommittee has held a total of four meetings and heard the views of representatives from groups such as those from the securities, banks and legal sectors. The Subcommittee has examined the definition of "professional investor" and the regulatory framework for the Professional Investor regime and sought explication on the assessment and qualifying criteria for professional investors, the minimum portfolio requirement, the regulatory role of the SFC and the HKMA, as well as sanctions and criminal liabilities for non-compliance with the Code of Conduct for Persons Licensed or Registered with the Securities and Futures Commission (Code of Conduct), Securities and Futures (Professional Investor) Rules (PI Rules) and the relevant legislation.

As a matter of principle the Subcommittee would not oppose the amendments in evidential requirements made to the Professional Investor (PI) Rules by the SFC in response to market needs. These amendments prescribe additional means of ascertaining whether an investor is a professional investor and considered as a high net worth professional investor, hence giving greater flexibility to the sector. The Subcommittee also supports the amendment to section 3(d) of the PI Rules to prescribe more types of corporations be considered

as high net worth professional investors.

The Subcommittee notes that the minimum portfolio requirement of not less than HK\$8 million (or the equivalent in foreign currency) for a high net worth individual investor to be classified as a professional investor under the PI Rules has remained unchanged since 2001. In view of the significant depreciation of the Hong Kong dollar, the rise in real estate prices and the general increase in the wealth of Hong Kong people, some members have questioned whether it is appropriate and reasonable to maintain the same minimum portfolio requirement. These members urged the Administration to consider raising the minimum portfolio threshold to enhance investor protection.

The Government has explained that the minimum portfolio requirement of HK\$8 million has formed part of the public consultation on Proposals to Enhance Protection for the Investing Public conducted by the SFC in the fourth quarter of 2009. According to the SFC, the sector and the majority of the respondents who have given views opined that the minimum portfolio requirement should be maintained at HK\$8 million. Many respondents are concerned about the adverse impact that any increase in the minimum portfolio amount would have on the private placement market in Hong Kong. This may hamper the market practice of direct placement of a newly listed company's shares in an initial public offering to professional investors in Hong Kong, undermine the development of the financial market in Hong Kong and compromise Hong Kong's position as an international financial centre. The Administration has advised that setting the minimum portfolio requirement at HK\$8 million is reasonable and this is similar to the requirement in other jurisdictions.

To enhance investor protection, some members have requested the Administration and the SFC to consider making it an explicit requirement in the Securities and Futures (Professional Investor) (Amendment) Rules 2011 (Amendment Rules) or relevant legislation requiring intermediaries to comply with the relevant regulatory requirements under the Code of Conduct in serving professional investors, and assess an investor's knowledge, expertise and investment experience prior to treating an investor as a professional investor.

The Administration is of the view that extracting certain elements from the Code of Conduct without the surrounding provisions may affect the totality of the regulatory requirements in the Code of Conduct and disturb the existing balance

of the regulatory regime, rendering it more difficult to administer. Moreover, such an amendment may necessitate consequential amendments to other parts of the Securities and Futures Ordinance (SFO) or subsidiary legislation, and the language to be used must be drafted very carefully to provide a high level of legal certainty as it would result in potential criminal sanctions. Nevertheless, the Administration has undertaken to review the Professional Investor regime in 2012 with a view to consulting the sector and the market.

A member has suggested the Administration to consider introducing, in the long run, a licensing regime in respect of different financial products and markets by way of the issue of a licence or certificate to accord an investor the status of a professional investor. With respect to this, the Administration has advised that it is not aware that any major overseas regulator makes an assessment of individual investors and grants them licences if they qualify as professional investors. As such a proposal involves fundamental changes to the role of the SFC as well as the existing market practice, the Administration considers it necessary to study the implications carefully and consult the market before making a decision.

Deputy President, the Subcommittee supports the Amendment Rules in principle. The Administration and the Subcommittee have not proposed any amendment to the Rules.

Deputy President, the following are my personal views. In general, the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports the Amendment Rules. The relevant Rules prescribe that more types of corporations should be classified as high net worth professional investors and ensure greater flexibility in evidential requirements to ascertain whether an investor should be classified as a professional investor. The Amendment Rules have undergone public consultation and it is widely supported by the sector.

In the course of deliberations by the Subcommittee, we have discussed the definition of "professional investor", the regulatory regime, minimum portfolio requirement and such like issues adequately. Such discussions are helpful to reaching a clear definition of "professional investor".

As for the resolution proposed by Mr KAM Nai-wai to draw up additional

requirements on the definition of individual professional investor, we think that it is not necessary.

The Amendment Rules are set down by the SFC under the powers conferred to it by section 398 of the SFO. If the SFC is to formulate any rules or amend the existing rules, it must follow certain proper procedures. These include the issue of a draft text to invite representations from the public. In view of this, the SFC should then publish a report on the results of the consultation, listing the representations it has received and its responses to such representations. The meaning of this set of procedures is to ensure an opportunity in the market for expression of views on the proposed new subsidiary legislation and for the purpose of early preparation for compliance.

The amendment now proposed by Mr KAM Nai-wai and the new offences associated with the amendment, that is, punishable by a maximum penalty of imprisonment for up to three years and a fine of up to \$500,000 upon conviction on indictment, have not undergone any public consultation. This proposal is made under hasty circumstances and without going through any comprehensive consideration. It has bypassed the procedures specified by the legislation on the formulation of subsidiary legislation by the SFC and no attempt is made to make use of the advantages of market participation.

In the process of deliberating on the Amendment Rules, the Subcommittee has also heard views expressed by the market which thought that there is no need to add the amendment proposed by the Member to the Rules. We have also heard in the deliberations that the SFC undertaking to conduct a public consultation exercise on this issue. Of course, this is backed up by the Administration. To uphold our position as an international financial centre and protect investors, proper procedures should be followed. This move also complies with the statutory procedures prescribed under section 398 of the SFO. The section is specifically enacted for the purpose of setting down rules applicable to the securities and futures trade.

After Mr KAM Nai-wai has proposed this resolution, I have received many telephone calls, faxes and e-mails from the trade and the relevant professional bodies. We are urged to speak on their concerns in this Council. They have stated that it would be a very serious matter for the trade if the relevant requirements are written into the Rules and that breach of the same would result

in criminal liability. The public should be consulted before such great changes are made. Views from the sectors concerned as well as investors should be heard. They do not necessarily oppose the amendment or refuse to comply with the existing Rules. But they hope that they can have a chance to air their views, such that everyone will be enabled to gain an understanding of what would be done and make the right decision.

Although the wording used in the proposed amendment has made reference to the existing Code of Conduct which is not statutorily binding, more careful studies should be made and words should be chosen with great care to render them comparable to the level used in the legal provisions. This is because a breach of the legal provisions will constitute an offence and the offender is liable to criminal sanctions such as imprisonment and a fine. The amendment concerned should also take into account the existing legislation and a comprehensive approach must be taken in order to avoid the occurrence of unforeseeable consequences or contradiction with the existing legislation, as these will lead to problems in implementation. As the relevant requirements are found in the Code of Conduct and the SFC's requirements on the conduct of intermediaries in serving professional investors are clearly stipulated, there is no need to write them into the PI Rules. Moreover, for many years the sector has been adhering strictly to the Code of Conduct and so there is no need to write the requirements into the Code.

At present there are statutory procedures which require consultation with the market if any subsidiary legislation is to be enacted. In our opinion, as the proposed amendment may result in criminal sanctions, there is more so a need to consult the market.

In fact, the Government stated clearly in the meeting of the Subcommittee on 16 November on the Amendment Rules that after hearing the views of members, the SFC would undertake a review of the professional investor regime and a public consultation exercise would be held. With the completion of the inquiry undertaken by the Subcommittee on the Lehman Brothers incident of this Council, both Members of this Council and the sector concerned may have some suggestions to make. These can be used as reference when the public consultation exercise is held later. Since the Government has undertaken to conduct a review and consultation, I think that the issue can be left to later

discussions when the review and consultation have completed.

Deputy President, at the present moment, we support the Amendment Rules. The arguments advanced earlier by Mr KAM Nai-wai are, in our opinion, still made from the point of view of investors in the Lehman Brothers incident. We agree fully that the rights of small investors in the market should be protected, but we should not just look at the Lehman Brothers incident. As a matter of fact, we should also see that professional investors should have more choices and rights in the market. In addition, we also know that some small investors would hope to have greater freedom when making investments and even if they do not qualify as professional investors, they would still hope that they can become professional investors and enjoy greater freedom in making investments. So we need to do more in regulation and education, instead of trying to force through the addition of certain requirements which have not undergone any consultation to the relevant rules. I hope Members can see the point here. In opposing the amendment today, it does not mean that we do not want to enhance protection but, as a matter of fact, the purpose of enhancing protection cannot be achieved by adding the amendment to the PI Rules alone.

Thank you, Deputy President.

MS AUDREY EU (in Cantonese): Deputy President, on behalf of the Civic Party I speak on the resolution on the Securities and Futures (Professional Investor) (Amendment) Rules 2011 (Amendment Rules).

Deputy President, first of all, I wish to state that I understand very well why Mr KAM Nai-wai wants to propose an amendment today. His purpose is to incorporate the part in the Code of Conduct regarding a professional investor's experience into the Amendment Rules and make it a statutory requirement. This will certainly also have implications in criminal liability. What he wants to do is to plug the loophole of people having got the money but not the expertise. This is because people who have a lot of money in their bank accounts are not necessarily professional investors. I know many people who are professionals, but that does not mean they are professionals in investments. They may be professionals in the fields of medicine and law, and they may actually have not much experience in investment, yet they can meet the asset requirement at present to be classified as a professional investor, that is, their investment portfolio has

got a net worth of \$8 million.

The amendment proposed by Mr KAM Nai-wai seeks to address this problem. He hopes that the deterrent effect concerned can be increased in order to give greater protection to investors. With respect to this point, I agree very much with the spirit behind Mr KAM's amendment. But I doubt if this is the way to solve the problem or that by doing so the investors are really given adequate protection and the protection they need. So in my speech today I will explain why the Civic Party cannot vote in support of Mr KAM Nai-wai's amendment later.

First, I wish to talk about the historical background of this Amendment Rules from a very narrow perspective. As a matter of fact, many Honourable colleagues have said earlier that if the SFC is to make any amendment to its rules, it will have to act according to the Securities and Futures Ordinance (SFO) and hold a consultation exercise. Now the SFC has indeed held a consultation exercise. I have in my hands now a copy of the consultation paper on evidential requirements for the Securities and Futures (Professional Investor) Rules published in October 2010. After the consultation exercise, a summary of the consultation was published in February 2011. When we look at these two documents, we will find that the scope of consultation at that time was very narrow indeed.

As we review the existing framework regarding professional investors or the related practices, we can see that professional investors are divided into two types. The first type is big companies such as banks and insurance companies set out in paragraphs (a) to (i) of Schedule 1 to the SFO. But this type of professional investors is not the subject of our discussion today. The other type is persons with assets. Put simply, they are people with an investment portfolio of not less than \$8 million or having not less than \$40 million entrusted to a trust corporation.

But how should we ascertain whether a person can be classified as a professional investor and meets the definition for it? The definition concerned is based on the Securities and Futures (Professional Investor) Rules (PI Rules) which are very complicated, and the person's assets 12 to 16 months before he makes the investment will have to be checked. This was why the SFC

conducted a consultation exercise on this issue of evidential requirements. The result of the consultation was that people in the sector considered that the requirements were very complicated. The practice was also thought to be too rigid, for it would be difficult to define what an investor had done during a period of 12 to 16 months. So the sector suggested that this should be relaxed and a standard which could be measured or examined should be added. This is the asset requirement on the investor concerned at the relevant date of investment. Hence the Government has introduced this piece of subsidiary legislation to this Council for negative vetting. This is based on the suggestion made by the sector at the time of the consultation, that is, to relax the definition of professional investor and to add a standard by which the person's asset at "the relevant date" should be used to assess whether he should be so classified.

If we look at the issue in this narrow context of past history and the formal requirements of due process and procedural justice, actually this Council should have the obligation to support such an amendment from the Government. This is because both the Government and the SFC have held a consultation exercise according to the established procedure and the views from the sector were uniform and a mainstream view was formed. This is the reason why the amendment is introduced by the Government to this Council and we are asked to pass the Amendment Rules. So as seen from this simple account of history and the point of procedural justice, we do have an obligation to pass it.

However, Mr KAM Nai-wai has presented us a bigger picture, one set against a much broader historical background. That is also very important. After the Lehman Brothers (LB) incident which broke out in September 2008, we came to know that there were many people in Hong Kong who had bought many LB-related products from the banks. And we knew later on that many of these people were regarded as professional investors but they thought they had been unfairly treated in this respect.

Let us then look at the operation. When banks sell this kind of products, very often what they do or the procedures involved would place the responsibility on the consumers. What is required is only that the consumer will sign the papers and tick against every option. But this does not necessarily meet the requirements from the SFC or the Association of Banks. That is to say, there may be omissions in the procedures. Another big problem is that although we

know that the SFC has made many inspections of the banks all through these years, no such problem is discovered.

As we consider this Amendment Rules on professional investors, we should see whether or not the protection given to consumers should be enhanced against this macro background. The first thing we have to look at is what in fact professional investors are. I have just now given a simple definition. But in fact things are very complicated. This is because we have to pay attention to first, the SFO, and second, the PI Rules. But both the SFO and the PI Rules have not mentioned that there turns out to be another part and that is, we should look at the code on professional conduct. This Code of Conduct states that even if someone is a professional investor, he still has to fulfil many conditions before he is classified as a professional investor. Examples of such conditions are whether or not he has been very active in making transactions in the market concerned, for how long and the number of transactions he has carried out, and so on. Many of these references are already found in the PI Rules. So this would give much more difficulties to people who do not belong to the sector concerned. They have no way to know that they have to find these references, requirements and conditions from among so many small details. They may also overlook something or have not done as much as they should.

So should we make use of this opportunity when the Government introduces this resolution to us and propose an amendment or try to improve the situation? My question is, there would be problems if this Council wants to add in many things after some consultation has been held on these requirements which belong to such a fine and narrow scope. So I have conveyed my view to the SFC and the government departments concerned.

When Honourable colleagues spoke earlier, many of them mentioned that the SFC had undertaken to conduct a full-scale consultation on this next year. Actually, when I met Mr ALDER of the SFC, he also admitted that the existing practice was far from being satisfactory and it was not sound. And he said that even people from the sector thought that there would be difficulties in operation. Even when people in the sector would want to classify someone as a professional investor, it is often due to this idea to play safe that the person will be classified as a non-professional investor instead. So Mr ALDER admitted that there were

shortcomings under the present practice.

Since the SFC has made an undertaking to conduct a full-scale consultation next year, I would think that this is a very important factor to consider. This is because if it says that no consultation would be held and if it is very happy with the present state of affairs, then as Members of this Council, we should think about what other things can be done. So since the SFC has admitted that there are problems, and it will conduct a review soon, I would think that we can rest assured.

On the other hand, after the LB incident, some improvements have been made such as to the Code of Conduct, and so on. There are also stricter requirements in sales practices and there is also the protection of a cooling period under certain circumstances. The relevant amendment legislation has also been submitted to this Council. In the past, there used to be two systems under the Companies Ordinance and the SFO, and there might be arguments or loopholes regarding the place of registration as stated in the prospectus. Now things have improved and everything should be done according to the SFO and not the Companies Ordinance. The improvements in these areas show that the Government intends to tighten control in such matters and make improvements. I am sure the Government, the SFC and the Association of Banks are waiting eagerly for the report from the Legislative Council Subcommittee on the LB incident. They hope that after the report is released, specific recommendations for improvement can be made by the relevant authorities.

I think that investor protection is the most important consideration, and such consideration should be not only in the context of laws. This is because no matter how well the codes, laws, rules or subsidiary legislation are written, there is a need to implement them and take enforcement action. As seen in the LB incident, it is not that the relevant requirements do not exist in the Code of Conduct, but often in operation, these requirements are regarded as no more than formalities and things are considered over and done with when the consumer signs and fills out information in the papers. The inspections undertaken have not achieved the purpose of adequate monitoring. We can see from the LB incident that investors do not enjoy enough protection precisely because enforcement work is not satisfactory.

Owing to these considerations I would think that as we consider the

amendment from Mr KAM Nai-wai, the most important thing is to consider whether or not work has been done well enough to protect the small investors, that is, the non-professional investors. I have mentioned a number of points just now, that is, enforcement should be more stringent, the SFC pledges that a consultation will be held on the drafting of the rules, and there have been improvements in a number of areas, and so on. Owing to these considerations, I think that speaking from the perspective of investor protection, it may not be necessary for us to support the amendment from Mr KAM Nai-wai.

There is, of course, another very important factor, as many Honourable colleagues have mentioned. Under the existing legislation, in particular the SFO, any amendment to be made must go through a consultation process with the sector. And the amendment proposed by Mr KAM on this occasion has not undergone any consultation. A more important point is that criminal consequences are involved in his amendment and if provisions in the Code of Conduct are turned into law, a situation will arise and, that is, since the requirements in the Code of Conduct have become statutory requirements, a contravention of these requirements would lead to criminal liability.

In general, provisions on criminal liability all have very stringent demands which are far more stringent than those for the Code of Conduct. With respect to the amendment from Mr KAM, it can be said that this is mainly an attempt to simplify the words in the Code of Conduct and put them into the law. If it is thought that the wording in Mr KAM's amendment is loose or ambiguous, this would not matter so much because we can always refer back to the original text in the Code of Conduct which is written in much greater detail. We can also know what is meant by words like "relevant", "active", "market", and so on and then we can know the meaning behind Mr KAM's amendment.

Despite all this, when we look at the way the Code of Conduct is written, we will find that the wording used is relatively loose and it is not as stringent as with that for provisions on criminal liability. In such circumstances, the Civic Party would be particularly concerned that if this simplistic attempt to transfer the words used in the Code of Conduct into statutory rules, it may lead to some consequences that we may never have imagined, completely understood or foreseen. Owing to this reason, we think that we should not do anything about this resolution and we should wait until the SFC has undertaken its review and that work is done to perfect and revise the Code of Conduct, instead of

transferring the rules in such a simplistic manner and within such a short time into legal provisions (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

DR DAVID LI: Deputy President, the Honourable Member is suggesting that we make substantive changes to the definition of "professional investor" in the Securities and Futures (Professional Investor) (Amendment) Rules 2011 (the Amendment Rules).

I will not mince words. These proposals are most harmful. For what? It is difficult to see what benefits the general investing public will gain from these proposed changes.

We must remember the context. We are referring to professional investors, namely, those with over HK\$8 million investible assets or HK\$40 million overall assets. These individuals may or may not be residents in Hong Kong.

In fact, local banks are increasingly directing their efforts at attracting an international clientele. These international customers see Hong Kong as the leading investment platform for the Greater China. We need this overseas business if Hong Kong is to grow and prosper as an international financial centre.

What would London and New York be like without an international clientele? These investors are high net worth individuals who are free to take their business anywhere they wish. They will certainly not choose Hong Kong, if they have to wait for two years to be considered professional investors.

The Amendment Rules as they stand have been subject to extensive consultation and comment. They have been reviewed by the Subcommittee on Securities and Futures (Professional Investor) (Amendment) Rules 2011 and found to be satisfactory. It would be extreme folly to overturn all this fine work.

The agreed Amendment Rules emphasize the good judgment of well-trained licensed managers. These managers exercise their professional opinions, backed up by strong evidence, before they classify an individual as a

professional investor. This is Hong Kong's advantage.

Our managers are highly qualified. We offer a service that few can match. The proposed Amendment Rules will downgrade this hard-won professional reputation and reduce the evaluation to a numerical score card. It will push professional investors to other international financial centres, leaving Hong Kong far behind.

As I said at the outset, these proposals are harmful. I ask Members to join me to vote against this resolution.

Thank you, Deputy President.

MR CHAN KIN-POR (in Cantonese): Deputy President, as many Members have said earlier, when the Government set out to amend the Securities and Futures (Professional Investor) (Amendment) Rules 2011 (Amendment Rules), actually the consultation held was based on evidential requirements for professional investors which is very narrow in scope. The aim was very simple, and it was very clear. The whole consultation was centred around this issue. So when we discuss this motion on the Amendment Rules, we should also focus on the relevant matters.

I respect very much and understand very well the great importance which Mr KAM Nai-wai attaches to the protection of small investors. I share his view. And that is, we should be very careful about protection and with the definition of professional investors because there are many rich people in Hong Kong and they make money by all sorts of ways and means. Someone who sells vegetables may be very rich. Hawkers and people who are engaged in certain occupations may be very rich people, for there are many ways in Hong Kong in which people can make fortunes. The fact that some people are rich does not necessarily mean that they are professional investors. There may not be any connection between the two at all. I therefore think that it is a great problem to use \$8 million to classify someone as a professional investor or otherwise. I am worried if this method is used. This is because we all think that there are great problems when we use money as a yardstick.

I have discussed the issue with the SFC and got its undertaking. Next

year in fact, it was the SFC's original intention that the matter should be addressed after the release of the report on the Lehman Brothers incident, but as I see it, it would be a very long time from now as the report can be released only by July or August next year at the soonest. The SFC has also told me that the matter might be addressed earlier, so I would think that it would be more appropriate to wait for a full-scale review of the definition of "professional investor" and the relevant regulatory regime, instead of only holding a consultation on evidential requirements and pushing for an amendment in a sloppy manner.

At first I did not have any strong views on the issue, but there are in fact many people in the sector, including people from investment banks or funds, who think that the amendment would have a great impact on them. They think that when they have done something carelessly or made some mistakes in calculation or working with the computer or for whatever reason, those in charge of enforcement will have no choice but to bring charges against them based on the rules. This is really a great cause of concern to them. Just think the great blow the person concerned or his company will suffer if he lands in jail because of what he has done in the office and that is not because of any intention to cheat.

As the consequences are so grave, I am sure we should hold ample consultations before we enact any law or do anything. We should make a decision only when the wording used is examined and agreed by lawyers. So I will certainly oppose the amendment proposed by Mr KAM Nai-wai. However, I hope the Government can understand this point: Would it be a good definition if the amount of \$8 million is used to classify someone as a professional investor? What should a professional investor mean? In the inquiry into the Lehman Brothers incident, we found that many people had suffered losses because of that. So the Government must not hesitate to put in more efforts. It must undertake the review seriously and impose sensible and appropriate restrictions on the definition of "professional investor".

Thank you, Deputy President.

MR ALBERT CHAN (in Cantonese): Deputy President, I am entirely a layman in financial matters and I do not know very well their operation and how investments are regulated. But over these few years past, I have handled many

related complaints. These include cases about certain people in the top management in the financial sector who are alleged of corrupt and illegal practices. Some of these cases have been referred to the Independent Commission Against Corruption (ICAC) for follow-up action and prosecution.

On problems related to the Lehman Brothers (LB), I am sure in these two or three years, every Member must have received numerous complaints in their ward offices regarding the heavy losses suffered by investors in connection with certain products of the LB. Of course, some of these investors have got back more than 90% of their investments, but there are also some others who because of some legal issues involved have not got any compensation at all. So amending this set of Rules would help improve the protection of investors.

The resolution proposed by Mr KAM Nai-wai today leaves laymen like me feel very much frustrated and baffled. First, on the definition of "professional investor", it really beats me. The logic and opposing positions or divergence there are all weird. If you look at the whole thing from the standpoint of someone in the banking or securities business, any attempt to tighten the definition of a jargon used should lead to strong support from the people in the sectors. This is because it is the sectors which will stand to benefit when these definitions are tightened or when the level of professionalism is raised. But we can see a weird phenomenon here. This resolution from Mr KAM Nai-wai tries to add a number of conditions to the definition of "professional investor" and as seen from the spirit and logic of this, also leaving aside the wording — as Secretary Prof K C CHAN has said, certain words may not be absolutely right, but the spirit of the whole amendment is to add certain conditions to the definition of "professional". The effect of this is to tighten up the so-called professional qualifications so that those investors who used to fall within the scope of the so-called "professional investor" as described by the Government will not meet such requirement because of this resolution now proposed by Mr KAM Nai-wai.

Purely from the professional perspective, this kind of proposal to tighten up the requirements should be welcomed by the trades concerned and the Government. We can see a naked and unabashed fragmentation and sectarianism among the professional bodies in Hong Kong right now. An example is the doctors from the Medical Council of Hong Kong (MCHK). In the past when Hong Kong was under British rule, doctors from all over the Commonwealth might come here and open practice. They were recognized.

After 1997, conditions have been tightened and even some world-famous doctors cannot practise here now. This is only caring about their own interests to the neglect of the needs of Hong Kong people. The kind of licensing examinations which the MCHK has set for overseas doctors are so difficult that I believe even those people from the MCHK or professors from the University of Hong Kong may not pass these examinations if they were to sit for them. This is a naked show of sectarianism.

Deputy President, I consider this amendment by Mr KAM Nai-wai is wrong. I think the name should be changed instead of just adding certain conditions. The term "professional investor" should not be used. I hope the Government and Dr David LI can really think about it. I think we should call these people "large-denomination investors". I have spent some time examining this issue and found that the basic spirit and principle behind the definition are that there are certain big investors who have not got the kind of protection as given to the average investors. It is not difficult to see that once some people are classified as professional investors, should anything happen, the kind of protection they enjoy in law, and from the point of view of the Government and the SFC, is different from that which the average investors will enjoy.

In general, if certain people are so defined as to have a special position and as they are classified as "professional", the kind of rights, responsibilities and obligations they have should be different. The only difference I can see now is that, in the context of problems dealt with by the SFC in future or certain investment projects handled by the banks, there will be a distinction in terms of liability, the pursuing of such liability and compensation offered. As for other unique features in other powers and rights, I just fail to see that there are any. But this does not mean that these professional investors can vote to select certain top officers in the SFC or that a special body is formed within the Government to cater for the needs of these professional investors, and so they can influence the government advisory framework. Apart from compensation, I fail to see in the Rules any distinction between professional investors and average investors who buy some stocks or take part in certain investment projects. Perhaps the Secretary or other Members well-versed in this could remind or enlighten me on this question as to what kind of difference is between professional and average investors besides that in compensation and liability.

Since a difference does exist, and suppose that is determined by a sum of

\$8 million of investment made, then it is clear that a person is so classified because his investment exceeds a certain amount. Of course, there are some other related provisions as well. But the main difference lies in the sum of money. Since this is the case, we should call the two kinds of people "average investors" and "large-denomination investors". These large-denomination investors will get another kind of protection and they can resort to other ways of recovery because of the amount of investment they have made. I would think that this then becomes clear and the term "professional investor" should not be used because it will distort things and mislead people. Even with the definition by the Government or the definition by Mr KAM Nai-wai, we can easily find people who can meet the requirements of both definitions, and yet these people may know very little in matters of finance.

In the LB incident, for example, when some new investment instruments or projects were launched, not only would these professional investors or government officials not understand them, but also people in the top management of the banks would not understand what these things were. I remember that when we discussed the LB incident, it seemed that two banks had not come to the discussions. Some of the top officers of these banks said during a media interview that they could not understand what some of these new investment or financial products were. And these were products launched by the bank they were working in. So if we use the qualifications for professional investors as laid down by the Government, I would think that the Government is really not taking the matter seriously. This is absurd for the financial system in Hong Kong. No paper qualifications are required and all that is needed is the amount of investment and the value of transactions made exceeding \$8 million or other levels as set by the Government. A person meeting that requirement is instantly raised to the "professional investor" status. Is this kind of professional status not a bit ridiculous? This so-called definition of "professional" gives people the impression that it is not professional at all or that gaining such a professional status is a big joke.

Since the spirit of the amendment lies in compensation and protection for these large-denomination investors, I hope that the Government can consider these next time. As I have just said, there would be some adjustment and amendment by the Government next year in connection with the issue. If this is the case, I would suggest to the Government that an apple should be called an

apple and an orange an orange. In other words, it must never say that something is another thing. People are learning from "Eunuch LAM" and government officials are getting very good at that. They are not learning the right thing. They learn from the despicable and unprofessional behaviour of that official with the lowest popularity ratings. They are putting political considerations before everything else, modelling on the practice on the Mainland. In the 1960s and the 1970s, that is, during the time of MAO Zedong, political considerations dominated and went before everything. And anything could happen and anything could be twisted to any shape to suit political needs.

So I hope that the original intent of regulation and the relevant definition can be restored. Words should not be twisted out of their meaning and the focus of arguments should not be allowed to get increasingly blurred. As I said in the beginning, I am not too familiar with the financial sector, but when I looked at the Rules, I began to have a lot of questions. What is meant by "professional"? Why should people be classified as "professional investors"? I got more and more confused. There is no organization responsible for licensing matters and there is no organization in charge of conferring such a qualification or assessing people and classifying them as professional investors. So if the Government wants to go ahead with this, it must undertake a full-scale review so that these issues can be clarified.

Deputy President, I wish to take this opportunity to criticize these hegemonists in the financial sector. There is no reason why we from People Power will not express our views when we have got the chance. Insofar as the Rules are concerned, the present system can well be said to be twisted beyond recognition when it comes to the question of protection for the ordinary people and the small investors. We have a lot of experience in writing to the HKMA and other related bodies of financial regulation on behalf of the people and convey their complaints. This is especially the case when some investment institutions have lured, persuaded, guided and suggested to these ordinary people that they should make an investment. And very often there were ambiguities and attempts to mislead people. In the end problems emerged. As the ordinary people tell us, the protection they have is extremely flimsy and fragile. It turns out that an investment of an amount of some hundreds of thousands dollars or even millions of dollars can vanish into thin air. But the money is the hard-earned money of the people. I have in fact seen many of these miserable

cases.

The Government will of course argue that there is regulation in the form of licensing. But for these front-line workers, when a client comes up and opens an account, his signature is basically an act to authorize the staff to make investments on his behalf. As the Secretary knows very well, the grey areas in this are beyond our imagination. In the end when problems arose, the agreement with the signature given is considered non-negotiable and final and the ordinary people can go to nowhere for redress. I hope this kind of mechanism can be changed so that investors, especially those ordinary people, will not see their interests exploited and sacrificed because of the greed and malice of certain people who care only about their own interests.

Finally, I wish to appeal to the Secretary that he should really look into the definition of "professional investor" and see if any change is necessary. He should solve the problem by replacing the term with a more reasonable one, so as to solve the disputes and problems. Deputy President, with respect to this resolution from Mr KAM Nai-wai, we can see that there are problems in certain areas. But as the spirit and original intent of Mr KAM in proposing the resolution are to force the Government to improve protection given to the average investors, so the People Power will support his resolution.

MR PAUL CHAN (in Cantonese): Deputy President, I will just try to give some brief comments. The spirit behind the resolution proposed by Mr KAM Nai-wai is good. But I am afraid I cannot lend my support to his resolution. The main reason is that while the contents of his amendment are very specific, there has been no ample discussion in the market and among different stakeholders. As Members have pointed out earlier, the consultation held is not adequate.

In addition, I have received views from many people in the sector and the legal profession stating that when the SFC is to hold another round of consultations, the market should be given an opportunity to discuss the contents of his amendment thoroughly to facilitate the making of a decision. When we consider these issues, we should not just take into account the situation here in Hong Kong but probably also the practices found in our neighbours, especially those in Singapore. I noted that the report issued earlier carried some information comparing the practices found in many places. After reading the

section on practices in Singapore, I find that the country does not have specific requirements of a similar nature. Since we seek to develop into an international financial hub, we must consider our competitive edges as well as our competitiveness. So, sorry, I cannot lend my support to this resolution.

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

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, Hong Kong claims to be a world-class financial centre, but as a matter of fact, the investment environment here is under the sway of investment funds across the world in an organized manner. So if it is said that Hong Kong is a mature investment or financial centre, this is only attributable to the fact that in Hong Kong and throughout the 30 years of the China's opening up, the money of most investors here are mercilessly devoured by these financial predators from all parts of the world.

We can see that the amendment proposed today stems from the Lehman Brothers (LB) incident of 2008. The methods of investment in the securities trade here are different from those found in other parts of the world. In other places, the markets are characterized by conventional funds. But in Hong Kong after the setting up of the Far East Exchange in 1969, the trend was that the investors had to make their own moves. Their investments are not made by the funds and investors have to make their own decisions. Most of these decisions are made together with the hard work of the brokers of the locally owned brokerages. Of course, it may be too high-sounding to talk about co-operation between investors and brokers. For after all, they act according to their needs of survival and how their capital is to be used. Therefore, this kind of operation is unlike that of the foreign stock markets and brokerages where investment moves are made by the funds.

In Hong Kong, most banks make their profits from the interest differentials. Why? The money deposited with the banks by members of the public and other agencies only earn a very low interest while the interest charged by the banks on loans to their clients is high. Banks make their money from such an interest differential which amounts to a few percentage points. However, in Hong Kong, the Hong Kong Monetary Authority (HKMA)

discourages banks from engaging in such a narrow scope of business activities and encourages them to try to expand their investment opportunities and business. The HKMA thinks that it is a pioneer that points the way forward to the banks and the latter should make use of investment opportunities all over the world.

Frankly, local banks are only led by banks funded by foreign capital. These foreign banks have money injected by people all over the world and they have world-class investment conditions and talents. They are better than local banks in every aspect. In the past, the colonial government was in charge of everything and the colonial mentality had its grips on everything here. It has been some 14 years after the reunification, but policies of this kind are still around. They have even become more rampant than before. Why? It is because those in power do not listen to public opinion and there is no difference as to whether they actually know about something or are ignorant of it. It is under these circumstances that the LB incident occurred. Although the report of the Subcommittee on the LB incident is still being deliberated on, please allow me to make a disrespectful remark here, and that is, the HKMA is fully responsible for the incident. This is because the HKMA imposes two kinds of supervision on the financial services and securities trade in Hong Kong. The investment department and the securities department of the banks are regulated by the HKMA, but the stock brokers who serve the ordinary people are regulated by the Securities and Futures Commission (SFC). The Government emphasizes that these two agencies are no different from each other in the standard and conditions of regulation to which they are subject. And both will act according to the law. But there is a great disparity between the two actually. Thus this accounts for the invisible division in our society. Both laymen and practitioners the financial sector have made their views known over a long time. But in the Government, no matter it is the Bureau Directors in the past or the Directors now, or the Secretaries in the past or the one we have now, they would not listen to anything that may sound displeasing to their ears. And this is regardless of whether they actually know the subject or are ignorant of it. This

DEPUTY PRESIDENT (in Cantonese): Mr CHIM Pui-chung, I wish to remind you that you should speak on the resolution on the Rules on professional investors.

MR CHIM PUI-CHUNG (in Cantonese): Deputy President, are you trying to

teach me or

DEPUTY PRESIDENT (in Cantonese): No, I was just trying to remind you.

MR CHIM PUI-CHUNG (in Cantonese): the analysis I am making is about the historical background.

DEPUTY PRESIDENT (in Cantonese): I hope you will come to the question direct.

MR CHIM PUI-CHUNG (in Cantonese): This is all the same. You do not have to remind me. It is just like the case with transport matters, over which I would not give you any reminder.

Deputy President, what are institutional investors? And what are experienced investors? What is this amendment about? After the outbreak of the LB incident, at that time the investment institutions, especially the banks, had a lot of products which they called "accumulator". But they were actually products that could be called "I kill you later", meaning that you will be killed by them. These are investment products designed by banks to end your life. And as many people are killed in this way, there comes the issue of experienced investors.

Now the SFC wants us to define what is meant by "experienced investors". The first criterion is that the person's assets should be at least worth more than \$8 million. This figure of \$8 million is only a figure and it does not mean anything. In the past, this sum of \$8 million was very substantial, but now it may just be a very small amount. So this figure is really no more than a number. Then the SFC demands that all intermediaries — that is, those people in the banks who promote or market such products — must follow the rules. But these rules are not provisions of law, but only restrictions placed on the investors. Of course, there is a code to follow regarding these restrictions. When I was deliberating on the relevant bill, I raised the demand that, since the SFC had set the lower asset limit at \$8 million, we should not discuss it anymore because it

was something we all agreed on. And in future this amount may be revised to \$20 million or \$10 million. But that is another matter. It is a question of how much a person's assets are worth. It would be okay as long as a bank produce proof to show how much money he has got or if he proves how much his assets are worth.

The second thing is those additional conditions. I propose that the SFC should issue licences for that. Why? It is because if anyone wants to become an experienced investor, he should fulfil the requirements laid down by the SFC. He should prove that he meets these requirements. And after vetting by the relevant department in the SFC, a licence or a certificate will be issued to that person if it is of the view that the requirements are met. If it is considered that this is troublesome, then we may have simple forms like the written test for a driving licence, listing all the requirements and the applicant can just tick against the right answer. Those who meet the requirements are then issued a certificate or some other kinds of document. In this way, the person can become an experienced investor in the eyes of the Government and the SFC.

If an attempt is made to facilitate experienced investors, then we would just need to get things done fast. And we do not have to charge any fees. This is because the purpose is to prove that the investor concerned is an experienced investor. This is an easy and simple task, but the SFC wants to shift the responsibility to the banks and even to the intermediaries for these products. Why? It is because should anything go wrong in future, the SFC will not have to bear any responsibilities and on the other hand, it can hold the intermediaries responsible. These intermediaries are most likely to be staff of the banks. In this way not only is the SFC not taking the responsibility but it also holds other people responsible. This is only causing trouble and not acting according to the rules. This kind of thinking and mentality is like using a colonial mindset to fleece the Hong Kong people and even potential investors from the Mainland. Why should it not do something easy and simple as that instead of stirring up troubles?

The amendment by Mr KAM Nai-wai seeks to criminalize the relevant matters. People from the sector will not agree to it. Moreover, this amendment will definitely not be passed as a result of the lobbying done by the Government. After all, laws are there for people to abide and why should trouble be caused? I cannot really understand it. If the Government is a responsible one, it will never

try to cause such intense conflicts in society over such simple matters. We have enough of these deep-rooted conflicts in society. We should know that Hong Kong is a lucky place because we rarely have natural disasters. But why should we create disasters ourselves when there are no natural disasters? Disasters, both natural and manmade, are two of the greatest harms to the people. And the Government is creating these harms when we used to have none of these.

I therefore must make my views known. But the SFC says that it is difficult to define what an experienced investor is. Then why should it bother to define it when it is so difficult to do so? The practical use of laying down such a definition is that, once an investor has obtained the certificate or proof, and if he makes any investments or engages in any speculations, then it is his own business and he should be responsible for it.

Deputy President, we know that gambling is legal in Macao. Before we enter a casino, we all know what the rules of the game are. And as the saying goes, nine people out of 10 who bet will lose. Everyone will lose money in casinos. No people would stage a protest when they have lost money. In the past, a sign used to be hung outside the casino entrance and it read somewhat like this: no one can always win and that is for sure, a game played on a small bet can be great fun; and one should only place a bet when he has got money to spare and this keeps the fun going.

We should all know what we are doing and that applies also to the SFC and the Government. They should let investors know clearly where the money they put in for investment will go. To put it in an unpleasant way, in the past, these so-called global investments were traps set for the investors to fall in, but now it is blatant plundering. This is the case in many of the stock markets in Europe and in the United States. I just want to tender this piece of advice to investors: remember to hold your wallet tightly, know what you are doing, and only invest or speculate when you can afford to lose. I therefore oppose the resolution moved by Mr KAM Nai-wai (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Speaking time is up.

MR JAMES TO (in Cantonese): Deputy President, the Democratic Party will

always conduct very careful studies of laws regarding financial matters, especially those provisions which are very technical in nature. So we will never propose any amendment on such matters easily. And when we do, we are very stringent when it comes to the wording used for we hope to handle the matter with great prudence.

Deputy President, originally I have prepared a script for my speech, but since I want to make this debate livelier and plus the fact that after listening to the speech by Mr CHIM Pui-chung, I think I can make an interesting response to his remarks. He was right when he said that everybody who went to a casino knew about the rules there and they would never grumble if they lose. And no one would stage a protest outside a casino. Then why should we want to draw up such a stringent definition for "professional investor"?

Before the Lehman Brothers (LB) incident, we all thought that the transactions conducted by institutional investors, professional investors and experienced investors could be considered to be transactions conducted by experts, and they were acts of wrestling on professional skills and that the small amount of money placed as a stake was meant to reap a huge windfall. The products involved were not those that the ordinary people and the average investor could have a chance to get hold of. The situation was just like a group of people engaged in gaming. These people got the abilities, as well as the experience and knowledge required, and so they could have fun in it. The money involved in the bets was considerable in amount and these people could make quick decisions. They would only need to glance at the papers, know how the game operates and then make a reply instantly. The reply was about whether or not a bet would be placed or whether a game would be played. Or even an action would be taken immediately to place a bet. Originally, these things should be done by experts, but after the LB incident, it suddenly dawned on people that of the many compensation schemes advanced, there are some people who are excluded, not eligible for any compensation. This is because they are classified as professional investors.

So many people wake up to this shocking discovery that they might just be people who have got some money and they are professionals but not in the investment activities. They may be professionals in medicine, or a professor of literature or a professor of fine arts, but they are never a professional in investment matters. Of course, I will not rule out the possibility that a professor

of fine arts may be an expert investor. But according to the compensation schemes proposed at that time, it turned out that the so-called "professional investor" is a person who has not been misled. They are not qualified to get any compensation under these compensation schemes. It is because they know that this is only a betting game they play.

However, some Honourable colleagues said earlier that the CEOs of some of the largest banks were once asked why they did not sell those products and two of them said that it was because they did not understand how these products worked. But there are investors who have an account with other banks and have a greater amount of deposits and they are alleged to have signed the documents and they are therefore considered professional investors. So the reason why the LB incident has given rise to such grave consequences is precisely because of the fact that prior to that, there were not many complaints from professional investors classified as such. But what has happened after the LB incident? It has been a number of years since the incident happened, but no changes have been made by the authorities. All the changes are made in the Code of Conduct. As for the relevant laws, the authorities have never considered amending them. In future, we may find this in the history books: Mr KAM Nai-wai of the Democratic Party thought that the amendment this time offered a good opportunity to make amendments in accurate and stringent language to the statutory responsibilities that must be complied with. It was only at the final stage of deliberations that the Government was forced to make a response and said that a consultation would be conducted.

Before Mr KAM Nai-wai proposed this amendment, the Government had never said that it would amend the laws on the definition of "professional investor" and the problems caused by the LB incident in order to protect the rights of small investors. It is certainly the case, for if the Government does not state its aim in this way, many Members would not know how they should lend their support to the Government. The LB incident is a case which has left some very lasting and painful marks on us.

Is it such a grave matter to include the relevant requirements in the law and the subsidiary legislation instead of the Code of Practice? Honestly, under the existing laws, although the Commercial Crime Bureau of the police have received complaints from thousands of people in connection with the LB incident, after many rounds of screening and examination by the Department of Justice, only a

few cases are selected on a trial basis for the instigation of prosecution. But all of these cases ended being unsuccessful. In other words, although many people in the industry claimed that after Mr KAM Nai-wai has proposed his amendment, many people would be very worried about breaching the law, as seen in the LB incident, even though there are tens of thousands of complaint cases which have statements commonly considered to be acceptable, no successful prosecution can be brought for one single case. This is because it would not be so easy to prove any case beyond reasonable doubt. Now we are not saying that it would be an offence if no assessment is made because of wilful non-compliance or an inadvertent computer error. All these acts will not be counted as grounds for conviction.

As to the question of whether there is sufficient stringency in the language used, I am the person in the Democratic Party in charge of examining the wording of the amendments to see if they can meet the standards of certainty and accuracy. If the wording of an amendment is not structured in a stringent manner, we would rather not propose it. This kind of work has been done in the Democratic Party for no short period of time, but almost 20 years. We have carefully studied the case with the Legal Adviser to the Legislative Council. The Government claimed that under the SFO, the relevant proposal must undergo a consultation process, or else this would be *ultra vires*. However, in the reasons given by the President of the Legislative Council in his ruling for granting leave to Mr KAM Nai-wai for proposing his amendment, as well as in the statement made by the Legal Adviser to the Legislative Council, all the arguments advanced by the Government are refuted. A most interesting case is when the Legal Adviser found a precedent which took place in 2007 and that is a good example of the Government acting in an arbitrary manner. At that time, the Government had made certain amendments to some subsidiary legislation, but those amendments were further amended without undergoing any consultation and the motion in question was immediately moved and passed in this Council. In other words, is it true that it would only be all right if amendments are proposed by the Government or the SFC, but not by Mr KAM Nai-wai? What kind of logic is that?

Some Honourable colleagues have pointed out earlier that if the acts of non-compliance are criminalized, this would cause hardships to the business sector and the banks and hinder Hong Kong's development into an international financial hub. I am surprised to hear that and this kind of argument sounds all

too familiar. The real estate developers have said that if the salable area must be listed accurately in the prospectuses for the sale of flats, this would pose obstacles to their work in selling the flats. I remember a funny DJ called LAM Hoi-fung once said that if stating the salable area in flats in an accurate manner and giving true information about the flats in the prospectus would impede work in selling the flats, then we have been cheated for decades. Why should we not do it? If what we want to do is to make a clear definition of those requirements that are already found in the Code of Conduct and should be complied with and elevate these requirements into statutory provisions, then are we posing obstacles to the work of people in the trade such that they will be afraid of marketing products to their clients? Then would it be correct to say that some clients have been deceived for decades? Perhaps all these are not the truth, and the truth is just that they do not want to make one more provision like this and add one more penalty like this. Our intention is only to deter brokers who act in an unscrupulous and sloppy manner and who wilfully turn clients who are obviously not professional investors into "professional investors". Such malicious people are the targets we have in mind. If it is only an act of sheer inadvertence, under the legal principle of proving beyond reasonable doubt, the chance of conviction is minimal. In the LB incident, the authorities have selected a number of cases with strong grounds from among tens of thousands cases, but prosecution was not successful in all of these cases. Then should the people working in the trade need to fear so much?

According to the Government's argument, if no consultation is carried out under section 398 of the SFO, then the amendment proposed by us or the move to accept such an amendment from the authorities would be considered a breach of the rules. The move may even be considered a contravention of a legislative process which is desirable. However, such an argument is completely refuted by the 2007 precedent cited by the Legal Adviser to the Legislative Council. But this then begs the next question: Does this mean that the Legislative Council can only act as a rubber-stamp and all it needs to do is to put a chop on the matter? Or can the Legislative Council only vote down the proposal concerned but cannot amend it? Would we be considered in the wrong if the Legislative Council proposes an amendment?

But the worst thing of all is that when Members of this Council like Mr KAM Nai-wai who wants to handle the matter in this way, even when the Government tries to lobby other Members, it only says that a consultation will be

held in 2012 on this issue. It falls short of saying whether the consultation will include the proposal made by Mr KAM Nai-wai that more stringent protection should be provided for in law. In other words, if in the end the authorities do not incorporate this proposed amendment from Mr KAM Nai-wai into the scope of the consultation to be held in 2012, then this outcome can never be obtained and this amendment will of course never be proposed. If the Democratic Party then proposes this amendment again, the authorities can also refuse it on the same excuse that it has not undergone any consultation. All in all, it is only the authorities that can propose an amendment and there must be a consultation before any amendment can be made. But the consultation exercise will not include other matters found or views heard in the Legislative Council because no pledge is given by the authorities. Unless Secretary Prof K C CHAN makes it clear in his reply later on that Mr KAM Nai-wai's proposal will definitely be included in the consultation, then there will still be a chance that the public and the Government can be persuaded into accepting that proposal. Otherwise, we can only conclude that everything is controlled by the Government.

It can be said that the Government is repeatedly and deliberately conducting consultation exercises of such a narrow scope. This is because it has never said that it would proceed with a comprehensive amendment exercise when all the recommendations made by the relevant committee in the Legislative Council are considered. As a matter of fact, the Government has spent almost two years conducting a review by itself. The conclusion thus reached is that there is no need to amend the legislation and only that the Code of Conduct should be revised. Since this is the case, I do not have much confidence in the Government in amending the law after reading the recommendations made by the relevant committee of this Council. Moreover, there has to be a premise to that and that is, the committee concerned must put forward proposals on amending the law. It is actually not known whether that committee will make any such proposal since it is very likely that support from the pro-establishment camp for a majority vote can be obtained as the case may be today.

By that time, and since the relevant committee in the Legislative Council has not made such amendment proposals, and since it is the view of the Government after conducting a review by itself that there is no need for amendment, then the conclusion is simple: there is no need to amend the law and it will do if the Code of Conduct is revised. In other words, this is sending home a message to practitioners in the trade that they should not be afraid of giving

information to cheat people and at most the punishment they may get is revocation of their licences. There will not be any criminal prosecution brought against them. In this way, what I am most concerned about are not the people of Hong Kong but, as can be seen from the prevailing trend of development, it will be our compatriots from the Mainland who are most at risk. Some of these Mainland people have got some money and so they put on a smart and professional look which gives them airs and graces. But they will become preys to the banks in Hong Kong, that is, all those banks financed by a foreign, Mainland or local capital. And they are fleeced ruthlessly because they are easy targets. They are told, "Since you are professional investors and since you look so smart and impressive, then give us the money."

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

DR PRISCILLA LEUNG (in Cantonese): Deputy President, on 15 September 2008, the Lehman Brothers (LB) incident aroused the concern of incumbent Members of this Council. I think I am one of the Members who were the first ones to follow up the case of the seven victims who were clients of the Standard Chartered Bank. At that time these victims uploaded their case to the Internet and that unveiled the LB incident. This was how we came to learn about the LB incident. If we have a chance to contact these victims frequently, we will find that they all have a different story to tell. And what were aired on the TV were just stories about those elderly persons who deserved the most of our sympathies. The information we have on hand shows that there are many other victims who have invested a sum of \$1 million, \$2 million, \$3 million or \$4 million and even \$8 million which is now the issue under discussion. Actually, their problems are not yet solved and they are still standing outside the entrance of the Legislative Council Building every day, hoping to get some assistance from us.

(THE PRESIDENT resumed the Chair)

In my speech today, first of all, I must make it clear that I am not targeting any staff from the banks whose cases have been referred to the Court for trial, nor any banks in particular. From the entire process of the inquiry into the LB

incident and our close encounters with the complainants, we find out that there are at least a few thousand victims who come from all walks of life. Some are university professors, some are professionals and some even are barristers. What does this tell us? It shows that people with relatively better means are not necessarily experienced investors. I recall we were doing our best and making earnest efforts in the hope of securing a settlement. The number of victims is huge and after knowing more about their situation, we are worried that some of them may experience mental breakdowns. We do not want to see any tragedies happen. So we have been urging the Government all along and likewise the Government has been urging the banks to come up with a settlement proposal which lists the basic refund rates.

However, a group of people has been left out. These people have become a new kind of victims. This is because from the many papers furnished by them, we know that they really purchased these very complicated products not knowing very well what they were doing. Now we are still looking into the question of why LB minibonds are called bonds and how there can be such a name that misleads the ordinary members of the public. After the outbreak of the LB incident, I have actually changed my view of the rules of that game. This is especially due to the fact that some friends of mine who are well-educated have also become victims. In other words, the question is not just about the educational attainment of the investors or their background and profession, but about whether the investors are protected in the entire sales process, whether they understand the risks of the products correctly, whether people selling the products have been properly trained, and whether those who train them know the products well enough.

As we all know, people in Hong Kong like to do things as a group and they are afraid of losing grip of the trends. So I am not saying that these victims should not bear any blame. They should be responsible for the decisions they made because they did not want to fall behind the trends. Before the LB incident, people used to have great confidence in the banks. When they bought these products from the banks, they really had full trust in the staff there who sold them the products. And it was likely that they never had any doubts.

We should not just be talking about the background of these victims. Mr James TO has just talked about the Mainland investors. I would think that irrespective of their background, all along the rules of the game have been

underpinned by trust. This is like the case when we go to find a lawyer, we will place all our trust in him and we listen to what he says. It is because of this trust the investors have in the banks that they heeded what the staff in the banks said. This is a relationship underpinned by trust. In other words, a fiduciary duty exists in the process. From the legal point of view, when the staff promote these products to the clients, they have to assume a certain degree of liability.

A controversial issue in today's debate is the question of responsibilities as Mr KAM Nai-wai has mentioned. I would think that the Government must define "professional investor" clearly. It must not first put forward a proposal, then eliminate some of these investors after problems have arisen and subsequently draw up a definition, that is, classifying them as professional investors. This kind of rules of the game is unfair. Moreover, in dealing with such a large number of cases, we can see that compared to the large investment corporations or banks, the small investors are at a great disadvantage. So we have been urging in the Panel on Administration of Justice and Legal Services that the coverage of legal aid service should be expanded to enable victims to instigate collective proceedings. As we know, even if someone has got assets worth \$4 million, he does not have the financial means to file a lawsuit against a bank.

The party which is most pleased to bring cases to the Court for a final judgment is often the banks because in terms of legal and financial resources, the victims are no match for the banks. I have some friends who are lawyers and they dare not file a lawsuit because they know the legal system in Hong Kong too well. They know how much money is needed when a case is brought before the Court of Final Appeal. So when we discussed the issue of legal aid in the Panel on Administration of Justice and Legal Services, we had offered our assistance to these investors and hoped that when they came across similar legal problems, they could be covered by the legal aid system.

As we look back at this incident, we can see a lot of things about the victims and their stories. When we were investigating the cases, we had made enquiries with the Hong Kong Monetary Authority and the Securities and Futures Commission and found that the advertisements of many of these products were completely misleading. At times, free supermarket coupons were used to entice clients to buy products as complicated as the LB products. In my opinion, the

entire regulatory regime should come under a thorough review.

The amendment from the Member does not aim at curtailing freedom in the system. Conversely, I believe firmly that our economic development must be built on upholding a free economy. What I am most unhappy about is that the Government has all along taken no proactive steps with respect to handling the LB incident. It has not conducted any review to see how the system can meet similar challenges while ensuring that there is sufficient deterrent effect in the system itself. For with this people at various levels of the command chain can be enabled to do their work in a positive manner and with vigilance. They will not for the sake of boosting their sales figures entice ordinary members of the public to fall into the trap of this kind of investment games, not knowing what in fact they are buying.

If this is considered to be gambling, I think it should be made clear from the outset that this is gambling and those who go into a casino are only doing this to gamble. Unfortunately, many people did not have this gambling mentality. They went to a bank to save money and bought these products out of their trust in the bank which they had patronized for decades.

So I must make it clear that personally I am most sympathetic to most of these victims of LB products. We are careful in this too for we cannot rule out the possibility that there are some people who often make large-denomination investments and they can certainly take the high risk. But in the course handling cases of various kinds, we found that actually most investors did not know very well the kinds of risk which these products would bring and the consequences they would have to bear. Such kind of investors in fact accounts for the majority of the investors.

The Government has said that there must be a consultation exercise before the relevant Rules can be amended, especially concerning those implementation details. I see the point of that. As an example, some of the words used by Mr KAM Nai-wai in his amendment may perhaps need refinement. For example, he said that a professional investor should at least have carried out 40 transactions in a year. But why 40 transactions? This is something I want to know. Moreover, he also mentioned "having traded actively in the relevant market". But how are we to define "actively"?

I have just made my position clear. It has been four years since I have

followed up the cases of these LB victims. First, they have all my sympathies. Second, since there are many victims who are excluded from the settlement schemes and they cannot get the compensation specified in these schemes, I have promised them that I will continue to follow up their cases. I hope the rules of this kind of game can be written down clearly in the law and the recurrence of similar incidents can be prevented.

The amendment we are discussing now does not actually give a retrospective power to these victims. I therefore agree to this amendment as a show of attitude.

I think that if the amendment can compel the Government to make more undertakings of an unequivocal nature, the relevant legislation would be able to better protect the small investors. As a member of the Subcommittee to inquire into the incident, my attitude and stand on this are very clear. This is because in the entire game, or in the LB incident, I have actually seen the helplessness of many of these small investors. They may have turned from middle-class people to bankrupts and their problems are not yet solved even now.

I therefore agree to the amendment as a matter of my attitude and direction, although there are some fine details about which I think I know very well why certain people from the legal profession and even the financial sector do not agree to some of these definitions, such as "40 transactions", and so on. If I were to draft this, I would not think they should be written this way. But as a matter of making my attitude known, I would support the direction as shown in this amendment.

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, then I will call upon the Secretary for Financial Services and the Treasury to speak again.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in

Cantonese): President, just now I have heard the views expressed by a number of Members. Basically, many Members agree to the need of consultation. I would like to emphasize again that the Government fully agrees with the importance of investor protection and holds no objection in principle to reviewing the existing definition of "professional investors". The SFC has made an unequivocal undertaking to review this matter and fully consult the public.

I wish to make some responses to the questions raised and views expressed by Members just now.

After the Lehman Brothers incident, the SFC has taken a series of measures to enhance investor protection. For instance, the SFC's earlier proposal to transfer the regulation of public sale of structured products from the prospectus regime of the Companies Ordinance to the offers of investments regime of the Securities and Futures Ordinance (SFO) was implemented in the year 2011. After the implementation of the proposal, the public sale of all unlisted structured investment products would be regulated under the SFO. The SFC has also published codes and guidelines to explain to the trade the regulatory policy on such products. The new Code on Unlisted Structured Investment Products sets out requirements for greater disclosure of information and enhanced transparency of these products. This helps strengthen the regulatory regime for retail structured products.

In May 2010, the SFC announced a series of measures for strengthening the regulatory regime for the sale of investment products. In September 2009, the SFC released the Consultation Paper on Proposals to Enhance Protection for the Investing Public and, after a three-month public consultation, implemented the relevant regulatory measures to enhance investor protection.

Many trade representatives have expressed a high degree of concern after learning about the motion proposed by Mr KAM Nai-wai. While the majority of the views consider it essential for the public and trade to be consulted extensively, some hold that the trade will lack flexibility in actual operation and the Hong Kong financial market may even lose its competitiveness in the international arena as a result of the relevant proposal.

In other regions where private banking is flourishing, such as Singapore,

only asset or income is adopted as the benchmark for the definition of "qualified investors".

Outside the law, Singapore's private banking industry has another code of conduct which sets out guidelines on conduct for the sale of products to "qualified investors". In regulating the relevant organizations, the authorities will examine whether or not they abide by these rules, and offenders will be warned or even penalized. However, at the legal level, the code of conduct is not written into the law. Neither are the irregularities criminalized.

A Member has proposed that a licensing regime be set up for professional investors to enable the SFC to assess each professional investor before granting him a licence. I would like to point out that this is a major proposal involving fundamental changes to the role of the SFC and the existing market practices. Therefore, we must consider it carefully.

President, I would like to reiterate our position that the Government has no objection to reviewing the existing regulatory regime for professional investors for enhanced investor protection. We merely object to hasty and unilateral revisions without consultation and prudent and comprehensive consideration. I believe Members will agree that legislative amendment is a major issue. We must consider it carefully and refrain from getting it done in one step.

The Government and the SFC have been sparing no effort in investor protection. We will also continue to improve our laws as well as rules and regulations with a view to striking an appropriate balance among effective law enforcement, promotion of market development and investor protection.

Thank you, President.

PRESIDENT (in Cantonese): Mr KAM Nai-wai, you may now reply.

MR KAM NAI-WAI (in Cantonese): President, I am very grateful to Honourable colleagues for their expression of views today on my proposed amendment. I have heard that the majority of Members who have spoken consider it necessary to enhance investor protection, and the majority of

Honourable colleagues find it necessary to conduct a comprehensive review. I hope the Government can heed this major principle carefully.

Just now I heard Secretary Prof K C CHAN mention that the Government had made a lot of efforts after the Lehman Brothers incident. But, in my impression, the protection in law, as far as I can remember, mainly lies in the safe harbours in the Companies Ordinance. In other words, the relevant legislation had been amended in respect of the offers of investments regime as I mentioned just now, so that the relevant investors can be protected. However, insofar as investor protection in the overall legislation is concerned, I cannot see any determination on the part of the Government.

Why am I saying this? I pointed out in my opening speech that the Government had conducted a consultation in September 2009 on proposals to enhance regulation of investment products and the conduct of intermediaries. According to the outcome of the consultation published at that time, the changes do not include substantial amendments of legislation. After the consultation, a code of practice which is similar to the existing Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct) was unveiled and then revised in June this year, but not many details have actually been added to the part concerning professional investors.

During the previous deliberations, I had enquired with the Administration. At that time, the Government said that it had not thought about making amendments to the relevant legislation after the Lehman Brothers incident. It is only until I proposed this amendment that the Government appeared to wake up suddenly. Just now I also found that many Honourable colleagues made a similar request, but the Government appeared to be unable to grasp the aspirations of the public at large. Perhaps the Government has chatted with the industry and bankers too often that it is unable to grasp the aspirations of the ordinary people and the community.

I found some of the views expressed by Honourable colleagues just now most puzzling. Mr CHAN Kam-lam mentioned that the industry was in strict compliance with the Code. Should that be the case, the Lehman Brothers incident would not have happened. Should that be the case Members should be aware of the reasons why there was a repurchase proposal after the incident. I do not remember if Mr CHAN Kam-lam is currently a member of the

management of the SFC. As revealed in the information published by the SFC after its investigation, in many of the repurchase cases, the systemic errors of the relevant banks were precisely caused by failed compliance with the Code of Conduct. Otherwise, would compensation have been made by the banks? If they were not found by the SFC to have violated their code of practice, would they have acted like charities? Would they have agreed to offer 80% to 90% compensation to victims of Lehman products and 70% to 80% compensation to victims of stocks and "currency and interest rate-linked instruments"? No. They were willing to make compensation precisely because they had violated their code of practice.

I only wish to say that if this is not provided for in the law, I will be extremely worried that, as pointed out by Mr James TO just now, the relevant situation will worsen in the future. This leaflet is just empty talk on paper. No one will abide by it. It is most puzzling that the industry has indicated that everything will be fine so long as there is such a leaflet. However, even the industry has asked: Why can the number of transactions not be set at 39? Why should the number of transactions be set at 40? Just now, Dr Priscilla LEUNG also asked the same question. It is actually the Code of Conduct which sets the number of transactions at 40. I have not made any alteration. It was agreed to set the number of transactions at 40 after consultation with the market. In other words, the industry has been consulted. I did not make it up. It is clearly specified in the leaflet after consultation that the number of transactions be set at 40. Therefore, the number of transactions is not invented by me. Should the industry query why 39 transactions are unacceptable, then why are 38 transactions unacceptable, either? Is it against the law to have traded 38 transactions per annum? Yes, it is. According to my amendment, it is absolutely clear that the number of transactions must not be less than 40.

How did the standard be set at 40 transactions? It was agreed by the industry, not invented by me. In this connection, I also wish to respond to the question as to whether the proposal was put forward by us hastily without holistic consideration. I have to admit that it is rushed because negative vetting is subject to a time limit, but does it mean that I have not considered the matter in a holistic manner? No. As mentioned by the Government just now, in respect of this amendment how can it be considered logical that it was acceptable for the Government to make amendments in 2007 but unacceptable for us to make amendments now? We do have made holistic consideration. We are

absolutely clear about the content of this leaflet before proposing the amendments. We have not done this in a slipshod manner.

Just now Mr Paul CHAN also mentioned Hong Kong lagging behind overseas countries. I do not remember whether or not the Secretary mentioned Singapore as an example just now. Should he have done so, why did he not mention the United Kingdom, which is mentioned in the paper, too? There are requirements in the United Kingdom that professional investors must, in the past four years, have traded in relevant markets an average of 10 transactions involving huge amounts of money per quarter — I repeat, per quarter.

Such information is provided by the Government, not me. This is the British system. We often say that we have to be on a par with New York and London. Do we just need to be on a par with Singapore? We have to be on a par with New York and London. What I was talking about is precisely the requirements in the United Kingdom. It is prescribed in the United Kingdom that the amount of transactions must meet a certain standard. This is not invented by me. Such stringent regulations are essential if we are to become international financial institutions. I do not think that these regulations will scare off people. Instead, our international reputation will be upgraded, thus attracting more investors to come to Hong Kong for investment because investors are protected here.

If Members agree with my point of view President, after listening to Members' speeches just now, I know that my motion might not be passed. But still I hope that the Government can consult the industry again on the amendment proposed by me today in a clear and concrete manner. I hope the Government will not tell us after the consultation that the industry has raised objection because even if it does, there must be reasons for it to do so. This Council should not stop the discussion just because we are told by the Government that the industry has raised objection.

With these remarks, President, I hope Members can support my amendment.

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

motion moved by Mr KAM Nai-wai 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 KAM Nai-wai rose to claim a division.

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

(Mr CHEUNG Kwok-che raised his hand in indication)

PRESIDENT (in Cantonese): Mr CHEUNG, what is your question?

MR CHEUNG KWOK-CHE (in Cantonese): The timer has not been activated. It is apparently not keeping time.

PRESIDENT (in Cantonese): Please tell the technicians to check the timer.

(Dr Priscilla LEUNG stood up)

DR PRISCILLA LEUNG (in Cantonese): President, I have to make a disclosure, that I am a member of the Process Review Panel of the SFC.

PRESIDENT (in Cantonese): Dr Priscilla LEUNG, please say it once again.

DR PRISCILLA LEUNG (in Cantonese): I do not know if there is a need to

disclose this, but I am a member of the Process Review Panel of the SFC. Thank you.

(The division bell continued, but the timer had not resumed operation)

PRESIDENT (in Cantonese): Honourable Members, as the timer failed to resume operation, I now suspend the meeting.

3.29 pm

Meeting suspended.

3.34 pm

Council then resumed.

PRESIDENT (in Cantonese): The division bell will ring for five minutes.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong and Mr CHEUNG Kwok-che voted for the motion.

Dr Raymond HO, Dr David LI, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr LAU Wong-fat, Ms LI Fung-ying, Dr Joseph LEE, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong, Mr CHIM

Pui-chung, Prof Patrick LAU, Dr LAM Tai-fai, Mr CHAN Kin-por, Mr IP Kwok-him, Mr Paul TSE and Dr Samson TAM voted against the motion.

Ms Miriam LAU, Mr Tommy CHEUNG, Mr IP Wai-ming and Dr PAN Pey-chyou abstained.

Geographical Constituencies:

Mr LEE Cheuk-yan, Mr James TO, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Andrew CHENG, Mr LEE Wing-tat, Mr KAM Nai-wai, Ms Cyd HO, Dr Priscilla LEUNG, Mr WONG Sing-chi, Mr Albert CHAN and Mr WONG Yuk-man voted for the motion.

Mr CHAN Kam-lam, Mr LAU Kong-wah, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Ms Starry LEE, Mrs Regina IP and Mr Alan LEONG voted against the motion.

Mr WONG Kwok-hing, Mr CHAN Hak-kan and Mr WONG Kwok-kin abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 24 were present, two were in favour of the motion, 18 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 24 were present, 12 were in favour of the motion, eight against it and three abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the motion was negatived.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have

accepted the recommendations of the House Committee: that is, the movers of motions each may speak, including reply

(Mr CHAN Hak-kan stood up)

MR CHAN HAK-KAN (in Cantonese): President, with respect to the voting results earlier, I wish to say that I did press the "Against" button, but what was shown on the display screen was "Abstain".

PRESIDENT (in Cantonese): We will record the question raised by Mr CHAN Hak-kan and check the voting results later.

PRESIDENT (in Cantonese): Two motions with no legislative effect. I have accepted the recommendations of the House Committee: that is, the movers of motions each may speak, including reply, for up to 15 minutes, and have another five minutes to speak on the amendments; the movers of amendments each may speak for up to 10 minutes; and other Members each may speak for up to seven minutes. I am obliged to direct any Member speaking in excess of the specified time to discontinue.

PRESIDENT (in Cantonese): First motion: Comprehensively reviewing and perfecting the Work Incentive Transport Subsidy Scheme.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr WONG Sing-chi to speak and move the motion.

COMPREHENSIVELY REVIEWING AND PERFECTING THE WORK INCENTIVE TRANSPORT SUBSIDY SCHEME

MR WONG SING-CHI (in Cantonese): President, I move that the motion on "Comprehensively reviewing and perfecting the Work Incentive Transport Subsidy Scheme", as printed on the Agenda, be passed. In an oral question

asked in early November, I requested the Secretary for Labour and Welfare to respond to the aspiration of the community at large for the Work Incentive Transport Subsidy Scheme (WITSS). As the question time lasted only 20 minutes, Honourable Members were unable to make use of the platform to conduct more in-depth collective discussions on the WITSS. Although the WITSS was discussed once in the previous Legislative Session, after reviewing the actual circumstances, we considered it necessary to give the Government a better idea of our thoughts, so that a review could be conducted. With the lapse of nearly a month since the last oral question was raised, I believe the Government should be able to provide us with more information in its response to us later on. It was pointed out in the last oral question that the relatively low number of people applying for the WITSS was attributed to a host of problems. Hence, during this motion debate, I hope the Secretary can listen to Members' aspirations clearly and then respond to the prevailing actual circumstances later on in the meeting.

President, we must say a few words about the history of the WITSS should we wish to explore it in an in-depth manner. Although the majority of Members may be very clear about the WITSS, I still wish to evoke people's memories of the former Transport Support Scheme (TSS) (predecessor of the WITSS). The TSS, introduced by the Hong Kong SAR Government in 2007, was designed to assist the needy unemployed persons and low-income employees in job-seeking and employment, and through enhancing employment, assist the disadvantaged in moving from welfare to self-reliance. Subsequently, the relevant proposals were taken on board and, with effect from July 2008, restrictions on the TSS were relaxed and the monthly income ceiling was raised from \$5,600 to \$6,500, with the duration of the TSS extended from the original six months to 12 months. The TSS also allowed eligible people living and working in the same district to apply for allowances, provided that fee-paying home-to-work commuting had been used. All these details of the former TSS are extremely clear.

In fact, the idea of reasonably relaxing restrictions on the TSS had always been welcomed by the Democratic Party because the then TSS was only applicable to four remote districts, namely Tuen Mun, Yuen Long, North District and Islands. For this reason, the Democratic Party has always held that the idea of the then TSS is too conservative, for the people in need are not only confined to low-income earners in remote districts. On the contrary, all eligible members of the public, regardless of where they live, should be similarly eligible to apply

for travelling allowances. In view of this principle, since the implementation of the TSS, the Democratic Party had been insisting that the TSS should be expanded to enable all eligible members of the public in the territory to apply to it. Meanwhile, the Government should also enhance the flexibility of the application procedure, so that more low-income earners and unemployed persons could benefit from the TSS.

Given the Democratic Party's stance, when we put forward our proposal on the policy address to the Chief Executive in the previous Legislative Session of 2010-2011, the idea of expanding the TSS was included in the labour and manpower policy as one of the key recommendations. We hope the Administration can give low-income earners and job-seekers a clear explanation. In the 2010-2011 Policy Address, the Chief Executive responded to the Democratic Party's aspiration and announced the Government's decision to launch the WITSS to subsidize the travelling expenses of all eligible people at work in the territory with a monthly subsidy of \$600 per person. According to the Government at that time, the new measure would replace the original TSS, and the new scheme would be reviewed three years after implementation.

Nevertheless, President, we could not possibly tell at that time the specific details of the WITSS and whether it had grey areas, uncertainties or areas of great controversy. It turned out that there were controversies in all quarters of society when the details of the WITSS were announced, thus triggering fierce debates in this Council at that time and a lot of criticisms from many members of the community. A wide range of issues, from the replacement of individuals by families or core families as the definition of the unit of application to the income and asset limits, the review timetable, and so on, have caused great repercussions in society. Consequently, thanks to either Members' discussions or the pressure exerted by Members, the Government's plan was slightly revised and the funding application for the WITSS approved. Now, it has been nearly a year since the approval of funding by the Finance Committee of the Legislative Council, and the WITSS has been accepting applications since October this year. However, many people in society still hope that the WITSS can be further reviewed and improved, so that more low-income workers and grass-root people can be benefited. For this reason, the Democratic Party calls on the Government to address squarely the following four major requests and listen carefully to the views expressed by Members in this Chamber today, so that the WITSS, which might be enhanced in the future, can carry more comprehensive considerations.

We have no intention to rap the Secretary or the Government for making trouble out of nothing. In fact, we have all along considered that if the WITSS is genuine, the public will definitely sing high praises of it. But now, the WITSS does not resemble anything. On the one hand, it is like a scheme subsidizing low-income households; and on the other, it is described as a work incentive transport subsidy. However, it cannot do anything to promote employment. As a result, some people are unable to receive the subsidy.

Our four major requests are: Firstly, we call on the Administration to immediately review afresh all the details of the WITSS, including simplifying and improving its application procedure, as well as reassessing and announcing the latest number of people who will benefit from the WITSS, instead of conducting a mid-term review a year later. When I asked the Secretary earlier the number of applications received since the WITSS was open for applications in October this year, the number and the percentage of applications which are eligible for the subsidy and the respective numbers of applications received under the former TSS over the past 12 months, the authorities replied that, as of late October 2011, the Labour Department had received 14 411 applications in total, and 3 378 or 95.6% of the 3 533 applications were received between October 2010 and September 2011 under the former TSS had been approved. President, the 95% to 96% approval rate of the former TSS actually reflects that it was not difficult to make applications, and the applications were very likely to be approved. But, due to the influence of a number of factors, such as an application procedure as complicated as making a thorough and detailed inquiry and a family is used as the unit of application, is the Government confident that the new WITSS can maintain a similar or an even higher successful rate and a similar number of beneficiaries? If it is not, should the Government immediately review afresh all the details of the WITSS as well as reassessing and announcing the latest number of people who will be benefited? We are looking forward to the Secretary's reply later on to see if he can tell us any new information I believe there will definitely be an applause in this Council should the Government say that 90% of the 400 000-odd eligible persons have had their applications approved. However, we are still looking forward to the Secretary's response.

Furthermore, we consider it inappropriate of the Government to conduct a comprehensive review three years after the implementation of the WITSS or a mid-term review one year into its implementation. Members can see that the inflation problem in Hong Kong is very serious and hence, the Democratic Party

considers that the review cycle is too long. Moreover, the effectiveness is still unknown. Therefore, it is disappointing that the Government still intends to delay the review by a year and disregard the prevailing actual circumstances without making some revisions.

Secondly, we call on the Administration to relax the eligibility criteria of the WITSS and adopt a dual-track approach — the approach frequently mentioned by us — for each unit of application and relax the income and asset limits, so as to achieve the purposes of subsidizing low-income grass-root employees and promoting employment. President, the Democratic Party still insists that a dual-track approach be adopted for each unit of application, which means that an entire household or individual can be accepted as a unit of application, and applicants should be allowed to make their own choice. In doing so, many members of the public can be benefited. At present, many people cannot benefit from the WITSS. It is feared that many people eligible under the former TSS or in former districts are no longer eligible for the subsidy. Actually, the family members in many households nowadays are not at all willing to disclose their income to other family members. In some households where family relations are not at all good, it is even harder to expect their family members to fully disclose their personal income for the sake of applying for the subsidy of several hundred dollars. There is no way for this family as a unit of application to apply for the subsidy should any of its members refuse to disclose his or her income. The present situation is that the WITSS has not only made it impossible for many members of the public to receive their entitled transport subsidy, it will even affect their family relations. The asset limit for a four-person household, for instance, is \$120,000. However, the asset limit for waitlisted public housing applicants can reach \$397,000. The Democratic Party considers that the Government should relax the asset limit of the WITSS accordingly and make reference to the asset limit for waitlisted public housing applicants and the data of other relevant policies as the benchmark for the WITSS.

Thirdly, we call on the Administration to review the amount of monthly allowance per person under the WITSS, and consider raising the amount having regard to actual conditions of living. Earlier, the Secretary for Labour and Welfare claimed that the existing level of subsidy, that is, a full monthly subsidy of \$600, should be able to cope with the burden of travelling expenses on most of the beneficiaries under the WITSS. However, the Secretary must bear in mind

that the full monthly subsidy was published in October 2010. In the ensuing year, many public modes of transport had raised fares one after another. So, is the monthly subsidy of \$600 still reasonable? Furthermore, a comprehensive review will not be conducted until three years later. By then, the fares might have risen to a level unaffordable to the public. Hence, I hope the Government can expeditiously review whether or not the monthly subsidy of \$600 is adequate.

Fourthly, we call on the Administration to study including the Job Search Allowance provided under the former TSS in the WITSS, and refrain from tightening the eligibility requirements for applicants for the Job Search Allowance and lowering the ceiling of reimbursement. The Democratic Party considers that the Job Search Allowance is not a new idea policy-wise; it had been implemented for a period of time under the former TSS. The Democratic Party thus hopes that the Government can bear in mind achieving the purpose of alleviating the burden of travelling expenses on low-income earners and, what is more, the needs and aspirations of job-seekers in its review of the details of the WITSS. This is why we hope the Government can expeditiously include the Job Search Allowance in the new WITSS, so that job-seekers can be benefited.

Lastly, President, in the remaining time of the debate, I believe Members will put forward different justifications, points of view, and proposed figures. The Democratic Party holds an open attitude towards all the views. In our opinion, so long as the WITSS is not reviewed, the Administration should continue to draw on collective wisdom and listen to suggestions from all sectors, with a view to formulating a most comprehensive improvement package. I hope Members can support my proposed motion.

Thank you, President.

Mr WONG Sing-Chi moved the following motion: (Translation)

"That travelling expenses are an important item of daily expenses borne by the vast number of employees and job-seekers in Hong Kong; the Government announced last year the idea of the Work Incentive Transport Subsidy Scheme (WITSS) and started to receive applications in October this year, but there are still voices in society calling for further review and improvement of WITSS, so that more low-income workers and grass-root people may benefit from WITSS; in this connection, this Council urges

the Government to:

- (a) immediately review afresh all the details of WITSS, including simplifying and improving its application procedure, as well as re-assessing and announcing the latest number of people who will benefit from WITSS, instead of waiting for a year to conduct a mid-term review;
- (b) relax the eligibility criteria of WITSS, adopt a dual-track approach for each unit of application and relax the income and asset limits, so as to achieve the purposes of subsidizing low-income grass-root employees and promoting employment;
- (c) review the amount of monthly allowance per person under WITSS, and consider raising the amount having regard to actual living circumstances; and
- (d) study including the Job Search Allowance provided under the former Transport Support Scheme in WITSS, and refrain from tightening the eligibility requirements for applicants for the Job Search Allowance and from lowering the ceiling of reimbursement."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr WONG Sing-chi be passed.

PRESIDENT (in Cantonese): Four Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the four amendments.

I will first call upon Members proposing the amendments to speak; but they may not move the amendments at this stage.

MS LI FUNG-YING (in Cantonese): President, discussions were already

conducted in great detail by the Finance Committee of the Legislative Council in respect of the funding for the WITSS early this year. In my opinion, neither the existing arrangement, whereby the family assets is used as one of the eligibility requirements for vetting and approval, nor the so-called dual-track approach (an approach whereby applicants are allowed to opt to declare their family or individual assets) supported by quite a large number of Honourable colleagues is appropriate. So far, my stance has remained unchanged. In the following, I will express my views with respect to two aspects: First, the problems arising from using assets as the vetting and approval criterion. Second, I will clarify some criticisms and misgivings about adopting applicants' remunerations as the vetting and approval criterion.

The WITSS, which uses family assets as the vetting and approval criterion, had already come under fire when it was still under discussion. For instance, for the sake of obtaining the \$6,000 subsidy, all family members are required to declare their assets. Such a stringent requirement certainly hurts the applicant's pride. Moreover, even if someone wishes to apply for the subsidy, he might not get the support from other family members. In fact, since the implementation of the WITSS in October, all these criticisms have turned into reality. My office has received a lot of complaints from members of the public, mostly grass-roots women. Even though they meet the income criterion of \$6,500 or below, they can still not apply for the transport subsidy because of refusal by their husbands or children to disclose their income position.

On the surface of it, the dual-track approach, which allows the use of the individual assets as the basis, can address the shortcomings of the existing WITSS. But this is not the case actually. Under a household-based asset test system, if the family members of an applicant refuse to co-operate, the applicant will be unable to obtain the subsidy. However, under an individual-based asset test system, if the family members of an applicant fully co-operate, the applicant can transfer his assets. As a result, a vetting and approval system based on personal assets as one of the test criteria will be criticized for its loopholes. President, I do not mean to denigrate Members' good intention in proposing to improve the WITSS. However, the problems mentioned must be resolved when the dual-track approach is put into implementation.

The asset-based WITSS still has to face a more fundamental problem and

that is, low-income earners are indirectly encouraged not to save money. The Government has repeatedly emphasized the three pillars, namely Comprehensive Social Security Assistance, personal savings and the Mandatory Provident Fund scheme, in an attempt to repudiate universal retirement protection. However, the specific policies implemented by the Government run counter to the three pillars promoted by it.

In my opinion, a transport subsidy scheme which is designed to really promote employment only needs to peg with remunerations. The Secretary once criticized my relevant proposal, saying that in merely adopting \$6,500 as the income limit for granting the subsidy would fail to help grass-roots employees with a monthly income over \$6,500 who had to take care of a number of family members. I think the Secretary's criticisms are specious, representing a confusion of concepts. The WITSS by its very name is designed to promote employment. If the Secretary wishes to discuss a support scheme for low-income families, just bring it on; I am prepared. However, I would like to invite the Secretary to give it a proper name before we can further discuss whether or not the scheme can achieve the objective of supporting the livelihood of low-income families. Actually, I have some specific recommendations on support for these families. I request that a cost of living index for members of the public be established to subsidize the daily needs of people who are unable to meet the index standard. When discussing the WITSS, the Secretary should not lump a variety of schemes together for discussion and describe the existing scheme, which is neither fish nor fowl and can do nothing to promote employment and provide effective support to low-income households, as the drawbacks of my proposal.

If the goal of our WITSS is to promote employment, what kinds of job are being promoted by this scheme in which \$6,500 is set as the income limit? According to the information on the occupations selected by the Census and Statistics Department, in June this year, cleaners earned the lowest average monthly income of \$6,691, followed by toilet cleaners and security guards, whose average wages were \$6,720 and \$8,665 respectively. Hence, if the line is drawn at \$6,500, the number of eligible persons will not be large, even if the applicants do not need to be means-tested. Of course, with the current inflationary adjustment, the threshold should be raised. As the rate of increase is a separate issue, Members may discuss it further. Although the wages of cleaners in general are higher than \$6,500, we have often heard some people in the business

sector complain about the difficulties encountered in recruitment. A non-means-tested transport subsidy will undoubtedly help enhance the chance of successful recruitment. Hence, I hope Members representing the business sector in this Council can support my proposal.

President, an income level of \$6,500 is equivalent to an hourly wage rate of \$31. If colleagues in this Council share the view that the existing statutory minimum wage rate of \$28 should be adjusted because it is too low, then there is absolutely no reason to object to my proposed non-means-tested transport subsidy scheme, as all employees currently receiving the minimum wage will be able to benefit from such a scheme and see the heavy pressure of living on them relieved.

President, the objective of the WITSS is to encourage the grassroots to work. My answer to the question of whether waiving the asset test will result in abuse of the WITSS is in the negative. I am not talking about the rich or people leading a worry-free life. Even if some people just manage to get by, they will still not take up obnoxious jobs, such as toilet cleaners, for the sake of the \$600 subsidy. I do not entirely deny such a possibility, but I am certain that there will not be many such cases. I do not consider it an abuse of public money to provide a transport subsidy to employees who are willing to take up low-pay obnoxious jobs when the principle on the effective use of public money is getting increasingly vague. From the angle of overall effectiveness, I think a non-means-tested transport subsidy scheme is absolutely worthwhile.

Lastly, President, no matter whether a review will be conducted immediately, the existing WITSS must first simplify the application form for income proof, as many casual workers can hardly request their employers to certify the amount of wages and the duration of hours worked for them. As a result, these workers will often be rejected when applying for the transport subsidy.

Thank you, President.

MR IP WAI-MING (in Cantonese): President, this Council has held discussions on the WITSS on a number of occasions. The WITSS by its very name is meant to encourage the public to go out to work through the transport subsidy. Given that one cannot bring along his or her family members to go out to work, the

subsidy should be individual-based. Therefore, the Hong Kong Federation of Trade Unions (FTU) has all along considered that the eligibility criteria of the WITSS should be relaxed and the individual be adopted as the unit of application.

Unfortunately, the Government has all along refused to heed these views and insisted on adopting the family-based criteria for vetting and approval. Furthermore, 32 000 people, who could originally apply for the transport subsidy on their own, have seen their incomes exceeded the ceiling when they are calculated together with those of their family members under the new system, thus falling out of the protection net provided by the WITSS. As a result, the WITSS has been subject to criticisms. The request made by members of the community just a month or so after the implementation of the WITSS for a comprehensive review and improvements is actually not groundless. We hope the Government can listen to our views and take on board our improvement recommendations, thereby improving the application method, alleviating the burden on low-income earners and resolving the in-work poverty problem.

The first item that needs improvement is the asset criteria of the WITSS. The current asset limit for a one-person household is \$44,000, including a wide range of assets. It has always been our view that savings insurance dividends, among others, should be deleted. We believe quite a number of wage earners might have taken out a savings insurance policy as another form of livelihood protection. Let us for the time being put aside the question of whether savings insurance can really protect the livelihood of wage earners and whether they can make a lot of money from the dividends receivable. We see that the coverage of the insurance taken out by the majority of wage earners is quite limited, and the dividends receivable are very limited, too. Why does such a small sum of dividend can deprive them of protection rendered by the transport subsidy?

In fact, the insurance dividend receivable, even if really "encashed", probably amounts to several thousand dollars, \$10,000 or \$20,000 only. We think that the Government's proposal to disqualify them from applying to the WITSS because of such a small sum of dividend deviates sharply from the original intention of the WITSS itself. During our discussion on the WITSS last year, I also raised the point that when applications were made by some people, the amounts of dividend receivable by them did not exceed their asset limit. However, months after their applications were made or their receipt of the transport subsidy, their assets exceeded the limit because of an increase in the

dividend receivable. Very often, the Government would stop their transport subsidy and even require them to return the subsidy already received.

Stringent vetting and approval is not a bad thing. However, if so many restrictions are imposed on the eligibility criteria, can the Government be considered as promoting employment? Furthermore, in his responses to our questions concerning retirement protection in this Council, Secretary Matthew CHEUNG had always maintained that encouraging personal savings is one of the pillars for tackling the retirement protection problem. Why does the Government refuse to spare such a meagre cash value? In our opinion, in conducting the asset test, the Government should exclude the cash value of insurance policies, severance payments and long service payments, and so on, from asset calculation, and consider calculating applicants' total assets and incomes on the basis of their household expenditure patterns, so as to affirm the original objective of the WITSS — promoting employment, providing a maintenance grant to low-income earners, expanding their scope of employment, and enhancing the mobility of the employment market, so that grass-roots workers can enjoy due livelihood protection.

President, I have already pointed out at the beginning of my speech that the existing WITSS has some loopholes. How can these loopholes be rectified? Perhaps I should say this: The Government might wish to provide a subsidy to low-income earners through the WITSS. However, it is unwilling to show or be considered by the community that an additional benefit is provided in Hong Kong. Therefore, it is reluctant to admit that the benefit is meant to subsidize the livelihood of low-income earners, as if it is concealing the facts and revealing only half the picture. Consequently, the entire WITSS does not resemble anything — neither an ass nor a horse. In our opinion, the Government cannot resolve any problems with its head buried in the sand.

The FTU proposes that the Government should introduce an employment and livelihood protection scheme, whereby the mechanism of the Community Care Fund can be exploited during the initial period to launch a three-year pilot scheme to assist grass-roots workers who fall outside government labour and welfare protection in obtaining wage subsidies and enhance the support for low-income earners. According to the outcome of a study conducted by the FTU, if a calculation is done on basis of the statistics obtained in the Quarterly Report on General Household Survey by the Census and Statistics Department in

the first quarter of 2011 as well as the statistical data submitted to the Legislative Council by the Financial Services and the Treasury Bureau on 30 March 2011, the number of persons who may benefit under the employment and livelihood protection scheme may exceed 115 000, which is sufficient to make up for the inadequacies of the original policy.

We hope the Government can provide necessary assistance through effective distribution of resources to people who cannot be taken care of under the existing welfare system and government policy or who are left out of the same, with a view to really promoting employment while meeting the objective of introducing the Community Care Fund. However, I have to emphasize that this is just a three-year pilot scheme. We propose that it should be made a transitional scheme. The Government should merge the existing WITSS with the employment and livelihood protection scheme currently advocated by us into a subsidy scheme for low-income earners in order to protect their livelihood.

President, it is an indisputable fact that travelling expenses are exorbitant in Hong Kong. Apart from proposing the relevant transport subsidy to assist low-income earners, we consider that the Government must address the problem squarely, get to the root of the problem and prescribe the right remedy before it can really rectify the loopholes of the scheme. Needless to say, I believe we all know that the root of the problem lies in the exorbitant fares of public transport in Hong Kong. Therefore, we think that the Government must review Hong Kong's existing public transport fare structure to prevent public transport providers from raising fares indefinitely and in an unrestrained manner. Otherwise, even if a bigger and more comprehensive transport subsidy scheme is launched by the Government in the future, it can still not follow closely the rises in travelling expenses or alter the existing transport fare structure. This can easily give rise to the situation of while one side of a bucket holds water, the other side of it just drains it away. It does not resolve the issue at all.

I also need to remind the Government not to regard the transport subsidy as a measure to give alms to low-income earners, for the original intent of the transport subsidy is to promote employment. Given the Government's proposal that ordinary people must be self-reliant and refrain from frequently relying on the Comprehensive Social Security System, the Government must assist the public in achieving self-reliance beginning with details in their daily lives. Hence, the policy implemented must not be self-contradictory with hurdles after

hurdles imposed to prevent the public from truly enjoying the benefits. The Administration should ensure that the transport subsidy can benefit more people and, under the present situation where inflation is escalating, Secretary, a monthly transport subsidy of a few hundred dollars is actually very important to many low-income earners. We hope the Secretary can heed our voices and expeditiously review the existing WITSS.

President, I so submit.

MR IP KWOK-HIM (in Cantonese): President, in retrospect, the WITSS was approved by the Finance Committee early this year for implementation on 1 October after repeated arguments. Although the details of the WITSS still had much room for improvement, it was not a satisfactory arrangement for Members to continue to be entangled over the scheme in the face of the high inflation and exorbitant fares at that time. Therefore, the DAB considered then that the most pragmatic approach was to approve the funding first to enable the grassroots with hardships to be benefited expeditiously and to review the effectiveness of the WITSS in the course of actual implementation.

With the implementation of the minimum wage on 1 May, we are very pleased to note that the income of grass-roots employees has seen an obvious increase, the labour market has remained robust, and the unemployment rate stays at a relatively low level. However, Members can also find that the underlying inflation rate has soared to 6.4% in recent months, and a number of public transport operators have scrambled to raise fares. As a result, members of the public have seen their wage increase eroded substantially and the pressure of living steadily on the rise.

Furthermore, the wage increase has resulted in a substantial drop in the number of persons making applications to the WITSS from more than 430 000 to approximately 400 000. Since the acceptance of applications under the WITSS on 1 October, the submission of applications has not been enthusiastic. The community's lukewarm reaction to the WITSS precisely reflects that it still has much room for improvement. And it is now opportune for a comprehensive review to be conducted and improvements made expeditiously. I would like to sum up three major points in regard to the direction of review, with a view to

expressing the DAB's views on this.

First, the existing income and asset limits of the WITSS are determined in accordance with the household income of the second quarter of last year. The data, which are definitely a bit outdated, cannot catch up with the new situation arising from the increase in the wages of grass-roots workers after the implementation of the minimum wage. What is more, they have failed to give regard to the impact brought about by the latest inflation figures.

The DAB has repeatedly proposed that the tiered threshold for vetting and approval be relaxed. In particular, the income ceilings for two-person and three-person households should be adjusted upward to enable more households to be eligible. Let me cite a two-person household as an example. If the two persons are a working couple, even if they only earn the minimum wage, their combined monthly income would have exceeded \$12,000, and so they are ineligible to apply for the transport subsidy. Hence, the Government should really seriously consider whether it is time to relax the income and asset limits to benefit more needy people.

Second, reference should be made to the former Transport Support Scheme to incorporate some of its desirable features. Let me cite the Job Search Allowance mentioned by Mr WONG Sing-chi just now as an example. The introduction of a maximum allowance of \$600 under the old scheme could alleviate the travelling expenses borne by the unemployed in seeking jobs. The DAB earnestly hopes that the Government can incorporate this measure by including the Job Search Allowance in the WITSS.

Furthermore, the old scheme, under which applications were made on an individual basis, was focused on people at work, thus reflecting personal income. The existing WITSS, however, adopts the household as the unit of application and is focused on households, thus reflecting mainly the households' financial position. The DAB hopes that the Government can consolidate the modes of application under the new and old schemes and introduce some sort of enhancement. In other words, wage earners can submit applications as individuals or on a household basis. This means that applicants can select their own mode of application having regard to their unique family and financial conditions. Doing so can not only enhance the flexibility of application to enable more wage earners to be benefited but also achieve the effect of promoting

employment.

Third, the application procedure should be streamlined to facilitate the making of applications by the public. At present, the application formality is too complicated. In particular, the fact that applicants are required to declare a lot of financial information about themselves and their family members gives them an impression that they are being checked for every single detail of their family. Many Members who serve in the districts have had the experience of being invited to assist in filling in the application forms. According to the views relayed by them, it is extremely difficult. We do understand that the application procedure is devised in such a complicated manner because the Government is worried that the WITSS might be abused. Therefore, the Government hopes to achieve perfection in everything, so that all details can be taken into account concurrently. We understand this because the use of public money is taken very seriously by the Audit Commission. Therefore, the relevant scheme is implemented strictly to ensure that it will not face impeachment or further audit by the Audit Commission when it is put into implementation. This is understandable given the prevailing socio-economic conditions. However, requiring applicants to fill in exceedingly complicated forms will make many low-income households worry that they have to assume criminal liability for erroneous reporting or omission, and thus their desire to make applications is dampened. I think the Government should be able to see this point clearly with the benefit of this experience. Hence, the DAB hopes that the Government can strike a balance between preventing abuses and facilitating members of the public by suitably streamlining the application procedure and the information required to be filled in.

Furthermore, we hope that the Government can take one more step by setting up additional Job Centres in various districts, particularly those districts where there is no Job Centre, such as the South District on Hong Kong Island. This can not only strengthen the employment service network of the Labour Department, but also facilitate WITSS applicants.

President, I would like to explain here the relevant amendment proposed by the DAB. In my opinion, despite the current affluence of Hong Kong society at large, the concept of safety net still remains at the lowest level decades ago whereby people would not starve to death. It is actually hard to accept such a concept in Hong Kong nowadays. Although the existing WITSS, to a certain

extent, is considered to be a maintenance allowance, it is hamstrung by its name as a "transport subsidy", thus resulting in inadequate coverage. Actually, it is groundless and unjustifiable, too. The DAB holds that a more comprehensive second safety net should have been built in Hong Kong a long time ago to enable low-income households to deal with hardships and obtain appropriate support. Therefore, the DAB proposes that the Government can consider transforming the WITSS into a "maintenance grant scheme for low-income families" and using it as the second-tier social security system in Hong Kong. In doing so, the Government can then justify its expansion of the coverage to include more targets.*(The buzzer sounded)*

Thank you, President.

MS MIRIAM LAU (in Cantonese): President, nowadays, prices are exorbitant and the inflation rate is standing high in Hong Kong. According to the latest figures just published by the Census and Statistics Department, the year-on-year Consumer Price Index for October recorded an increase as great as 5.8%, including a year-on-year increase of 4.8% in travelling expenses. Furthermore, a number of modes of transport are in the waiting line for making fare increase applications. The enormous pressure thus exerted on low-income earners in particular is indeed worrying.

The WITSS was formally launched last month by the Government precisely because a number of low-income families had found their income eroded by the exorbitant travelling expenses in Hong Kong. Although the original intent of the WITSS is to subsidize the travelling expenses of low-income earners and encourage them to go out to work, it is designed in such a way that it seems like some sort of an onerous procedure for application for such benefit, and a considerable number of needy persons are made ineligible as a result.

For instance, the replacement of the former method whereby an application for transport subsidy was made on an individual basis by a new method whereby the household is made the unit of application has given rise to numerous problems. Let me cite a family with two members as an example. Under the new scheme, its household income limit is only \$12,000, whereas under the old scheme, the two members could each receive the transport subsidy even if they each earned \$6,500 or below, despite the fact that their total household income

actually reached \$13,000. The new scheme is actually retrogressive, for the household income limit has shrunk to \$12,000. In short, the new scheme is widely criticized for adopting a household income limit and its very stringent ceiling and relevant requirements.

Let me cite a three-person family as an example. There is only a \$1,000 difference in the household income limit between such a family and a two-person family, with a discrepancy of a mere \$500 between a four-person family and a five-person family. Come to think about this. Does a household require more than \$500 or \$1,000 to take care of one more family member? My purpose of proposing this amendment today is to draw the attention of the Administration to the need of addressing the unfairness arising from the household income limits on families with two or more members, so that amendments can be introduced to rationalize the arrangement.

In fact, many arrangements for applications to the Government for other benefits are more lenient than the one for the transport subsidy. Let me cite public housing as an example. The monthly household income limit for a three-person household is \$1,800 higher than that for a two-person household, whereas the limit for a four-person household is \$3,300 higher than that for a three-person household. These arrangements are far friendlier than the one for the transport subsidy. It is evident that, despite the WITSS being meant to provide work incentives, the Government obviously has the intention to use the stringent eligibility criteria to "drive off applicants" to prevent too many people from making applications.

President, I would like to point out that the transport subsidy was originally intended as a work incentive initiative, not purely a benefit. Hence, the Government has indeed distorted its original intent of providing work incentives for individuals in insisting that applications for the transport subsidy must, like applications for other government benefits, be family-based rather than individual-based.

In fact, it was because of the failure of the former transport subsidy scheme to meet the needs of some households that the dual-track approach was proposed by us to allow the beneficiaries to elect to use an individual or a family as the unit of application. Let me cite a couple, with one earning a monthly income of \$7,000 and the other \$5,000, as an example. Under the former mechanism

whereby individual-based applications are accepted, only the person with a monthly income of \$6,500 or below, that is, the one earning \$5,000, was eligible for the transport subsidy. However, if a household is used as the unit of application, as the combined monthly income of the couple precisely falls within the income limit of \$12,000 (that is, \$7,000 plus \$5,000), they are thus eligible to apply for the transport subsidy and receive \$1,200 in total. This is greatly helpful to alleviating the financial pressure on low-income households. Therefore, the new scheme is actually welcomed by some low-income households.

But, unfortunately, it is also quite unfair to adopt a household as the unit of application, for many people have thus been made ineligible under the WITSS. Let me cite a three-person household with each member earning a monthly income of \$5,000 as an example. Under the old scheme, each of them was eligible for the \$600 transport subsidy. Under the new household-based scheme, however, their combined monthly income of \$15,000 has exceeded the family income limit of \$13,000. Therefore, sorry, these three persons are ineligible for the transport subsidy under the new scheme. So, the so-called WITSS is indirectly discouraging them from going to work because they would be unable to receive the transport subsidy should they work. In that case, they had better apply for Comprehensive Social Security Assistance.

Therefore, the WITSS has both merits and demerits, and it badly needs perfecting. However, when it was initially introduced, the Government had paid no attention to the various justifications put forward by us with respect to the proposed dual-track approach. Instead, the Government insisted on merely allowing the applicants to make household-based applications. Members were also told that should they reject its proposal and insist on studying the dual-track approach, the Government would have to go back to carry out a study, and the time required for the study would be unknown. No one could tell whether it would take one, two or three years. At that time, the Liberal Party also considered that such factors as inflation — the same point mentioned by Mr IP Kwok-him just now — had to be considered before deciding whether or not to accept the proposal. Eventually, after the Government had expressed the willingness to raise the household income limit for a two-person household to \$12,000, we agreed to allow the WITSS to be implemented first, on the condition that the Government must immediately activate the mechanism to study the

dual-track approach to perfect the WITSS which is actually seriously flawed.

In fact, the statistics show that the response to the WITSS since its implementation has been lukewarm. During the period between 3 October, the commencement date of the WITSS, and the end of October, only 14 411 applications were received, which was not only far lower than what was expected, but also less than 10% of the initially expected 218 000 cases, because of the stringent eligibility criteria and extremely complicated procedure. As mentioned by several Honourable colleagues just now, it takes at least several hours to just read and fill in the application forms, submit a string of financial documents as support, and so on. It is indeed quite time-consuming to make just one application for the transport subsidy.

In addition to the desperate need to improve the eligibility criteria and application procedure, the wage level in Hong Kong is now higher than it was when the WITSS was introduced. To prevent even more people from falling out of the WITSS net, we fully agree with the proposal in the original motion that the Government should immediately review afresh all the details of the WITSS, instead of conducting a review after a period of time or a year, to ensure that the eligibility criteria and arrangement of the WITSS can follow closely the social development and really achieve the original intent of encouraging individuals to go out to work.

Apart from this, we consider that there is also a need to include job-seekers again in the scope of support provided by the WITSS. The Government can follow the former Transport Support Scheme to provide job-seekers with accountable transport subsidy, with a view to encouraging them to go out to seek job opportunities. The Government should absolutely not cite "only a very small number of job-seekers had applied under the old scheme" as an excuse to continue to exclude job-seekers. In particular, there is a possibility for Hong Kong economy to experience a downturn. Should that happen, a considerable number of job-seekers might need to apply to the relevant scheme for support in going out to look for suitable jobs.

Furthermore, a number of modes of public transport have raised fares one after another since the idea of introducing the WITSS was conceived. Therefore, in reviewing the WITSS, it is advisable for the Government to adjust the amount of transport subsidy having regard to the increase in travelling

expenses by, for instance, raising it by \$50 to \$650 per person per month.

In short, we hope that the Government can expeditiously review the WITSS to expeditiously streamline the application procedure, adjust the various eligibility restrictions and amount of subsidy, renew its support for job-seekers and implement the dual-track approach, with a view to ironing out the existing problems of the scheme, so that needy persons can be benefited in concrete terms.

Insofar as the amendments are concerned, we cannot support Ms LI Fung-ying's amendment because it proposes deleting "adopt a dual-track approach" altogether. The Liberal Party fully supports all the other amendments as they all seek to improve the existing WITSS.

President, I so submit.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, I would like to thank Mr WONG Sing-Chi for proposing this motion today and Ms LI Fung-ying, Mr IP Wai-ming, Mr IP Kwok-him and Ms Miriam LAU for proposing amendments to give us a good opportunity to draw on collective wisdom.

The Work Incentive Transport Subsidy Scheme (WITSS) is one of the major policy initiatives of the current-term Government to enhance care for employed grass-roots workers. The goal of the WITSS is to relieve the burden of travelling expenses on commuting to and from work on low-income households with employed members, with a view to promoting sustained employment. It can be said that the WITSS, which is a brand new scheme, is vastly different from the former Transport Support Scheme launched in four remote districts by the Government in 2007 in terms of the philosophy underlying the policy and the details. Moreover, the new scheme is better than the old one in many areas. For instance, the new scheme which covers the entire territory is not time-limited. Irrespective of the travelling distance, mode of transport and actual travelling expenses, all employed members of low-income households, including self-employed persons, can apply provided that they meet the criteria. Even employed members who work fewer hours per month, such as part-time workers, may apply for a half-rate subsidy.

We have listened extensively to the views expressed by Members and the

general public on the design and specific arrangements of the WITSS and explained its details to members of the Panel on Manpower of the Legislative Council in December last year and February this year respectively. The funding application for the WITSS was also endorsed by the Finance Committee on 25 February.

After months of preparations, the WITSS became formally open for applications from 3 October onwards. An applicant may apply immediately for the transport subsidy dating from April this year or apply later for a one-off transport subsidy for a longer period up to 12 months. As of yesterday evening, that is, 29 November, the Labour Department has received 19 393 applications in total, and 21 230 applicants are involved. As each application includes all the applicants in the relevant household, the number of applicants is larger than the number of applications. Of the 2 618 applications processed, 2 592 have been approved. With an approval rate of up to 99%, 2 699 applicants in total have been benefited. The figure of 2 699 is quite easy to remember. Of these approved applications, 2 176 (involving 2 222 applicants) are granted a six-month full subsidy of \$3,600 and 18 (involving 18 applicants) a seven-month full subsidy of \$4,200. All these subsidies have already been transferred to the successful applicants. We will expeditiously process other applications to enable eligible persons to receive the subsidy as soon as possible.

Currently, the WITSS is still at an infancy stage. We will pay close attention to its implementation and make reference to the experience gained one year after its operation, with a view to conducting a mid-term review. I have already made it clear earlier that, if necessary, we will consider bringing the review forward. In fact, I have undertaken to give a full account on the overall progress of the WITSS and explore the room for improvement at the meeting to be held by the Panel on Manpower on 16 February next year.

After listening to the views of Members, I will give a more detailed response again. President, I so submit. Thank you.

MR WONG KWOK-HING (in Cantonese): President, just now, the Secretary pointed out in his speech that the WITSS and the Transport Support Scheme were diametrically different, and the former was even better and did not need any revision. He added that the funding application for the WITSS had been

approved by this Council implies that Members are accountable. Simply put, this is what he meant. Is it really the case? I do not think so.

Just now, colleagues proposing the original motion and amendments already gave a brief and clear account on the circumstances surrounding the approval of the funding application in respect of the WITSS. It was because, given the exorbitant prices and inflation at that time, there was no way to rescue the needy should we continue to argue incessantly. In view of this, we were compelled to pass such a half-baked scheme. As things are getting more and more expensive, and transport operators are scrambling for fares rises, we cannot but request that the review be brought forward.

President, the WITSS is described by me as "painkillers" and "antipyretics" for low-income earners. Why do these people have to apply for the subsidy under the WITSS? It is because their income is so low that they can hardly eke out a living. Owing to their hardships and the current exorbitant travelling expenses, they have to apply to the Government for the drugs. However, the Government has tried every possible means to make life difficult for them in distributing the drugs to them.

For this reason, I think that it is absolutely reasonable and sensible for the original motion and amendments to propose "adopting a dual-track approach for each unit of application" and various improvements. The authorities should consider and accept them.

The crux of the problem is we cannot but ask why low-income earners have to get the "painkillers" and "antipyretics". If they are not in pain, then they do not need the "painkillers"; if they are not having a fever, then they do not need the "antipyretics". They need to obtain these drugs precisely because of the Government's blunders in administration and imbalance in planning, thereby causing hardships in living and employment to the grassroots and low-income elderly people.

President, let me cite several "causes of disease". Due to the emergence of the associated causes of disease in society, the Government has to distribute "painkillers" and "anti-biotics drugs". However, it should not be miserly and penny-pinching.

The first "cause of disease" is the imbalance in town planning. As

low-income earners cannot afford exorbitant rents, they have to live in remote public housing flats in the new towns (they can certainly not afford buying a flat). And due to their relocation to the remote new towns, they have to bear exorbitant travelling expenses. Given that a return trip between Tung Chung and the urban areas, such as Kowloon or Hong Kong Island, costs them tens of dollars daily, with a monthly income of only \$6,000 or so and such a heavy burden in paying travelling expenses, how can they meet their personal expenses? Not only have the relevant issues been raised by Members for many years, I have also made repeated criticisms in this Chamber. So, I do not wish to repeat them here.

I would like to cite some new examples. Yesterday, President, in a case conference conveyed by a few colleagues and me with the Administration in the Legislative Council Complex, it was revealed that the Housing Department had planned to construct four public housing blocks in Area 56, Tung Chung to provide approximately 3 600 units, though these units would be far away from the Mass Transit Railway station and bus terminus. In this connection, one of my colleagues asked, "Given that the Government has considered resuming the construction of Home Ownership Scheme flats, why does it not build these flats there?" When the representative of the Administration replied that public housing flats needed to be built there so that the people could be relocated there, my colleague asked, "So, what can be done about their travelling expenses?" However, the Government was still its same old self, saying that the relevant plan was formulated according to the planning criteria at that time and could not be changed. Frankly, I think it is meaningless even if more "painkillers" are distributed.

Second, the Government is biased in favour of the monopolistic modes of public transport, particularly the railway. In order to protect the development and operation of the railway, the authorities have imposed numerous restrictions on other modes of public transport, making it impossible for them to compete with the railway. As a result, the railway has become the dominant player and continued to raise fares, thus aggravating the burden of travelling expenses on the public.

Third, we have been making strong calls on the Government to introduce a monthly ticket scheme for various modes of transport to alleviate the burden of travelling expenses on wage earners who have to go to work every day. However, the Government has all along been turning a deaf ear to our appeal.

As a result, wage earners who have to work every day are made to bear exorbitant travelling expenses.

Admittedly, the interchange scheme for modes of transport can alleviate the burden of travelling expenses on the public. However, the provision of the intelligent sensors is most haphazard. Indifferent to our requests, the authorities have made no improvement. All these show that the Government can watch from the sidelines with the "market-led" excuse, and thus the masses are just being preyed on freely.

Fourth, although tunnel tolls are rising, the tunnel operators still often complain that the toll increases have yet to reach the permitted level of legitimate profit under the "Build, Operate and Transfer" agreement. Despite its short remaining term, the current-term Government has not yet given an account on a possible buyback of the tunnels.

The four "causes of disease" cited by me just now illustrate how the masses are made to shoulder a heavy burden of travelling expenses due to the Government's blunders in administration, so their hardships. Therefore, I hope the Secretary can consider relaxing various hurdles (*The buzzer sounded*)

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

MR LEUNG YIU-CHUNG (in Cantonese): President, the Neighbourhood and Workers Service Centre (NWSC) and I object in principle to the WITSS because we think that the current high level of travelling expenses is caused mainly by the Government's ineffective work and inadequate regulation of public utilities. As a result, travelling expenses are standing high in Hong Kong. Meanwhile, these public utilities, which have no social conscience, remain reluctant to fulfill their social responsibilities of taking care of the grassroots, despite their substantial profits made every year.

For instance, the net profit of the MTR Corporation Limited (MTRCL) in the first half of 2011 had even reached \$8.05 billion, representing a 21.2% increase over that of last year. The profits reaped by the Kowloon Motor Bus Company (1933) Limited (KMB) from 2008 onwards were \$670 million in 2008,

\$680 million in 2009, and even up to \$850 million in 2010. The Citybus Limited (CTB) was even more remarkable. Its profit in last year alone even amounted to \$1.26 billion. In fact, insofar as the situation of last year is concerned, a 9.7% profit would have been enough for the CTB if the calculation is done on the basis of its profit ceiling. The remaining profit is extra and should be paid back to the public. However, the CTB has not done anything at all. This shows that, despite their substantial profits every year, these enterprises have no social conscience. Instead, they have requested fare increases.

In June this year, the MTRCL raised fares by 2.2%, and in May this year, the KMB increased bus fares by 3.6%. These corporations have, on the one hand, made enormous profits and, on the other, continued to increase fares, thus pushing their fares to such an exorbitant level today. However, the Government just sits with its arms folded. In view of the financial difficulties encountered by the grassroots in living as a result of the exorbitant daily travelling expenses incurred for travelling to and from workplaces, we have appealed to the Government for assistance. It was on this premise that we could not help but accept the Government's initiatives reluctantly; otherwise, the grassroots will continue to suffer.

This is actually not the best way to solve the problem because the more transport subsidy offered by the Government to the public, these unscrupulous public utilities will only continue to raise fares. As a result, when the \$600 transport subsidy becomes inadequate in future and needs to be increased further, we will find the Government raise the amount of subsidy while public utilities continue to raise fares, thus leading to a vicious circle whereby taxpayers have to continue to subsidize these public utilities. This is why I think that the root cause of the problem lies in how the Government can curb the greediness of these public utilities to prevent them from raising fares blindly or indiscriminately. Most importantly, they must fulfill their social responsibilities according to their social conscience.

Anyhow, the WITSS has come into effect. The old scheme, though allowing individuals to submit applications, did not suffice to meet demands because it was only applicable to four districts. This time around, the Government has heeded public opinion and extended the scope of the new scheme to cover all parts of Hong Kong. This is generally welcomed by the

public. But worst of all, some people eligible under the old scheme are made ineligible under the new scheme, because the household is now used as the unit of application under the new scheme. As a result, some workers were previously eligible for the subsidy by virtue of their low income when they submitted individual-based applications, but now they have become ineligible because the calculation is based on their total household income.

When promoting this scheme to us earlier, Secretary Matthew CHEUNG emphasized again and again that the new scheme had a lot of merits. For instance, two family members who were originally ineligible could now become eligible for the subsidy. We do not deny the existence of such cases. But worst of all, more people who were formerly eligible are now ineligible. A survey conducted recently by the NWSC and some community organizations has confirmed the existence of this phenomenon.

Apart from this, we have taken the initiative to publicize the new scheme on the streets and assist the public in filling out the application forms for fear that the Government is not making adequate efforts in promoting the scheme. But very often, when the people saw the income limit specified on the leaflets, they would say that there was no point in submitting applications, for their income had already exceeded the limit. Therefore, despite the Secretary's earlier remark that 20 000-odd applications had been received, more people who were formerly eligible for the subsidy are now ineligible. Meanwhile, many people are ineligible even though they wish to apply for the subsidy, because the exceedingly low income limit has caused hardship to them.

A casual comparison can already show that there are different thresholds for the Government's existing subsidy schemes, including those for public housing, textbook and healthcare assistance and the distribution of \$6,000 to each new arrival through the Community Care Fund. Among the numerous thresholds, the one for the WITSS is the tallest. Why does the Government have to do this?

Why does the Government have to set the threshold for the WITSS, as a long-term scheme for assisting the grassroots, at a level higher than those for any other subsidy schemes? Why does it have to make life difficult for the public? We have been reminding it that the desired result cannot be possibly achieved if a dual-track approach is not implemented for this scheme to benefit more people.

This is what has actually happened. Hence, I hope the Government and Secretary Matthew CHEUNG can heed public opinions and expeditiously revise the details of the WITSS, so that more people can be eligible for the subsidy; otherwise, the result will just be the opposite, and many people will be disappointed.

In view of this, community organizations have made several requests. First, we request that the review be brought forward to January next year and the details of the relevant review be set out clearly. Second, we request that a dual-track approach be adopted with respect to the eligibility requirements by retaining the individual as the unit of means test, so as to enable the applicants to opt for either individual or household as the unit of application. Third, we request that reference be made to public housing eligibility criteria in raising the income limit to benefit more low-income workers. Fourth, we request that the Government provide extra assistance to low-income workers with monthly travelling expenses higher than \$600. Fifth, we request that the Government perfect the support measures for the WITSS to assist workers in making applications.

I would like to briefly explain our fifth request. The existing envelope for applications to the WITSS is not at all environmentally-friendly because it is the heaviest and thickest of all the envelopes for the numerous schemes. Even the application forms for public housing are not as heavy and thick (*The buzzer sounded*) I therefore hope that improvements can be made.

President, I so submit.

MR CHEUNG KWOK-CHE (in Cantonese): President, well before the introduction of the WITSS, Members of this Council and community organizations already proposed the implementation of a dual-track approach. With this approach, an applicant may submit an application as an individual or use the entire family as a unit of application. This can enable the WITSS to help more impoverished persons and families in need and alleviate their heavy burden in meeting travelling expenses. Unfortunately, the Government has all along treated the public and Members as if they are "talking nonsense". Even now, it is still turning a deaf ear to our proposals and sticking to its own view.

However, facts speak louder than words. According to the data provided

by the Labour and Welfare Bureau, as of October, the WITSS had received some 14 000 applications only. Despite the revision made by the Secretary just now, the number of applicants will not be much greater. Compared with the 400 000 eligible persons estimated by the Government, the number of applications received is even less than 10% of the estimated figure. This precisely shows that the existing requirements have barred many people with genuine need. Moreover, the requirement for an entire family to undergo an income and asset test for the submission of an application has also deterred many applicants.

Admittedly, the original intention of the Bureau's current proposal in using household income and asset as assessment criteria is good for certain families. In an example cited earlier by the Secretary, a worker supporting his entire family with a monthly income of \$8,000 could not possibly benefit from the old scheme. However, he can submit an application under the new scheme.

However, merely using the household income as the criterion will also give rise to another unfair phenomenon. Let me cite an example: Suppose the husband and wife in a three-person family each earns a monthly income of approximately \$6,500. With such an income, they could separately apply for the subsidy under the old scheme. However, they are no longer eligible under the new scheme. On the contrary, if only one person in a three-person family is in employment and his income happens to be below the income limit of \$13,000, then he is eligible for the transport subsidy.

Let us think about this carefully. The travelling expenses borne by two persons in employment are definitely higher than the travelling expenses borne by just one person. In the example cited just now, one person in employment is eligible for the transport subsidy, but on the contrary, two persons in employment are not eligible. Furthermore, the people who make up a household are not necessarily a couple. They might be a father with two sons. Generally, two brothers who have their own jobs are financially independent. Why should they be treated as belonging to the same household in applying for the transport subsidy? How should their personal assets be calculated?

Therefore, I think that the dual-track approach is, after all, more flexible, for it can cater to the different needs of various families. Furthermore, the present response to the WITSS is so poor that it is absolutely necessary for the Government to immediately review the drawbacks of the existing scheme and

make improvements, so as to benefit more people in need and prevent the lower stratum from suffering from exorbitant travelling expenses.

Furthermore, I would like to make a request again. I hope the Government can consider bringing people with disabilities working in sheltered workshops into the scope of the WITSS. Although some of them live near sheltered workshops or even enjoy a shuttle bus service, there are still some who need to pay for their own travelling expenses to go to the sheltered workshops. I hope the Secretary can sympathize with this small number of people by expanding the scope of subsidy, so that they can receive the same benefit.

In the final analysis, President, the Government has to bear an unshirkable responsibility for the exorbitant travelling expenses borne by the grassroots. At present, according to its town planning, the Government will continue to develop new towns while allocating a large number of disadvantaged persons, such as low-income earners and new arrivals, public housing in new towns. However, there are a lack of business activities and few job opportunities in the new towns while the cost of going out to work is very high. This will undoubtedly compel the people living there to fend for themselves or apply for Comprehensive Social Security Assistance. As a result, they hardly have any chance to improve their lot.

Therefore, I think that it is the fundamental responsibility of the Government to provide a transport subsidy to the grassroots, especially those wage earners living in remote districts, before better transport support and town planning are available. In the long run, I hope the Government can come up with ways to ameliorate the problem of exorbitant travelling expenses in Hong Kong rather than adopting stopgap measures, as is the case now.

President, I so submit.

MR LEE CHEUK-YAN (in Cantonese): President, the Hong Kong Confederation of Trade Unions (CTU) has been thinking of resolving the problem of in-work poverty, which has been a great concern to us, from two aspects, one of which being the minimum wage. Because of the minimum wage, wages will not be miserably low, and hopefully, be raised slightly. Certainly, \$28 is not enough. If the minimum wage were set at \$33, at least one person who works

for eight hours a day can support two persons. In this way, the minimum wage can slightly prop up wages. Yet, these people still remain in poverty even with the minimum wage, for the circumstances of all families are different. Members should know that I always use \$33 as the basis of calculation. Even so, workers can only enjoy a standard of living comparable to that of CSSA recipients. A person who has a job should enjoy a better life.

So, what solution do we have? The solution is to provide subsidies on living expenses. Indeed, we have been campaigning for the minimum wage and subsidies on living expenses for a long time. However, when we came to a position and found that the Government was not doing enough in providing subsidies on living expenses, we hoped it could at least subsidize low-income workers in an indirect manner. Hence, in 2006, the then Commission on Poverty launched a transport subsidy scheme for low-income earners to make individual-based applications. At that time, the income limit was set at \$5,600, which was later relaxed to \$6,500, and the personal asset limit at \$44,000. However, the scheme was launched as a pilot scheme, and only people living in four designated districts were allowed to apply for it.

The CTU had all along maintained that the scheme should be extended to cover all the 18 districts, for it was inadequate for the scheme to be confined to the four districts. Moreover, it made no sense for the scheme to be confined to the four remote districts on the ground that people living there had to go to work in the downtown areas of Kowloon. Conversely, people living in downtown Kowloon might be working in remote areas, not to mention that the expenses on travelling between Kowloon and Hong Kong Island are also exorbitant, even though these two places are downtown areas. This explained why we had all along proposed to extend the scheme to cover all the 18 districts. I would like to give Members an account on the history of the scheme here.

Despite our repeated enquiries about when the scheme would be implemented in all the 18 districts, the Government had worked behind closed doors. We do not know clearly how the Government could have come up with such a lame proposal. According to this lame proposal, a transport subsidy would be introduced in future, though the applications would be individual-based rather than household-based. The greatest problem with the household-based applications is that there are income and asset limits and tests. The income limits for a two-person family, three-person family, and four-person family are

\$12,000, \$13,000 and \$14,000 respectively; and the asset limits for these families are \$30,000, \$60,000 and \$90,000 respectively.

President, the problem is that with these limits, how can the scheme, originally designed to provide a work incentive transport subsidy, promote employment? Most of the families which have more than one person in employment are ineligible for the subsidy, why? This is because the combined income of two persons in employment can easily exceed the limits of \$12,000, \$13,000 and \$14,000. In other words, in a family where only one person has a job, this person might be supporting two or four persons with his \$10,000 income. In these cases, he might have a chance to be eligible for the transport subsidy. But even if he stands a chance, he still has to undergo the asset test. Therefore, we can see from these cases that, first, the more people in a family choose to work, the less chance there is for them; and second, the more savings they have, the less chance there is for them.

Therefore, we have come to the conclusion that this transport subsidy scheme encourages neither employment nor savings. The reason for the CTU to lobby Members at that time to oppose this scheme launched by the Government, which was neither fish nor fowl, was to compel the Government to adopt a dual-track approach, whereby individual-based and household-based applications could be accepted, and preferably, abolish the asset test. Even if the asset test is to be retained, the Government should still relax it by all possible means because it is actually very easy for a four-person family to reach the \$120,000 asset limit. So, is the Government not encouraging them to save up?

At this stage, the Government is actually implementing a proposal which is neither fish nor fowl. Moreover, the scheme already came into effect on 1 October. I pointed out a long time ago that the scheme was not going to work, because it is simply possible for the applications made by those people to be approved. President, this was pointed out by me a long time ago. I do not mean to say that my prediction is definitely accurate. Worst of all, it is now shown that my prediction is accurate. Let us examine the latest figures released by the Government. At the meeting convened by the Panel on Manpower last month, the Government told Members that there were 14 000 applications in total without saying the number of persons involved. According to the latest figures obtained by us today, the number of applications in the first month was 14 000. Now that the scheme has entered the second month, has the number increased to 28 000? The answer is in the negative. The number of applications has shrunk

to only 19 392 conversely. So, are there many cases involving many people? The answer is, again, in the negative. Only an additional 900 people are involved. In other words, there are only 21 230 people beneficiaries in the second month.

Frankly, President, the 400 000 eligible low-income applicants originally estimated by the Government should have already applied for the subsidy in the first month if they are eligible. Even if they have not done so in the first month, they should do so in the second month. However, only 19 000 applicants have submitted applications in the second month. President, what is the problem? There are currently only 19 000 applicants. However, in a meeting of the Finance Committee of the Legislative Council back then — I was opposed to the proposal put forward in the document — the Secretary estimated that 400 000 people would meet the eligibility requirements and presumed that only 200 000 people would submit applications because some people might fail the asset test. In other words, these 400 000 people would only meet the income requirement, but it is uncertain as to whether or not they meet the asset requirement as well.

Eventually, the number of eligible persons was revised to 200 000, and \$5 billion was put aside for applications to be made over a three-year period. Next, the Government recruited 200 people and set up a large office in Middle Road, Tsim Sha Tsui, to accommodate them. How much money is involved here? It will cost the Government nearly \$300 million in three years. In other words, the Government will spend \$100 million per annum to distribute the \$100 million or so transport subsidy. I am talking about spending \$100 million to distribute \$100 million, not \$1 billion. Actually, the money spent on recruitment is even more than that distributed to the beneficiaries.

Such being the case, President, we call on the Government to immediately review the WITSS and ensure that, after spending so much money to recruit them, these 200 people will not have nothing to do. The Government should relax the eligibility requirements and adopt the dual-track approach, so as to make more people eligible. Instead of being so mean to workers, the Government should make it easier for them to be eligible for the transport subsidy, so that more people can be benefited.

Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, it is beyond dispute that

transport expenses in Hong Kong are expensive. Although we often rail at public transport operators, we cannot change this reality. This being so, what should we do? We can only devise a transport subsidy scheme to help low-income members of the public living in remote areas.

In this connection, the former Commission on Poverty (CoP) recommended the introduction of the Transport Support Scheme (TSS). Initially, the Government was extremely reluctant to do so but with the urging of the CoP, the authorities finally implemented the TSS in Yuen Long, Tuen Mun, the Outlying Islands and North District. It was greatly welcomed by the public.

However, reportedly, due to the worry of the Government that the Audit Commission may conduct checks in the future and the concern that the TSS could not be implemented successfully, the Government conducted a study behind doors and proposed a review. After a review exercise, the authorities came up with a Work Incentive Transport Subsidy Scheme (WITSS).

Initially, when we listened to the briefing on the WITSS given by the authorities, we thought that it was very comprehensive because all members of the Hong Kong public could benefit from it, no matter in addition, some amendments were also made to the WITSS, so that eligible people living and working in the same district can also apply.

The applicants do not really have to incur transport expenses in order to be eligible for the subsidy of \$600. They only have to meet the requirements on income and asset limits. Applicants can decide by themselves whether or not to take transport. Even if they choose to walk, it does not matter and they can apply for the subsidy of \$600 all the same. The WITSS is virtually a scheme to subsidize low-income people. We welcome this measure because low-income people in all the 18 districts of Hong Kong can benefit from it.

However, I believe that when the Government launched the WITSS, perhaps due to the excessive prudence of the Secretary the authorities estimated that the number of applicants would be large but the Secretary did not compare the estimated number of applicants with the actual number of applicants in terms of the percentage. At that time, it was estimated that the number of applicants would stand at about 400 000, but the Secretary said just now that the

number of applicants since October was less than 20 000.

However, I do not expect a lot of people to make applications in the future either. Why? When we were doing our work in the local communities, some members of the public asked us about the details of the WITSS, for example, the requirements for making applications. We then asked them how much monthly income they earned because the income limit of a single-person household is \$6,500. At hearing this, they were very surprised because their monthly incomes already exceeded \$6,500, so they were not eligible to apply and there was no need to ask about other details at all.

In addition, some eligible people asked us about the application procedure, so we produced a heap of information I also have a copy of the information on hand. There is a yellow form of a very large size (allow me to talk about this later). A single envelope is not enough because there are also many other attachments and it is also necessary to submit copies of the identity cards of one's family members, as well as providing information on each of them. There is also a set of guidance notes and if an applicant is self-employed, it will be troublesome for him because practically an entire account book has to be submitted. If an applicant is a taxi driver, he has to set out all his expenses, including the water bill, electricity bill, towngas bill, telephone bill, the rent, rates, freight costs, transport costs, insurance premiums, repairs and maintenance of machinery, and so on. All items must be listed in detail.

The last page of the application form instructs applicants to be careful and they must not make mistakes in filling out the form because providing any wrong information is liable to the maximum penalty of 14 years of imprisonment on conviction. On reading this, applicants will really find their legs trembling because the maximum penalty is 14 years of imprisonment.

In all the 200 or so offices of the DAB, including its District Council members' offices and district branches, there are colleagues to help the public fill out the relevant forms. Secretary, they are all volunteers. The Secretary has hired almost 200 people to do the work in this regard and in fact, we are on a par with him because there are more than two colleagues in each of our offices.

We would take all the forms to our offices and help members of the public

fill them out. However, often, we could not continue after filling them in for a while. Secretary, this is true and you can try it yourself. It is very difficult to find some of the information, for example, the information relating to the income from work earned by applicants. The application form requires an applicant to fill in the income and number of hours worked in each of the past six months. If one has a regular nine-to-five job, it would be relatively easy to calculate one's monthly income. Otherwise, I believe one would surely feel very confused.

Members can look at this form consisting of two pages. If an applicant belongs to a household with a number of members, he would find it even more troublesome.

The authorities have made things complicated and imposed strict requirements, so there is little wonder that only 20 000 people have made applications. The authorities pointed out that among these 20 000 applicants, 99% of them were eligible. Of course they are, because if they provide false information to make themselves eligible, they may be liable to imprisonment for 14 years.

If an applicant can fill in the form to the very last page and submit the application form together with the required copies of documents to the authorities, they will have expended a great deal of effort. However, in the end, the authorities would only grant a subsidy of \$600 to him for a maximum continuous period of one year. Furthermore, the first batch of applicants will only be granted six months of subsidy, that is, only \$3,600. The public would think that this amount can be earned simply by working as a part-time worker without having to go through such great trouble. Moreover, any slip may lead to brushes with the law.

Therefore, I think the whole WITSS I believe the authorities really have to conduct a review as soon as possible, or they will be roundly criticized by Members.

Just now, we said it was hoped that the Government could heed good advice to conduct a review and relax the relevant restrictions as soon as possible. For this reason, we express our support for the original motion. Since the views expressed in the amendments proposed by Mr IP Wai-ming and Ms Miriam LAU

are similar to those of the DAB, we will also support them.

Ms LI Fung-ying's amendment proposes to abolish the requirement on applicants' household asset test, we have reservation about this. We believe that it is only necessary to relax the relevant restrictions. Abolishing the relevant requirement all of a sudden may not be the most desirable approach. Therefore, we have reservation about this proposal.

President, I so submit.

MR WONG YUK-MAN (in Cantonese): President, the discussion on the Work Incentive Transport Subsidy Scheme (WITSS) today arouses a lot of thoughts and feelings in me. I can see this Secretary recite his script like chanting. At the beginning, when an application was made to the Finance Committee or in the meetings of the relevant panel prior to that, he was already roundly criticized. What I can still remember vividly is "Long Hair" throwing a plastic bottle to oppose the WITSS. As a result, this gave Members of the pro-democracy camp an excuse, saying that we resorted to violence. Then, in the Committee on the Rules of Procedure, they — including the Civic Party and the Democratic Party — supported tightening the Rules of Procedure to extend to panel chairmen the power to evict Members whose conduct is grossly disorderly. President, I have to relate this story, do I not? It was all because of him. It was him who did all such "good deeds".

Well, today, in discussing the WITSS here, frankly speaking, he is still obdurate because he still refuses to raise the household income ceiling and abolish the absurd approach adopted in calculating the assets of households with two members or more. I have to tell the Secretary that, unlike Mr TAM Yiu-chung, I resolutely support Ms LI Fung-ying's amendment. What is the justification for basing the calculation on household income? Why not adopt the past practice of basing the calculation on the income limit? In that event, all the people can receive the subsidy. It is only necessary for the income to fall below a certain limit to receive the subsidy of several hundred dollars and it would be so very convenient, would it not? Now, this is such a great hassle to the public and a waste of money. This is such a great waste of administrative expenses, all for him to continue to recite his chant here. The Hong Kong Government is really

so strange, and I am just baffled.

We met with the Financial Secretary yesterday and I lectured him for half an hour because he only listened without giving any response all the time. I told him to continue to hand out money next year and instead of \$6,000 this year, the amount should be \$8,000 next year. Some political parties say that money should not be handed out and that the tens of billion of dollars should be spent on some long-term projects. True enough, if you were to tell me now that the number of places in nursing homes and homes for the aged would be increased by 1 000 each year and that 5 000 more public housing units would be built, it would not be necessary to hand out money. However, has he done so? No. Many political parties say that the tens of billion of dollars should be used to implement some long-term measures rather than making cash handouts frequently. How come this is frequent? In any event, the virgin has been deflowered, has she not? After handing out money for once, the virginity of the so-called fiscal philosophy of the Hong Kong Government has been lost, do you understand? To put it more vulgarly, doing this once is dirty and doing it twice is filthy. After handing out money once, just go on with it because he is not doing his job, and he has not introduced long-term measures, has he? Does he know how miserable the poor elderly are? And how miserable the poor are? Will the maintenance grant scheme for low-income families proposed by the DAB also be mean-tested? It surely will be, will it not? What is the use of offering several hundred dollars? Can you tell me what the use of offering several hundred dollars each month is? Even the subsidy on transport is already included in this amount. Can you tell me what this is good for? Buddy, this is good for nothing, right?

Basically, be it the original motion or the amendments, we support the great majority of them because they are better than nothing but it is useless saying all these things, President, because he would not do anything. Now, the political parties have given him some face by proposing a dual-track approach. This was also mentioned on the last occasion but the Secretary just turned a deaf ear to it, buddy. The next Government must surely ask him to continue to serve as the Secretary or

(Someone at the back interrupted)

MR WONG YUK-MAN (in Cantonese): what? I have not put on the

microphone? My voice can be heard, so how come there is no microphone? Can everyone hear me?

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

MR WONG YUK-MAN (in Cantonese): a problem with the microphone I am already speaking so loudly

(Someone at the back interrupted)

MR WONG YUK-MAN (in Cantonese): my microphone is switched off? Then just give me back the time. At present, the stances of the political parties and those amendments have already given the Secretary face by asking for less, buddy, have they not? To ask for less means to ask for a dual-track approach but he is even unwilling to do so. Therefore, I would rather support Ms LI Fung-ying's amendment since this matter has come to such a pass. Of course, it is also better to have the other relevant amendments than otherwise. This is just like the allocation of funds by the Finance Committee on the last occasion. There is nothing we can do because he just would not do anything, is there?

Yesterday, we met with the Financial Secretary. I met with the Financial Secretary together with "Hulk" (Mr Albert CHAN) but in fact, we are just performing a ritual because he would not heed what we said. We submitted a proposal of some 40 or 50 pages on the 2012-2013 Budget. I have uploaded it onto the Internet and even though we had given it to him, he did not read it. We have prepared a summary for reporters, but they did not report on it. The only piece of news they reported on is the proposal to hand out \$8,000. This is really news-worthy but all the other proposals are not. We have put forward many specific proposals, including the construction of an obstetric hospital and the construction of more public housing units. Some are related to policies and others to expenditures. Policies and expenditures are inseparable, are they not? Are the increases in expenditure in the Budget related to policies? So long as the policies remain unchanged, the expenditure will remain unchanged and this is a very simple theory. Therefore, do not use this as an excuse all the time, saying that one can only talk about expenditures and revenues in the Budget but not

policies. This is downright an excuse.

I do not know how the Secretary would respond later on but in fact, Members can guess how the response of the Secretary would be like. The Secretary would only say the same things and there would be nothing new. Matthew CHEUNG, let me ask you now if you will accept a dual-track approach? Will you do it? You surely would not. It is all the more unlikely that you would accept the amendment proposed by Ms LI Fung-ying, is it not? He surely would not revert to the past practice. He just would not do anything, so why is he sitting here? Am I right? Why is he sitting here? He is just reciting his speech like a chant!

I have to tell the next Chief Executive whoever asks you to continue to serve as the Secretary will have bad luck. This is also the case with several other Secretaries and he is one of them. He has the opportunity to do a good job in matters relating to people's livelihood. He has such a lot of resources but he just would not do anything and he just cannot get the approach right. I thank Mr TAM Yiu-chung for producing that pile of documents just now. I have also had the same experience. Someone asked me why I was holding a plastic bottle, so I took out the documents for him to look at. The procedures are so complicated and there are so many forms, right? This is not designed to make things easy for the public and the procedures always require people to do a lot of things, do they not? This is like giving alms to people. If they do not do something, they would not be given the money. Buddy, at present, the Government has so much money and wants to encourage people living in remote areas to go out and work by offering them some transport subsidy, so that they do not have to receive CSSA, right? In other words, what he is doing now defeats the original intention. All the administrative measures are running counter to the scheme and will only undermine it. This is not to mention the fact that the scheme is already fraught with problems, now fresh in implementation, buddy.

All right, today, this motion has been moved and I just cannot make him do some self-examination. Therefore, apart from being discourteous to him in our speeches, what else do you think we can do? Is that not so? Many Members have proposed very specific ways, but he just would not consider them at all. These officials do not have to step down at all and this is how Hong Kong is like (*The buzzer sounded*) these officials would never step down

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

MRS REGINA IP (in Cantonese): President, having heard Secretary Matthew CHEUNG give his explanations on the scheme just now, I feel all the more strongly that this is not a transport subsidy to encourage employment because the cross-district requirement has been removed. In other words, someone who lives and works in Wan Chai may also get the subsidy even if he walks to work, so how can this be called a transport subsidy? It is not related to transport and even if one goes to work on foot, he is still eligible for the subsidy so long as he earns a low income.

However, as many Honourable colleagues have said, apart from the cumbersome procedures, the household is used as the unit for application under the scheme, so if one person works, he is eligible for the subsidy but if two persons in the household work, they are not. Is that not tantamount to discouraging household members from working, so as to receive the \$600 subsidy from the Government? Therefore, even though many members of the public have such a need, due to the cumbersome procedures, they have decided not to apply after consideration. Therefore, I hope the Secretary can be more honest and call a spade a spade. What society needs is actually a low-income supplement. This scheme does not encourage employment, nor is it related to transport. If cross-district travel is really subsidized, the Government will have to offer a large amount of subsidy.

Let me give a live example. Earlier on, I had been visiting the local communities very often and went to Tin Shui Wai a number of times. A single mother in Tin Shui Wai told me that her income was some \$8,000 and she was raising two children. On divorce, her husband left a small property to her but the procedure had not yet been completed and there were still some legal disputes. However, it can be said that the title had been transferred to her and she could be considered to own some assets. She earns a monthly income of some \$8,000 and works in Wan Chai. As we all know, apart from those jobs in restaurants, there are few other types of jobs in Tin Shui Wai. The transport expenses incurred by her for going to work daily amount to tens of dollars but with a monthly income of some \$8,000, she cannot apply for the government subsidy, so in fact, she was living in straitened financial circumstances.

When I met the customers in some restaurants in Tin Shui Wai, they told

me that in fact, they could not have the pleasure of having tea in restaurants frequently. Because of their low income and high transport expenses, they have to be very mindful of their expenses even when spending just a few dollars or ordering a dim sum, so they cannot have tea in restaurants very often. Therefore, Secretary, the facts speak louder than words. The scheme has been launched for such a long time and the Government estimated that 400 000 people would be eligible. In the end, only 20 000 people have applied. Maybe in his reply later on, the Secretary can talk about whether or not it could be so ridiculous as to spend \$100 million on administration to hand out \$100 million of subsidy?

Therefore, I also agree with Honourable colleagues' comments. In fact, when the Government proposed the introduction of the scheme, in the discussions of the Finance Committee, we in the New People's Party already supported the implementation of a dual-track approach. I remember I have probably said that the scheme is problematic in terms of concept. In the case of the Comprehensive Social Security Assistance (CSSA) system, the family can be adopted as the unit because a three-member family uses only one fridge and so does a four-member family. In respect of CSSA, in terms of the expenses, if two persons, three persons or four persons buy food and put it in a fridge, the temperature setting of the fridge will just be the same and more subsidies in the form of CSSA will not be incurred. However, it is different when it comes to encouraging people to take up employment, and it is necessary to use individual as the unit to encourage employment.

Apart from that single mother, when I was passing by the restaurants in those housing estates, a group of women working as cleansing workers and in restaurants told me that they were not eligible but their incomes were really very low, so they need the subsidy very much. It is fundamentally wrong for the Government to adopt the concept of CSSA and use the family as the unit in calculation. If the Government wants to encourage each individual to take up employment or subsidize the transport expenses of each individual, a larger amount of supplement should be offered in the case of cross-district travel.

I understand that the Secretary has to safeguard the use of public funds and I know that officials are often afraid of being cheated by the public, so they have devised so many forms. However, as in the example cited by me earlier on, a single mother has a small property and is still fighting a legal battle with her husband. The property may be awarded to her, or it may not be. With a

monthly income of \$8,000 and two children to raise, even she cannot apply for the subsidy, so how possibly can the Government help the public?

Therefore, although I know that the Secretary wants to safeguard public funds and is afraid of being cheated by the public and as a result, members of the public are required to make declarations stating that if they lie, they may be liable to imprisonment and the Government will institute criminal prosecutions, I think the Government still has to consider whether or not it is really necessary to conduct assets tests, as Ms LI Fung-ying said just now. It is necessary to conduct means tests. If a lot of people own some assets, are all these applicants with assets not allowed to receive the subsidy? Therefore, I speak in support of the motion and all amendments today. I think the Government should conduct a review as soon as possible. Although the Government would say that this policy has been implemented for less than a year, that it would be reviewed after implementation for a couple of years and that this is the case for all subject matters and policies, as the Government has been slow in introducing this policy and the response has been poor, it has failed to help the public. For this reason, I propose that the Government conduct a review as soon as possible.

I think the Government should implement a dual-track approach. Although it is necessary to conduct means tests and the Government should not grant the subsidy to people who do not need it, it may still be necessary to consider some cases individually. To single parents or people who have to travel long distances to work, can they be granted a subsidy more than \$600? In addition, I think the assets test is really unnecessary. Therefore, I support the motion moved by Mr WONG Sing-chi and the amendments proposed separately by Mr IP Wai-ming, Mr IP Kwok-him, Ms Miriam LAU and Mr WONG Yuk-man.

Thank you, President.

MR RONNY TONG (in Cantonese): President, it applies to both the Government and those politicians that if the thinking behind a proposed policy is misguided, often, although one may think that one is doing a good deed, it may lead to general and widespread discontent instead and even give rise to adverse consequences.

President, not long ago, someone said that it was only necessary to fill in a

form consisting of five and a half pages and by doing so every six months, one can receive \$3,600, or if one does so once a year, one can receive \$7,200 and that each time, it would only take one or two hours at the most. To applicants, is this a great deal of trouble? President, who made all these remarks? It was none other than our Secretary, who said so to the mass media in September last year. These remarks precisely manifest the thinking of the Government. What he actually meant was, "I am already being so generous in doling out \$3,600, so you for God's sake spend one hour filling in the form and stop complaining about this and that.". President, this is precisely the thinking of the Government. If this kind of thinking is adopted in helping the needy, it is running completely counter to the original intent of offering assistance.

President, has the Secretary ever considered what the underlying significance of spending a couple of hours on filling out this difficult form is? It is true that this form only consists of five and a half pages but what is asked therein is the occupations of the people living in the same household, for how long they have worked, in what positions, if they are unemployed, if they earn any wages and how much the wages are, if any investment has been made, if there is any personal savings, if there is any dividend from any insurance taken out. This is how the Government ferrets about for all the particulars of a household. However, strange enough, it does not ask the applicants how much debt they actually owe. Are there any outstanding credit card balance that have to be repaid? This is because even if an applicant earns a lot of money but he also has to repay a lot of money, he will have little money left. This being so, why is it necessary to ask about all those things?

President, maybe we should reverse the roles. Let us give the Secretary \$3,600 and ask him to tell us what all members of his household, both young and old, have done, what assets they have, what property transactions they have made, how much money they have received and how much the balances in their bank accounts are in the past six months. Perhaps we should also make him talk about all these, should we not? President, such thinking is completely wrong. This is only a system to help the poor with \$600 each month, so is it necessary to be so harsh?

President, nearly all Honourable colleagues in the Legislative Council have reached a consensus on the need for a dual-track approach. According to the surveys conducted by local groups, among wage earners who made applications

under the so-called pilot Transport Subsidy Scheme back then on an individual basis, 45% believed that they were no longer eligible after the unit of application had been changed to the household. The great majority of these respondents are public housing tenants. A group that conducts surveys even said that on the basis of all the people in Hong Kong, as many as 80% of the population was no longer eligible. However, the biggest issue is: What are the difficulties encountered in spending over an hour to fill out the form?

President, the form does not just ask how much money the family members of an applicant earn. President, if one lives with one's brother or if a mother-in-law and daughter-in-law live together but one does not want to let other people know, what then? Does it mean that if one's family relationships are not so good, it is not worthy enough for one to apply for the subsidy? Or to put it in another way, if a certain member of a family is particularly hardworking, say, if a son is very hardworking but maybe by working overtime for one day, the income already exceeds the limit prescribed in the application requirements, so he is not eligible to apply for the transport subsidy. In that case, the more hardworking one is, the more unwilling the Government is to grant him the subsidy. Instead, those who stay home instead of working may be able to receive the subsidy. This is running completely counter to the original intent of offering the transport subsidy because the original intent of the transport subsidy was to encourage people to work in society. After consideration for some years, the Government eventually agreed with the original intent proposed by us, that is, the public want to work in society but the transport fares are too high, so they need help in taking up employment. This is why we proposed this system but now, the results are directly opposite to the intended ones. If members of the public are hardworking and they work overtime on one or two days, they are no longer eligible to apply, so how can we think that the original intent has been achieved?

President, we can also judge whether or not the comments made by Honourable colleagues are correct with the help of figures. When designing the new transport subsidy scheme, the Policy Bureau concerned said that according to the statistics of the second quarter of 2010, 430 000 workers met the requirements on hours worked and wages but by the second quarter of 2011, the number of people was 400 000 instead, that is, over 30 000 people could no longer meet the qualifying threshold. In addition, according to the report made by the Secretary to the Legislative Council in November, as at the end of October, the number of

applicants for the transport subsidy only stood at some 14 000 people. President, the number of applications was only some 14 000. That means this is a far cry from the estimate on the number of applicants made by the Government, so where have the hundreds of thousands of workers gone?

Although the Government said that it was the result of implementing the minimum wage, if you have ever visited the local communities, nearly all the people there would tell you that the major factors are the complexities and hassles in filling out this form and the application procedure. Therefore, President, in the next budget, we will find the Secretary insisting on carrying out a review of this scheme only after it has been in operation for one year. I dare say the provision of \$4.8 billion for this purpose can be used for a long time to come because it could never be used up as no one dares to apply or no one is willing to apply.

Therefore, the original intent and goal of this policy is desirable but with the misguided thinking in implementation and operation which is completely at variance with the original intent of this system, so it can be said that no assistance can be provided to the public. This being so, why does the Government not make changes? President, I really hope that the next Government will adopt new thinking by showing greater concern for the public in its consideration of this issue.

Thank you, President.

DR PAN PEY-CHYOU (in Cantonese): President, I have a very nice cake in my hands. It looks very nice and people who see it all want to eat it. At where I am standing, I can also smell the aroma of this cake. However, if I tell you that *ixeris japonica* has been added to this cake, I wonder if you, President, would still be interested in eating it.

I think this Work Incentive Transport Subsidy Scheme (WITSS) can really reflect a pattern in the Government's administration. The Government has introduced many measures beneficial to the public but they are all like this aromatic cake with *ixeris japonica* in it. For some unknown reason, whenever the Government introduces measures beneficial to the public, it would never forget to add a mace or two of this kind of the bitterest Chinese herbs to them. It

looks as though the Government wanted to tell the public that the aim in introducing this measure is to let you look at it without being able to enjoy it. In the end, those who can truly benefit from such measures are those who are so desperately starved and so desperately poor that they have no choice but to receive welfare benefits. Frankly speaking, if the Government continues to effect administration in this way, how can its popularity rating not remain low?

I think the transport subsidy scheme being discussed today is a typical example of a cake with bitter herbs in it. Why do I say so? Because in introducing this scheme, the Government genuinely wants to help low-income workers and their families, but there are various unreasonable areas in the measures under the scheme. However, the Government insistently refuses to rectify them. Moreover, a number of problems have also arisen in the actual implementation of the scheme. As a result, this scheme looks like a cake with bitter herbs added to it.

First, under this scheme, household income and assets are used to assess if an applicant is eligible for the transport subsidy. Why is household income used as the criterion? If an elder brother living in a household earns some \$20,000 monthly but he is saving money for his marriage while the younger brother with little academic qualifications has just started to work, earning a wage of only \$6,000 monthly, will the elder brother subsidize the monthly transport expenses of his young brother? Is it reasonable to penalize the younger brother by refusing to grant him the transport subsidy because of the high income of his elder brother?

Second, under this scheme, the household is used as the unit, so the more people there are, the greater the disadvantage and the discrimination. The income limit for a single-member household is \$6,500 and the income limit for a two-person household is \$12,000. That for a three-member household is \$13,000 and for a four-member household, it is \$14,000. If a four-member household has two adults and two children in it, there is no problem. However, if all four members of a household have incomes, what should they do? These four people surely cannot get any transport subsidy. Why should they be penalized? Is this measure reasonable? The second unreasonable area under this scheme is the excessively low income and assets limits. When the Government drew up the scheme, it used the figures of the second quarter of 2010 at that time and estimated that 436 000 people would be benefited. However,

after a period of inflation and the implementation of a minimum wage, which raised the incomes of low-pay workers, the Government estimated that only 402 000 people would be benefited. In fact, in the third quarter of this year, people earning less than \$6,000 monthly only numbered at 248 600 and if this figure is discounted having regard to the higher incomes of some other members in these households and the small amounts of savings made by some households, the number of people who can really be benefited may be less than half this figure.

Third, the application procedure is very cumbersome and applicants are required to declare their assets every half a year. However, the Government may say that one can declare one's assets once a year and receive the transport subsidy that one is entitled to in a year retrospectively. If a family can wait for a year to receive the monthly transport subsidy of \$600, it surely is not a family that needs the "rice" urgently for their meals. If the Government wants to help the poor, why can it not make things easy for them by letting them receive the subsidy a little bit earlier? In addition, it is necessary to fill in the income of each and every month. Just now, many Honourable colleagues said that even the gifts from friends and relatives have to be declared, so is it necessary to declare even the red packet money that one receives during the Chinese New Year? Is it necessary to declare the several thousand dollars that one gets by pawning grandma's jade bracelet? Is this kind of requirement reasonable? Does this not constitute a nuisance to the public? Each family has to declare its assets once every half a year. If a family gets a windfall in those six months, do you think it would continue to apply for the monthly transport subsidy of \$600?

In the past two years, the Government has handed out \$6,000, offered the transport subsidy and now, the elderly and people with disabilities can take public transport at a fare of \$2, but no matter what the Government does, why can it not allay public grievance? The core reason is this cake with bitter herbs in it. Frankly speaking, each time the Government makes one more cake with bitter herbs, public grievances will mount a little and this is even worse than having no cake to eat at all. Therefore, I really hope that the debate today can serve as a reminder to the Government. Buying this piece of prop is expensive to me but if I can wake the Government up with my criticisms, it will be worth the money. I repeat that this cake has no bitter herbs in it, so later, I will share it with the colleagues in my Member's office. Thank you, President.

MR ALBERT CHAN (in Cantonese): President, just now, Dr PAN Pey-chyou

produced a cake and I thought he wanted to accuse the Government of "Ah Mau making cakes" — making new shapes out of none. President, this comment of "Ah Mau making cakes" is not entirely inappropriate. I wish to tell the Secretary a piece of history and the original aim of this so-called transport subsidy.

Almost a decade ago, when I began my work in the local communities in Tin Shui Wai and subsequently, after establishing a ward office in Tung Chung in 2002 or 2003, in several years' time, we received many complaints from residents in Tung Chung and Tin Shui Wai. At that time, residents who had moved into those areas basically had the feeling that after doing so, they were alienated from all their friends and relatives and that after moving into these areas, due to the exorbitant transport fares, no relatives would ever pay them any visit. It also means great hardships to them working in society. In 2002 or 2003, many families had to bear transport expenses of over \$1,000, but a lot of people had a monthly income of \$6,000 or \$7,000 only. Secretary, just imagine this: With a monthly salary of just \$6,000 or \$7,000, one has to bear transport expenses amounting to \$1,000 and add to this the lunches — many people would even skip lunch, buying bread or bringing their own lunch boxes instead — and such is the hardships endured by residents living in Tung Chung and Tin Shui Wai.

A family of four moved from Chai Wan in the Eastern District to Tung Chung but in the end, they cannot bear the exorbitant transport fares — although in the end, they retained their public housing unit, this family of four had to move back to the Eastern District by renting a room. They calculated their living expenses and found that spending some \$2,000 to \$3,000 monthly to rent a room was still cheaper than the transport expenses incurred by the four members in the family because two of them had to go to work and the other two had to go to school. They had to live in a cubicle for a long period of time and only went back to their home in Tung Chung during longer holidays.

Therefore, not only do high transport fares affect the daily lives of residents, they also seriously impair the relationships of these residents with their families, relatives, neighbours and friends. Therefore, at that time, I made the demand that the Government put in place an employment transport subsidy scheme. The scheme proposed by me then was intended to make the Government assist residents living in the so-called remote areas somewhat by putting in place a cross-district transport subsidy scheme, so that the living of

workers would not be adversely affected by high transport expenses, for otherwise their degree of poverty might reach an inhumane level.

My proposal at that time adopted personal income as the basis, that is, if a person's monthly income is between \$7,000 and \$8,000, the Government would provide a subsidy of \$500; for someone with a monthly income between \$6,000 to \$7,000, the monthly subsidy would be \$1,000 and for someone earning less than \$6,000, the Government would offer a monthly subsidy of \$2,000. At that time, I put forward this definite proposal to the Government but for many years, the Government did not take it on board. It was not until 2007, when other political parties — I believe that subsequently, various political parties, including the DAB, also put this proposal forward. If you work in the local communities, you will feel deeply how the problem of high transport fares causes hardships among the public — therefore, after many political parties had put forward similar proposals, the Government eventually implemented a transport subsidy scheme in 2007, that is, the pilot Transport Support Scheme (TSS).

Many Members have talked about the development of the TSS thus far, so I am not going to repeat this but the existing scheme has completely distorted the original intent of the TSS back then, as well as totally changing and affecting the support provided to low-income workers on account of the high transport fares. When the Government changed the vetting criteria by adopting household income as the basis — I pointed out just now that many people only earn a monthly income of \$6,000 to \$7,000 but their transport expenses are very high — the original intent of providing support is basically defeated and it has been turned into an income supplement for the whole family. To individuals, a supplement on family income may be totally irrelevant to them. Often, many employed people, in particular, young people, would agree to contribute \$1,000, \$2,000 or \$3,000 as family expenses. Then, they have to manage their remaining income according to their financial circumstances. To them, having \$1,000 or \$2,000 more may make their life easier but if they receive \$1,000 or \$2,000 less in transport subsidy, they have to be very thrifty and may even have to skip lunch because they have to pay for the relevant living expenses.

Therefore, I wish to impress upon the Secretary the importance of the transport subsidy. Transport expenses account for a rather high proportion of the personal incomes of some people — in some cases, as high as some 10% or 20% — thus causing hardships in their living and lowering their incentive to

work in society. The case is very simple. For example, some people want to find work, no matter if they live in Tin Shui Wai or Tung Chung recently, an improvement can be seen in Tung Chung because there is a greater variety of jobs at the airport, so many Tung Chung residents can find work in the airport, thus lowering their living expenses but the residents in Tin Shui Wai have remained miserable all the same. It is unusual to be able to find a job in Tin Shui Wai because there are only two major landlords in Tin Shui Wai, one being the Cheung Kong Holdings Limited and the other The Link REIT, and few industries can be found there. The industries in Yuen Long are barely operating. If residents in Tin Shui Wai want to find work, often, they have to go to the urban areas or Hong Kong Island.

Many residents living in remote areas would therefore be very miserable without the transport subsidy. The whole problem fully manifests the rigidity of government bureaucracy and its adamant refusal to correct itself. If we look at the original intent of this service and fund allocation as well as the present situation in implementation by the Government, the Government is making misrepresentations again, refusing to distinguish between right and wrong and putting the cart before the horse. Sometimes, I hope the Secretary can wake up a little bit. Since you are a senior official in the Government, you have to assess if a policy can serve its intended purpose having regard to the hardships of the public in their actual living. However, you are sticking to your position in total disregard of the difficulties of the public. Therefore, it is absolutely necessary to condemn this. If the Secretary still does not wake up, he will only continue to be reviled by the people.

MR FREDERICK FUNG (in Cantonese): President, I remember that in February this year, the Government made a funding application for \$4.805 billion to the Finance Committee for the purpose of implementing this Work Incentive Transport Subsidy Scheme (WITSS). At that time, society strongly demanded that the arrangement of a means test on the basis of individuals had to be retained under the scheme, but unfortunately the Government refused to concede and sternly rejected implementing a dual-track approach. It did all it could to exclude elementary workers who were originally entitled to the subsidy from the scheme. In order to canvass support from the pro-establishment camp and enable them to back down with good grace, the authorities hastily promised to relax the income limit for two-member households and allow people working less

than 72 hours but more than 36 hours to receive half of the transport subsidy, that is, \$300.

At that time, I already warned that the real intention of the authorities in changing the rules of the game rashly, namely changing the original personal means test to a means test using the household as the basis was to suppress the number of applicants and reduce government expenditure, but the actual effect would be to exclude the genuine working poor from the scheme. These miserable people would have to continue to spend a large part of their wages on exorbitant transport fares. The scheme was originally designed to ease the burden of transport fares on the grassroots to achieve the goal of encouraging sustained employment, but due to a drastic change in the vetting criteria, the nature of the scheme was changed substantially.

However, the Government turned a deaf ear to this and the pro-establishment camp also refused to look squarely at this or use its opposing votes to force the Government to concede. At that time, Honourable colleagues in the pro-democracy camp could only choose to walk out as a gesture of protest. Although the funding was eventually approved, the adverse consequences are now emerging one after another. As at the end of October, according to the latest figures provided by the Government, there were only 14 411 applications under the WITSS, far fewer than the original estimate made by the authorities.

President, according to the General Household Survey, and based on the estimates of household income distribution and the hours worked of employees, in the second quarter of 2010, about 436 000 people met the income limit requirement under the WITSS. If, according to the assumption of the authorities, the application rate is 50%, at least 218 000 people would make applications. Since more than one person in a household can submit applications, a conservative estimate is that three people in a family would submit applications. If we multiply the number of families which have submitted applications, that is, 14 411 families, by three, the result is 43 233 people at the maximum. The application rate now is about 20% of the estimate of 218 000 people.

It is obvious that the aim of the Government in introducing a stringent mechanism of income and assets tests is to drive away low-income people with an urgent need for transport subsidy and this aim has been achieved. Should the

Secretary open a bottle of champagne in celebration? I only wish to say that with such a low application rate of 20% or even less, even half of that provision of \$4.805 billion could not be spent, so are the authorities really sympathetic to the transport needs of the working poor? In fact, the Administration only want to let a little bit of money slip through the gaps of its tight fist, thinking that needy people can already be helped in this way. For many years, the Hong Kong Association for Democracy and People's Livelihood (ADPL) has advocated the establishment of a second safety net, but this measure is exactly running counter to our proposal.

The ADPL has all along advocated that the Government must realize the concept of a second safety net in its administration. Simply put, the aim is to put in place a set of ongoing financial assistance measures with simple application methods and more relaxed application requirements, so as to help the working poor, who are not eligible for CSSA. In this way, they can get a hand in countering the living expenses that are so high as to be unaffordable nowadays and they can thus be prevented from eventually falling into the safety net and having to apply for CSSA. Therefore, we believe that it is necessary to put in place a second safety net.

I still remember that in 2005, I was still the Chairman of the Legislative Council Subcommittee to Study the Subject of Combating Poverty, which conducted an in-depth study on the problem of in-work poverty and recommended the provision of a subsidy on transport expenses to the working poor. The prototype and starting point of the present WITSS was the outcomes of the discussions between the legislature and the authorities back then. However, the relevant principles were rejected by the Government and it was after a series of tussles, compromises and delays that a scheme was formally launched in mid-2007 to provide a subsidy on transport expenses to residents living in remote areas on a trial basis.

However, the Government was intent on changing the rules of the game by altering the originally more relaxed vetting method to a means test on a household basis. This measure is clearly at odds with the principle of a second safety net and with the principles underpinning the initial introduction of a transport subsidy. The design of the authorities was to bring the transport subsidy on a par with CSSA through the stringent and complicated vetting for eligibility, so that eligible applicants can be driven away and government

expenditure reduced.

Therefore, the ADPL strongly demands that the Government conduct a review of the WITSS immediately, as well as establishing and operating a system with simple application procedures and more relaxed application requirements. It should also introduce a dual-track approach immediately to allow means tests on either an individual basis or household basis, so that more people among the working poor can be benefited and the concept of a second safety net really realized.

In the final analysis, President, no matter how the Government provides a transport subsidy, in fact, the real culprit is the high transport fares. The Government has all along adhered doggedly to the principle of "big market, small government" by leaving it to the market to provide food, housing, transport and clothing to the public and solve all the problems in these areas. Therefore, all along, public transport companies have been in an advantageous position. Operating according to the divine rule of the so-called commercial principles, they are concerned only about pursuing maximum profits, regardless of the social responsibilities that they should assume in setting exorbitant fares to squeeze each and every cent out of the public. Therefore, in the long run, the Government should review the entire policy on public transport and make it people-oriented rather than business-oriented and avert the existing long-standing problem of high transport fares through policy measures and even by such methods as imposing restrictions through tender terms and changing the modes of operation.

I so submit.

MR CHIM PUI-CHUNG (in Cantonese): President, I have said before that various cities and regions may have natural and man-made disasters. Fortunately, Hong Kong is a blessed place, so there are relatively few natural disasters. If we regard the hoisting of typhoon signal No. 8 as a natural disaster, in the past couple of years, there were several occasions on which the typhoon signal No. 8 was not hoisted eventually, so Hong Kong did not suffer any great losses. However, there are many man-made disasters in Hong Kong, including those caused by some politicians from time to time. Unfortunately, the Work Incentive Transport Subsidy Scheme (WITSS) is one of such man-made disasters.

President, why do I say so? Last night, I discussed the relevant problems

with the Financial Secretary. I asked him, "Why not do a good job of putting in place the transport subsidy? Why not implement the arrangement of letting elderly people take transport at a fare of \$2 as soon as possible?" The Financial Secretary said that these two matters were both under the charge of Secretary Matthew CHEUNG. I dare say that the WITSS, having evolved into this state, is another kind of man-made disaster. I have no dislike of Secretary Matthew CHEUNG whatsoever. I believe that if anything within the purview of his Policy Bureau happens, he would surely face up to it and deal with it as soon as possible and to put it more colloquially, if there is any matter, he would give pats on people's shoulders and resolve the matter for most Members. However, he has learnt from his mentor not good enough.

The authorities really must understand what the significance of "transport subsidy" is and analyse these two words. Just now, an Honourable colleague said that my political views may not be the same as theirs but on this issue, with so many Members sharing a consensus, Secretary, do you mean that every one of us is deceiving you? Although he says, "I have to keep watch over the wealth of 7 million people", the two words "transport subsidy" are designed to cater to the needs of members of the public who have to travel across districts to work. Why has the present situation arisen? Because the urban area of Hong Kong has expanded a great deal and the great majority of new arrivals or residents cannot all live in the urban area. This is an objective factor perpetrated by the environment. This is nobody's fault, but the fault of society or social progress. But the point is not here or there. What is the significance of the transport subsidy? Since the transport fares are just too expensive, the Government has to offer subsidies, so that the public can afford the transport fares.

President, we understand that some people do not apply for Comprehensive Social Security Assistance (CSSA) because they have great self-esteem, so even though they have to lead a harder life, they still want to live in dignity without being looked down upon. In particular, young people are not the second generation of poor people after the second generation of poor people have worked very hard, apart from being poor financially, they can also be poor spiritually or physically. This point is very important. For this reason, we hope that they will not apply for CSSA. If they apply for CSSA and stay home, all sorts of ideas may occur to them and they may think that others are so rich but they are so poor. If they cannot resolve this kind of mental conflicts, they may kill themselves by burning charcoal, so is this not a great pity? Therefore, we

should encourage them to work in society and if they find that the girls in the outside world are all quite pretty, they may forget their own miseries. If they work hard, they may be given other opportunities, or they can switch jobs, so that they can earn more money and break away from poverty. Therefore, the aim of the transport subsidy is to enable them to work outside, be oriented to society and accept the formation and challenges that can be found in society.

President, just now, many Honourable colleagues cited many examples. I believe all sorts of tests must be abolished altogether. So long as an applicant can prove that his pay is below a certain figure, for example, \$6,000 or \$7,000 — we can set a figure — and that he crosses districts to work (those in some districts can receive a larger amount of subsidy), the Government can issue Octopus cards to them and when they take buses or MTR trains, a signal will be generated when he passes through turnstiles, just like the Octopus cards for the elderly in the past, so as to stamp out abuse. Moreover, even legislation can be enacted to provide that using other people's Octopus cards is liable to imprisonment for 14 years. In this way, the arrangement would be reasonable.

The means tests conducted at present practically direct unnecessary criticisms and pass judgments on people's integrity, thus leading to social discontent with the Government and giving the opposition a source of votes. I do not hold any dislike of the Government. What is the use of criticizing the Government? I do not stand to gain anything from doing so. However, I consider it really necessary to give the Government a reminder because the Government is causing social division. We have to understand that our Motherland has stressed that Hong Kong needs a harmonious society and in a harmonious society, the Government needs to assume leadership. However, the Government has all sorts of fine excuses in taking various measures, saying that public funds cannot be used liberally. Of course, such a spirit or idea deserves our respect because this principle was passed down from a Financial Secretary in the 1990s, Sir Hamish MACLEOD, some 20 years ago. The authorities are particular thrifty in fiscal management and this is worthy of our appreciation and encouragement. However, to give other people excessively poor treatment, considering other people to be in another category — we cannot say that they are beggars — to treat the applicants as another category of people should rightly be criticized.

For this reason, I hope very much that the Government can really devote

some more efforts to studying this matter. Since there are so many complaints, including the complaints about fuel prices "quick in going up, slow in coming down", why is the Government still so bent on its wrong ways and unwilling to wake up? It does not matter if we have different political views because for the sake of votes, all of us will surely emphasize our own political ideas, but looking into other social issues is our responsibility. Secretary, please wake up.

MR LEE WING-TAT (in Cantonese): President, in the past, when we requested the authorities to tell us whether or not they would undertake to consider increasing the monthly transport subsidy for each person, the Government would often respond that according to the statistical figures of the second quarter of 2010, the present level of subsidy should be adequate to ease the burden of transport expenses borne by most of the recipients. This is what the Government said at that time. However, the monthly sum of \$600 was set last year but for a period of time in the past, various major transport operators have adjusted their transport fares upwards one after another. The average increase in the fares of the six outlying islands ferry routes was about 10% while the increase in the fares of monthly passes was 7%. In 2010, the overall increase in the fares of the MTRCL was 2.05% and in 2011, it was 2.3%. The Kowloon Motor Bus Company (1933) Limited and the Long Win Bus Company Limited also increased their fares by 3.6% and 3.2% respectively in May this year. May I ask the Government if it thinks that given the double pressure of transport fare increases and inflation, the increase in the wages of the grassroots is able to catch up? If not, should the monthly transport subsidy for each person be adjusted upwards appropriately in view of the actual circumstances? I hope the Secretary can give us a response later.

On the amendments, Mr IP Wai-ming's amendment proposes the introduction of employment and livelihood protection by activating the assistance mechanism of the Community Care Fund (CCF), so as to assist grass-root workers falling outside government labour and welfare protection in obtaining wage subsidies and basic livelihood protection. The Democratic Party agrees with this. In Hong Kong, the definition adopted in several major surveys on the problem of in-work poverty is: If working people earn a monthly salary that is less than 50% of the median monthly income, they are considered the "working poor" and if the income of a household is less than 50% of the median income of households with the same number of people, it is considered a "working-poor

household". According to the Oxfam Hong Kong Poverty Report: Employment and Poverty in Hong Kong Families, in the second quarter of 2010, 10% of all working households are working-poor households, representing an increase of 12% compared with the figure of 172 600 households in 2005. If we move the spotlight to the total number of people living in these households, we can see that the number of people has increased from 595 600 in the year 2005 to 660 700 in the second quarter of 2010. It can thus be seen that the situation of the working poor is very serious and the affected people need long-term assistance very much.

President, one of the original intentions of establishing the CCF is to supplement the inadequacies of the existing safety net put in place by the Government, that is, to play a complementary role to the existing financial assistance and services of the Government or other charitable funds, so that assistance can be offered to the needy. However, the schemes implemented under the CCF are only short-term and transitional in nature, and the CCF should also play the role of a thermometer to identify the schemes for which the Government should consider long-term implementation. Therefore, if it is found that there is a need to introduce employment and livelihood protection, we urge the Government to implement this proposal as a long-term measure.

President, Mr IP Wai-ming's amendment mentions in particular that the employment and livelihood protection has to include people with monthly personal incomes below \$6,500 who are ineligible for the WITSS on a household basis. Under the new WITSS, the applicants must meet the requirements on household income and assets before they are granted the subsidy. The position of the Democratic Party is that it supports the implementation of a dual-track approach in the processing of applications by the Government, that is, to let applicants choose freely between making applications on the basis of household income and assets or on the basis of personal income and assets. However, since the Government refuses to take on board our views, this employment subsidy can be regarded as a way for people whose monthly income is less than \$6,500 and whose household income and assets have exceeded the limit to receive livelihood protection.

As regards Mr IP Kwok-him's amendment, one of the proposals relating to the Policy Address of the Chief Executive this year put forward by the Democratic Party is to introduce a living supplement for low-income families, so that some improvement can be made to the living of low-income people. Mr IP

Kwok-him's proposal seeks to provide a maintenance grant scheme for low-income families, so as to enable more families the incomes of which are on the low side but which are ineligible for CSSA to receive a maintenance grant. This is in line with the idea all along favoured by the Democratic Party.

President, the WITSS provides a transport subsidy to needy people to ease their burden of transport expenses. However, the needs of working-poor households in their living are not just confined to their transport needs arising from their job search or employment. Just now, I also mentioned that the situation of the working poor in Hong Kong is serious and I am not going to repeat the figures. Here, I wish to stress the impact that working-poor households have to bear. According to the Cost of Nutritionally Balanced Meals in Hong Kong: A Survey on Low Earning Families and Policy Recommendations published by Oxfam this year, it was found that working-poor households cannot afford the costs needed for a nutritionally balanced diet. Nutrition from food is one of the basic indicators that shows us the needs of poor families. It is a basic responsibility of the Government to provide a safety net to its people, so that they can have protection in their living. In an affluent society like Hong Kong, it is unimaginable that people can suffer from malnutrition or cannot even have three meals a day due to poverty. However, this kind of situation has really arisen, as confirmed by various study reports and figures. Therefore, in the long run, it is imperative for the Government to introduce a maintenance grant for low-income families.

I so submit. Thank you, President.

DR RAYMOND HO (in Cantonese): President, to many low-income people and the grassroots, in particular, people who live in remote areas and have to travel long distances to work, transport fares are often a major item among their living expenses. Be it in their commute to work or job search, the public have to rely on public transport. Although public transport in Hong Kong is very convenient and comes in a variety of modes, such as buses, minibuses, taxis, trams, ferries and MTR trains, in the face of exorbitant transport expenses, the choices of the public are actually limited. Of course, individual members of the public may choose to walk but given the considerations of time and distance, this mode is not suitable for the great majority of the public, so they have no choice but to save on other living expenses. For this reason, the implementation of the Work

Incentive Transport Subsidy Scheme (WITSS) is really helpful in easing the financial burden on low-income people.

Apart from being able to ease the burden of transport expenses on eligible people, this scheme can also encourage people who have lost the incentive to work due to the disproportionate amount of transport expenses to their wages to join the labour market again. Since this scheme has a positive effect on society, the application procedure should be made as simple as possible to encourage eligible people with such a need to make applications.

However, the application form under the scheme consists of seven pages. Apart from requiring applicants to fill in their general information, in parts 3 and 4 of the application form, applicants also have to provide information on the monthly income and hours worked of each job. An applicant and all his family members also have to provide information on various items of income and asset, including bank deposits, cash savings, stocks, mutual funds, bonds, the cash value of insurance policies, vehicles, non-self-occupied properties, and so on. There is no doubt that in implementing this scheme, the Government has to ensure that the scheme would not be abused. I believe the great majority of the public will understand this point. However, the cumbersome application procedure may also deter some eligible people. Therefore, the authorities should conduct a study in earnest to strike a balance between preventing abuse and simplifying the application procedure.

In addition, the authorities should consider adopting a dual-track approach by accepting applications both on an individual basis and on a household basis. The press reported that in a survey conducted by a group, it was found that almost 30% of the respondents in low-income districts could meet the personal income requirement but they could not make any application because the total income of their households had exceeded the income limit. To some extent, the survey shows that the present requirements of application put some individual applicants at a disadvantage. Regarding these people, the implementation of a dual-track approach will enable them to choose to apply for the subsidy on an individual basis. This is a reasonable and justified arrangement, particularly in view of the fact that transport expense is a personal expense. If the authorities concerned allow the making of applications on an individual basis, it will no longer be necessary for the applicants to ask their other family members for personal

information, so that inconvenience and even embarrassment can be avoided.

As regards the monthly income limit prescribed under this scheme, it is \$6,500 for a one-member household, \$12,000 for a household of two, \$13,000 for a household of three, \$14,000 for a household of four and \$14,500 for a household of five. I believe the authorities concerned can consider making adjustments, particularly in view of the fact that the minimum wage of \$28 per hour was introduced earlier this year. If someone works nine hours daily for 26 days a month, his monthly salary will amount to \$6,552 which already exceeds the income limit for a one-member household. If someone is married and the terms of employment of his spouse are similar, they already cannot meet the income requirement for a household of two.

President, the aim of the WITSS is to ease the burden of transport expenses on low-income workers in commuting to work and encourage them to engage in sustained employment. To attain this goal, I think the authorities concerned should make reasonable adjustments to the scheme, so that more people in need can benefit from it.

I so submit. Thank you, President.

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

MR LEUNG KWOK-HUNG (in Cantonese): President, when I met with John TSANG yesterday, he said we could tell him our expectations for the Budget. Of course, he would only treat our proposals as "wind past his ear".

The League of Social Democrats has proposed a number of times that the enormous reserves — at present, the money in the coffers is overflowing — be used to buy back the transport services owned by public transport consortia or carry out strategic acquisitions, so that the Government can turn such public services indispensable to the public into government operations and do a more effective job of easing the burden of public transport expenses on the general public. However, the authorities did not make any response.

The Secretary often said that the relevant system was proven, so he became

the target of the bottles hurled by me on four occasions. One year has passed in a wink. Although this proven system is considered by the legislature to be ineffective and in need of improvement, he pays no heed to this. Even I do not know what sort of accountability and supervision this is.

President, many people say that one must not use verbal violence or throw objects in the legislature. I ask Honourable colleagues to enlighten me on what course of action you would take to change this Government if it does not heed your views?

This "sin" was perpetrated by Henry TANG single-handedly. He has said that he wants to run for the office of the Chief Executive and is about to "take off" soon. When he was the Financial Secretary, in order to make the various political parties and groupings in the Legislative Council vote for the passage of his budget and infuse a sense of success into his career, he came up with the so-called Transport Support Scheme. Initially, only members of the public in four remote areas could benefit from it, but the existing Work Incentive Transport Subsidy Scheme (WITSS) has extended its coverage to all the 18 districts of Hong Kong and its nature has changed.

What can we see in this? It is the fact that the former Chief Secretary for Administration, "with thingies dangling", in order to secure enough votes, created a so-called "relief measure" that was irresponsible and only had short-term effects. Subsequently, the scheme developed problems and they have yet to be dealt with properly even now.

Members, on that day, when I threw something at the Secretary, I said here that even if the minimum wage were to be set at \$33, as workers hoped, we would not have to thank him. Just now, Dr Raymond HO said that if someone worked nine hours a day for 26 days a month, he could only earn \$6,500 but his income would already exceed the income limit. Is the Secretary not feeling ashamed? Although a minimum wage has been set, people have to work more than eight hours to earn \$6,500 but this wage level already exceeds the income limit under the WITSS.

What is more, the Secretary wants this policy to be implemented by a number of departments, so as to drive people into desperation. Individual applicants have to provide information together with their household members

when making applications, so in the end, their applications will not be successful. This is again about the story of throwing bananas. Donald TSANG said that they would offer the "fruit grant" but it was necessary to conduct a means test, so bananas were thrown at him. It was only after the throwing of bananas that no means test was required.

President, what is the crux of the problem? First, public transport services are monopolized by consortia and according to the provisions, they are guaranteed reasonable profits and the Government cannot bargain with them; and second, the other revenues of these consortia (for example, advertisements and revenues from properties) are not counted as their assets. Therefore, they can always be profitable and even if they make mistakes in investment, they can still be profitable. If the Western Harbour Crossing is not commercially viable, this can also be a ground for making toll increases.

Since the Government is incapable of dealing with this problem, the low-income or poor people can only bear the increases in the fares of services that they had no choice but to use. As a result, their disposable income is dwindling. This is no different from the high land price and high rental policy.

Who can do without public transport? President, maybe you can because you have a private car. Our debate has nothing to do with you. What we are talking about are members of the public who have no choice but to take public transport.

Many people have given their backing to the Secretary, saying that it was miserable the Secretary to be thrown bananas. The Secretary was on the brink of tears, saying, "Oh, I am very scared and dare not come to the meetings here anymore.". However, he still stays in his post. Now, the distance between him and me are so great that I cannot throw anything at him anymore. I wish dearly that I could be in Mr TAM Yiu-chung's seat, so that I can throw articles at the Secretary.

Secretary, please hold your head high like a man and look here! Let me ask you a very simple question: When will you listen to our proposal and adopt a dual-track approach for the WITSS instead? When will you raise the amount of subsidy according to the adjustments to the minimum wage or future adjustments? When will you do this? You only have to answer my questions

and do not talk about "proven" anymore. Let me tell you, this claim of being "proven" is an insult to this Council.

MR ALAN LEONG (in Cantonese): President, in February this year, the Finance Committee approved a funding of \$4.995 billion for the implementation of the Work Incentive Transport Subsidy Scheme (WITSS), under which a monthly transport subsidy of \$600 is granted to eligible people under employment. It was estimated that as many as 436 000 people could benefit from the scheme and the administrative cost would account for 8.5% of the provision.

The authorities established a new Work Incentive Transport Subsidy Division (WITSD) staffed with 300 people to process the applications. On 3 October this year, the acceptance of applications for the WITSS began formally but up to now, the number of applicants only stands at about 14 000, accounting for 0.033% of all eligible applicants, so the figure shows a lack of interest. Some reports even pointed out that the number of people going to the WITSD in Tsim Sha Tsui to make enquiries was limited and that the first batch of transport subsidy would be issued only at the end of this year at the earliest. Therefore, the final number of eligible and successful applications is still unknown.

President, from the initial introduction of the policy, through improvements made to it to its reintroduction to the formal acceptance of applications, there were many voices in society demanding that the application threshold be lowered, the application procedure be simplified, a dual-track approach be adopted, the amount of subsidy be reviewed and the Job Search Allowance be included in the WITSS, so as to enhance the scheme and enable more low-income workers and members of the grassroots to benefit from it. For in this way their burden of transport expenses incurred as a result of working in society can be eased.

President, I have pointed out at a meeting of this Council in the last Session that the WITSS was originally intended to fulfil the people's wish but in the end, it only provided subsidies to working people in low-income families instead of all low-income working people throughout Hong Kong, as originally promised. Although the difference between the two in terms of language is small, the difference in meaning could not be greater. Using the household as the unit in vetting will no doubt turn the WITSS into a welfare policy akin to

Comprehensive Social Security Assistance.

The Secretary once said sternly that a dual-track approach was neither feasible nor appropriate. He considered that such an arrangement could not identify people with less financial need and that confusion would occur in enforcement. He was also concerned about the possible abuse of the WITSS. However, in fact, to require that applications be made on the basis of households would exclude many low-income workers from the scheme because the incomes or assets of their family members cannot meet the requirements.

President, the Public Transportation Concern Alliance conducted a survey on 212 grass-roots families in September and found that although nearly 30% of the respondents had incomes that met the requirement of an income limit of \$6,500 for one-member households under the WITSS, they could not apply for the subsidy because their total household income exceeded the limit for making applications.

In respect of enforcement, the WITSS also deterred many eligible people. The times and social conditions have changed and family backgrounds are becoming more complicated. People have greater financial independence and a lot of people are unwilling to provide any information on their income to their family members. To avoid disputes, some people choose not to apply for the transport subsidy. For this reason, the threshold has excluded the genuine needy from the scheme.

At present, the WITSS targets working people but job seekers are excluded from it. This is at great odds with the original intent of encouraging employment. Many job seekers have to attend a number of interviews before they are hired, so their transport expenses are not small. A Job Search Allowance (JSA) would have a positive effect on encouraging employment. However, the Government abolished it on the ground that the JSA beneficiaries only accounted for a very small proportion. There are about 140 000 unemployed people in Hong Kong, but only tens of thousands of job seekers from the grassroots.

Hong Kong has amassed a huge fiscal reserve and in the face of these needy people accounting only for a small proportion of the people in society, not only has no help been extended to them, we are even pinching pennies. For this

reason, the Civic Party hopes that the Government can address the needs of society squarely by including the JSA in the WITSS and refrain from tightening the eligibility requirements for applicants and lowering the ceiling of reimbursement.

The Civic Party is also puzzled by the prescribed maximum income and assets limits under the WITSS. Take a single-member household as an example, the income limit under the WITSS is \$6,500, whereas that for public housing is \$8,740, so the difference is \$2,240. As regards the assets limit, it is \$44,000 under the WITSS but \$193,000 for public housing, so the difference is four-fold. The Government should bring the income and assets limits under the WITSS on a par with the threshold for applying for public housing application or with those in other welfare policies, so as to establish a set of coherent social welfare policies.

At present, the amount of subsidy under the WITSS is calculated according to last year's figures. The Composite Consumer Price Index this year is 5.8% higher than that of last year and transport fares have also increased by 4.8%. Since the amount of subsidy has failed to catch up with inflation, the Civic Party strongly demands that the Government speed up the pace of reviewing the WITSS.

President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr WONG Sing-chi, you can now speak on the four amendments.

MR WONG SING-CHI (in Cantonese): President, just now, 18 Members, including those who proposed amendments, have spoken. From the proposals in the amendments and Members' remarks, it is evident that Members generally consider that the existing Work Incentive Transport Subsidy Scheme (WITSS) of the Government is, in the final analysis, neither fish nor fowl and that

improvements are required in many areas. Ms LI Fung-ying even pointed out when elaborating on her amendment that the WITSS introduced by the Government was practically incapable of meeting the actual needs of numerous low-income people. Therefore, she proposed that the means test be abolished and that so long as one earns less than \$6,500, one can be granted the transport subsidy of \$600.

The Democratic Party believes that this is preferable but unfortunately, the WITSS being implemented by the Government now also includes a supplement for low-income families. Although we think that Ms LI Fung-ying's amendment may be even more helpful to low-income people than the existing approach adopted by the Government, if Ms LI Fung-ying's amendment is passed, the dual-track approach proposed in the original motion and the other amendments will be deleted. Apart from making low-income people earning less than \$6,500 monthly eligible for the subsidy, a dual-track approach is actually also designed to enable families with an income exceeding \$6,500 but below the maximum income limit to receive the subsidy. It is more desirable to provide a financial supplement to these low-income families. In these circumstances, it is very difficult for us to support Ms LI Fung-ying's amendment, so the Democratic Party will abstain from voting on it. However, in fact, we do not oppose the views expressed by Ms LI Fung-ying because one very important point therein is that the transport subsidy offered by the Government at present is practically unable to meet the needs of low-income people in taking up employment.

As regards the amendments proposed by Mr IP Wai-ming and Mr IP Kwok-him, both Members have included some measures that are even more beneficial to the public and proposed more specific proposals on income or livelihood protection for the Government's consideration. These proposals happen to coincide with the proposals on a maintenance grant for low-income families and the considerations regarding severance payments and long service payments that have all along been voiced by the Democratic Party. When I had a meeting to discuss this scheme with the Secretary for the first time, I already pointed out that it was unreasonable to include severance payments and long service payments in the calculation of assets, so the Democratic Party will support the amendments proposed by Mr IP Kwok-him and Mr IP Wai-ming respectively.

The amendment proposed by Ms Miriam LAU also seeks to make the

existing proposal more specific and provide a direction for earnest consideration by the Government, so that no unreasonable arrangements with regard to the differences in income limits will be made. As regards what kind of arrangements can be considered reasonable, Members can continue to discuss this in detail. We will also support Ms Miriam LAU's amendment because today, we want to convey a very clear message to the Government by making it clear that this is the view of the great majority of Members. I do not know if any Member would voice any disagreement but it seems not a single Member holds that the WITSS being implemented by the Government now is very satisfactory. The great majority of Members consider that the proposals put forward in the original motion and the amendments merit serious consideration by the Government. Therefore, I hope the Secretary would no longer claim that this scheme is proven. If it is, I believe some of the political parties and Members in the legislature would have voiced agreement.

From the speeches I have heard today, it can be seen that Members are actually very disappointed with this scheme. Many low-income people or potential job seekers cannot get the transport subsidy at all. This scheme can neither encourage them to take up employment nor improve their living, so I do not know how the Secretary would respond. But I hope he would refrain from saying that the scheme is proven or that the authorities would give further consideration. If the Secretary says that it would accept all the views voiced by Members, be it those in the original motion or in the amendments proposed by other Members, and even the proposals in the amendment proposed by Ms LI Fung-ying, then I would consider that you can still respond to the demands of the public. Otherwise, you would only let down the legislature and the public even more.

Thank you, President.

SECRETARY FOR LABOUR AND WELFARE (in Cantonese): President, again, I am grateful to Mr WONG Sing-chi for his motion and the 18 Members who spoke earlier on for offering a lot of most valuable and concrete proposals.

Although at previous meetings of the Legislative Council Finance Committee and Panel on Manpower, views were exchanged and detailed explanations given on many of the proposals and views raised today, I still wish

to respond to several major viewpoints raised today.

First of all, I wish to clarify that the Work Incentive Transport Subsidy Scheme (WITSS) is absolutely not intended to drive "clients" away. I have pointed out just now that the WITSS is an innovative idea, therefore, some time is needed to observe its operation. We promise that if necessary, an interim review can definitely be conducted ahead of the schedule. I have made this point very clear and we will consider it. We certainly do not mean that the WITSS is proven as it has been implemented for only a month or so. We all know that it is a new initiative.

Mr WONG Sing-chi and a number of Members have requested in their speeches that the Government review various areas and the application requirements under the WITSS. I would like to talk about the application form, which has been described as a thick pile. Since the WITSS is a new scheme, it is our intention to give applicants detailed explanations, so a rather thick manual was designed.

However, often, there is the misunderstanding that the form makes up a thick pile. In fact, the application form consists of only five pages. In many places, it is only necessary to put a tick; in other places, one can just leave them blank if no information can be provided and in some places, not every applicant has to provide information. Members all know that there are various types of applicants and some are self-employed people. The application form has to cater to both self-employed people and salaried people. Therefore, it must be more comprehensive.

Members must understand the Government's position. We must obtain some basic information before vetting is possible. Otherwise, based on what can we start vetting? We have already tried our best not to require unnecessary information. At present, applicants have to make applications every six months or every year. What is the merit of this arrangement? It is precisely to spare applicants the need to fill in the form a number of times or to fill in the forms every month. If applicants fill in the form every six months to provide more information to us, we hope that we do not have to trouble them afterwards. If they fill in the form properly, we will then grant the subsidy to him.

Members can see that according to our figures, in the case of some 2 000

applications, we granted the sums to the applicants immediately after vetting. This is why I said just now that we hoped the vetting could be carried out as soon as possible, in the hope of granting the subsidies to applicants as soon as possible. It is really our intention to benefit the public and extend every convenience to them. Of course, we will continue to observe the entire operation and if there is room for improvement, I promise that we will surely make improvements.

Just now, I said that the WITSS was a completely new scheme and undertook that apart from conducting a comprehensive review every three years, an interim review would also be conducted and that the review would be brought forward if necessary.

The second point that I wish to raise is that some Members said we had estimated the number of applicants to be some 400 000 but the actual number of applicants was a far cry from the anticipated target. I have to clarify two points. I explained very clearly in the Finance Committee that basically, the relevant figure is based on the household income distribution and the number of hours worked of employees as obtained by the Census and Statistics Department (C&SD). Our requirement is a minimum of 72 hours worked and if an application is made for a half-rate subsidy, 36 hours worked are required. The number of people eligible to make applications was calculated according to the number of hours worked and income distribution. However, we did not have any figure on assets, nor did the C&SD, and we did not know how many people would apply either.

Since we had to apply to the Finance Committee for funding, we had to make estimates, so what was the basis of the funding application? If 400 000 people are eligible to apply and half of them actually make applications, how much money do we need? This is only our planning and purely a general frame of reference. We did not mean that some 200 000 people would definitely make applications.

Members have to note one point, that is, the WITSS is a very flexible and open-ended scheme. An application has to be made every six months at the earliest. Why is it necessary for a period to cover at least six months? Because this obviates the need for applicants to make applications tediously every month and they can receive \$3,600 in one go. Recently, a batch of applicants has received \$3,600 per person and some even received \$4,200. If applicants submit

their applications in November, they can have seven months of subsidy and if applicants submit their applications in December, they can have eight months of subsidy, so this is convenient to them.

We think that the situation will become clear by March next year. Why? Because applicants can wait for 12 months at the most before making applications and if their applications are not received by the end of March, there will not be any more opportunity. Therefore, we think that the actual situation regarding applications will become very clear by the end of March or late April next year and we undertake to observe the progress in the coming months.

Mr WONG Sing-chi and some Members proposed that a dual-track approach be discussed anew. Some time ago, at the meeting of the Finance Committee, we explained clearly that the reason for adopting the present approach is to enable us to consider the financial situation of the entire household more holistically and to be able to commit resources to low-income households that are in greater need. This is our aim, which is the same as other ongoing financial assistance schemes of the Government.

The past Transport Support Scheme (TSS), which covered only four districts, has a time limit. Members will remember that initially, the time limit was six months but subsequently, I agreed with Members' request and extended it to 12 months. However, the existing WITSS is open-ended and we hope that it will be ongoing instead of being abolished after six months.

Therefore, just now, a Member said that the scheme only had a time limit of six months but in fact, this is not the case. Members have a lot of misunderstandings, so later on, I will clarify them one by one. The WITSS is open-ended and after three years, a comprehensive review will be conducted. However, we hope that the WITSS will operate on a sustained and constant basis. Therefore, we must ensure that the public are benefited and that it is convenient to them. While we provide assistance and subsidies to encourage employment, we also have to ensure the appropriate use of public funds and strike a balance between both ends. All ongoing government financial assistance schemes adopt such a mode. Using the household as the basis will make it easier to identify which households have greater actual need and it can be said that this approach can also reduce abuse to a minimum.

Some Members mentioned issues relating to income and assets limits, in

particular, they are concerned that after the introduction of the minimum wage, the number of eligible people may decrease. I appreciate this point and have undertaken to observe the development in the next few months first, as well as giving Members a full account at the panel meeting on 16 February, so as to explore the room for improvement and see which areas can be improved.

Why is it necessary for Members to give us some time? Because the WITSS has been implemented only for less than two months. If we talk eloquently about making changes not long after its implementation, I think this is too early. I hold a completely open attitude and we share Members' views. We hope that the WITSS can assist members of the public rather than pose obstacles to them, and we are not trying to drive the "clients" away. Even so, we still need to obtain the relevant data to facilitate our work and analyses.

Moreover, Ms Miriam LAU mentioned earlier the issue of the income difference between a household of two and a household of three. Of course, in our review, we will also look at this point. Why is the difference only as small as \$1,000? Members will remember that back then, we determined the income limit for a household of two as 84% of the median income, whereas it was 65% for a family of three. That was the yardstick adopted by us at that time.

We think that be it a family of three, four or five, generally speaking, the more the members in a household, the lower the expense per capita. A fridge can be shared by a number of people and this is the general view. However, I also undertake that the scheme will be examined as a whole during the review.

Ms LI Fung-ying proposed the abolition of the assets test. As I said earlier, in order to tie in with other ongoing financial assistance schemes of the Government, there is some difficulty in abolishing such tests altogether. It is also our hope that a strange phenomenon in which some people earning a small income have plenty of assets would not arise. If we continue to grant subsidies to these people, would some people consider it to be unjustified? This is also an issue about the use of resources.

I think another point that merits discussion here is that earlier, a Member pointed out that the former TSS covering four districts did not prescribe any assets test but the existing WITSS does. This is a misunderstanding. The former TSS covering four districts also prescribed an assets test from the very

beginning and the personal income limit was \$6,500, whereas the assets limit was \$44,000. In fact, we have transplanted the assets limit of \$44,000 to the existing WITSS as well as retaining the personal assets limit of \$44,000. The limit for a household of two is \$60,000 and this is incremental. Therefore, I have to clarify that the assets test is nothing new, and it was transplanted from the former TSS.

Mr IP Wai-ming suggested calculating applicants' total assets and incomes on the basis of their household expenditure patterns. I believe this will complicate the method of calculation and the form may become even longer. We really want to simplify matters as far as possible to facilitate administration and make them easily comprehensible to applicants.

As regards the proposal relating to the cash value of insurance policies, severance payments and long service payments, we have explained earlier on that since all these items can be converted into cash at any time, coupled with the fact that the same requirement is prescribed in other existing schemes, there is some difficulty in abolishing this requirement all of a sudden.

As regards the amount of subsidy, some people ask if \$600 is not a rather small sum. In fact, I have said earlier on that reference was made to the figures in the second quarter of 2010 when determining this amount. At that time, among members of the public who had to take public transport in their commute to work, the average transport expense of people who did not have to cross districts to work was \$410, whereas the amount was \$460 for those who had to.

We understand that the transport fares of members of the public living in remote areas are greater than such amounts. On the transport fares for the commute to and from Tin Shui Wai, the bus fare for a single journey is \$20.7 and a round trip costs \$41.4. We understand this and the aim is to keep things as simple as possible. Otherwise, it would be very difficult to offer different amounts of subsidies to residents who have to travel across districts to go to work.

In addition, should inter-district overlapping journeys be included? During the deliberations, we raised many issues for discussion. For this reason, we believe that setting the amount at \$600 for the whole territory can achieve the aim of providing financial assistance to encourage employment and there is no

need to meet the expenses in full.

Mr WONG Sing-chi proposed the reintroduction of the Job Search Allowance (JSA). As we have explained before and as I said in reply to a question asked by him earlier on in the Legislative Council, under the former TSS, the number of applicants for the JSA was very small and most of them were already employed and on the job when they made applications. Therefore, we believe that the new WITSS should focus on this area.

As regards needy people, if they are recipients of Comprehensive Social Security Assistance (CSSA) and they want to look for work, the Support for Self-reliance Scheme can provide transport subsidy to them to enable them to look for work.

As regards young people, our Youth Pre-employment Training Programme and other schemes have also put in place special arrangements to meet their needs.

Mr IP Wai-ming put forward a proposal on employment and livelihood protection and the activation of the assistance mechanism of the Community Care Fund, such that people who fall outside the WITSS in receiving assistance can be helped, and Mr IP Kwok-him also mentioned replacing the WITSS with a maintenance grant scheme for low-income families.

I understand that Members' intention is to help the grassroots and the same applies to us. What I have in mind is also to assist them. However, I wish to explain clearly that the aim of the WITSS is to ease the burden of transport expenses on low-income households and workers in commuting to work, so as to encourage them to take up employment, rather than meeting general living expenses or transport expenses unrelated to work.

Members all know that in fact, needy members of the public can receive assistance in the form of income supplement or low-income subsidy within the safety net of CSSA. In fact, many people receive low-income CSSA even though they are in employment. In this regard, we will certainly continue to observe closely what measures can be taken to help the needy.

I also need to clarify one point, that is, a Member said that she learnt only

now that one does not necessarily need to take any transport in order to receive the subsidy under the WITSS. This is not true. Our form states very clearly — here are many areas requiring clarification because Members have a lot of misunderstandings, so excuse me but I must make such clarifications today — our form states explicitly that transport expenses must be incurred.

In fact, we have refused some applications because we do ask applicants the modes of transport they take and the amount of transport expense incurred. These have to be declared. If the answer is that no transport is taken and no transport fares are paid, we will not grant any subsidy. This point is very clear, and it is stated very clearly in the form and the guidance notes.

President, to cut the long story short, I fully understand the valuable views expressed by Members tonight and I value the comments made by each Member. I understand that Members are doing their work with devotion. Although the WITSS may have some shortcomings, I thank Members for allowing the scheme to be launched at that time. At present, at least over 20 000 people have submitted applications and some 2 000 people have been benefited. I ask Members to give us some room and time. I hope that more specific proposals can be put forward at the meeting of the relevant panel on 16 February and I urge Members to explore ways of improving the WITSS.

Thank you, President.

PRESIDENT (in Cantonese): Ms LI Fung-ying, you may now move your amendment.

MS LI FUNG-YING (in Cantonese): President, I move that Mr WONG Sing-chi's motion be amended.

Ms LI Fung-ying moved the following amendment: (Translation)

"To delete "travelling expenses are an important item of daily expenses borne by the vast number of employees and job-seekers in Hong Kong" after "That" and substitute with "the fares of public transport in Hong

Kong are high, constituting a heavy burden on the grassroots"; to delete "the idea of" after "last year"; to add "the application requirements are harsh, and" after "this year, but"; and to delete "adopt a dual-track approach for each unit of application and relax the income and asset limits" after "criteria of WITSS," and substitute with "abolish the requirement regarding applicants' household asset test, and replace it with applicants' remunerations as the vetting and approval criteria".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Ms LI Fung-ying's amendment to Mr WONG Sing-chi's motion be passed.

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 WONG Sing-chi rose to claim a division.

PRESIDENT (in Cantonese): Mr WONG Sing-chi has claimed a division. The division bell will ring for five minutes.

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

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

Functional Constituencies:

Ms LI Fung-ying, Dr Joseph LEE, Mr Paul CHAN, Dr LEUNG Ka-lau, Mr IP Wai-ming, Dr PAN Pey-chyou, Mr Paul TSE and Dr Samson TAM voted for the amendment.

Dr Raymond HO voted against the amendment.

Mr CHEUNG Man-kwong, Ms Miriam LAU, Mr Vincent FANG, Mr CHAN Kin-por, Mr CHEUNG Kwok-che and Mr IP Kwok-him abstained.

Geographical Constituencies:

Mr Andrew CHENG, Mr WONG Kwok-hing, Mr WONG Kwok-kin, Mr LEUNG Kwok-hung, Mr Albert CHAN and Mr WONG Yuk-man voted for the amendment.

Mr Albert HO, Mr LEE Cheuk-yan, Mr James TO, Mr CHAN Kam-lam, Mr LEUNG Yiu-chung, Mr LAU Kong-wah, Ms Emily LAU, Mr TAM Yiu-chung, Mr Frederick FUNG, Ms Audrey EU, Mr LEE Wing-tat, Mr CHEUNG Hok-ming, Mr Ronny TONG, Mr KAM Nai-wai, Ms Cyd HO, Ms Starry LEE, Mr CHAN Hak-kan, Dr Priscilla LEUNG, Mr WONG Sing-chi and Mr Alan LEONG abstained.

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

THE PRESIDENT announced that among the Members returned by functional constituencies, 15 were present, eight were in favour of the amendment, one against it and six abstained; while among the Members returned by geographical constituencies through direct elections, 27 were present, six were in favour of the amendment and 20 abstained. Since the question was not agreed by a majority of each of the two groups of Members present, he therefore declared that the amendment was negatived.

PRESIDENT (in Cantonese): Mr IP Wai-ming, you may move your amendment.

MR IP WAI-MING (in Cantonese): President, I move that Mr WONG Sing-chi's motion be amended.

Mr IP Wai-ming moved the following amendment: (Translation)

"To add ", given that" after "That"; to delete "; the Government" after "Hong Kong" and substitute with ", the Government thus"; to delete "and" after "unit of application" and substitute with ","; to add "including specifying the exclusion of the cash value of insurance policies, severance payments and long service payments, etc., from asset calculation, and consider calculating applicants' total assets and incomes on the basis of their household expenditure patterns," after "asset limits,"; to delete "and" after "circumstances,"; and to add "; (e) to introduce employment and livelihood protection and activate the assistance mechanism of the Community Care Fund, so as to assist grass-root workers who fall outside government labour and welfare protection in obtaining wage subsidies and basic livelihood protection, including offering subsidy support to people with monthly personal incomes below \$6,500 who are ineligible for WITSS on a household basis; and (f) to formulate a comprehensive review mechanism for the regular and comprehensive review of WITSS-related matters and periodic adjustments" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the amendment, moved by Mr IP Wai-ming to Mr WONG Sing-chi's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr IP Kwok-him, as Mr IP Wai-ming's amendment has been passed, you may now move your revised amendment.

MR IP KWOK-HIM (in Cantonese): President, I move that Mr WONG Sing-chi's motion, as amended by Mr IP Wai-ming, be further amended by my revised amendment.

Mr IP Kwok-him moved the following further amendment to the motion as amended by Mr IP Wai-ming: (Translation)

"To add "; and (g) in the long run, study replacing WITSS by a 'maintenance grant scheme for low-income families', so as to enable more families whose incomes are on the low side but who are ineligible for Comprehensive Social Security Assistance to receive maintenance grant" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr IP Kwok-him's amendment to Mr WONG Sing-chi's motion as amended by Mr IP Wai-ming be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Ms Miriam LAU, as the amendments by Mr IP Wai-ming and Mr IP Kwok-him have been passed, you may now move your revised amendment.

MS MIRIAM LAU (in Cantonese): President, I move that Mr WONG Sing-chi's motion, as amended by Mr IP Wai-ming and Mr IP Kwok-him, be further amended by my revised amendment.

Ms Miriam LAU moved the following further amendment to the motion as amended by Mr IP Wai-ming and Mr IP Kwok-him: (Translation)

"To add "; and (h) in respect of the eligibility criteria of WITSS, rationalize the unreasonable arrangement of small discrepancies in household income limits among families with two or more members" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Ms Miriam LAU's amendment to Mr WONG Sing-chi's motion as amended by Mr IP Wai-ming and Mr IP Kwok-him be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr WONG Sing-chi, you may now reply and you have six seconds.

MR WONG SING-CHI (in Cantonese): President, from the response of the Secretary just now, we can see that the Secretary has not heeded the views of Members on many aspects. I hope that the Legislative Council will continue to unite together and strive for the implementation of WITSS on a dual-track approach.

Thank you, President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved Mr WONG Sing-chi, as amended by Mr IP Wai-ming, Mr IP Kwok-him and Ms Miriam LAU, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority

respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

PRESIDENT (in Cantonese): Second motion: Establishing an independent statutory Office of the Health Service Ombudsman.

Members who wish to speak in the debate on the motion will please press the "Request to speak" button.

I now call upon Mr Andrew CHENG to speak and move the motion.

ESTABLISHING AN INDEPENDENT STATUTORY OFFICE OF THE HEALTH SERVICE OMBUDSMAN

MR ANDREW CHENG (in Cantonese): President, I move that the motion, as printed on the Agenda, be passed.

President, I believe the subject of today's debate is no stranger to our Honourable colleagues because a number of discussions on the establishment of an independent statutory Office of the Health Service Ombudsman were held in this Chamber of the Legislative Council in May 1999 (or 12 years ago), May 2001 (or 10 years ago), March 2006 (five years ago) and January 2009 (two years ago) respectively. In the motion debate of the Legislative Council on 14 January 2009, Honourable colleagues, irrespective of their parties or groupings, had clearly and distinctly expressed our wish by passing a motion of urging the Government to establish an independent statutory Office of the Health Service Ombudsman.

After the motion debate, the Secretary had made several responses in the Progress Report, including such measures as working on a pilot scheme on the hospital accreditation for public hospitals, assessing patients' views and personal experience on the Hospital Authority (HA)'s services through the Patient Satisfaction Survey, and implementing the proposal of the Medical Council of

Hong Kong (MCHK) to increase the number of Lay Members. President, in September of the same year, the Administration, at the meeting of the Panel on Health Services, reported a number of improvement initiatives for the handling of medical incidents by public and private hospitals, including extension of the criteria for mandatory reporting of medical incidents so that the Department of Health, on receipt of reports of incidents, will collect information and ensure that the hospitals concerned will investigate the causes of the incident.

However, President, two years have passed since then. In the past decade or so, medical blunders or incidents have happened one after another despite the discussions on our proposals. For instance, there have been such incidents as the dispensation of wrong medicine or medicine more than prescribed, the falling of a baby to the ground during birth, and the patient's bladder being cut during a caesarean section. There is really a long list of incidents. Furthermore, incidents occur not only in public hospitals, but also in private hospitals. Whenever an incident has occurred, we can always hear the Secretary say that an investigation panel will be set up. However, medical incidents continue to happen on a rising trend. However, the experience tells us that the community, the media and the public do not find the existing mechanism satisfactory. We may even see that these so-called investigations and reports of these panels probably intend to delay the release of the facts so as to evade heated comments in the media. These so-called investigations and reports may be just a shield to cover up medical blunders.

Various kinds of medical incidents have happened continuously, to the dismay of the community, and greatly undermined people's confidence in medical services. Furthermore, in the absence of a credible mechanism to carry out investigations and mediation and handle compensation matters in the wake of incidents, the patients or their families are forced to resort to the media and public pressure as well as the judicial system, in the hope that their cases will be handled in a more impartial manner. As a result, this exerts heavy pressure on the healthcare system and mental stress on front-line workers, while the patients or their families who are forced to appear before the media also feel physically and mentally exhausted. Due to the absence of an independent mechanism for handling health service complaints fairly and impartially, the Government actually has to use public funds on the provision of legal aid and the Court has to expend abundant resources on handling litigations on medical incidents, thereby

creating an all-lose situation for the three parties.

The most widely criticized aspect of the current system is that the doctors are shielding one another. The patients and their families as well as the community at large doubt the impartiality of the Public Complaints Committee (PCC) of the HA and the MCHK on the ground that investigations are conducted by their own peers. Also, the Consumer Council and The Office of The Ombudsman are not suitable channels of redress. Nor the public have a mechanism to lodge complaints. The fact that the doctors protect their own interests is the biggest obstacle to the handling of medical blunders.

The complaints against the HA, as I said just now, are handled by the PCC of the HA. Nevertheless, the PCC is an internal body of the HA instead of an independent body; if it is proven that the patients suffered losses as a result of repetitive medical negligence in the past, and the HA should make compensations, the patients' confidence in such a mechanism investigating the incidents impartially and making reasonable judgments will really be greatly undermined. In the past, there were some liberal and outspoken members in the PCC such as Rev CHU Yiu-ming and Dr Conrad LAM, and the patient organizations could maintain closer contact with them. There were also individual members in whom the public still had some confidence. But these two members were no longer appointed after they had respectively served for two terms. This shows that people who are outspoken and willing to take up cudgels for the public would not be re-appointed.

Despite the many shortcomings of the complaint mechanism of the HA, there is still a system at least, but it seems that there is not any channel for complaints against medical incidents in the private sector. If the public are dissatisfied with private healthcare practitioners, complaints can be lodged with the MCHK and other professional regulatory bodies. However, these bodies mainly judge from the profession's perspectives as to whether the doctors subject to the inquiry have been unethical and brought the sector into disrepute. The scope of investigation is thus very narrow and lots of complaints are not entertained, not to mention that they will not deal with compensation matters or assist in mediation.

On the other hand, President, even though it is obvious that the hospital

concerned has made a mistake, the patients and their families are always in a disadvantageous position during the compensation negotiations. Given that the patients and their families often lack information and resources, they are on a most unequal footing during negotiations over compensation with the HA. Moreover, as the patients and their families do not have confidence in the hospital under complaint and the PCC of the HA, they will consequently resort to the media and the judicial system as I said earlier.

President, if there is an independent Health Service Ombudsman, it is believed that the repetitive investigation procedures at present can be streamlined. With the Office of Health Service Ombudsman providing one-stop investigation services, regardless of whether it is a case of medical blunder or maladministration, all complaints about medical services will be handled, and investigations and mediations including compensation negotiations can be conducted by the Office. For areas related to professional autonomy such as the power of arbitration and sanction, the case would be referred to the relevant professional bodies for handling upon completion of investigation. To pre-empt situation of insiders being regulated by outsiders, the investigations can be conducted by healthcare professionals appointed by the Office. Should the mechanism be made an independent statutory body, it would be independent of all healthcare providers and all suspicions of it being biased in favour of the Government or having doctors protecting the interests of doctors will be avoided, and its credibility and impartiality could be ensured. The Office, as an independent body acting as an intermediary, will present information and assume the role of a conciliator during the compensation negotiations between a patient and a hospital. So, the parties would be on an equal footing in the negotiations so that they could agree upon mutually acceptable and more equitable compensation, thus obviating a long judicial process. Furthermore, the Office with a full grasp of the complaint processes and results can publish information on a regular basis, monitor and analyse the trends of complaints and give advice. Its recommendations will then be referred to the Administration as a basis for policy determination, thereby promoting the improvement of medical services.

In fact, President, in 1999 or more than a decade ago, Prof William HSIAO of the Harvard University suggested, after a review of the healthcare system in Hong Kong, the establishment in Hong Kong of an independent office for handling healthcare complaints resembling the Office. So, I have pointed out at the beginning of my speech that the issue was discussed by the Legislative

Council in May 1999. A decade has passed and it seems that the Government remains in a position of protecting the healthcare system and healthcare workers by handling medical incidents in the form of complaints, reports and investigations. As a result, many victims and their families are denied reasonable treatment.

Sometimes, the patients' families are unable to get even a clearer and more impartial report because the report provided by the hospital concerned is as sacrosanct as the Bible. In order to get such reports, the patients' families have to lodge applications with various departments and after getting these reports, they may still be unable to they even cannot hire experts on their own to find out whether there are any medical blunders. Of course, there are many independent experts, but the patients' families cannot afford their service.

Therefore, the establishment of an independent Office of the Health Service Ombudsman can really bring improvements to many aspects of the existing healthcare system, which is on the verge of collapse. The fact that healthcare workers in public hospitals are exhausted by excessive workload and the lack of resources has led to the frequent incidence of medical incidents. I would like to emphasize that we are not picky, requiring zero accident in the healthcare system. This is impossible. I believe many victims will accept that there are risks in medical surgeries, just like Honourable Members and the public do. But at least, when such high-risk incidents have occurred, the hospital concerned will give an explanation to the victims and conduct an investigation or even provide compensation in an equitable manner. I believe many patients or victims will consider this system feasible. But unfortunately, medical incidents have happened one after another, and the victims who want to seek justice are like blind men feeling an elephant. Very often, grievances will arise when they are unable to get reasonable compensation.

I hope the Secretary will understand that more than a decade has passed and in recent months, or owing to a number of fatal sentinel events in Tuen Mun Hospital this year in particular, public confidence in the public-sector system is declining. In order to restore their confidence, the establishment of an independent Office of the Health Service Ombudsman is one of the measures. Surely, this will also require the Government to put in efforts in various aspects such as increasing resources and enhancing the morale of healthcare workers. I hope that in the days to come, the Secretary will make efforts so that the

next-term Government will establish a truly independent mechanism for healthcare complaints one day and help us move towards a trustworthy healthcare system.

Thank you, President.

Mr Andrew CHENG moved the following motion: (Translation)

"That, as medical incidents in public and private health services have occurred frequently in recent years, but there is a current lack of a uniform, credible and highly transparent mechanism for handling health service complaints from members of the public, causing the public to feel helpless, this Council urges the Administration to, without violating the principle of professional autonomy, establish an independent statutory Office of the Health Service Ombudsman to receive complaints concerning public and private health services from the public, investigate and conciliate complaints as well as handle compensation matters under a uniform mechanism, also inform complainants of the investigation outcome within a reasonable time frame and regularly announce to the community the situation regarding handling of medical complaints, so as to ensure that complaints targeting at health service are properly handled and transparency in the handling of complaints is enhanced, and thereby improving the quality of health service."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Andrew CHENG be passed.

PRESIDENT (in Cantonese): Three Members will move amendments to this motion. This Council will now proceed to a joint debate on the motion and the three amendments.

I will first call upon Members who will move amendments to speak, but they may not move the amendments at this stage.

DR PAN PEY-CHYOU (in Cantonese): President, I would like to talk about the

feeling of being complained, as a medical practitioner. No different from an ordinary person, we feel scared and a tremendous pressure in the face of a complaint. Generally speaking, dealing with complaints is an excruciating experience.

I have been in medical practice for over 30 years and I was actually complained on one occasion during practice in New Zealand around 21 years ago. I was responsible for treating a patient admitted into the hospital for manic disorder. The patient had a very tall and strong physique. After admitting into the hospital, he told me that he was unable to sleep. So, I gave him some prescription. He was still unable to sleep after two days. After giving him some kind of sleeping pills, he saw some improvement in emotion and various aspects. He was soon discharged from the hospital. However, he lodged a complaint against me with the superintendent. What was his complaint? He said that the sleeping pills were quite good. He questioned why Dr PAN had not prescribed those pills for him right the very beginning. The question was, of course, easy to answer. There was a reason for that. I then replied the superintendent accordingly and the problem was resolved.

I told the patient in his follow-up appointment, "Robert, you complained about me. I feel that the mutual trust between doctor and patient has been damaged. I can hardly continue to give you treatment." After a moment, he said, "Dr PAN, I don't mind your continuing to treat me." After a few minutes, he added, "Doctor, I believe everyone needs to face some complaints from time to time." His words engaged me in some deep thinking.

For healthcare workers, facing complaints is a kind of difficult experience. However, from a different perspective, complaints can keep healthcare workers alert at all times during work while acting as an incitement to continuous improvement. Good medicine for health tastes bitter in the mouth; from this angle, complaints can serve some proper functions.

Next, I would like to talk about the possible impacts on the relationships among the patients, doctors and hospitals in case of a medical incident. First of all, it will ruin the mutual trust — there basically exists a certain kind of trust between doctors and patients. Both doctors and patients will become wary of each other once a medical incident happened and are even at swords points. Standing toe-to-toe, the communication channel between both parties is fading

away. Instead of speaking direct from their hearts, the speaker will think how the other party will cite or interpret the content of each sentence. They may simply avoid communication. Communication is, therefore, lost.

The so-called act of self-protection and the state of opposition clearly reveal the inequality between doctors and patients or among doctors, hospitals and patients. First of all, you can say that doctors enjoy home advantage but patients are only visiting team members in the case of a medical incident. Secondly, hospitals hold all vital information including patients' records, written records of the whole incident, some applicable guidelines and codes while patients know very little about them. Thirdly, hospitals have a whole team of professionals to support them, which includes experts in other fields as well as legal counsel; patients, on the other hand, often have none. Fourthly, hospitals and doctors are basically financially stronger and they are often insured against professional liabilities; patients, however, are hamstrung by their financial situation.

Therefore, if the Office of the Health Service Ombudsman is really to be established, I think its most important task will be: first, to provide a fair and equal platform for the complainant and the complained. In order to achieve this, we have to raise the status of the complainant or the patient through a series of methods. The Office has to provide a convenient one-stop service and lower the threshold for anyone who wants to file a complaint. Secondly, the Office should be independent of the medical institution to ensure unbiased handling of complaints or prevent favouritism towards the hospital or medical practitioner. Thirdly, the Office can obtain all relevant documents such as the case history, internal guidelines and even internal investigation reports so that the patient can also access the information held by the hospital and the medical practitioner. Fourthly, the Office can also provide independent professional advice so that the patient can understand the opinion and judgment of other experts on the incident. All these can shorten the perception gaps among the patients, hospitals and medical practitioners.

Only on a relatively equal footing can both parties open a real dialogue. An honest and fair dialogue can most often resolve many problems. Many medical incidents really deserve an apology. However, when dialogue cannot resolve the problem, we may need a more complicated negotiation and

conciliation to clarify responsibilities and even compensation matters.

I think that the Office should not replace the Judiciary or the relevant self-governing bodies of the professions such as the Medical Council of Hong Kong (MCHK) or the Nursing Council of Hong Kong. Why? Because their roles will be very much confused if the Office assumes their roles, and the so-called professional autonomy will also be seriously affected. I will further discuss this aspect later. However, in my opinion, the Office can provide reasonable support to patients and complainants. In case they want to take legal actions against the hospital or the medical practitioners, the Office can provide certain support and assistance.

The Office should periodically release some statistics to enhance the transparency of its work. The medical institutions can refer to those statistics to help them formulate measures to improve service quality. The figures can also help them identify whether these service improvement measures are actually effective.

Besides, the Office should host some public education activities on a regular basis. The public education can be geared to the needs of the public, enabling the public to understand the existing risks in the medical service. Public education is conducted not simply because someone has done something wrong. Making the public understand the risks can also help reduce some unnecessary complaints. Public education can also be geared to the needs of the healthcare workers so that they can know the causes of such complaints with the ultimate purpose of improving their service quality.

In my opinion, the success of the Office hinges on the trust from hospitals, medical practitioners and patients. In other words, the Office has to be unbiased in handling cases. In order to achieve this, it needs to distinguish justifiable complaints from those abusing the procedure. Only after a long period of hard work will it win the trust of people from all walks of life and the community as a whole, thus building up a reputation of impartiality and transparency.

The Hong Kong Federation of Trade Unions basically supports the original motion and the amendments, but I would like to express my views on the amendment by Mr Paul CHAN. He suggested increasing the number of lay members in the MCHK and raising the proportion of lay member participation in

disciplinary inquiries. The current situation is that among the 28 members in the MCHK, four of them are lay members. These four lay members are mainly responsible for attending disciplinary inquiries on medical practitioners which are usually held in public and receive wide coverage by the mass media. Therefore, I think public monitoring is already quite sufficient in this respect.

As to the question of whether there is a need to increase the number of lay members, I think it is an issue worthy of study and consideration. On the face of it, more monitoring and greater public participation seem to be a good thing, but we should not forget that the aim of professional autonomy is to give medical practitioners ample room so that they can make judgments in the best interest of patients. If there is too much monitoring and regulation by lay members, the medical practitioners may tend to be conservative and cautious. Perhaps there will be no more medical incidents by then, but it may be even more disastrous.

I so submit.

MR PAUL CHAN (in Cantonese): President, the amendment I shall propose today is actually nothing new. Back in 1999 or 12 years ago, the Harvard Report on healthcare reform already pointed out that the Medical Council of Hong Kong (MCHK) protected the interests of doctors and this issue was also discussed by the community. The MCHK once also indicated that the number of lay members would be increased by two. However, nothing had been done until 2001 when an incident concerning a doctor using his mobile phone during an operation occurred. Members may also recall that a doctor had answered his mobile phone twice chatting about a car purchase during an operation. Nevertheless, the MCHK decided that the doctor had not committed professional misconduct, thus causing a public outcry. Owing to this incident, the relevant issue was discussed seriously again. Not only had the MCHK established the Working Group on Reform of the Medical Council (the Working Group), the Legislative Council also set up a subcommittee on improvements to the medical complaints mechanism in order to consider how best to improve the medical complaints mechanism together with the Government and the MCHK. One third of those Members who had participated in the discussion are still sitting in this Chamber. I am sure that they know the whole incident better than I do.

As a representative of the professional sector, I fully understand the

importance of respect for professional autonomy. However, as this issue involves the rights of patients and public health, which is an issue of great public interest, professionals should, in my opinion, assume accountability in a responsible manner. Everybody must have had the experience of falling sick or seeing their loved ones falling ill in bed. We, as ordinary people without medical knowledge, will naturally feel worried and helpless. And we will naturally rely on and trust doctors' diagnosis and treatment. Therefore, in case there are unscrupulous doctors who are negligent or even disregard the interests of patients, even though they constitute a minority in the profession and make mistakes inadvertently, I think we still need a transparent mechanism with credibility to handle the complaints in order to do justice to the patients and doctors, as well as to win public confidence and trust in the healthcare system. On this basis, my amendment seeks to strike a balance between professional autonomy and the rights of patients, and minimize the emergence of the situation whereby public interests are overridden by trade interests.

President, as I said right at the beginning, the MCHK established the Working Group in 2001, which conducted a review of the MCHK's structure, composition and functions in more than six months before submitting its reform recommendations to the Government, including the proposal of increasing the lay members of the Preliminary Investigation Committee (PIC) from one to three so that the lay members would account for one third of its total membership. In addition, it was also proposed that the number of lay members be increased from four to eight, or from four out of 28 to eight out of 32, or from the proportion of one seventh to one fourth. Unfortunately, President, 10 years down the road, the MCHK has not put its own proposals into practice. Is it because the MCHK has resumed its old self once the heat is taken off the incident involving the doctor using his mobile phone and the pressure of the community and the public has also died down?

President, according to a report by the *Ming Pao Daily News* on 23 February 2009, Prof Felice LIEH-MAK, Chairman of MCHK, said, and I quote, to this effect, "The MCHK has considered amending the legislation by increasing the number of lay members from four to eight. However, it is worried that the Legislative Council may make substantial amendment by increasing the proportion of lay members to 50%, thus compromising the professional autonomy of the MCHK. 'Professional autonomy must be upheld and under no circumstances should doctors be tried by outsiders.'" (End of quote).

President, I think, Prof Felice LIEH-MAK was over concerned. In fact, we can conduct an in-depth study in a liberal manner, including making reference to the practice of some overseas jurisdictions before discussing improvement proposals. For example, on the proportion of public participation in investigations and public hearings, I think it can be discussed separately from the proportion of public participation in the MCHK.

As for investigations and public hearings, I have the following ideas. At present, complaints about the conduct of doctors will be handled by the PIC. The Chairman and Deputy Chairman of the PIC, after consulting the views of a lay member, will deliberate the complaint together before deciding the way of handling it. In this process, three persons will be involved, of whom one is an outsider. In this connection, I suggest that the number of lay members should at least be increased by one, preferably a member of the legal profession. In this way, these two lay members can exchange views and discuss the issue together and countervail the pressure of the Chairman and Deputy Chairman when necessary. In the accountancy profession, complaints against accountants will also be received and public hearings will be held when such complaints are considered substantiated. The Disciplinary Committee comprises five members, of whom three are lay members, and the Chairman must be a lay member with legal background. With such a composition, which consists of a representative of the accountancy profession, the Disciplinary Committee can perform the functions of public monitoring and protecting public interests as it possesses both professional knowledge and judgment, with lay members constituting the majority.

President, in my opinion, there is a practical operational need to increase the participation of lay members. I have read the MCHK's annual report online, which is the 2009 annual report recently uploaded onto its website. In 2009, the MCHK received 493 complaints, of which 213 (or 43.2%) are being processed or pending further information. The progress and efficiency is disappointing. Nor is it fair to the complainants. Among the 280 complaints which have been processed, 67 cases have to be referred to the PIC for public hearings or the Health Committee for follow-up. Given that the percentage is over 20%, it should not be described as low.

The MCHK currently comprises four lay members only, who have to take

turns to sit on the PIC for three months. According to the above figures, as there were 280 cases to be considered in 2009, each of the four lay members had to read the papers of 70 cases on average in three months before advice could be given. As the lay members sit on a part-time basis and have their own full-time jobs, can such amount of manpower meet the ever increasing complaint cases year on year?

President, as for the MCHK, I consider that the proportion of lay members should be increased from the present proportion of 4:28 to one third as suggested in their original proposal at that time. At present, members of the public and government officials responsible for monitoring the accountancy profession account for nearly one third of the members of the Council of our professional body. President, let us look at the attitude of some MCHK members which is really infuriating and further substantiates the need for reform. The report of *Ming Pao Daily News* I mentioned earlier said, and I quote, to this effect, "Some MCHK members have never attended the disciplinary inquiries. She felt extremely frustrated on seeing that the attendees were always the few." With this in mind, how can the MCHK refuse reform? How can it refuse to increase the proportion of public participation in order to give full play to public monitoring?

President, in the remaining time, I would like to express my views on the regulation of private hospitals. Currently, private hospitals are issued licences and regulated by the Department of Health. However, as reported by the press yesterday, even though a medical incident has occurred in a private hospital or even the patient has died, apart from giving a warning to the hospital concerned, the authorities will not impose any other penalties or take the initiative to disclose any information and data about the hospital. As for the MCHK, which is responsible for monitoring doctors rather than hospitals, it cannot play any role in it. In my opinion, President, it is necessary to establish an independent statutory Office of the Health Service Ombudsman as proposed in the motion. It will target at not just doctors, but also hospitals. Moreover, it will do justice to the public and doctors so that the public's confidence in doctors, medical services and the healthcare system can be maintained.

Thank you, President. I urge all Honourable colleagues to support my amendment.

MR CHAN HAK-KAN (in Cantonese): President, many Honourable Members

are very familiar with today's motion debate on the establishment of a statutory Office of the Health Service Ombudsman. As for the old Members, they may have had discussions on many occasions. But for new Members like me, we have also discussed the issue once, in January 2009.

I am most grateful to Mr Andrew CHENG for his motion today because his motion is basically a rehash of my amendment in 2009. It is a motion with wordings exactly the same as my amendment at that time.

Certainly, I am also grateful to Mr Paul CHAN and Dr PAN Pey-chyou for the details they have added to my amendment. So, I will support the amendments proposed by both of them today.

President, although the relevant motion was discussed in January 2009, which was more than three years ago, it seems that no progress has been made so far in respect of the establishment of the Office. In the meantime, we have seen that the number of medical incident is not zero but on the rise.

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

Just now some Honourable colleagues mentioned some medical incidents, including the falling of a newborn baby to the ground without justification in the Hong Kong Baptist Hospital; a premature baby requiring amputation due to necrosis of muscle tissue caused by erroneous injection in Tuen Mun Hospital; the death of a patient whose tracheostomy was mistakenly covered by a gauze in Kowloon Hospital; and the death of a patient suffering from heart disease due to wrong dispensation of medicine in Tuen Mun Hospital yesterday. The spate of medical incidents show that it is necessary to establish the Office so that these cases will be followed up and handled, and justice can be done to the public.

Deputy President, I would like to discuss how medical incidents in private and public hospitals are handled under the present system. Let me start with the regulation of private hospitals first.

Under the current system, the Department of Health (DH) as the regulatory

authority requires that private hospitals should comply with a code of practice, by creating the posts of patient liaison officers who are tasked with handling medical complaints, in addition to submitting a monthly summary to the Director of Health within the specified time. Private hospitals are also required to report sentinel events to the DH within 24 hours upon occurrence of the event. One will have an impression by the code of practice that the existing system seems to be sound and systematic. However, is it the case in reality?

Take the falling of a newborn baby to the ground as an example mentioned just now. Even an adult who has hit the wall or suffers head injuries will cause concern about whether his brain will be affected by concussion or whether there is any bruise, let alone a newborn who should warrant greater care. However, the Baptist Hospital has not taken the initiative to report the case to the DH on the ground that the incident "did not involve serious injury".

Such an explanation is really surprising. Why did a private hospital try to play down a sentinel event and cover up the case in order to protect its reputation?

Deputy President, according to the figures, the number of sentinel events in private hospitals was 52 in 2009 and then suddenly dropped to 10 last year. As of the end of last year, there were only three such cases. Is the drop in the number of medical incidents really so conspicuous? Can the relevant figures truly reflect the reality? Both Honourable Members and the public are really doubtful about that.

Besides, how does the DH monitor the private hospitals, must I ask? What is the deterrent effect of the punitive measures on private hospitals? What is the strength of such measures? The answer is that the DH can only reprimand the hospital concerned and impose a fine of \$1,000, which is worse than a "paper tiger" or a "toothless tiger".

Therefore, I hope that the Government, while establishing the Office, will also amend the legislation so as to vest greater powers in the DH, as well as enhance the existing penalties. The Government can also consider introducing more stringent measures, such as cutting the number of hospital beds or even suspending the provision of some specialist services by some private hospitals

with a view to obliging them to handle each medical incident in a serious manner.

Deputy President, most patients will seek treatment in public hospitals after fallen ill. However, once a medical incident happened in a public hospital, the patients and their families will be in a position equivalent to the situation of David facing Goliath in a *Bible* story. They are simply on an unequal footing.

Many people have criticized the neutrality and credibility of the Hospital Authority (HA), as the service provider, in handling medical incidents and they are doubtful about it. Although we can see that the HA will occasionally form an investigation panel on medical incidents, most of the results only suggest that a review of the existing procedures and guidelines by the HA is required. The public cannot help but wonder whether the HA is trying to play down its responsibility. As the investigation will take several months or even a year or so, the patients and their families will never know the progress of the investigation.

Therefore, we hope that after its establishment, the Office can answer the aspirations of the public expeditiously so that the patients and their families will be informed of the investigation results and the progress as early as possible, and in this way the impartiality and transparency of the current investigation regime can be enhanced.

Deputy President, I wish to point out that my amendment seeks to urge the authorities to offer emergency financial assistance (EFA) to victims of medical incidents or their families in a way modelled on the existing Traffic Accident Victims Assistance (TAVA) Scheme. Deputy President, why do I make such a suggestion? Because it is unfortunate to fall ill, and it is even lamentable to fall victim to a medical incident. If a patient who has fallen victim to a medical incident is the breadwinner of his family, his family will certainly be affected. Even if he is not the breadwinner of the family, his family members will have to stop working in order to take care of him, thus facing a situation of no income.

Besides, we know that an investigation into a medical incident often takes time. It is more likely that an inquest in the Coroner's Court is necessary. If it is decided that it is a medical incident, the patient and his family may have to make further claims. This will be a long process, during which they may have

no income or earn a meagre income, thus imposing a very heavy burden on their earnings and their financial situation.

If an EFA mechanism for medical incidents is established, the patients and their families will be offered a sum of emergency money. I believe this can relieve their financial pressure in the short term.

Deputy President, my idea is to establish an EFA mechanism for medical incidents modelled on the existing TAVA Scheme. Why should my proposed mechanism be modelled on the Scheme? The reason is that under the TAVA Scheme, applicants are only required to report the accident to the police and present a valid sick leave certificate upon submitting a completed application form for the granting of financial assistance. The amount approved depends on the degree of injury. The authorities may deal with medical incidents in a similar manner.

The most important point is that two factors should not be taken into account under the proposed EFA mechanism: the applicants' financial situation and which party will be held responsible for the medical incident in future. The sole purpose of the mechanism is to offer help to those in need by providing them with immediate financial assistance.

Therefore, the EFA mechanism should operate on the principle of being simple and convenient, and on the condition of not prejudicing the patient's right to claim compensation from the hospital concerned in future. As for the amount of grant, the Administration may make reference to the TAVA Scheme by classifying the payment of grant into several levels, such as death grant, disability grant, injury grant and interim maintenance grant, so that the applicants will be provided with different levels of assistance. I would also suggest that the operation of the EFA mechanism be placed under the charge of the Office I proposed just now, or other government departments like the Social Welfare Department.

Deputy President, given the ageing population and the imminent launch of the healthcare reform, I very much hope that the Government will seriously consider the establishment of an independent Office of the Health Service Ombudsman in order to restore the patients' confidence in hospitals. More importantly, training should be enhanced and front-line healthcare manpower

increased so that their pressure can be alleviated with a view to maintaining the quality of medical services and protecting patients' rights and interests in the true sense.

Deputy President, I so submit.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): Deputy President, first of all, I would like to thank Mr Andrew CHENG for proposing this motion. I would also like to thank Dr PAN Pey-chyou, Mr Paul CHAN and Mr CHAN Hak-kan for their amendments. Precisely because this subject involves professional autonomy of our healthcare personnel, trust between medical practitioners and patients in addition to principles and concepts underpinning the mechanism of handling medical incidents, it deserves our long-time repeated discussions as it provides us with much food for thought.

Our healthcare personnel bear the moral duty of care entrusted by both patients and the public. Take medical practitioners as an example. According to the Code of Professional Conduct For The Guidance of Registered Medical Practitioners, "Medicine as a profession is distinguished from other professions by a special moral duty of care to save lives and to relieve suffering. Medical ethics emphasizes the priority of this moral ideal over and above considerations of personal interests and private gains While the Medical Registration Ordinance confers upon the medical profession considerable freedom of self regulation, the profession is obliged to abide by a strict code of conduct which embodies high ethical values, protects patients' interests, and upholds professional integrity. Trust is essential to the practice of medicine. There can be no medicine in the absence of trust. The patient's trust imposes upon the doctor a corresponding duty to be trustworthy and accountable. Whereas a patient's trust is fundamental to the process of healing, the ability to heal depends importantly on one's professional knowledge and skills. It is therefore necessary for every doctor to attain continuous professional development through lifelong learning in order to fulfill the duty of care to patients." This is an extract from the introduction to the Code of Professional Conduct For The Guidance of Registered Medical Practitioners. In other words, the professional autonomy of our medical practitioners is founded on patients' trust and, in order to win patients' trust, medical practitioners must work for the benefits of the patients, fulfilling their bounden duties of saving lives and relieving suffering. Not all ailments are

curable and risk to a certain extent is always involved in medical treatment. As long as the medical practitioners have exerted their best in providing the most suitable treatment and professional healthcare to the patients, the patients' family members as well as the public will make allowances for the profession in spite of any medical incidents.

Traditionally, all kinds of society have given quite a high degree of autonomy to the medical profession. When the General Medical Council was formed in the United Kingdom in the 19th Century, there was a general view that the medical practitioners had the expertise and professional conduct to ensure professionalism while upholding the trustworthiness of the profession to the public. Similarly, the aim of setting up the Medical Council of Hong Kong (MCHK) in the 1950s was to confer the highest degree of autonomy on the medical profession besides determining its professional development and regulation on the basis of the same faith. Professional autonomy ranges from handling registration and investigating misconduct in the professional aspect to regulating discipline. Hong Kong society has given the largest possible trust and recognition to the medical profession, and this implies that the general public expects highly of the moral duty, expertise and professional conduct of Hong Kong's medical practitioners. However, their professional autonomy is not unlimited or left unchecked. They have to make responsible decisions under the supervision of the public and media. Any violation of professional conduct, moral duty or personal integrity will not only lose patients' trust but also result in public condemnation and rejection.

In fact, our healthcare personnel have never disappointed the public. They have been, for many years, taking upon themselves the goals of saving lives, relieving suffering, protecting patient's interests and adhering to professional integrity with a view to developing the medical profession vigorously. The healthcare service in Hong Kong has achieved world-class quality within the past few decades, thanks to their continuing education, research, readiness to learn from overseas experience and their efforts in attempting and studying various treatment protocols for different ailments. The Government has also continuously devoted resources, introducing advanced medical equipment and training healthcare professionals so as to provide an optimal environment to nurture Hong Kong's medical development. It is hoped that the medical practitioners can thus bring their full potential into play to save lives and cure illnesses. Thanks to the multitudinous efforts, our health indices

such as life expectancy and infant mortality rate are globally top rate. In 2009, the infant mortality rate in Hong Kong ranked the third lowest in the world. On the other hand, the life expectancy of Hong Kong people has also obviously increased. In 2009, the male population life expectancy in Hong Kong was 79.7 years while the female population life expectancy was 85.9, ranking the second and the first in the world.

The total dedication to the provision of quality service by our healthcare professionals who exercise a high degree of professionalism and strictly abide by the code of ethics are vital to maintaining the effective and efficient medical system that we have built up for years. However, our medical system is now facing serious challenges, bringing ever-increasing pressure to bear on our healthcare workers. These challenges include the demographic change, especially the dramatic ageing of population and an increase in morbidity rate of individual lifestyle diseases, causing a sharp rise in demand for medical service. Besides, advanced medical technology and information have led the public to expect the medical service to catch up with the latest technological development. In response to the public's demand for quality medical service, the service provider has to render different treatments and explain to the patients the effects and risks of such treatments, thereby increasing the need for more healthcare manpower.

With the continuous advancement of society and information boom during the past few decades, there have been some unnoticed changes in the relationship between healthcare workers and patients. Patients used to seldom ask about their rights or health conditions. Nowadays, they generally request more transparency and the right to know. We understand and respect such request on the one hand while promoting and encouraging a patient-based culture on the other. Under the principle of patient-based culture, a medical practitioner should have the health condition, method of treatment to be adopted, its effectiveness and risks explained in detail when giving treatment to a patient. Since the overall level of education is higher than a few decades ago, the patient can be able to understand the explanation and exercise the right to know, including the right to decide whether or not to accept the medical practitioner's advice and, therefore, be responsible for his own decision. In the course of medical treatment, the patient can maintain communication with the healthcare workers to learn more about his condition as well as the process of treatment in order to minimize unnecessary misunderstanding. If the patient is still not

satisfied, he can lodge complaints through a number of channels.

Besides actually putting great emphasis on the quality of medical service and the safety of patients, the Government has also endeavoured to establish a mechanism to effectively handle medical incidents and complaints as an important part of delivering quality medical services. We think that a fair, impartial, effective and efficient complaints handling mechanism should, first and foremost, aim at ensuring professionalism and professional ethics of healthcare workers. Secondly, the mechanism should focus on protecting and upholding patients' interests. Thirdly, it should enhance the bilateral trust between patients and healthcare workers. These principles must be applicable to Western medical practitioners, Chinese medicine practitioners, dentists, nurses and other allied health professionals. On this premise, the various existing institutions have played different roles and functions in the process of handling medical incidents or complaints.

Since establishment, the Hospital Authority (HA) has maintained a two-tier mechanism with checks built in to handle complaints. Currently, there are Patient Relations Officers in each hospital under the HA, particularly responsible for receiving feedback and handling complaints from patients and their relatives about the services of the hospital. In case of any medical incident at any HA hospital, under the existing reporting mechanism, hospital clusters will make immediate reports of medical incident to the relevant hospital, the cluster management and HA Head Office through the HA's internal Advanced Incident Report System.

As for private hospitals, they are required under the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes to set up a complaints handling mechanism, which includes receiving, investigating and resolving complaints. All private hospitals are also required to follow the reporting system on sentinel events formulated by the Department of Health and report any sentinel events within 24 hours upon occurrence of the event.

In addition, professional medical regulatory bodies such as the MCHK is responsible for handling cases concerning professional misconduct or malpractice. The MCHK and its Preliminary Investigation Committee will follow the procedures laid down in the Medical Registration Ordinance and the Medical Practitioners (Registration and Disciplinary Procedure) Regulation in

handling complaints received against registered medical practitioners, conducting investigations into allegations of professional misconduct and taking disciplinary actions. If the MCHK has decided that a medical practitioner is guilty of professional misconduct, it can impose punishment by issuing him a warning letter or even revoke his professional registration.

Besides the medical system, we also have the Office of The Ombudsman responsible for investigating the complaints about public services including medical service, with the focus placed on addressing issues of maladministration in the public sector. The Coroner's Court will inquire into any incident that involves death. The patient or his family members can also sue for damages against the relevant medical institution or personnel via civil proceedings and the Judiciary will decide whether the claimant has suffered any loss in order to release judgment on the damages. Although the existing complaints handling mechanism has room for further improvement, these organizations have, however, properly performed their respective functions in the whole process of follow-up on medical incident and its ensuing complaint. These organizations have complemented one another.

The medical profession is different from any other profession. Risks, to a certain extent, are inevitable during the course of treatment. The kind of risk we are talking about is a matter of life and death. Therefore, training in the medical profession is even more stringent than in any other profession. In addition to five years of harsh training at the Faculty of Medicine, a medical student has to undergo one year of clinical practice before becoming a formal medical practitioner. It may be a much longer and harder way to go if he wants to become a specialist. A medical practitioner is required to pass the Hong Kong Academy of Medicine examination before acquiring the status of specialist. Generally speaking, it takes six to eight years.

In order to equip a medical practitioner well to handle any future potential risks he may have to face, it is vitally important to provide him with sufficient opportunities to treat different kinds of patients in the training process. The HA has been playing the role of training medical practitioners so that they can continuously enhance their medical skills in an environment of sufficient resources and support facilities. But what is more important is that medical practitioners can hardly bring their potential into full play in an environment where there is no mutual trust or community support. Therefore, when

considering whether a new mechanism of restraint should be established, we should be careful and avoid ruining the mutual trust among medical practitioners, patients and society. We absolutely do not wish to see medical practitioners refrain from making any innovative attempts or refuse to provide patients with the most suitable treatment simply because of the risks involved. We do not wish to see them evade the same for the purpose of minimizing the chances of being complained. If the medical practitioner is worried and fails to establish mutual trust with his patients, this will imperceptibly hinder medical development to the detriment of patients and society as a whole.

Deputy President, as I said at the beginning, the subject of discussion today is worthy of our deep thought. I will give a further response in my second speech later on after listening to more Honourable Members' views.

Thank you, Deputy President.

MS CYD HO (in Cantonese): Deputy President, the Secretary has made some very earnest remarks earlier on, explaining the lofty ideals, duties and code of practice of the profession of medical practitioners. But in real life, we have seen that some doctors are unworthy of the trust that the public has put in their profession. Some time ago, the Secretary already got himself badly battered when he proposed to recruit 10 overseas doctors to alleviate the problem of tight manpower in the public-sector healthcare system. I believe the Secretary is indeed like drinking water on a cold day as only he himself knows whether it is cold or warm, and only he himself knows how to get along with the profession.

Just now, the Secretary also said that professional autonomy is not unlimited, and I see what he means. It is also for this reason that the Secretary introduced measures to require hospitals to take the initiative to report medical incidents which will then be made public by the authorities after receipt of such reports by the Secretary. However, while this mechanism has been implemented for a few years, apart from creating a deterrent effect on hospitals, the difficulties encountered by patients and their families in the course of lodging complaints about medical incidents have not been reduced. As a matter of fact, the Harvard Report in 1999 already pointed out the need to establish an independent ombudsman office to handle medical complaints. But today, while more than a decade has passed, this office has not yet been established. The main obstacle is

certainly the Government's reluctance to establish such an office. Secondly, there is the barrier of "professional autonomy" as there is opposition from many members of the medical profession.

In this connection, I wish to first talk about the merits of an independent ombudsman office to the general public. Firstly, in the event of a medical incident, it may not be the case that only one professional sector is involved, and it may not be the case that only doctors, pharmacists, anesthetists or nurses are involved. But the existing complaint mechanism is profession-based, which means that if healthcare personnel in various professions are involved in an incident, the complainant will have to lodge a complaint with several different professional bodies. Even under the internal mechanism of the Hospital Authority (HA), the HA will have to send its staff to collect all the information and then approach various professional bodies to gain an understanding of the incident before collating the sequence of events in the incident. If we can put in place a one-stop mechanism which is case-based, it will be greatly helpful to the general public, patients and their families. If governance or health services are truly people-oriented, it is imperative for us to establish an independent ombudsman office to handle medical complaints.

Moreover, an independent complaint mechanism will have credibility, and the public will no longer hold queries about whether doctors are protecting the interests of doctors. In the meantime, this mechanism can provide professional assistance to the public, enabling the public to obtain professional opinions easily, in order to countervail the professional opinions given by the other party. Furthermore, this mechanism can provide more humanized communication. In handling a complaint, the staff of the ombudsman office do not play the role of defending or protecting themselves and so, they can put themselves in the complainants' shoes and appreciate their feelings. Apart from providing professional assistance, they can also help complainants manage their emotions, so that they will not develop even more unnecessary negative emotions. In fact, the establishment of an independent complaint mechanism will be beneficial to the authorities, the subjects being complained and the complainants.

Given that an incident may involve many different professions, it is all the more necessary to provide one-stop services to help the public in lodging complaints. Mr Paul CHAN mentioned just now the incident of a doctor talking on a mobile phone that occurred 10 years ago. That is indeed a typical example of doctors shielding doctors. The Legislative Council invited five or six doctors

to attend a hearing of the panel at that time. But among all the doctors who attended the hearing, with the exception of Prof CHUNG Sheung-chee who was willing to directly, honestly and fairly make criticisms accusing that doctor of professional misconduct for talking on his mobile phone about buying and selling second-hand cars at that time — only Dr CHUNG Sheung-chee made such comments — the rest of them were merely beating about the bush, not daring to make criticisms directly. Therefore, there is indeed the case of doctors shielding doctors in reality.

After that incident, a number of private hospitals have been developed in Hong Kong and the authorities have also promoted the industrialization of medical and healthcare services. From a more practical point of view, doctors are not only a profession needed by the people. Actually, it is also an interest group. As family doctors and specialist doctors refer patients to each other, how can we make doctors tell their patients impartially that a certain doctor has committed medical misconduct before or caused a medical incident because of inadequate professional knowledge? How possibly would these doctors be willing to say anything like that? Such being the case, unless an independent ombudsman office is established This office can even invite participation by medical experts from overseas. If we only rely on the evidence given by local medical personnel, it is indeed very difficult to handle the complaints from patients.

Besides, the Secretary mentioned some overseas experience in his reply in 2009, pointing out that the establishment of an independent complaint mechanism may not be the only solution. Here, I would like to cite the experience of some foreign countries. In Australia, they have a health services ombudsman who is independent of the Government; in the United Kingdom, legislation was enacted 18 years ago to create the post of Health Service Ombudsman for handling complaints against public and private health services, and the Ombudsman is responsible to the Parliamentary Ombudsman. Here, I hope that the authorities will, with the objectives of serving and helping the people, practically study what kind of an ombudsman office should be established, so that assistance can be provided to patients and their families who are affected for a lifetime due to medical incidents in Hong Kong.

Thank you, Deputy President.

MR ALBERT HO (in Cantonese): A spate of medical incidents has occurred in

Tuen Mun Hospital recently. First, there was the death of a teenager named CHEUNG Yui-ting after undergoing a cervical spine operation and then, there was the unfortunate incident of an infant having to undergo an amputation of his leg as a result of an injection of nutrition solution by a paediatrician. So long as no improvement is made to the situation of the exodus of experienced specialist doctors and manpower shortage in public hospitals, I am gravely worried that medical incidents will never cease to happen. The patients' families are deeply grieved and discontented and have taken actions to make public the incidents not only because of these incidents *per se*, but also the many problems of the hospitals in terms of communication and explanation in handling medical incidents. In the case of amputation of the infant's leg, the hospital considered that it is not a sentinel event, thus prompting the family to make public the incident through the media. In the case of teenager CHEUNG Yui-ting, an overseas expert was appointed by the Hospital Authority (HA) to investigate the incident. The report stated that an early extubation was performed after the surgery but the surgery was still up to the international standard, and the family certainly felt aggrieved on hearing this. If a credible, fair and impartial mechanism is put in place to handle health service complaints, I believe at least the patients' families do not have to turn to the media and take actions to expose their cases so quickly.

The question of establishing an Office of the Health Service Ombudsman has actually been discussed in the Legislative Council for more than a decade. In 1999, Prof William HSIAO, a Harvard consultant commissioned by the Hong Kong Government, pointed out that the healthcare system in Hong Kong was flawed in various aspects and recommended the establishment of an independent ombudsman office to handle medical complaints in Hong Kong. At that time, with the exception of doctors who considered the proposal not feasible, the consensus of the community was basically supportive of it. Subsequently, this Council held a number of motion debates in 2001, 2006 and 2009 respectively, clearly expressing a consensus on the establishment of an Office of the Health Service Ombudsman, but the Government has remained unwilling to do it.

The Government and the medical profession are opposed to the establishment of an Office of the Health Service Ombudsman mainly because of two reasons: First, the HA and private hospitals already have in place a complaint mechanism. Besides, the Medical Council of Hong Kong (MCHK) also has a professional mechanism for handling complaints, while the Court can certainly

serve as an effective and authoritative arbitrator. Therefore, they consider it superfluous to establish any other organization in addition to the existing ones. Second, the establishment of an Office of the Health Service Ombudsman will undermine the professional autonomy, and the Secretary has also mentioned this point earlier on. However, I think both points cannot hold water.

At present, that medical incidents have to be handled through the MCHK and legal proceedings indeed causes a lot of problems to patients. First, the complaint mechanism itself is complicated. The mechanism for handling medical complaints involves many parties. Doctors and nurses are regulated by different professional bodies, and when an incident involves a mistake made by a hospital, a complaint has to be lodged with such government departments as the Department of Health. From this we can see that the channels are very much scattered, and more often than not, the patients or families cannot even figure out where they should go to for lodging a complaint.

Moreover, the judgment made by the MCHK and the HA's Public Complaints Committee (PCC) is confined to investigation of complaints and sanctions against doctors. Patients who wish to seek reasonable compensation must file a case in court separately. But as we all know, members of the public lack information and resources, and it is very difficult for them to confront the financially-strong doctors or the HA in court. Furthermore, in the many procedures involved in the MCHK, PCC, Legal Aid Department, and so on, the patients have to spend an enormous amount of efforts and resources and their complaints are often subject to repeated delays. All this has caused even greater nuisance to patients and their families who already met with misfortune.

Third, patients or families affected by incidents of medical blunders who wish to lodge a complaint with the MCHK are often required to seek an independent professional opinion, but this is precisely a difficulty to them. As we all know, a great majority of famous doctors in Hong Kong are acquaintances of each other and many of them are even working in the HA. Such being the case, when the subject of the complaint is a doctor or any hospital under the HA, it will involve the doctors' mutual that is, the expert whose opinion is sought may have a close relationship with the subject of the complaint. Past experiences have shown that many experts are unwilling to come forth to point an accusing finger at their fellow practitioners in the profession and at most, they will only say in private that they think that there might be problems. But they

are just unwilling to say this openly. This is what we mean by doctors shielding doctors. In view of this, if the Government finds it impossible to resolve these problems of the existing mechanism, I believe many problems and the grievances of the complainants will never be addressed. Therefore, we consider that the way out lies in the Government really heeding our views and establishing an Office of the Health Service Ombudsman.

In respect of professional autonomy and insofar as sanctions against the professionals is concerned, upon the completion of an investigation by the independent Office of the Health Service Ombudsman, I believe the case should be handed to the relevant professional body for it to make its own judgment on whether medical misconduct is involved and whether there is a need to impose penalty. Therefore, I believe this will not affect the professional autonomy stressed by the Secretary, and it will not be *(The buzzer sounded)*

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR ALBERT HO (in Cantonese): affected by the establishment of an Office of the Health Service Ombudsman.

MR CHEUNG MAN-KWONG (in Cantonese): Deputy President, my discussion today will focus on the mechanism for handling medical incidents in private hospitals.

Whenever the medical complaint mechanism is discussed, the Government will invariably say that there is already sound regulation, as the Department of Health (DH) is responsible for regulating private hospitals, whereas the Medical Council of Hong Kong (MCHK) regulates Western medical practitioners. The MCHK handles complaints against Western medical practitioners, including complaints about professional misconduct, in accordance with statutory procedures.

However, the MCHK is primarily not a suitable mechanism. The duty of the MCHK, being the regulator of the profession, is to judge from the angle of the profession whether or not the doctor concerned is unethical or has brought the

profession into disrepute. For this reason, many complaints have been dismissed, and its powers are also subject to great restrictions. For instance, complaints about patients suffering damages due to problems in communication do not fall within the ambit of the MCHK. In 2009, the Preliminary Investigation Committee of the MCHK dismissed 45 cases on the ground that doctors' attitude and doctor-patient communication were involved.

Besides, the MCHK has all along been criticized of being biased in favour of doctors. Of its 28 members, only four are lay members, and of the 24 members from the doctors' profession, 14 are elected from among doctors or by doctors' organizations, which carries a strong overtone of protectionism. The Legislative Council held a debate on the establishment of an Office of the Health Service Ombudsman in 2009. Secretary Dr York CHOW said at the time that the MCHK had proposed in 2001 to increase the number of lay members, but no progress has been made so far. In fact, the MCHK also proposed in 2001 to carry out a reform which included increasing the number of lay members of its Preliminary Investigation Committee from one to three, but this has also turned out to be a "dishonoured cheque" as nothing has been achieved so far.

According to the Annual Report of the MCHK, 348 complaints about "disregard of professional responsibility to patients" were received in 2009, and after their handling by the Preliminary Investigation Committee, the caseload was reduced to 60 only, and a mere eight complaints were substantiated after disciplinary inquiries were held. This has reinforced the negative image of the MCHK among members of the public who have misgivings about whether the MCHK can handle medical complaints fairly.

In respect of the regulation of private hospitals, the DH is a "toothless tiger". Under the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes, the DH requires private hospitals to inform the DH within 24 hours after the occurrence of a medical incident, set up a mechanism for handling complaints and provide a complaint digest to the DH on a monthly basis. But last month, a visiting obstetrician-gynaecologist in Baptist Hospital dropped a newborn baby on the floor after delivery, causing the baby to suffer a cerebral hemorrhage. The hospital management considered that the incident was not "sentinel" and did not report it. As the DH's requirements that private hospitals should report medical incidents or set up a complaint handling mechanism are only administrative measures, private hospitals are not subject to any legal

liabilities for not reporting such incidents. This shows that the DH's regulation of the complaint mechanism in private hospitals is virtually useless.

When patients have fallen victims to medical incidents in private hospitals, a difficulty faced by them is that they must ascertain from whom they should pursue responsibilities. As it is often the case that the operation is performed by a visiting doctor who is not an employee of the hospital, it is absolutely not easy for the patient to find out about the course of events to ascertain who should be held responsible.

Recently, the Coroner's Court has conducted a hearing on a medical incident in which a pregnant Mainland woman died of massive blood loss after giving birth by cesarean section in Baptist Hospital. The Coroner pointed out that there was misunderstanding between the doctor and the nurse in obtaining the blood packs, which caused a delay in blood transfusion and resulted in the death. Citing the medical reports of a number of expert witnesses, the Coroner raised many questions regarding the medical procedures. However, the duty of the Coroner's Court is to inquire into and make a determination on the cause of the death, not to pursue responsibilities in respect of the incident. In order to pursue responsibilities, the family has to lodge a complaint with the MCHK or resort to legal proceedings. But should the family lodge a complaint with the DH against the private hospital, or with the MCHK against the doctor, or with the Nursing Council of Hong Kong against the nurse? If an investigation into a case is to be carried out by several organizations separately, is it possible to find out the truth? Is it possible to identify who should be held responsible?

With the establishment of an Office of the Health Service Ombudsman to handle medical complaints under one single roof, these problems can be resolved more easily.

The Food and Health Bureau has a number of plans to promote the development of the private healthcare sector. It even plans to provide four sites for the development of private hospitals, with a view to taking forward the industrialization of healthcare services. Meanwhile, the authorities also plan to seek funding approval from the Legislative Council for setting up a health protection scheme office for the implementation of the voluntary Health Protection Scheme, in order to encourage the public to take out medical insurance and use private healthcare services. However, in order to promote the

development of private hospitals, the first step should be to enhance the regulation of private hospitals and establish an Office of the Health Service Ombudsman, so that private hospitals can no longer remain in a position of almost under no control at all. Otherwise, in the current circumstances where private hospitals are not regulated effectively and patients involved in medical incidents are not treated fairly, if the Government wants to further promote the development of private hospitals, that would indeed be a most irresponsible course of action.

Deputy President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, I very much support the establishment of an independent statutory Office of the Health Service Ombudsman. Not only do I support this proposal, I all the more hope that it can be established as soon as possible because the early establishment of this Office can compel the healthcare sector to raise its vigilance and hence reduce the incidence of medical blunders, which will provide further protection to the safety of patients. For this reason, I very much hope that the Secretary can leave aside the narrow professional interest of the sector and focus on the safety of the general public.

Deputy President, why do I particularly propose to expedite the establishment of this ombudsman office? The reason is that I have recently handled an unfortunate case — the person involved in this case does not wish to make known his case to the news media and so, the news media does not know this case; nor do members of the public know it — What happened to this patient? As his mother used to have rectal cancer, he was worried that he might suffer rectal cancer. So, when he found anomalies in his faecal conditions, he immediately consulted the doctor and asked whether or not he could have an endoscopy, but the public hospital said no, because he could have it only in very special circumstances, and he was told to keep to the follow-up sessions. After attending follow-up sessions for a period of time, he found anomalies with his faeces again as he found signs of bleeding, and so on. The doctor, after examining him, told him that he only had haemorrhoids and gave him medicine for treating haemorrhoids. So, following the doctor's instruction, he took the medicine but a fortnight later his conditions worsened and he went to see the doctor again. He went to the Accident and Emergency Department where he

had an endoscopy. The result was that he had a tumour of four centimetres developed in him and worse still, the tumour had spread to other parts of his body, meaning that he already reached stage four, which is terminal.

Deputy President, think about this: A fortnight ago the doctor said that he only had haemorrhoids but a fortnight later it was found to be terminal liver cancer. How possibly could his conditions deteriorate so quickly? I would like to ask the representative of the medical profession whether this is possible. This is just impossible, but this is exactly what happened. He said that he still wishes to receive treatment in the hospital and so, he does not wish to make known his case, hoping that the doctor can take good care of him and that he can recover one day. But in fact, while he is still alive, his conditions are not satisfactory. He had thought of seeking assistance from the Legal Aid Department but in vain because he had met many barriers in the process.

In fact, similar cases have happened more than once. As Members may recall, in 1995 or 1996, there had been five cases of babies falling into a vegetable state in Princess Margaret Hospital in three years successively. At that time, the hospital management denied any problem in the course of delivery but after I had made unrelenting efforts to pursue these cases, the Government was eventually forced to set up a three-member task force, and it was found that there were many problems with the medical procedures. It was even found that the Consultant in charge was not stationed in the hospital at the time and that the hospital had to page him, bidding him to come back. The results of the investigation revealed these situations. The three-member group had, therefore, proposed improvement measures and of course, I do not know if any improvement has been made to the situation. However, the life safety of patients does actually rely heavily on the entire healthcare system. If no action is taken to address the problem squarely, I am worried that these situations will only happen from time to time.

In fact, from what I have seen in many medical incidents, it is often the case that the healthcare workers did not intend to be lazy and neglectful, and it was only due to various circumstances that mistakes were made. What we hope now is that there will be no more blunders. I hope that healthcare workers will be more vigilant and accord priority to the interest of patients by looking into how they should take care of the patients to ensure that patients can receive treatment safely. Because we do not wish to see patients die in the course of treatment by

healthcare personnel, and we hope that the patients can be cured by them. But regrettably, medical incidents have often resulted in tragedies.

Therefore, I think if we do not address the problem squarely, especially if no objective assessment mechanism is put in place, it would be very difficult to accomplish this task. Because judging from the many cases with which I have come across, in order to identify a An example is legal proceedings. It is often necessary to initiate legal proceedings, or else the healthcare sector will simply take no notice of the complaints. But what will happen in initiating legal proceedings? That is actually a very bad experience because local medical workers, when asked to provide their medical opinions in writing, often refuse to do so on various excuses. They are just unwilling to do so. Why? The reason is that as we all know, these practitioners in the medical profession mostly graduated from the same institution, and they are worried that they could become the accused one day. They are worried about this and so, they dare not make accusations against other people; nor do they dare to comment too badly on other people. As a result, the complainant would encounter great difficulties in initiating legal proceedings. This has indirectly forced the complainants to, as some colleagues said earlier, approach overseas experts to fill out the medical report before legal proceedings can start. But Deputy President, regrettably, and as you may also understand, the costs for engaging an overseas expert to provide an assessment are not affordable to members of the general public. This also explains why the medical sector often treats these problems very lightly; nor does it attach great importance to these problems, thus resulting in medical blunders day after day.

Therefore, in my view, if this ombudsman office can be established now, the sector will raise its vigilance. We do not mean to make some people take the blame. This is not my intention. Rather, I hope that after the establishment of this ombudsman office, the sector can be more alert and careful in doing anything, rather than acting perfunctorily, or it can even press the entire healthcare system to conduct a major overhaul. For we understand that many healthcare workers are being complained or involved in medical blunders only because of the manpower shortage and excessively long working hours. The establishment of the ombudsman office can objectively force them to face the problem. Not only should their personal integrity be upgraded, the entire system will also need to be reformed, and this is the most important point. In this connection, I very much hope that this ombudsman office can be established

early, and I hope that the Secretary will cease to be so stubborn (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR LEUNG YIU-CHUNG (in Cantonese): to the neglect of the public interest.

MR WONG KWOK-HING (in Cantonese): Deputy President, I support the original motion and all the amendments today. Before I start my discussion on the establishment of the Office of the Health Service Ombudsman, I wish to express profound regret at the successive occurrence of medical incidents over and over again during the greater part of the year. After the occurrence of each incident, the hospital would call it an isolated incident. In fact, when six such incidents have occurred in a row, are they still just isolated incidents? In this connection, I wish to take this opportunity to call on the Secretary to expeditiously conduct a comprehensive review of the spate of medical incidents that occurred in Tuen Mun Hospital in the New Territories West Cluster, in order to expeditiously identify the causes of these incidents. Is the problem due to the lack of resources for deployment and an acute shortage of healthcare personnel in Tuen Mun Hospital? Are these incidents proof of a decline in the standard of medical care? Is it because the hospital management has problems in quality management or is it because there are flaws in the medical technologies? Is it that the healthcare workers there have been greatly affected, resulting in a low morale among them? With regard to these problems, I think the Secretary is duty-bound to expeditiously launch a review and give an explanation to the Legislative Council.

Next, Deputy President, I wish to say that the original motion and the amendments today have all urged the Government not to drag its feet but to expeditiously establish an independent statutory Office of the Health Service Ombudsman. The establishment of this mechanism can provide healthcare workers, patients and their families with an equitable platform for the handling of complaints. This, I think, is fair and correct.

I noticed that the Secretary said in his first response earlier that the

complaints are already handled by many different departments separately, and he particularly mentioned that The Office of The Ombudsman can also handle these complaints. He seemed to be saying that the existing system can already solve the problem and respond to the concern about the protection of patients' interests. In fact, what I precisely wish to point out is that the various mechanisms and systems currently in place still cannot respond to the proposals made in the original motion and the amendments today.

Dr PAN Pey-chyou of the Hong Kong Federation of Trade Unions made a very good speech earlier on, analysing in great detail the reasons why there is a need to establish an independent statutory Office of the Health Service Ombudsman. As a doctor who has 30 years of practice under his belt, he considers the establishment of this framework necessary. I have paid great attention to a key point which is fundamental to his view that it is necessary to establish this Office and that is, it provides a platform for patients and their families to have more opportunities of negotiation, communication and conducting conciliation with healthcare workers on an equal footing, so that they can have an equal opportunity or status in resolving disputes and in conducting legal proceedings. This has precisely nailed the crux of the problem — Why do patients or families of the victims often have so many complaints when medical incidents have happened to them? In fact, the reason is just that when handling the problems, the existing mechanism, firstly, does not have adequate or a high degree of transparency and sometimes, it even has no transparency at all; and secondly, it is far from independent, which explains why there are criticisms of "doctors shielding doctors". Moreover, there are conflicts of interest and roles. Furthermore, there is the problem of the attitude of the hospital or the personnel concerned, and patients or their families sometimes cannot even obtain any information. They are ignored when they try to seek information, not to mention study and discuss the information or exchange views in greater depth. These circumstances will lead to more misunderstandings, and prejudices will hence develop gradually. Therefore, the provision of a sound platform will enable various parties to enjoy an equal status, which can foster communication and trust among them.

Therefore, regarding the establishment of this Office, I think the authorities do not have to think too negatively about it; nor do they have to fear that it will certainly bring adverse consequences. The establishment of this Office can, in

fact, further inspire mutual trust (*The buzzer sounded*)

DEPUTY PRESIDENT (in Cantonese): Your speaking time is up.

MR WONG KWOK-HING (in Cantonese): between doctors and patients.

MR RONNY TONG (in Cantonese): Deputy President, if you ask me what the difference is between suing a lawyer and suing a doctor, I can tell you that if you are suing a lawyer, many lawyers will compete to be your representative in the proceedings. But if you are suing a doctor, even though you have tried very hard, you still may not be able to find a doctor who is willing to give evidence to help you initiate proceedings.

Besides, if a lawyer made a mistake in his professional capacity, it normally does not cost a human life as the victim may only suffer financial losses at the most or may be sentenced to imprisonment in more serious cases. But if a doctor made a mistake, the patient might die. From the legal viewpoint, if a victim or patient unfortunately died, the family can seek compensation under the arrangement in law and the amount generally does not exceed \$2 million. In other words, in cases where the patient died, the compensation that the family can seek is far lower than that in cases where the patient is alive. After the occurrence of a medical incident, if the family seeks compensation from the hospital or doctor or merely demands an open apology from them, can their wish be granted? Deputy President, the answer is that it is extremely difficult.

Recently, I feel sorry that I have to represent a family in negotiating with Tuen Mun Hospital over a case in which a hardworking 13-year-old student who was well-behaved and excelled academically died during an operation. The hospital said that an internal inquiry would be conducted. But a month or so later, the report submitted by the hospital outrageously did not say who should be held responsible and what responsibilities they should take. Then, the hospital said that an expert would be engaged to give an opinion on whether or not any mistake was committed. Subsequently, the expert wrote a long chain of terms that we do not even know how to pronounce. But there is one most important line which said, to this effect, "I would not do such a thing had it been me who

was handling it. But I cannot say that what these doctors did was wrong." So, were these doctors right or wrong in what they did? Much has been said but no conclusion has been drawn. The gravity of "doctors shielding doctors" is, therefore, conceivable.

If you wish to ask a person to give evidence to prove that a healthcare worker, medical doctor or hospital in Hong Kong has committed a mistake and hence has to be held responsible for an incident, honestly speaking, your chance of success is almost zero, unless you are very rich and can afford the cost of engaging experts from elsewhere to give evidence in Hong Kong. Even if you have the means to afford the cost of hiring experts to come to Hong Kong and their evidence can prove inadequacies on the part of the hospital in treating the patient, the compensation that the hospital will be required to pay may still fall short of the cost of hiring experts. In other words, there will be more losses than gains in taking a doctor to court.

What is more, in the course of proving that a mistake was committed by a hospital, even if there are doctors who are willing to help, it is often the case that there will still be many difficulties. It is because from the legal viewpoint, and under the basic principle adopted by the Court, doctors do not have to take responsibilities for a misjudgment made at a time when he needs to make a decision instantly. The doctor will be held responsible only when the patient or family can prove negligence on his part and his failure to perform up to the professional standard. Only in such a case will a patient stand any chance of suing a doctor successfully. All these show that it is almost impossible for the general families to pursue responsibilities from hospitals and seek reasonable compensation from them through normal legal proceedings.

Under our healthcare system, is it that doctors can choose as they wish whether or not to take responsibilities for their mistakes because it is difficult for patients or families to sue doctors successfully? Is this the way that our system is supposed to be? If a system does not have a self-correction mechanism, how can this system maintain its standard? How can it improve the quality of services?

Deputy President, I think "people investigating their own peers" can never be convincing to the public. This, coupled with the mentality of "doctors shielding doctors", would make it even more impossible to meet the community's

demand that the healthcare sector should take up social responsibilities. When a mistake is committed, they should admit it and apologize for it and even make reasonable compensations. When our basic system cannot meet this demand, we would have to study whether a more independent and credible mechanism should be added to remedy the blunders in the healthcare sector. In view of the existing system, I think this is absolutely what needs to be done.

Therefore, I think the motion proposed by Mr Andrew CHENG and the amendments proposed by various colleagues today must be put into practice. However, like other major issues, this issue has been discussed in this Council for years, just that the SAR Government has consistently refused to assume the responsibilities required of it by addressing squarely the problem of how the healthcare sector should face the public when mistakes are committed. I, therefore, hope that the Secretary can take on board the views of this Council today.

Thank you, Deputy President.

MR ALBERT CHAN (in Cantonese): Deputy President, I believe every Member returned by direct geographical constituency elections must have received many complaints about medical blunders before. I think many Members, in the face of such complaints, have all found it difficult to pursue justice for the public. As many Members have said, the manner in which medical blunders are handled in the entire healthcare system is tantamount to black box operation. It often takes millions of dollars to engage lawyers and professional doctors to provide professional support.

There are several cases that I have been handling for years. One of them involves a hospital where the father of the complainant died in the course of medical treatment due to a medical blunder. The complainant has made great efforts in collecting a lot of information and conducting researches. It was eventually found that some medical records had been unlawfully replaced and altered. Although the case was finally reported to the police, nothing has been heard of it so far. Anyone who reads those documents from the angle of a third party will find that several pages have obviously been replaced and yet, no justice has been done in the end.

In another case, the teenage daughter of the complainant has fallen victim

to a medical blunder and lapsed into a vegetative state. For many years, the complainant has to go to the hospital every day to massage and clean his daughter. The legal proceedings with the Hospital Authority have continued for many years and no agreement has yet been reached on the amount of compensation. The legal aid granted to the complainant has come to the final stage and somehow, a warning has been issued, telling the complainant that the provision of legal aid will be revoked if the complainant still does not accept the compensation amount.

Going through all such pain and experiences, the complainants must really have their tears run dry. These problems in the healthcare sector have clearly revealed the prevalence of health service hegemony. We have criticized many types of hegemony, such as financial hegemony and real estate hegemony. Even financial hegemony is subject to the regulation of the Hong Kong Monetary Authority and the Securities and Futures Commission, and in respect of transactions in the real estate sector, the Government has put in place the Estate Agents Ordinance and proposed recently the enactment of legislation to regulate the sale of uncompleted residential properties. The authorities have imposed a series of control, even though these may not be very reasonable or satisfactory mechanisms, but compared to the control on health service hegemony, the hegemony in health service is the biggest of all types of hegemony and the most hegemonic of all.

Let us now turn back to the regulation of the medical profession, so to speak. Firstly, as Members said earlier, the so-called professional rules of the medical profession are primarily made by a small coterie. They control the entire market and set fees and charges as they like. People say that property developers have sold "shrunk flats" at awesome prices, but medical fees and charges can also be astonishing. Child delivery at the Hong Kong Sanatorium and Hospital might only cost several tens of thousand dollars in the past and it now costs \$200,000 or \$300,000. They are given a free hand to set the level of fees and charges. When it comes to the management of medical fees and charges, it can be said that they are subject to no control at all.

Regarding the problem of medical blunders, as many Members have said and as Mr Ronny TONG also mentioned earlier, it is extremely difficult to find a specialist doctor in Hong Kong who is willing to give evidence in court to prove that a certain doctor has committed a medical blunder. Therefore, in order to

hire an expert to give evidence in a case of medical blunder, it is often necessary to hire a doctor from Commonwealth countries or other places to be an expert witness.

So, the situation of "doctors protecting doctors" or "doctors shielding doctors" is like the way how a fraternity association operates. Mutual flattery and cradling, as well as transfer of interests abound. Members of the ordinary public can only be fleeced and exploited without mercy.

Therefore, with regard to this proposal put forward by Mr Andrew CHENG, many Members have expressed support over the years because it can be seen clearly that the existing system is not a balanced system. Hegemony in health service has plunged the people into pain and sufferings, and when their family members have health problems and even died as a result of medical blunders or improper medical treatment, they often have nowhere to turn to for help. Therefore, so long as this system is not thoroughly revamped, we will only see health service hegemony continuously does whatever it likes and continuously bullies the people. For this reason, with regard to this motion proposed by Mr Andrew CHENG, I hope that the many pro-government Members will not change their supportive attitude adopted before, so that this motion can be passed today.

Deputy President, the problem with Tuen Mun Hospital in New Territories West actually shows both inherent and acquired deficiencies. Why do I say so? When I discussed this problem some years ago with a senior health service leader responsible for developing Tuen Mun Hospital, he made it clear at the outset that Tuen Mun Hospital would certainly have problems because first, the hospital is too big, involving too many hospital beds and healthcare workers, and it is indeed difficult for one hospital chief or chief executive to manage Tuen Mun Hospital effectively.

Second, there is not adequate support. Of the many Cluster hospitals, if we base the calculation on the number of patients, Tuen Mun Hospital is provided with the lowest percentage of financial support. That Tuen Mun Hospital is provided with the least funding is proof that it is given only weak support and is therefore plagued by many problems in other aspects.

Third, Tuen Mun Hospital has to take care of too large a population.

Compared with hospitals in other districts, Tuen Mun Hospital covers a relatively large share of the total population in New Territories West. Owing to the inherent and acquired deficiencies, coupled with the lack of regulation and accountability under health service hegemony, people in the northwest districts have to face particularly more sufferings and particularly serious problems.

Therefore, in order to mitigate the problem, apart from rectifying the inhuman and unreasonable phenomena brought by health service hegemony, the Government is also duty-bound to increase the provision of financial support to Tuen Mun Hospital and to the New Territories West Cluster for them to carry out an internal administrative reform, in order to do justice to the public.

MR VINCENT FANG (in Cantonese): Deputy President, I do not know if it is fortunate or unfortunate for this motion to be proposed by Mr Andrew CHENG today. It is fortunate in the sense that as another serious medical incident occurred only yesterday, this motion debate today can produce a stronger effect, but as the loss of human life is resulted after all, the reputation of the public health service sector as well as the reputation of Hong Kong have been adversely affected.

I am the Chairman of the Hospital Governing Committee of Kwai Chung and Princess Margaret Hospitals, and I may have a clearer picture of the actual circumstances in the public-sector health service system. There is actually no reason to oppose a motion which proposes to establish an independent statutory Office of the Health service Ombudsman. But I would like to ask colleagues who propose or support this motion a question: After the establishment of this ombudsman office, other than providing an additional channel for the affected families to lodge complaints or seek compensations, can it in any way help address the problem at root? I dare say that it cannot address the problem by reducing the incidence of medical incidents and worse still, it will cause the situation to worsen to the detriment of the standards of medical care in Hong Kong. Why?

The reasons are simple. After the family of the affected patient lodged a complaint, they will certainly request the relevant doctors, healthcare workers, the hospital and even the managing body to conduct an investigation, assume responsibilities or make compensations. In other words, a group of relevant

people and departments will be put under immense pressure. The hospital may need to set up a special unit to conduct the investigation, and resources will have to be further stretched. I do not think that this outcome will bring any good to the public.

I am not suggesting that we should do nothing but allow medical incidents to occur and that the public should not pursue responsibilities. However, we must clearly find out the reasons of medical incidents and identify ways to reduce and even avoid man-made mistakes. In fact, hospitals are also handling medical incidents in this direction, hoping to ascertain the root causes of incidents. Where exactly do these root causes lie? One of the causes lies in the shortage of doctors and healthcare workers in the public healthcare sector which has resulted in a series of adverse consequences, as the Legislative Council has discussed repeatedly.

As we all know, the staff wastage rate has been very serious in Tuen Mun Hospital in recent years, with senior doctors and healthcare workers accounting for a majority of the staff drained. While the doctors of Tuen Mun Hospital said on television yesterday that the incident should have nothing to do with manpower because the relevant vacancies were already filled in July, these posts vacated by the exodus of senior doctors were filled definitely by less experienced ones.

In this connection, although the Secretary has always said that medical school and nursing school places will be increased, it can take as long as 10 years or eight years at a minimum for these newly-trained staff to be able to cope with their job independently. I, therefore, hope that the Secretary will study jointly with the Hospital Authority or hospitals how to retain experienced doctors and healthcare workers. Otherwise, the public health service sector will forever be a training ground for the private healthcare sector, helping the private sector in training their staff entirely out of the Government's resources. This is downright a double loss to the Government.

It is said in the motion that medical incidents have occurred frequently. From the frequency of press reports on medical incidents, it appears their incidence rate is slightly higher. In the past, these incidents mostly involved the public healthcare sector but recently, even medical incidents in the private sector

have captured the media limelight more frequently. That said, when compared with other cities, the incidence rate of medical incidents in Hong Kong is still on the low side, and the rate is even lower particularly if the average number of cases in which doctors and healthcare workers provide consultation or services is factored into the comparison.

I fully appreciate that when it comes to these avoidable incidents, one such incident is too many. But if no amendment is made to the population policy in Hong Kong, I believe healthcare workers in Hong Kong can hardly have breathing space and medical incidents can hardly be reduced.

What is the relationship between health service complaints and the population policy? Members will see what I mean after this explanation by me. Take the maternity wards as an example. The fertility rate in Hong Kong has always been low, and in both public and private hospitals, the daily usage rate of the delivery rooms by pregnant women was not high at all in the past but now, each and every delivery room is utterly fully packed. While doctors can still choose to take up less cases of child delivery but nurses in the maternity wards are up to their ears in work all the time. How can they cope?

Therefore, if the population policy of Hong Kong remains unchanged and any person who was born in Hong Kong can have the permanent right of abode in Hong Kong, when they bring their parents and grandparents on both the father and mother sides to settle in Hong Kong, the SAR Government, which is already stressed out by the problem of population ageing in Hong Kong, will only find it impossible to meet the demand for health service in the future.

Secretary, although the population policy is not under your purview, it is still closely linked to the scope of responsibilities under your charge. Therefore, I think it is necessary for you to present your professional opinions on the population policy.

I so submit. Thank you, Deputy President.

MS AUDREY EU (in Cantonese): Deputy President, we support the original motion and all the amendments. We consider that the establishment of an independent statutory Office of the Health Service Ombudsman can really brook

no delay because the existing mechanism is indeed ineffective.

(THE PRESIDENT resumed the Chair)

In respect of public health service, a complaint mechanism is currently in place, and about 2 000 complaints are received annually. As regards the number of substantiated or partially substantiated complaints, in 2008, for example, the total number was 17 only; in 2009, there were only 13 substantiated or partially substantiated complaints in total; in 2010 (that is, last year), out of the 2 241 complaints received, only 10 were substantiated. We do not talk about private hospitals because they are not only different from the public health care structure and system, but they sometimes even refuse to admit and announce whether or not a sentinel incident has occurred. It is only until the case is brought to light by the media or the family that they will admit it and give explanations. Therefore, the existing system is obviously ineffective. It is necessary for us to establish an independent statutory Office of the Health Service Ombudsman. .

We very much support and agree to the reasons mentioned by a number of colleagues in their speeches earlier, and I am not going to repeat them here. But President, I think there are two major principles which warrant Members' attention. The first major principle, as the original motion and all the amendments have actually pointed out, is "without violating the principle of professional autonomy". This is a very important principle, and all the amendments have kept this line. Even in the amendment proposed by Mr Paul CHAN which calls for the inclusion of more non-professional members in the composition of the Medical Council of Hong Kong to enhance participation from lay members, the line "without violating the principle of professional autonomy" is still retained. Therefore, Members do not have objection to this principle.

However, the other principle is also vitally important, and as I listened to the speeches made by colleagues earlier, I found that this principle was not clearly expounded. For this reason, I would like to spend some time discussing it.

Many people consider it desirable for an independent ombudsman office to

be established to provide one-stop services, which means that it will handle everything from receiving complaints, conducting investigations, collecting evidence, giving independent professional advice, conducting hearings, meting out penalties and awarding compensations. To many people, this is a most expedient and convenient arrangement but in fact, this approach of providing one-stop services will, indeed, have a lot of sequels.

In many other places in the world there are mechanisms for handling medical complaints, but they will handle investigation, prosecution, hearing and compensation separately because indeed, it is, of course, undesirable for people to investigate their own peers but if the investigation, prosecution, hearing and compensation are handled by the same organization, it will breach the principle of conducting investigations in a truly fair and impartial manner and that of procedural justice. This is why the medical complaint mechanism in New South Wales, Australia, is under the charge of two organizations which have their respective duties and functions. The Medical Board is mainly responsible for monitoring the integrity of the profession and disciplinary hearings, and it can require doctors to pay a fine, whereas the Health Care Complaints Commission is responsible for conciliation and when necessary, it can initiate prosecution action in the Medical Tribunal. Both organizations have power of investigation. They are not subordinate to one another but they exercise monitoring on each other.

I would also like to talk about these practices later as Hong Kong also has a similar situation. We must make it clear that when we say that we support the original motion and the amendments, we do not mean that the one-stop services should include investigation, hearing, judgment and compensation. Instead, we should take into consideration the fact that the existing mechanisms, such as the Equal Opportunities Commission (EOC) or the Consumer Council, also provide conciliation service or receive complaints and after investigation, they will even name the parties concerned and criticize them when they see a need to do so. They will neither conduct hearings nor claim damages, but they will help the complainants initiate legal proceedings with their funds.

Take the EOC, which provides these services, as an example. If conciliation is unsuccessful, the EOC can initiate legal proceedings on behalf of the complainant for the Court to ultimately make a decision on compensation. This is most important. The Consumer Council works in the same way, too.

When a complaint is received from a consumer, it will conduct an investigation and the parties concerned will even be named and criticized. But if conciliation fails, it can make use of the Consumer Legal Action Fund to help consumers initiate legal proceedings for the Court to ultimately make a decision on compensation. This practice is also very important, or else we can also propose that the independent Ombudsman be brought in to deal with all matters relating to investigation and compensation for handling financial matters, such as the Lehman Brothers incident. But that would also lead to problems.

Therefore, when dealing with the question of compensations, we must give careful consideration to one point and that is, we are not talking about statutory compensations. Mr CHAN Hak-kan's amendment has made a very good proposal. In fact, under the Traffic Accident Victims Assistance Scheme and the Criminal and Law Enforcement Injuries Compensation Scheme, compensation is made out of statutory compensation funds. These cannot be taken as the substitute of court judgment; nor are they meant to be full compensation. But in emergencies, partial compensation can be made through these funds or The Ombudsman without prejudicing further statutory or legal claim procedures. Therefore, we support the proposal of establishing this type of ombudsman office. Thank you, President.

DR JOSEPH LEE (in Cantonese): President, I wish to make a declaration first. I am a member of the Hospital Authority (HA) Board, and I am a nurse myself. On this topic of our discussion today, I have heard many colleagues say that front-line health workers seem to have a lot of inadequacies which have resulted in many medical incidents, and there is no way for the public to lodge complaints. These comments sounded rather negative. Of course, Members may think that I, being a nurse myself and a nurse teacher, will naturally try to fend off these criticisms, and there are even such remarks as "people investigating their own peers" and "people certainly do not wish to be investigated by their own peers".

To me, however, I think this original motion and the amendments today have put across a positive message of enormous import. That is, there is indeed a need for us to establish an independent statutory body, so that when members of the public are dissatisfied with certain healthcare issues, such as the treatment method, nursing care method, the attitude of health workers and even the services and facilities in hospitals, this statutory body can receive complaints or views

from members of the public, or from patients and their families whom we refer to as users, in order to take follow-up actions and exercise its statutory powers to conduct an investigation into the relevant incident in a fair, impartial and open manner.

Some Members asked whether it is possible to provide one-stop services, such as setting up a body which can institute prosecution and also make judgment and conduct hearings, just as Ms Audrey EU has said. All these are actually just the details. Rather, what I consider most important is that there is indeed not any statutory body now to handle the matters just mentioned by me. This motion debate today seems to have focused on health professionals but in fact, the entire healthcare system is made up not just by doctors and nurses, but also comprises many allied health professionals, chiropractors, medical practitioners in private practice and doctors serving in public hospitals. The Secretary may raise the point of professional autonomy, arguing that the service quality of these professionals is already regulated by professional bodies. This is actually a different matter. The point is that we really need to set up this type of statutory body, so that the relevant parties will not be put in a position where they are confronting each other and they can have a platform where they can explore the root of the problem.

President, the problem now is that there is no standardized handling approach as different organizations only work separately in their own way. As some Members have pointed out, if a complaint is lodged against a nurse, should it be lodged with the Nursing Council of Hong Kong (Nursing Council) or with the HA or the private hospital that employs the nurse, or even with the Department of Health? I am not sure. As a result, the confrontation will be widened and this, I think, is extremely undesirable.

I also serve on the Independent Police Complaints Council (IPCC) for public service. The IPCC plays the role of a statutory body, responsible for monitoring the Complaints Against Police Office as to how the complaints lodged by the public against the police are handled. Certainly, there are criticisms that the IPCC is purely a totem of symbolity with no substantive powers. Yet, its establishment can indeed give the public sufficient confidence and knowledge, making them understand that the investigations into these cases will be fair and impartial. Likewise, the intention of this original motion and the amendments today is to call for the establishment of such a statutory body which can inspire

absolute confidence in the public and do justice to both parties. Apart from the public or patients and their families who are involved, front-line workers, when being complained or in the wake of medical incidents, do hope that an independent body with statutory powers can present the facts in a fair and impartial manner, so that everyone will know what exactly has happened.

If, after finding out the truth, the statutory body has found any inadequacy, it can refer the case to the professional body concerned. Cases involving doctors can be referred to the Medical Council of Hong Kong; those relating to nurses can be passed onto the Nursing Council; those involving allied health professionals should be referred to the Supplementary Medical Professions Council; and those relating to chiropractors should be referred to the Chiropractors Council. All in all, there are different professional bodies exclusively responsible for handling matters relating to professional regulation in their respective fields. They monitor the quality and compliance with the code of practice in their respective professions, and they can perform a complementary role. However, the problem is that no such statutory body has been established and as a result, when a number of medical incidents have successively occurred recently, the public, the media, front-line health workers and even the hospital management have become extremely confrontational.

I think the most important function of this statutory body is to enable all parties to understand the truth while at the same time doing justice to all sides. I cannot speak at length here on the detailed arrangements for this statutory body for the time being. With regard to such details as those described by other Members in their amendments concerning how this body should operate and what duties it should have, I think they should be left open for the time being. So long as we agree on the establishment of this statutory body in principle, this body will look into the matters that I have just mentioned. This is the first point.

Second, if this statutory body is credible, the results of its investigation will not only help upgrade the quality of healthcare services or the quality of front-line services, but also achieve the objective of public education. When certain medical incidents have reflected inadequacies in certain circumstances, the public will then understand that when they come across similar incidents, they will need to reveal them or lodge complaints. Moreover, the establishment of this statutory body also serves another important purpose of reducing complaints and pre-empting unnecessary misunderstandings. This is actually the most

important component of public education.

Therefore, I hope that today, this motion can be passed for careful consideration by the Government. It is indeed imperative for us to establish an independent, statutory and credible body to handle all these matters. This will enable the public and front-line health workers to take forward the development of the healthcare industry or healthcare services on the basis of greater confidence and enhanced mutual trust, so that the quality of healthcare services in Hong Kong can be maintained continuously.

Thank you, President.

MR CHAN KIN-POR (in Cantonese): President, in recent years, medical incidents have occurred frequently in Hong Kong, posing serious threats to the safety of patients in Hong Kong. This will only be detrimental but also not conducive to the Government's industrialization of healthcare services.

At present, if a patient wishes to lodge a complaint about health services, he can lodge it with the hospital or clinic where the incident occurred and besides, he can further lodge a complaint with the Public Complaints Committee of the Hospital Authority (HA) and to the Medical Council of Hong Kong (MCHK) which is the regulator of the medical profession. As regards other channels, such as The Office of The Ombudsman, organizations campaigning for the rights of patients and consumers, the media and the Judiciary, they are not the direct channels and members of the general public may end up wasting their efforts and time, as these channels may not be able to effectively deal with the disputes arising from medical incidents.

The topic of the motion today was already discussed in the first Legislative Session of this term of the Legislative Council, and the motion was passed at that time. In a wink of an eye, this term of the Legislative Council has come to its last Session. I wish to take this opportunity to discuss the need for the establishment of an Office of the Health Service Ombudsman in Hong Kong based on the latest statistics.

The MCHK is at present responsible for regulating the integrity of medical

professionals and handling allegations of professional misconduct against medical practitioners. When he discussed the motion on that last occasion, the Secretary considered intervention in the MCHK unnecessary in respect of matters relating to the handling of patients' complaints, because statistics showed that the MCHK had indeed performed its professional duties and functions and safeguarded the rights and interests of patients. But the problem is that the Medical Registration Ordinance currently in force has not provided for a definition of professional misconduct. Rather, it is determined by the MCHK in handling complaints based on the criteria adopted by members of the profession, without giving consideration to the standard acceptable to the patients, members of the public and the community in the process. Of the 28 members of the MCHK, 24 are doctors, and there are only four lay members, showing that there is the situation of people regulating their own peers. This is a far cry from the professional autonomy and self-regulatory system in any other profession.

Apart from the situation of people regulating their own peers, another problem of the MCHK is that it takes an extremely long time for the MCHK to handle a complaint. For instance, many of the verdicts made by the MCHK this year concern complaints lodged some five or six years ago. Even if the patients and their families can persist for such a long time dealing with the MCHK, they may not have the means to afford the huge cost of hiring a lawyer to contend with the lawyer defending the doctor involved in the incident. This is grossly unfavourable to patients who are at a disadvantage.

In fact, the number of complaints received by the MCHK has drastically increased over the decade since 2000, recording a more than double increase from about 227 cases in 2000 to 493 cases in 2009. But among these 493 cases, only about 20% were cases considered by the Preliminary Investigation Committee of the MCHK after decision, and a mere 40% of these 20% cases could eventually reach the stage of hearing. It means that only about 40 of 500 complaints will have a chance of hearing. It is imaginable that the number of substantiated cases was even less.

It is rare for complaints handled by the MCHK to be given a chance of hearing and found substantiated. What about the performance of the Public Complaints Committee (PCC) of the HA, which is the complaint mechanism of public hospitals? In its report published as early as in 1999, the Harvard expert panel already pointed out that most complaints and appeal cases handled by the

PCC were found to be not substantiated.

However, there has not been any improvement 11 years down the line. The PCC handled a total of 255 complaints in 2010, only five of them were substantiated. This has aroused doubts about the fairness and impartiality of the mechanism.

Although there has been much advertising about the inclusion of members of the community in the PCC which is entirely made up by non-HA members, all the members are actually appointed by the HA Board. The HA is, therefore, the service provider, the party being complained and the appointor of persons handling complaints at the same time. It is difficult for the public to know whether there is any conflict of interest and self-censorship.

Therefore, I support Mr Paul CHAN's amendment which urges the authorities to review the composition of the MCHK, and I also think that the authorities should expeditiously review the appointment system of the PCC to look into whether, for instance, the appointments can be made by the Chief Executive instead, or whether members of representative assemblies and representatives of the Consumer Council as well as sufficient patient representation can be included to enhance its independence and transparency.

While the Government has plans to industrialize healthcare services, it is still extremely necessary to put in place a simple and effective complaint mechanism for the public to ensure that the safety and rights of patients and consumers will not be compromised. At present, professional bodies and government departments have set up their own systems for investigation and for making verdicts and announcements of incidents. This has made it difficult for the public to monitor the number and details of the complaints systematically; nor can they discern the trend of medical incidents and make risk assessments for themselves before receiving services. This has indirectly enabled the health workers and institutions concerned to evade their responsibilities. Therefore, I support the establishment of an independent statutory Office of the Health Service Ombudsman.

The aspiration of the public for the establishment of an independent medical complaint mechanism has actually been discussed since a decade or so ago at meetings of the Legislative Council in 1999. I believe this motion is

going to be passed today and I hope that the authorities will seriously enforce the decision that we made today.

President, I so submit.

MR TAM YIU-CHUNG (in Cantonese): President, medical incidents have occurred frequently in recent years, and public complaints about health services have been numerous. In respect of public hospitals, the number of complaints received by the Public Complaints Committee of the Hospital Authority (HA) has increased year after year. In 2009-2010, as many as 275 complaints were received, representing an increase of 22% over the previous year, and compared with 2006-2007, the number has even increased by 72%. Most of these complaints involved health services in hospitals. For example, in 2009-2010, there were 197 complaints about health services, accounting for 72% of the total number of complaints. I believe the number will be even higher this year because for me alone, I have already received three complaints this year, but these cases have yet to be reported in newspaper. Here, I would like to talk about these cases, so that Members can understand the accusations made by the families.

In the first case, a 12-year-old girl who had been performing well in sports and whose health conditions had been good suddenly passed out at home one day and was subsequently sent to Tuen Mun Hospital. As the doctor could not find out the cause after conducting a number of examinations on the girl, the doctor suggested the girl to carry a 24-hour heart monitor. But if the girl should wait in the normal queue for the equipment required, it would be her turn to use it only in 2013. So, the doctor made arrangements for the girl to be admitted to hospital at a later time, hoping that the equipment could be made available for her use by all means. But in the end, the hospital was unable to arrange for the equipment for use by the girl and instead, the girl was discharged and later referred to a private laboratory to do the test. After a heart monitor was put on the girl at the private laboratory, on the last night of the 10-day period awaiting the results, she passed away in her sleep. With regard to this unfortunate incident, the parents of the girl have been questioning why the hospital, though knowing that the girl's passing out was abnormal, could not keep her hospitalized until they could find out the reason. Another even bigger impropriety is that in the afternoon just before the girl passed away, she attended a follow-up session in Tuen Mun

Hospital and the doctor said that there was nothing wrong with her health, but the girl told his mother that she felt dizzy in the morning of that day. During the follow-up session, the family of the girl could only wait outside the consultation room. The girl was still young and did not know what should be brought to the doctor's attention, and the doctor did not make enquiries with the girl's family either. This might have let slip of the chance to save the girl's life. Although the hospital has admitted that it was inadequate to put questions to the girl only during the last consultation, it has shifted the responsibility for the girl's death to the decision made by the Coroner. While the incident occurred more than six months ago, the girl's family still has not been given an answer that they need.

In the second case, a member of the public who sustained burn injuries was sent to the Accident and Emergency Department. After undergoing an operation, he was subsequently sent to another hospital, and the receiving hospital found that this patient who originally sustained burn injuries had lapsed into a vegetative state. It was after intervention by the receiving hospital that the first hospital admitted that an incident had occurred, as the breathing machine had been out of order during the operation and the patient had been in a state of hypoxia for three to five minutes. Finally, emergency manual oxygen pumping was administered, and this patient who was originally admitted for burn injuries hence lapsed into a vegetative state. But the hospital provided the family with two medical reports only five months later in October, while the investigation report has yet to be completed. The two medical reports have sidestepped what happened with the crucial issues being evaded, and from the beginning till the end, no explanation is given on the failure of the three doctors and many nursing staff to notice the breakdown of the breathing machine during the operation, causing cerebral anoxia in the patient who subsequently lapsed into a vegetative state. Had this not been found out by health professionals in another hospital, perhaps the family would never have found out the truth.

In the third case, a seriously-ill girl also lapsed into a vegetative state in the course of medical treatment. As she had had a radioisotope scan, the contrast agent injected into her at the time was later found to be bacillaceae-contaminated, and later, the girl died unfortunately. Was it the contaminated contrast agent that had shortened her life? Her family has not yet been given an answer so far.

We certainly understand that medical incidents occurred for various

reasons. It could be manpower shortage or lack of resources, and it could be limitations in medical technologies, but they are more probably caused by human negligence or error. Therefore, I sincerely urge health workers at various levels to sum up the experience and lesson of every medical incident and be more vigilant, for precious human lives are at stake. I all the more hope that the Secretary can address squarely the gravity of the problem and the shortage of resources, particularly in the New Territories West Cluster. As the Cluster caters to a large population, the public demand for health services has been increasing but inadequate health workers and tight resources have made the situation become increasingly serious. Moreover, the Government should expeditiously establish an independent statutory body for handling health service complaints. It should be given investigation and arbitration powers and responsible for compensation and following up the affected patients and their families, in order to protect the rights and interests of patients.

I so submit. Thank you, President.

MS MIRIAM LAU (in Cantonese): President, medical incidents just never cease to happen in Hong Kong. The latest incident involved Tuen Mun Hospital where an old man with head injuries sustained at dropping to the floor as a result of passing out was admitted last Wednesday. The hospital did not recognize the bleeding in his brain and worse still, prescribed the old man with anticoagulants. As a result, the patient died on Sunday. This has been the second fatal incident that occurred in this hospital in three months. This, coupled with various other major or minor incidents reported to have occurred in the public and private healthcare sectors in recent months, has indeed cast great doubts on the safety and reliability of the healthcare system in Hong Kong.

At present, cases of professional misconduct or malpractices on the part of doctors are handled by the Medical Council of Hong Kong (MCHK). The MCHK actually holds great powers as it can ban doctor in breach of the rules from practising. In spite of this, most of its members are doctors, which means that they are regulated by their own peers. Added to this is that the penalty imposed on doctors who committed professional misconduct has all along been considered rather lenient. Members of the public inevitably feel that doctors are shielding doctors and that the MCHK has no credibility to speak of.

In respect of the public health service system, the Hospital Authority (HA)

has put in place a two-tier complaint mechanism, whereby the relevant hospital can first attempt to resolve the case, and if the case cannot be resolved, it will be referred to the Public Complaints Committee. The HA Risk Alert is also issued regularly to explain to the public the incidents and problems that have occurred in the public healthcare sector, which also serves to raise the vigilance of health workers. However, these startling medical incidents have still occurred continuously in the public healthcare sector, with some of them even involving the loss of human lives.

Take Tuen Mun Hospital where a spate of serious medical incidents have occurred in recent months as an example. Some time ago a boy died after a cervical spine surgery in the hospital. The hospital had engaged an overseas expert to write up a report. The report first stated that tracheal extubation was normally performed the second day after the surgery but then it said that it was not a problem for early extubation performed within a short time after the surgery in that incident, and the report even ended with a line which said to the effect that the international guidelines had been complied with. It fell short of mentioning who should be held responsible for the incident, or giving a clear and reasonable explanation to the family of the deceased.

Indeed, medical incidents have happened continuously, followed by one report after another but mistakes still occur one after another and yet, nobody needs to bear responsibilities for the incidents. This shows that the complaint mechanism of the HA, as described by some people, cannot even be compared to a "paper tiger".

The latest sentinel event that occurred in that hospital even involved three specialist doctors. After the trio had examined the computerized tomographic brain scan of the old man in the case, none of them found cerebral hemorrhage in his brain, and it was only when there were changes in the patient's conditions two days later that the problem was detected after a re-examination of the patient. This has dealt a blow even more directly to public confidence in the public healthcare system. The entire incident can indeed be described as inconceivable.

As regards private hospitals, they are even subject to no control at all. The Government's regulation of private hospitals relies solely on an ordinance enacted several decades ago, in which the maximum fine that can be imposed is a mere \$1,000. Even though the number of written warnings issued to private

hospitals by the Department of Health (DH) has doubled this year, the DH has not proactively disclosed the information, whereas private hospitals have not taken the matter seriously after receiving the warnings. This is why a case of a doctor dropping a baby onto the floor in the course of delivery could be withheld from being reported.

The Liberal Party considers that the frequent occurrence of medical incidents, particularly in the public healthcare sector, may be quite closely related to the manpower drain. That said, we do not rule out the possibility of it having to do with certain inadequacies in the medical complaint mechanism and hence its failure to effectively urge the hospitals to make improvement.

However, I wish to stress that while the public would wish to see a reform, they do not mean that the existing regulatory system which upholds professional autonomy should be replaced. While professional autonomy is being upheld, should the protection of patients' rights not be also enhanced? Particularly, in handling and responding to medical complaints, the existing complaint system mostly looks at complaints from the angle of health workers and gives more consideration to their own difficulties than everything else. Such being the case, the sufferings that have been brought to the patients and families physically and mentally are easily ignored. What is more, as the complainants generally lack professional knowledge and resources, they often encounter difficulties when they need to engage experts to challenge the party being complained, and it is often the case that the results of the complaints are hardly convincing or satisfactory to the patients or their families.

A case in point is a recent incident that occurred in Kowloon Hospital where a patient died after his tracheotomy hole was sealed. Even Secretary Dr York CHOW, who started out as a doctor and who is in the Chamber now, has queried the health workers for always being reluctant to provide information after the occurrence of incidents to avoid punishment. The Secretary even had to openly appeal to the healthcare personnel concerned to provide information proactively and honestly. In other words, it is highly likely that the culture of "doctors shielding doctors" has already taken root in the healthcare system of Hong Kong.

Therefore, the public's aspiration for setting up a one-stop, independent

mechanism for handling both public and private health service complaints is absolutely understandable. Of course, we cannot expect medical incidents to stop happening or to happen less frequently as a matter of course after the establishment of this independent statutory Office of the Health Service Ombudsman. In fact, it is more important to identify the real causes of the frequent occurrence of medical incidents. Is it because of the manpower problem? Is it because of insufficient training, the lack of resource input, inadequacies of the regulatory system or other problems? We must identify the root causes of the problem and prescribe the right cure. This, together with the support of an effective complaint mechanism, will hopefully reduce medical incidents and restore public confidence in the public healthcare system.

With these remarks, President, I support the motion.

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

DR LEUNG KA-LAU (in Cantonese): President, I have only seven minutes to speak while the Secretary does not have any time constraint on his speech.

First of all, a complaints mechanism for health service is extremely important as public interest is involved and a channel is provided for the people to claim damages and lodge a complaint against the medical workers concerned upon the occurrence of a medical incident. Take the Mainland as an example. As the mechanism in this regard is far from perfect, if a patient has died due to a medical incident, the doctor concerned will certainly be chased after and killed. This is also one of the reasons why Hong Kong doctors find it difficult to practise on the Mainland. What we have to consider now is whether Hong Kong's existing mechanism is adequate.

I wonder if Members are aware of the amount of professional liability insurance that Hong Kong doctors need to buy. Regarding doctors in obstetrics and gynecology, the amount is \$320,000 per year; as for doctors in orthopedics and plastic surgery, the amount is \$250,000 per year, while the annual premium for me is \$120,000. If not because of the insufficiency in the existing complaints mechanism and compensation mechanism, why should we pay such enormous insurance premiums? Reputation is highly cherished by doctors, and

the business of the doctor concerned will be seriously affected once a medical incident has been reported by the media, regardless of whether it is true or not. The doctors simply can do nothing under the monitoring of the media, regardless of what mechanism has been put in place.

Many people are skeptical of the credibility of the Medical Council of Hong Kong (MCHK), but I would like to provide some data for your information. Among the disciplinary inquiries held by the MCHK, 90% are found guilty, which is a proportion on a par with the Court. Regarding the lay members of the MCHK, the medical sector also agrees that as there are only four lay members, their workload is too heavy and the number of lay members should be increased. However, the MCHK members appointed by the Government should, in principle, be the same as the representatives elected by the sector. In other words, given that there are four lay members among the existing 28 members, should the number of lay members be increased to eight, the doctor representatives elected by the sector should also be increased by four. As the Government can appoint 14 members out of the 28, the appointment of eight lay members will pose no problem.

In the face of numerous medical incidents, the media tend to be selective in coverage. Perhaps let me tell all of you here that the doctor who used his mobile phone during an operation was very unwise for carrying a mobile phone while on duty. However, as to the allegation that he was chatting about buying a car, it was actually a distorted story and nothing of this sort happened. Also, please do not forget that Hong Kong has a relatively sound legal system. Any patient who considers that a medical incident has occurred can bring a civil action against the party concerned. In case of lack of means, he can apply for legal aid.

Some Members mentioned a lot of medical incidents just now. However, does this justify the establishment of a new mechanism? The crux does not lie in the number of cases. Rather, it lies in the number of cases which have not been handled fairly because medical incidents can hardly be avoided. In the United States, the incidence rate of medical incidents is 10% in relation to the number of patients admitted to hospitals. In other words, the number of medical incidents may be tens of thousands and the question is whether those cases have been handled fairly. A few days ago, Mr Andrew CHENG disclosed a medical incident in Prince of Wales Hospital where the patient's bladder was punctured during a cesarean section and cited this as an example to demonstrate the

inadequacy of the medical complaints mechanism. In fact, this only shows that the mechanism maybe I should say that Mr CHENG has not found a more convincing case because as a surgeon, I can tell Members that once the patient's bladder has been pierced, a medical incident will immediately occur instead of emerging three weeks later.

All complaints systems have their shortcomings. However, some of the characteristics of medical services and complaints will never be changed by any mechanism. First, no medical complaints mechanism can reduce the incidence of medical incidents or enhance the quality of medical service. Second, medical diagnosis will never be 100% accurate; nor will treatment be 100% reliable. From the standpoint of patients, any complications will be construed as medical incidents; any unsatisfactory decision, as long as it is made by a doctor or the MCHK, will be regarded as an attempt by doctors to protect doctors' interests; if the decision is made by the Court, it will be regarded as an attempt by officials to shield officials. Even if a new office for handling medical complaints has been established, it still has to rely on professional opinions and the experts who make recommendations to the ombudsman office will always be doctors who will, similarly, know the persons being complained. Moreover, those experts, if not appointed by the Government, will be employed by the Government. How can they be absolutely independent?

The biggest problem of the new mechanism is that it will damage the trust between doctors and patients. According to the Personal Data (Privacy) Ordinance, the patients actually have the right to ask for all medical records instead of reports. It is not useful to have the reports because reports are written by the hospitals which can write whatever they like. Therefore, the most important documents are medical records. The patients can also hire experts to study the medical records in order to find out what has gone wrong. But the crux of the problem lies in whether the cost of investigation should be borne by the patient or the Government. If it is met by the Government, complaints will certainly surge, leading to skyrocketing medical costs. Members may have heard that there are some ambulance chasers in the United States. Who are those people? They are lawyers because champerty is allowed in the United States and lawyers can share the judicial award with the patients. As a result, defensive treatment is prevalent in the United States and medical costs account for 16% to 18% of its Gross National Product. Furthermore, such a complaints mechanism is incapable of handling the problems relating to resources and

management. The problems raised by Mr TAM Yiu-chung just now are also related to resources and management. It is most unfortunate that we will see harms long before we can see the benefits. Currently, the morale of the medical personnel in Tuen Mun Hospital is low. Owing to its notoriety, its staff wastage rate is also high. What help does it bring by establishing such an ombudsman office?*(The buzzer sounded)*

President, I so submit.

DR PRISCILLA LEUNG (in Cantonese): President, I consider today's motion very much worth exploring. The first topic I discussed in my speech on this year's Budget was healthcare service and pointed out that more resources should be provided in healthcare financing or as healthcare reserve. The Government has earmarked \$50 billion in this year. In my opinion, the Government should not distribute all fiscal surplus to the public in the next year's Budget. Rather, the surplus in future should be, if any, spent partly on healthcare service on a yearly basis.

Why do I consider healthcare services so important? This is because the experiences of my friends, the community I serve or even my own family tell me that if a family member has fallen ill, the entire family will face great pressure. Many Hong Kong people have to face retirement and medical costs may account for the biggest portion of their expenses after retirement. A good healthcare safety net and a system providing public and private health services which can set people's minds at ease are a worthwhile investment important to the Hong Kong society.

I have all along been a staunch supporter of allocating more resources to healthcare service, and I would voice this advocacy every year. Surely, I also understand that friends in the medical profession and doctors have worked very hard before being qualified for practice. The drain of talents in the public healthcare sector is evident to all and the pressure has not gone unnoticed. Meanwhile, a spate of medical incidents has been reported by the television, the radio or the press recently. In my opinion, the falling of a newborn baby to the ground is the most mind-boggling. For all those mothers out there, the first thing that comes to their minds is why such a thing has happened. But for me, the first thing coming to my mind is the question as to whether it was due to the

inadequacy of manpower in the hospital or a genuine shortage of experienced doctors that has led to such a problem. So, I very much hope that friends in the medical profession will consider and explore Mr Andrew CHENG's original motion and the three amendments in a more liberal attitude. In my opinion, the establishment of an independent statutory Office of the Health Service Ombudsman is a direction which is worth exploring.

In fact, on behalf of the universities in Hong Kong, I have been, over the years, fighting for — because I come from the tertiary education sector — fighting for the establishment of an inter-institutional redress mechanism. Why should I fight for such a mechanism? Is it because of an unsound judicial system? No. The judicial system has provided a good channel for many people in Hong Kong to resolve disputes. However, there are some dispute cases in which the parties concerned are really on an unequal footing. On the other hand, there are also some medical incidents in which the death of the patients has caused great grievances. If the patient or his family members considered the illness curable or a very minor ailment, but the patient has died unexpectedly due to a medical incident, his family's feeling of loss will turn into great grievances. Any family in the face of such a situation will tend to hold such grievances even though the medical incident has only led to some unexpected diseases or permanent disability, not to mention causing the death of the patient.

I absolutely believe that no medical worker would wish the occurrence of a medical incident. I also believe that most of the doctors currently working in the public healthcare sector or doctors working in private hospitals — I am acquainted with many doctors as many of my former students are working in the medical profession — they will tell me lots of their grievances because workers in the healthcare sector are facing enormous pressure. They cannot focus on providing better services due to the large number of complaints. Furthermore, there is also a lack of resources.

In fact, the source of all such grumbles lies in whether the existing mechanism for handling such disputes or complaints is considered fair and impartial by all parties concerned. We are not saying that the judicial system is unsound. However, only the poorest people — because they can get legal aid — or those who have strong financial capacity can make use of the judicial system

from day one until the end. Other than those people, no one can go through the entire mechanism to the final stage. As a member of the legal profession, I certainly understand that it will be a very heavy burden for the ordinary people if they want to seek remedies through the judicial system. There are some cases which must be resolved by the judicial system, but there are some others which can be settled through other channels before going to the Court. Therefore, I fully support that the Office of the Health Service Ombudsman be given the charge of investigating and conciliating complaints as well as handling compensation matters as proposed in the original motion.

In fact, it will often take a lot of time to deal with compensation matters and a settlement agreement cannot be reached despite a lot of calculations. So, if there is another mechanism enabling conciliation to be conducted for those who are dissatisfied with the healthcare service or wish to lodge a complaint before resorting to the judicial system — we also have arbitration as the mechanism for commercial service — we may attempt this channel before resorting to the Judiciary when things really cannot be settled.

As for the patient's family, it will be very painful for them to go through the court proceedings if they have to seek remedies immediately through the judicial channel given that they have already suffered great trauma due to the occurrence of a medical incident to their relative. In my opinion, we should establish a better mechanism and consider how best to get this done properly. Meanwhile, I would also like to advise friends in the medical profession that a more liberal attitude should be adopted towards this issue. It does not mean target at anybody or aims at imposing penalties on them. Rather, it is hoped that in the event of a dispute, it can be resolved in a more effective and more (*The buzzer sounded*) equitable manner, in the opinion of both parties.

President, I so submit.

MR LEUNG KWOK-HUNG (in Cantonese): President, the issue is in fact very simple. First of all, we are discussing whether a more credible institution should be established to handle the growing number of medical incidents. This does not target at the doctors, but the health service. If a hospital is in poor shape, medical incidents may occur. All in all, the treatment of patients may give rise

to medical incidents, and doctors need not be so nervous though they are undoubtedly one of the service providers.

Why does the Government not support the proposal even though we have voted on the motion many times? Why does the Government insist that it cannot accede to the demand? In fact, if there is really an independent statutory Office of the Health Service Ombudsman — if it is really independent — most of its decisions in respect of public health service will attribute medical incidents to a myriad of factors, such as shortage of healthcare manpower, doctors being driven crazy by excessive workload for a long period of time, and so on. The Office will basically be a magic mirror, reflecting problems within the portfolio of Secretary Dr York CHOW, such as too many Consultants in the Hospital Authority (HA). All of these are old problems that have been debated on too many occasions *ad nauseam*. If there is an independent statutory body, which is also impartial and when it has made some comments, do you think it will act like the majority of the 60 Legislative Council Members by playing the role of a "big critic"? The only difference is that when we play the role of a "big critic", some people will say, "Those unscrupulous politicians speak out simply because they want to solicit more votes." Basically, can the current-term Government or the HA meet the challenge? No, they cannot.

Second, regarding the healthcare expenditure, the level of public healthcare spending as a share of our GDP is most unsatisfactory when compared with other regions with a similar level of GDP. Many Members said, "Why can't we do better?" On hearing that, I think they have, to put it bluntly, problems with their mind. The Government told us that it has no money. President, you may also recall that Dr YEOH Eng-kiong once asked where the money came from before you became the President of the Legislative Council. Did money fall from trees, he asked? He meant there is no money. If this Council dare not ask the Government to change its fiscal management philosophy — what is the use of keeping 18 months' or 24 months' reserve if the Government does not have any tax revenue? An excessive reserve is pointless. A 12 months' reserve will suffice. However, Members dare not do so. Nor do Members support tax increases. That being the case, how can the Government have money? This is why this Council, at this juncture, will always urge the Government to increase spending and the rich to pay more taxes in order to do something for the poor and those who are unable to help themselves. Most of the so-called "royalists" or Members of the pro-establishment camp have unanimously said that this is a bad

idea or not feasible. Now, they have turned into big critics.

Third, it is not that the Government has not proposed a solution. It has pointed out that if public hospitals are in poor shape, it is necessary to develop the healthcare industry. How dare the Government propose the development of the healthcare industry? It has made such a proposal when our health service is in a mess. Though \$50 billion has been set aside to lure people to participate in the so-called "mandatory medical fund" many years ago, the issue is like "expired dumplings" and discussion is still going on. We are still discussing how best to lure people away from the public healthcare sector in order to alleviate the Government's burden. To date, we are still discussing it.

So I think it is certainly very reasonable for the Government not to support the establishment of the Office of the Health Service Ombudsman because dirty linen it will not wash dirty linen in public. Something not seen means it does not exist. How can the Government allow a credible institution to pass judgments constantly pointing out what has gone wrong? Secondly, where does the rot of our system actually lie? It lies in the functional constituencies which comprise several professional or non-professional functional constituencies. Most of them consider themselves professionals and more capable than the others. So, this Council has 30 Members returned by functional constituencies, right? They account for one half of the total number of Members, with medical practitioners forming one of these sectors, right? That being the case, I would like to ask you a question: As this is condoned by our system, meaning that these professions' interests override public interest, how could the same logic not be applied in other areas?

For those who criticize the Medical Council of Hong Kong (MCHK) for shielding the doctors today, why do you not oppose the bad arrangement for the Chief Executive election? Those 1 200 Election Committee members are elected by the so-called functional constituencies or those 220 000 people who consider themselves more capable than the others, while the remaining 6 million-odd people cannot voice their views. This is the root cause of the rot of our system. So, in my opinion, this Council is crazy, unprincipled and illogical, and this can be called populism. In other words, when voters say that there is a problem, they will point accusing fingers in the same direction in order to please the voters. I would like to ask you a question: If you unanimously say that the MCHK is shielding the doctors, do other sectors not have the same

problem? Why can these sectors elect the Chief Executive on our behalf? Given that these sectors have the right to elect the Chief Executive, can the Chief Executive offend these sectors? Dare the pig or wolf or a mix of pig and wolf¹ offend these people? So, it is pointless for Mr Andrew CHENG to give a long speech as this is precisely our system.

So, President, I will not pin high hopes on the Government. I bet against the implementation of the proposal by the Government. How possibly could the Government discharge its duties if not because of being hurled objects or given a push? Am I right? To put it simply, this is the reason why I hurled objects at Donald TSANG.

MR ALAN LEONG (in Cantonese): President, like the offices of many Honourable colleagues, my office also frequently receives cases about medical complaints. Some complainants expressed their anger about the injustice done to them. Some complainants wanted justice for their deceased family members. They did not always demand compensations. Some of them simply wanted to find out the truth. All of those cases have left a deep impression on me. President, you can imagine how tremendous the pressure would be for the victims or their family members when unfortunate medical incidents happened. Worse still, the resistance they encountered during the complaint process might be bigger than the pressure itself.

Recently, a number of medical incidents have occurred in Hong Kong that involved human lives, including the case mentioned by Mr Ronny TONG, in which a boy died in Tuen Mun Hospital after a cervical spine operation. A patient suffering from laryngeal carcinoma died in Kowloon Hospital; it was suspected that his death had been caused his tracheotomy being mistakenly covered by gauze on all sides. In most medical incidents, the family members of the victims were unable to lodge any complaint, not to mention the opportunity of being fairly processed.

President, if a complaint is filed against a public hospital, the Hospital Authority (HA) has a two-tier complaints handling system to deal with any complaint lodged by the victim or his family members. The first-time

¹ It refers to the Chief Executive hopefuls.

complaints will all be directed to the relevant hospital or clinic for initial handling. As many Honourable colleagues said just now, the handling of medical complaints by the hospital or clinic concerned is unconvincing because they are investigating their own peers. Moreover, when handling incidents, the Patient Relations Officers usually give us an impression that they prefer appeasing the patients to effectively handling the complaints.

If the complainants are dissatisfied with the response from the first-tier complaints mechanism to which they have initially directed their complaints, they can appeal to the Public Complaints Committee (PCC) for case review. However, the transparency and functions of the PCC has been open to question. The PCC members are all appointed by the HA with the current Chairman being one of the Directors of the HA. It goes without saying that there is a role conflict, easily causing a complainant to lose confidence in the investigation result. Even the administrative support for case review is also provided by the HA Head Office, which includes summoning relevant healthcare workers, obtaining information from the hospital concerned and appointing experts. There is a lack of independence in its operation. In addition, complainants are not allowed to sit in on the PCC's hearings. During the whole complaint process, they are unable to know what is going on. In other words, there is not a bit of transparency or credibility in whole process.

President, you may also be well aware that in a hearing conducted by the Medical Council of Hong Kong (MCHK) on the alleged professional misconduct of a medical practitioner, the accused, the complainant as well as the family members of both parties can sit in on the hearing. Therefore, I cannot help asking why the hearing conducted by the PCC under the HA does not allow any family member to sit in while the MCHK's hearing is open to the family members of both parties? I am really baffled.

According to the data of recent years, the number of accepted complaint cases which were subsequently found substantiated by the PCC is most insignificant and declining. In 2009, for example, the HA received a total of 2 044 complaint cases involving hospitals, representing an increase of 10% from 2008. Among the 273 cases referred to the PCC, only five cases were substantiated and eight cases partially substantiated. Although the HA had received a total of 2 141 complaint cases involving hospitals last year, only 255 of them were referred to the PCC. Among them, merely five cases were

substantiated and another five cases partially substantiated.

When the abovementioned channel of complaint is found ineffective, justice cannot be done even if the complainant decided to bring it to the Court because the complainant may have to employ an expert witness. There is a certain degree of difficulty finding expert witnesses in Hong Kong and it will be very costly hiring such from overseas. As many Honourable colleagues have mentioned, if the complainant fails in his application for legal aid or cannot afford the cost of hiring expert witnesses, the complainant may probably be forced to give up the idea of bringing the case to court.

President, a complaints mechanism that is not independent, transparent or credible is no longer a valid complaints mechanism. Therefore, the Civic Party supports today's motion and amendments, agreeing to the establishment of a statutory independent Office of the Health Service Ombudsman to unite the complaints mechanism for public and private hospitals.

I so submit.

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

MR PAUL TSE (in Cantonese): President, if the person concerned is Michael JACKSON, then there will be no more worry because his family has sufficient resources to pursue liability. But in reality, how many people like Michael JACKSON are there?

President, the more professional knowledge and skills an industry has, the more concerned about professional autonomy it will be. And it will also be more difficult for the public to have the opportunity or an appropriate mechanism to participate in the regulation of this industry. The healthcare sector, to which medical practitioners belong, and the legal profession, to which lawyers including barristers belong, may be the last fortress to allow the penetration of an independent regulatory mechanism at the very last moment. On the recent discussion on the establishment of an independent regulatory mechanism for the tourism sector, we may also have to "surrender" — I hope it will succeed. I believe doctors and lawyers are most possibly the last sectors to establish an

independent regulatory mechanism. Let us keep our eyes peeled for their developments in the future.

President, first of all, what are the advantages of establishing an independent regulatory mechanism? Many colleagues have mentioned a myriad of merits, but I still want to add a little bit more. As Mr LEONG mentioned just now, both the victim of a medical incident and his family members are fundamentally in a depressed state. If they have to go through various proceedings in order to pursue liability, it is like rubbing salt into an open wound.

Secondly, the dead cannot speak. Very often, the deceased should be the one who knows what happened best. However, the doctors and medical workers will speak their own version unilaterally after the death of the deceased. Although there are some relevant records, these records are still not 100% reliable or credible because the dead cannot speak. Sometimes, it will be very difficult for the heartbroken family to pursue liability in order to hold those responsible accountable.

Thirdly, President, the two parties are on an unequal footing. The general public even for solicitors and barristers, it is also very difficult for them to wrestle with a specialist and they always need to seek third-party assistance. As many colleagues have mentioned that doctors will shield each other, it is necessary to rely on a third party to hold those responsible accountable. Hong Kong is also a small place, apart from being a small circle. It will face enormous difficulties given its status as a small city and a small place. The situation of Hong Kong is not comparable to foreign countries such as the United Kingdom where doctors in many counties and cities can offer help, and in the United States there are many doctors who can serve as expert witnesses. But in Hong Kong, it is always necessary to look for witnesses in other common law countries, such as Australia and the United Kingdom. It is really difficult and the existing system is therefore unbalanced.

There will be a lot of advantages in establishing an independent system. As some colleagues have also mentioned, the discovery stage, in which a decision on whether legal action should be initiated has not yet been made, is a crucial moment. Besides, the conciliation mechanism is also a very good one. But I would like to elaborate on the ridiculous aspect of a self-regulatory mechanism. I am afraid that the doctors or healthcare sector in Hong Kong will become

willing to take one step forward by considering giving up self-regulation only when a major impact is brought by an incident similar to the "Ah Zhen" incident in the tourism industry. Let us keep our eyes peeled for an "Ah Zhen" incident in the healthcare sector. It is because problems which are left unresolved will pile up. It all depends on when the last straw will break the camel's back.

President, regarding self-regulation or "investigation by its own people", I always think of a relatively — If the jury in a court is composed of "unscrupulous people", will it be more efficient? Many doctors and lawyers often emphasize that they know their industry much better. To a certain extent, this is true. However, the desired effectiveness will be achieved by inviting some witnesses in the same industry when necessary instead of conducting an investigation of "unscrupulous people" by "unscrupulous people" every time.

President, after listening to the Secretary's speech, I found that one of the most justifiable reasons to oppose the motion is overlapping efforts. Ms Audrey EU has also cited the example of New South Wales in Australia. If overlapping is advantageous and if it is an independent mechanism that can conduct investigations, conciliations or handle complaints or compensation matters in relation to the professional ethics of doctors or nurses, why should it be rejected?

President, I very much hoped that Dr LEUNG Ka-lau could raise more convincing defence for the healthcare sector. I had expected much from him. But unfortunately, I could not hear any sufficient justification apart from his voice of objection. He mentioned that insurance premiums paid by doctors were exorbitant, amounting to \$120,000 or \$300,000 per annum. However, many of our acquaintances in the healthcare sector have always mentioned the so-called "extraterrestrials" or "moon men", which refer to those people who are earning a weekly or monthly income of \$1 million. Thus, an insurance premium of \$120,000 or \$300,000 is only small charge to them, isn't it, President?

Certainly, I concur that the establishment of such a mechanism cannot immediately solve many problems. On the contrary, I even think that it will not reduce the incidence of medical incidents. However, in an unbalanced situation where a system with dubious credibility needs improvement, why should the establishment of an independent mechanism as the case in many countries be rejected? This is the first step forward. Most importantly, President, many Members with a legal background have also emphasized that under the present

system, despite their legal background as solicitors or barristers, they may not be able to help the parties concerned. We also understand that even though the party concerned has been granted legal aid, it is also very difficult to initiate a legal action. President, under such circumstances, I hope the healthcare sector of Hong Kong will not wait until a serious incident like the "Ah Zhen" incident has occurred before it is awakened like the tourism industry and willing to concede, enabling our system to become fairer and more equitable.

Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): Mr Andrew CHENG, you may now speak on the three amendments.

MR ANDREW CHENG (in Cantonese): President, I would like to make use of these five minutes to speak on the amendments proposed by three Honourable colleagues.

The first one is the amendment by Dr PAN Pey-chyou. In his amendment, he has added the main functions of the Office of the Health Service Ombudsman to my original motion. I fully agree to these seven functions and would like to respond to the query of a couple of Members about these seven functions: Will the independent Office to be established in future achieve the purpose? In my opinion, the points raised by Mr Vincent FANG and Dr LEUNG Ka-lau cannot convince me. They said we will see harms long before we can see any benefits. They also queried the effectiveness of the Office. By proposing these seven functions, Dr PAN Pey-chyou has clearly set out its functions such as investigation, collecting evidence, providing assistance, handling of compensation matters and providing information within a regular time frame. If Honourable colleagues consider that I am pained particularly because such queries are raised by Dr LEUNG Ka-lau from the

medical profession.

In my opinion, President, if a profession wants to be respected by the others, it should all the more need to open itself rather than warding off all criticisms with such a strong sense of self-defence. I hope doctors will understand, as I have reiterated, that the Office we are talking about does not necessarily aim at meting out punishment. Our purpose is to have fair investigations. Sometimes, patients or their families are really unable to know what has happened or there may be misunderstandings among themselves. Owing to a lack of channel, they may express their grievances through all possible means, while the reporters who find it interesting will write some stories on them. These stories will be regarded as true when they are frequently reported by the press. However, as we all know, some complaints in the past were not valid and there were medical justifications to support such a decision. Such a chaotic situation is precisely what we do not wish to see. What we precisely want is a more credible mechanism for handling complaints instead of relying solely on the complaints mechanism and complaint handling mechanism under the HA.

A colleague mentioned medical hegemony earlier. I do not want to see that the medical profession, which should deserve respect, give people an impression — Dr LEUNG Ka-lau often utters doctors' platitudes such as "Do you know that?" "Do you know that if I don't tell you?" Many doctors also talk to me in such a manner. Certainly, we have to trust doctors. However, in the face of a problem or irresponsible medical treatment, we cannot place our trust entirely on doctors. Rather we should place on a more independent healthcare system and complaints mechanism. I agree that medical incidents are inevitable. But we can pre-empt unfair treatment. We can also pre-empt non-transparent investigations of medical incidents.

Mr Paul CHAN's amendment has also highlighted the problem. The sector has over-protected its own profession and dignity. The MCHK can enhance its credibility through increased lay member participation as well as more public participation.

Regarding Mr CHAN Hak-kan's amendment, I have deliberately incorporated word for word the amendment he moved to my motion last year to my original motion for two reasons. First, I hope that Members will support it.

Secondly, I also look forward to, apart from giving Members another I also agree to the new proposal put forward by Mr CHAN Hak-kan because the establishment of an emergency financial assistance mechanism modelled on the Traffic Accident Victims Assistance Scheme can certainly enable victims of medical incidents to get assistance from the mechanism before going through the lengthy process. It has also provided Honourable colleagues in this Council food for thought in respect of this motion. I absolutely agree with what the Secretary said in his first speech: Such thinking is essential. But whether or not actions will be taken, it all depends on the Secretary.

Thank you, President.

SECRETARY FOR FOOD AND HEALTH (in Cantonese): President, I thank Members for their valuable opinions expressed on the motion earlier on. I have noticed that many Members stressed that the principle of professional autonomy could not be violated in any complaint handling mechanism. As I also mentioned in my opening remarks, the principle of professional autonomy is founded on patients' trust. An environment for medical practice that promotes understanding, communication and mutual trust is helpful to health workers in performing their inherent duty of saving lives and alleviating sufferings. In this connection, if the establishment of an independent statutory Office of the Health Service Ombudsman can serve this purpose and better still, upgrade the quality of our health services, I absolutely will not oppose it. However, can the operation of this Office truly serve this purpose? This is warrants our deep thoughts.

Generally, patients have great trust in the professional judgment of doctors. Unfortunately, several medical incidents have occurred recently, and the public hope to have a mechanism that can handle medical incidents and health service complaints more properly and this, we absolutely understand. Summing up the comments of Members, we agree that an ideal complaint handling mechanism should operate on a number of major principles. First, the mechanism must be able to process complaints against health workers, and make fair and impartial decisions on complaints about the professional conduct of health workers and health services; second, there should be enough medical professionals in the mechanism to make judgments and conduct analyses on the cases to facilitate adjudication; third, there should be an appropriate degree of participation from people outside the profession, and the cases should be analysed independently

from the community's angle outside the profession and the judgments thus passed should reflect social values; and lastly, the mechanism must be impartial, objective and transparent, with the objective of fostering mutual confidence between patients and health workers. The current mechanism for handling medical incidents and complaints operates broadly in line with these principles but certainly, there is still room for improvement.

In respect of public health service, under the two-tier complaint mechanism currently in place, all initial complaints and views will be handled and responded to directly by the hospital/clinic concerned, in order to manage complaints at source and ensure that prompt action is taken for improvement. This is how complaints are directly handled in public hospitals. Complainants who wish to put forward further views or are not satisfied with the handling or outcome of his or her complaint could appeal to the Hospital Authority (HA) Public Complaints Committee (PCC) for a review. The PCC is responsible for considering and deciding on all appeal cases independently and making recommendations for service improvement to hospitals. The PCC is comprised of a total of 25 members who are not HA employees. The purpose is to ensure that the complaints are handled objectively and fairly. The PCC has 18 members who are non-medical professionals coming from different sectors of the community, including patients' representatives. The hospitals under the HA have made a performance pledge of replying to the complainant in six weeks for general complaints and in three months for complex cases. On the other hand, the PCC will respond to a complaint in three to six months, while complex cases will take longer. The HA received a total of 2 300 complaints in 2010, which was more or less the same as the number in 2009. In the meantime, the HA received 14 400 opinions and 35 500 commendations in 2010.

In respect of the reporting mechanism for more serious medical incidents, the HA has since January 2010 implemented a revised sentinel and serious untoward event policy. Under the revised policy, in addition to sentinel events, all serious untoward events relating to medication error and patient misidentification would need to be reported by the clusters/hospitals concerned within 24 hours. Following the same principle for handling sentinel events, a serious untoward event will be dealt with properly, so as to minimize the harm caused to the patient and staff involved in the incident.

After the introduction of this reporting requirement for serious untoward

events, a total of 81 serious untoward events occurred in the period from January to September 2010, and 47 serious untoward events were reported during the period from October 2010 to March 2011. Of these 47 reported events, close to 90% involved medication error, whereas the remaining five cases involved patient misidentification.

In addition to improving the mechanism for reporting and handling medical incidents after their occurrence, the HA considers that precautionary work is equally important and has implemented various initiatives for risk identification and introduced appropriate technologies to further enhance patient safety. For instance, the HA has adopted the patient safety round conducted by the management and front-line staff. Patient safety round is an internationally adopted approach to identify risks in the work environment and workflow and explore improvement measures. In the HA, senior managers will take part in the rounds and listen to the front-line staff on their concerns and suggestions regarding protocols and procedures in their daily work settings. The HA Head Office has also identified specific areas for conducting safety rounds with cluster management and set up regular platforms for communication, feedback and recommendations across different disciplines and specialties.

Besides, the use of appropriate technology also plays an important role in enhancing patient safety. The HA has adopted the use of 2D barcode extensively to enhance patient identification and minimize human errors, such as mix up of blood specimens. The HA has also initiated pilot projects on the use of radiofrequency in mortuary services to ensure correct identification of deceased bodies.

With regard to a number of medical incidents that have occurred recently, I met with the HA Chief Executive and Cluster Chief Executives this morning and asked the HA to set up a task force to seriously and thoroughly review the causes for the recent medical incidents. This will include a review of the procedures and requirements of internal clinical supervision and studies of ways to make improvements, in order to ensure patient safety and enable the public to continuously receive quality health services in HA hospitals with peace of mind.

The series of measures and mechanisms that I have just mentioned cannot

be replaced by an independent statutory Office of the Health Service Ombudsman.

In respect of private hospitals, under the Code of Practice for Private Hospitals, Nursing Homes and Maternity Homes (the Code) issued by the Department of Health (DH), all private hospitals are required to submit on a monthly basis a complaint digest to the DH to enable the DH to have an understanding of the level of performance of the hospitals in handling complaints. Under the Code, the staff and related personnel of private hospitals are required to regularly receive training on customer service improvement, and a notice on the channels for receiving complaints is also required to be posted at the admission office, reception counter of individual service, cashier and reception hall to ensure that patients are aware of the channels for complaint. In 2010, the 12 private hospitals received and handled a total of about 400 complaints which mainly involved staff performance, staff attitude, hospital environment, hospital fees and charges, and so on.

As the regulator of private hospitals, the DH will conduct investigations upon receipt of complaints against private hospitals or reports on medical incidents in private hospitals, and will require the hospital to take appropriate measures to rectify the mistakes or refer the cases to the relevant professional regulatory bodies for follow-up actions. Since 2010, the DH has regularly published information on sentinel events on the principle of striking a proper balance between the public's right to know and patients' privacy. Public announcements on individual events will be made by the DH if the event is of significant public health impact or ongoing public health risk. In 2010, the DH received a total of 80-odd complaints against private hospitals, of which some 40 involved staff performance, 10 involved administrative procedures, eight involved communication, seven involved fees and charges, and 10 involved other matters.

To further enhance our ability to regulate private hospitals, we are working on a review of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance, particularly in respect of the professional standard of service and transparency of fees of private hospitals, with a view to further upgrading the service quality of private hospitals and protecting patients' right to know.

In 2009, a pilot scheme of hospital accreditation (the Pilot Scheme) was

launched by the HA in partnership with the Australian Council on Healthcare Standards, with the objective of gauging the performance of hospitals in various aspects. The Food and Health Bureau has also set up a Steering Committee comprising representatives from the DH, the HA and the Private Hospital Association to oversee the implementation of the territory-wide hospital accreditation programme. Through participating in the accreditation process, it is expected that both public and private hospitals' accountability to service quality and safety will be strengthened, and that public confidence in the quality of health services will be enhanced.

Five public hospitals (namely the Caritas Medical Centre, Pamela Youde Nethersole Eastern Hospital, Queen Elizabeth Hospital, Queen Mary Hospital and Tuen Mun Hospital) and three private hospitals (namely the Hong Kong Baptist Hospital, Hong Kong Sanatorium and Hospital and Union Hospital) have joined the Pilot Scheme and all passed the accreditation, and they have been awarded four-year full accreditation status. As our next stage of work, the hospital accreditation programme will be extended to cover more hospitals, with a view to further enhancing quality and safety management of local hospitals to international standards. For the HA, resources have been earmarked to extend the hospital accreditation programme to another 15 public hospitals in the next five years, in order to continuously improve the quality of health services and enhance protection for patients while fostering public confidence in the quality of health services.

In respect of the regulation of the integrity of medical professionals, the Medical Council of Hong Kong (MCHK) is an independent statutory body set up in accordance with the Medical Registration Ordinance, responsible for the regulation of doctors practising in Hong Kong.

The mechanism for handling complaints against doctors of the MCHK already sees the participation of members of the public. The Chairman and Deputy Chairman of the Preliminary Investigation Committee are required to obtain the consent of a lay member before dismissing a complaint, or else the complaint must be referred to the Preliminary Investigation Committee for consideration. In the five years between 2006 and 2010, the MCHK conducted 118 disciplinary inquiries and only four cases were found to be not substantiated. As regards the penalty imposed, the doctors were given warnings or reprimanded and in more serious cases, removed from the Register. Between 2006 and 2010,

a total of 69 doctors had been removed from the Register of the MCHK for a period ranging from one month to permanent removal. The judgments of the MCHK's inquiries and their reasons are uploaded onto the website of the MCHK, and the judgments are also published in the Gazette in accordance with the Medical Registration Ordinance. Other healthcare professional bodies also have similar mechanisms in place.

A number of Members mentioned earlier that the Government has neither taken any action nor stated a position on the establishment of an independent ombudsman office and that I do not wish to see their professional autonomy affected. This is not true.

We have made reference to other experiences. I remember that in 2009 when Mr Andrew CHENG proposed a similar motion for debate, we did study the medical complaint mechanisms in the United Kingdom, New South Wales of Australia and Ontario of Canada, in an attempt to draw on experiences that would be suitable for Hong Kong. However, it was found that the mechanisms for handling health service complaints, the duties and functions of the governing bodies and the coverage of the powers of these bodies were different in the three places. Our conclusion then was that these complaint handling mechanisms were far from comprehensive in respect of their powers and functions, and so on, and they were subject to various degrees of restriction. As regards compensation, a great majority of overseas professional medical regulatory bodies and independent organizations receiving complaints do not handle this area of work.

Today, two years on, we have again made reference to the practices in various countries, in an effort to understand and learn new experiences. Here, I would like to share with Members the experience of the United Kingdom.

The General Medical Council in the United Kingdom has all along been responsible for handling complaints against registered doctors in the country and making a decision on doctors' fitness to practise. In 2008, the United Kingdom Government established a new independent organization to take over the work of the General Medical Council in handling complaints against doctors. At that time, the British society considered that it would be more credible and effective for an independent organization to handle these complaints. The Office of the Health Professions Adjudicator was subsequently set up in accordance with the

Health and Social Care Act 2008. This new Office was responsible for handling complaints against doctors of the General Medical Council and opticians of the General Optical Council and investigating the fitness to practise of doctors and opticians. The United Kingdom Government had hoped at that time to gradually extend the duties and functions of the Office of the Health Professions Adjudicator to cover complaints against other healthcare workers.

However, the Office of the Health Professions Adjudicator was closed down by the United Kingdom Government in less than two years after its inception. In 2010, the Government conducted a two-month public consultation on the future development of the Office of the Health Professions Adjudicator, and the Department of Health announced in December 2010 that after collecting and carefully considering different views and proposals, it was considered unnecessary for the health professions to be regulated by a body in the form of a health professions adjudicator. The report also stated that although the public wished to have a fair complaint handling mechanism in that apart from such professionals as doctors, appropriate participation from the public is also allowed in handling the complaints, the community did not consider the Office of the Health Professions Adjudicator the best mechanism for handling complaints but on the contrary, it was considered superfluous. The public considered that the improvement and reform of the complaint handling mechanism of the General Medical Council to enhance its independence and credibility would be more efficient and more cost-effective than the establishment of a new regulatory body.

The United Kingdom experience has served as an important reference for us to draw on. We are discussing this issue today in the hope that patients' rights and interest can be better protected. But when we consider whether or not to put in place a new mechanism, we must ask ourselves what objective and effects we would wish to achieve before proceeding to consider whether or not this channel is most suitable and most effective.

As we all understand, we hope to improve the complaint mechanism in order to give the public more room to express their views and handle their complaints. But can the establishment of this independent mechanism replace all the other mechanisms currently in place? I do not think so. If such being the case, should we improve the existing mechanisms and include in these mechanisms those elements which are considered necessary by Members? This

is what we should also consider.

Earlier on many Members, especially Members who are lawyers or barristers, mentioned that it is not easy to find doctors to appear as expert witnesses in Court, and that there is also the problem of "doctors protecting doctors" or "doctors shielding doctors". I agree that the Court is the final adjudicating mechanism of great importance. It is also the place where judgments are made on complaints or any other matters for furtherance of justice. Before I joined the Government, I personally had had many chances to be an expert witness in Court. I personally think that many doctors in Hong Kong are most willing to provide professional, correct and impartial opinions. That said, we must understand that under this mechanism, we are also subject to many restrictions.

I personally had the experience that even though I had provided a report to the lawyer, the lawyer still might not accept it and even asked me to make amendments to the report to suit the needs of his client. I hope Members will understand that the principle of justice is also very important in any aspect of our work. We understand that lawyers are engaged to work in the interest of their clients but if professionals are asked to write up reports which are untrue, I think that is a very big mistake and is even a question of professional integrity. So, I hope that when dealing with these issues, the several professions involved must consider whether they should exercise certain restraint and self-discipline in this respect.

I think in the existing health service regulatory system which upholds professional autonomy, we have attached great importance to how we can improve the existing mechanisms for handling health service complaints and we have been working closely with various professional regulatory bodies to ensure that the mechanisms can handle complaints properly and effectively. Apart from making continuous improvements to the mechanisms for handling complaints, we have also explored ways to continuously upgrade the quality of the healthcare professions. To this end, we will set up a high-level steering committee to conduct a strategic review of the planning and professional development of healthcare personnel and also of the regulatory frameworks and that is, the MCHK or the Hong Kong Nursing Council mentioned earlier. The objective is to ensure that the manpower and standards of the healthcare professions are sufficient to support the continued development of the healthcare

system. Mr Paul CHAN mentioned in his amendment that the composition of the MCHK should be reviewed and that consideration should be given to the proposal of including more participation from independent and credible lay members. We will consider these views in the strategic review.

We also agree that consideration should be given to including elements of conciliation or arbitration in the complaint handling mechanism. Our major principle is that any medical organization and healthcare professional bodies must at all times give priority to patients' safety and health as well as the interest of the community. Sectoral interests should not override the well-being of patients. We will also consider the proposal made by Mr CHAN Hak-kan of providing additional assistance to people affected by medical incidents. In this connection, we must ensure that this will not have any direct implication on their complaints, especially in respect of the professional liability to be involved in the future. Any changes made to the system must be premised on the principle of effectively protecting patients' rights and interest, and we should also carefully consider whether changes to the system will affect the mutual trust between patients and health service providers which may bring counter-productive effects to the patients. For example, this may cause health workers to become too conservative by giving up the application of innovative but risky treatments on patients or refusing to accept other challenges in treatment, in order to protect themselves. In the end, the patient-based philosophy will be undermined. This, I believe, is not what members of the community would wish to see.

President, I hope that with the concerted efforts of all sides, the mechanism for handling health service complaints can be improved, while the quality of healthcare services and patients' interest can be enhanced at the same time. I understand that Members have certain expectations in this respect. I hope Members can take an objective and impartial view in assisting us to carry out work in this area continuously.

Thank you, President.

PRESIDENT (in Cantonese): Dr PAN Pey-chyou, you may now move your amendment to the motion.

DR PAN PEY-CHYOU (in Cantonese): President, I move that Mr Andrew

CHENG's motion be amended.

Dr PAN Pey-chyou moved the following amendment: (Translation)

"To delete "as" after "That," and substitute with "with the increasing needs and pressure of public and private health services in Hong Kong,"; to add "; in this connection" after "to feel helpless"; to delete "receive complaints concerning public and private health services from the public, investigate and conciliate complaints as well as handle compensation matters under a uniform mechanism, also inform complainants of the investigation outcome within a reasonable time frame and regularly announce to the community the situation regarding handling of medical complaints, so as to" after "Service Ombudsman to"; to delete "and" after "complaints is enhanced,"; and to add "; the functions of the Office should include: (a) to centralize the receipt of public complaints against all public and private health service providers registered in Hong Kong; (b) to conduct investigations into the complaints received, with statutory powers to request the relevant parties to provide related information, such as medical files and internal investigation reports, for facilitating investigations, and inform the complainants and the parties under complaint of the investigation results within a reasonable time frame; (c) to assist complainants in obtaining independent professional advice on their cases; (d) to assist the two sides in communicating with each other on an equal footing, and to conduct conciliation and handle compensation matters with their mutual consent; (e) to provide complainants in need with information about further actions on ascertaining liability through judicial means as well as professional liability proceedings and investigation, and offer reasonable assistance to complainants for instituting such procedures; (f) to regularly announce to the public the statistics on complaint cases and the handling of medical complaints, so as to enable the public to know the trend of complaints about health services; and (g) to promote civic education to enable the public to understand the causes of medical incidents and complaints, so as to deepen public awareness of health service risks, and prompt health service providers to improve the quality of health services" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That

the amendment, moved by Dr PAN Pey-chyou to Mr Andrew CHENG's motion, be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr Paul CHAN, as Dr PAN Pey-chyou's amendment has been passed, you may now move your revised amendment.

MR PAUL CHAN (in Cantonese): President, I move that Mr Andrew CHENG's motion, as amended by Dr PAN Pey-chyou, be further amended by my revised amendment.

Mr Paul CHAN moved the following further amendment to the motion as amended by Dr PAN Pey-chyou: (Translation)

"To add "; at the same time, the Administration should review the composition of the Medical Council of Hong Kong, consider introducing the participation of more independent lay members of credibility to enhance the strength of public monitoring and safeguarding public

interest, and consider raising the proportion of lay member participation in handling complaint cases regarding misconduct in a professional respect, so as to further ensure that the investigation into and the handling methods and procedures for such cases are fair, just and impartial" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr Paul CHAN's amendment to Mr Andrew CHENG's motion as amended by Dr PAN Pey-chyou be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr CHAN Hak-kan, as the amendments by Dr PAN Pey-chyou and Mr Paul CHAN have been passed, you may now move your revised amendment.

MR CHAN HAK-KAN (in Cantonese): President, I move that Mr Andrew

CHENG's motion, as amended by Dr PAN Pey-chyou and Mr Paul CHAN, be further amended by my revised amendment.

Mr CHAN Hak-kan moved the following further amendment to the motion as amended by Dr PAN Pey-chyou and Mr Paul CHAN: (Translation)

"To add "; the Administration should also study establishing an emergency financial assistance mechanism for medical incidents modelled on the Traffic Accident Victims Assistance Scheme, so as to offer timely assistance to families with financial difficulties arising from medical incidents" immediately before the full stop."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Mr CHAN Hak-kan's amendment to Mr Andrew CHENG's motion as amended by Dr PAN Pey-chyou and Mr Paul CHAN be passed.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the amendment passed.

PRESIDENT (in Cantonese): Mr Andrew CHENG, you may now reply and you have one minute 18 seconds.

MR ANDREW CHENG (in Cantonese): President, since the Secretary has

raised the issue about the United Kingdom, I then thumbed through the recent developments in the country. My understanding is that the British Government, which is in financial straits, has included the mechanism in the ambit of administrative affairs ombudsman to reflect "cost-effectiveness" — the phrase that the Secretary always keeps saying over and over. So, I hope the Secretary do not provide information in a selective manner.

Some Honourable colleagues have mentioned the "Ah Zhen" incident, in which we should have heard what Ah Zhen said, "Your expenses on food and accommodation are on my account; you have to shop." We all know the story and we all wonder how she could have said that. However, the situation is different for medical practitioners. Even if there is an error in a procedure, the patient will find it impossible to argue with the surgeon because the patient has no idea whether the surgeon has really made any mistake. Therefore, even if the "Ah Zhen" incident did happen in the healthcare sector, I think the chance of veritably inducing self-discipline is still not big.

A netizen from the Mainland said on the Internet that he once went to a hospital and saw all doctors and nurses wearing helmets like motorists. He soon realized a medical incident had happened in the hospital before. Doctors and nurses wore helmets while on duty because the patients would hit their heads on sight.

President, I would like to (*The buzzer sounded*) use this joke to bring out one point and hope that medical practitioners in Hong Kong need not wear helmets at work.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Andrew CHENG, as amended by Dr PAN Pey-chyou, Mr Paul CHAN and Mr CHAN Hak-kan, be passed.

PRESIDENT (in Cantonese): Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion as amended passed.

NEXT MEETING

PRESIDENT (in Cantonese): I now adjourn the Council until 11 am on Wednesday, 7 December 2011.

Adjourned accordingly at twenty-two minutes to Eleven o'clock.

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Financial Services and the Treasury to Ms Emily LAU's supplementary question to Question 1

As regards how the development in the financial services sector had resulted in employment growth in other sectors, the robust financial services sector has indeed created a sizeable amount of business to other sectors in the Hong Kong economy. According to data from the Census and Statistics Department, the financial (including insurance) sector in 2010 incurred total expenses of \$44.2 billion on such services including:

- (a) advertisement, business promotion, accounting, audit, legal and other business services (\$14.6 billion);
- (b) transportation, travel, postage, newspaper and magazines, and communications (\$12.0 billion); and
- (c) property which includes rent, rates and government rent (\$17.6 billion).

At the same time, the financial services sector generated a wide spectrum of employment opportunities, ranging from managerial, clerical to semi-skilled positions in such other sectors as business services, personal services, communications, and so on. As mentioned in our Financial Secretary's Budget speech this year, the creation of every 100 jobs in financial services will in turn bring about some 60 jobs in related industries. This is broadly similar to other so-called "pillar industries".

For employment in the financial services sector, the number of employed persons increased substantially over the past five years by about 40 000, at an average annual growth of 4%, far higher than that of 1.2% for all sectors. Among the 40 000 employment created, about 30% were managerial and professional level positions, which saw an average annual growth of 3.5% over the same period. The remaining 70% (that is, 28 000) jobs created were non-managerial and

WRITTEN ANSWER — *Continued*

non-professional level positions. The average annual growth rate was about 4.3%. The financial services sector not only provides a large number of high-paying and professional jobs, but also offers employment opportunities for many other supporting staff.

The financial industry plays a strategic role in Hong Kong's economic future by raising the competitiveness of our economy. It is a big contributor to the economic integration between Hong Kong and the Mainland, which will in turn provide opportunities for everyone in Hong Kong. The financial services sector, through close partnership with other sectors in the economy, is a vital component in the overall development of our city.